IN THE EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO.: GDAHCV2024/0500

IN THE MATTER OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT ORDER 1967
("THE COURTS ORDER")

AND

IN THE MATTER OF THE JUDICIAL AND LEGAL SERVICES COMMISSION REGULATIONS
("THE JLSC REGULATIONS")

AND

IN THE MATTER OF THE APPOINTMENT OF EDDY VENTOSE AS A JUSTICE OF APPEAL OF THE EASTERN CARIBBEAN SUPREME COURT
("THE APPOINTMENT")

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF A WRIT OF CERTIORARI

BETWEEN:

JAMES A. L. BRISTOL KC

Claimant

AND

THE JUDICIAL AND LEGAL SERVICES COMMISSION

Defendant

AND

EDDY DAVID VENTOSE

Interested Party

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow — High Court Judge

Appearances:

Mr. Sydney A. Bennett KC, Ms. Ann Henry KC and Mr. Dylan Charles for the Claimant
Mr. B. Michael Hylton KC, Ms. Dia Forrester and Mr. Sundiata Gibbs for the Defendant
Mr. Anand Ramlogan SC, Mr. Vishaal Siewsaran and Mrs. Daniella Williams Mitchell for the Interested Party

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2025: February 25th;
April 17th, 20th; (Submissions)
July 07th.
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[1] **GLASGOW, J.:** The present ruling follows this Court's decision dated 12th December 2025 concerning an application brought by the Interested Party, Justice Ventose (hereafter "Justice Ventose"). In that application, Justice Ventose challenged the Court's jurisdiction to hear this the substantive claim instituted by the Claimant, Mr. Bristol (hereafter "Mr. Bristol"). In the 12th December 2025 jurisdictional challenge, this Court held that it possesses jurisdiction to hear and determine Mr. Bristol's claim.

[2] The factual and procedural background to the issues arising in this matter is set out in detail in the 12th December 2025 ruling. Accordingly, this judgment will refer to the relevant facts only to the extent necessary to explain and determine the issues presently before me. Readers seeking a more comprehensive account of the factual background are referred to the 12th December 2025 ruling.

The case

[3] For present purposes, a brief statement of the relevant constitutional and legislative framework will suffice. Grenada is one of nine Member States and Territories of the Organisation of Eastern Caribbean States, (hereafter "OECS"), that share a common superior court, namely the Eastern Caribbean Supreme Court, (hereafter "ECSC"). A fuller account of the history of the ECSC is set out in the 12th December 2025 ruling and need not be repeated here. The constitutions of the participating OECS States and Territories[1] contain materially similar provisions relating to the ECSC, which is established by legislation known as the Supreme Court Order (hereafter "the Courts Order"). Section 4 of the Courts Order establishes the Court.

[1] The Grenada Constitution is contained in Chapter 128A of the Laws of Grenada

[4] Section 5 of the Courts Order (hereafter "section 5") sets out criteria for appointing the judges of the ECSC which criteria include the appointment of judges who sit on the Court of Appeal. Section 5 reads –

> "(1) The Chief Justice shall be appointed by Her Majesty by Letters Patent and the Justices of Appeal and the Puisne Judges shall be appointed on behalf of Her Majesty by the Judicial and Legal Services Commission.
>
> (2) A person shall not be qualified to be appointed—
>
> (a) as Chief Justice or a Justice of Appeal unless—
>
> (i) he has been for a period or periods amounting in the aggregate to not less than five years a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or
>
> **(ii) he is qualified to practise as an advocate in such a court, and has so practised, for a period of, or periods amounting in the aggregate to, not less than fifteen years;**
>
> (b) as a Puisne Judge unless—
>
> (i) he is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or
>
> (ii) he is qualified to practise as an advocate in such a court and has so practised, for a period of or periods amounting in the aggregate to not less than ten years.
>
> (3) For the purposes of subsection (2) of this section references in that subsection to a period or periods during which a person has practised as an advocate in any such court as is mentioned in that subsection shall be construed as including a period or periods during which a person—
>
> (a) has been serving in the office of judge of any such court; or
>
> (b) after having become qualified to practise as an advocate in any such court, has been serving in a public office in some part of the Commonwealth the functions of which include 'appearing as an advocate in any such court or in the office of magistrate, or registrar of a court, in some part of the Commonwealth." (Bold emphasis mine)

The controversy

[5] All parties agree that Justice Ventose has not "… been for a period or periods amounting in the aggregate to not less than five years a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court

having jurisdiction in appeals from such a court."[2] Consequently, as will become apparent later in this judgment, the central issue is whether Justice Ventose's appointment was made in accordance with the requirements prescribed by section 5(2)(a)(ii) of the Courts Order. More specifically, the dispute brings into sharp focus the meaning and scope of the terms "advocate" and "has so practised" as they appear in section 5(2)(a)(ii).

[6] Section 18 of the Courts Order establishes the Judicial and Legal Services Commission (hereafter "the JLSC"), the first defendant to these proceedings, while section 5 confers upon the JLSC the responsibility for appointing judges to the High Court and the Court of Appeal.

[7] Mr. Bristol's case is that the JLSC acted unlawfully and in breach of section 5 when it appointed Justice Ventose to the Court of Appeal on 8th January 2024. According to Mr. Bristol, Justice Ventose had not "so practised" as an advocate for the requisite period of fifteen years at the time of his appointment. It therefore falls to this Court to examine the basis upon which Mr. Bristol presents that concern.

[8] The JLSC maintains the contrary position. It stands by its decision, asserting that it complied with section 5(2)(a)(ii) by satisfying itself that Justice Ventose had practised as an advocate for the prescribed period of fifteen years prior to his appointment to the Court of Appeal. Justice Ventose, for his part, aligns himself with the JLSC's stance. He firmly declares that he satisfied the fifteen-year practice requirement stipulated by section 5(2)(a)(ii) and that, consequently, the JLSC lawfully appointed him to the office of Justice of Appeal.

Elaborating the disputations

(i) *Mr. Bristol*

[9] Mr. Bristol begins from the premise that section 5(2)(a)(ii) of the Constitution refers to an "advocate" without defining who qualifies as an advocate for the purposes of that

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[2] Section 5(2)(a)(i) of the Supreme Court Order

provision. This interpretive difficulty is not, however, insurmountable. Mr. Bristol argues that guidance as to the meaning of the term "advocate" may be found in its traditional definition as "*a legal practitioner whose specific focus is the representation of clients involved in litigation, generally in adversarial proceedings before courts or tribunals*."[3] He relies on **A Concise Law Dictionary**[4], **A Dictionary of English Law**[5] and the case of **Medclaf v Mardell**[6] as authorities for this proposition. Mr. Bristol presents section 42 of the United Kingdom's **Legal Aid, Sentencing and Punishment of Offenders Act 2012** as offering a definition of*…"advocacy" in the context of judicial qualifications and professional experience as the exercise of a right of audience before a court, tribunal, or other person*."[7]

[10] Mr. Bristol further argues that, in England and Wales, advocacy was historically the preserve of barristers. By contrast, the legal profession in the Caribbean, and particularly in the Eastern Caribbean, is fused, with all attorneys-at-law enjoying rights of audience before the courts. Nevertheless, he maintains that the Courts Order continues to recognize a distinction between advocates and non-advocates. To support this position, he refers to the decision of the Malaysian Federal Court in **Badan Peguam Malaysia v Kerajaan Malaysia**[8], where the Court considered the distinction between barristers and solicitors in interpreting constitutional provisions that employed the term "advocate." The court in that case observed that

> "…We see that, even though the term 'advocate and solicitor' is used in the Ordinance, the drafters of the Constitution chose the word 'advocate' when drafting the Constitution. True that the Ordinance did not define the word 'advocate' even though the word 'solicitor' was defined. Both are terms peculiar to the English legal profession. An advocate conducts cases in court. A solicitor does not.
>
> Bearing in mind the background of the members of the Reid Commission that drafted the Constitution, it could well be that they were influenced by the position in England where, until very recently, only advocates were appointed

[3] See paragraph 4 of Mr. Bristol's submissions filed on 17th April 2026
[4] P G Osborn (4th Edition)
[5] Charles Sweet (1882)
[6] [2002] 3 Costs LR 428 at paragraphs 52-55
[7] Supra, note 3 at para 5
[8] [2008] 3 LRC 600

as judges, not solicitors, even though in the then Malaya and until now we have a joint profession."[9]

[11] Mr. Bristol advances the same analysis in relation to the Grenada Constitution. He argues that the drafters of the Grenada Constitution, as well as those of the Constitutions of the independent member states of the OECS, were persons skilled in English law and therefore they intentionally chose the term "advocate." In his submission, that choice of language was deliberate and was intended to restrict the category of persons eligible for appointment as judges of the Court of Appeal to those who are advocates in the sense outlined above. Mr. Bristol further elucidates that –

> "[F]or the purposes of proving the qualifying period of practice of advocacy required by **Section 5 (2) of the Courts Order,** an applicant must show more than the date from which he was qualified to practice advocacy. He must have "...so practiced… for a period of, or periods amounting in the aggregate to, not less than fifteen years".[10]

[12] Mr. Bristol further explains that –

> (1) Legal practice involves many aspects of which advocacy is only one aspect. Thus it is quite possible to practise law without being engaged in litigation. Non litigation services performed by a lawyer may include *"…conveyancing, provision of corporate, financial or other advisory services*"[11]. In this regard enrollment to practise law as an advocate only proves that you are so qualified to do. It does not prove that you have actually practised as an advocate;
>
> (2) Prior to the fusing of the profession, barristers and solicitors engaged in differing aspects of litigation. Solicitors engaged in litigation management but were precluded from appearing before the courts. This would mean that the lawyer who is engaged in litigation preparation or management, even if that engagement is substantial, would not be considered an advocate;
>
> (3) The term advocate is traditionally understood to be restricted to those who are presenting a client's case to the court. The meaning of the term does not extend to those "…*providing written advice to clients, writing opinions, drafting pleadings, or other litigation support work, if these activities do not directly involve appearing before or addressing a court*."[12];

[9] [2008] 3 LRC 600 at 608
[10] Supra, note 3 at para 7.1
[11] Ibid para 7.2
[12] Supra, note 3 at para. 7.4

(4) The distinction between a lawyer who serves as an advocate and one who serves as a legal consultant or advisor lies "…*in the specific legal entitlements and activities associated with advocacy, such as rights of audience and conducting litigation, which are not inherent to the role of a legal consultant or advisor. Consultancy or advisory work typically involves providing legal advice or opinions without engaging in the formal representation of a client in court or exercising rights of audience. Advocacy, on the other hand, specifically involves representing a client in legal proceedings and exercising rights of audience*"[13];

(5) Since agreements for consultancy services vary, it would be difficult to discern, without proof of the contents of the agreement, what sorts of services were offered by Justice Ventose to Finnistere and Associates and whether those services were written advocacy on behalf of a litigant in court;

(6) JLSC is misguided in its approach to the interpretation of section 5(2) (a)(ii) since that "…*view does not align with the traditional understanding of advocacy as involving active representation in court proceedings"*[14].

(7) Notwithstanding the fusing of the profession, *"[T]he effect of this development is not to change the fundamental nature of the practise of advocacy but to expand the pool of persons permitted to exercise the right of audience before the courts to include all practitioners. In so far as they practise advocacy practitioners are bound by pretty much the same principles, standards and rules as were applicable to advocates in the courts prior to fusion*."[15] As such the definition of "practise as an advocate" cannot be adjusted to mean anything other than its traditional definition;

(8) Section 5(2)(a)(ii) is a deliberate legislative mechanism which "… *clearly delineates the qualifications for judicial appointments, including the requirement for a minimum period of service as a judge or advocate*."[16] This deliberate legislative approach may be observed in the constitutional provisions of other former and present British territories concerning the establishment of superior courts and the qualifications for judicial office. The British Antarctic Territory (1965) and Gibraltar (1969), for example, adopted provisions governing appointment to their Courts of Appeal during a period broadly analogous to that in which the OECS Constitutions were drafted. Those provisions did not require actual practise as an advocate; rather, they required only a prescribed number of years' standing. Consequently, eligibility extended to persons whose legal experience had been acquired in circumstances in

[13] Ibid para 7.5
[14] Supra, note 3 at para 7.7
[15] Ibid at para 7.8
[16] Ibid para 7.9

which they may have been unable to practise before the courts or had not obtained a practising certificate;

(9) The framers of the Courts Order could have easily adopted the approach of the British Antarctic Territory and Gibraltar. However, they deliberately took the policy approach that the applicant must have practised as an advocate. "*Their decision to require candidates for the higher judiciary to "practise as an advocate" in the traditional sense of that term, for the minimum period of 15 years represents the choice to adopt a particular model for the establishment and organization of the Courts in the Eastern Caribbean. That decision was that judges would continue to be appointed exclusively from among attorneys who practiced and were familiar with the rules of advocacy and court procedure*"[17]. "*The policy objective was to ensure that the Courts were staffed with judges who by reason of practise over a multiyear period had gained familiarity with rules of evidence and procedure and adequate insight and experience in the conduct of adversary proceedings in the courts*";[18]

(10) Even if the court accepts the JLSC and Justice Ventose's approach to interpreting section 5(2) (a) (ii), the facts of this case do not demonstrate that Justice Ventose "...*practiced advocacy for the period of 15 years within the meaning and intendment of the Courts Order*.**"**[19] The JLSC could not, therefore "…*rationally have accepted that Professor Ventose had satisfied the requirements Section 5(2) of the Courts Order given the information that had been provided to it by Professor Ventose in the course of his application.*" [20]

[13] Mr. Bristol next relies on the constitutional arrangements of the British Antarctic Territory and Gibraltar to reinforce his construction of section 5(2)(a)(ii), and in particular his submission that the provision contemplates actual practise as an advocate. He points to section 3 of the British Antarctic Territory Court of Appeal Order 1965 (SI 1965/590), which sets out the qualifications required for appointment as President of the Court or as a Justice of Appeal in that Territory –

"**Constitution of Court**
(b) a person shall not be qualified for appointment as the President or a Justice of Appeal of the Court unless—
(i) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or

[17] Supra, note 3 at para 7.11
[18] Ibid para 7.12
[19] Ibid para 7.13
[20] Ibid

(ii) he is entitled to practise as an advocate in such a court and has been entitled for not less than five years to practise as an advocate or a solicitor in such a court.
(c) for the purposes of this paragraph, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—
(i) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or
(ii) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise."

[14] Similar provisions are found in section 58 of the Gibraltar Constitution Order 1969 (23/5/1969) –

"**58 Appointment of judges**

(1) The Chief Justice, the President of the Court of Appeal and the Justices of Appeal shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) No person shall be qualified for appointment as Chief Justice, President of the Court of Appeal or Justice of Appeal unless—
(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal in some part of the Commonwealth or in the Republic of Ireland, or of a court having jurisdiction in appeals from any such court; or
(b) he is entitled to practise as an advocate in such a court and has been entitled for not less than ten years to practise as an advocate or as a solicitor in such a court.

(3) For the purposes of this section, a person shall be regarded as entitled to practise as an advocate or, as the case may be, as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or, as the case may be, of solicitors) notwithstanding that—
(a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or
(b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise."

[15] Mr. Bristol finds the distinction with the Courts Order to be that section 5(2)(a)(ii) "…*requires a candidate to have qualified for the bench by the duration of his or her actual practice of advocacy rather than the length of the period for which he or she*

was entitled to practice is clear from the requirement that the practice of advocacy be … for a period of, or periods amounting in the aggregate to, not less than fifteen years."[21] The Courts Order, in section 5(3), contemplates "…*that there may be periods in which a person is not engaged in the practice of advocacy despite being qualified to do so. It is thus the aggregate number of years of actual advocacy rather than the years during which the applicant was entitled to practice as an advocate which is required*."[22]

Applying the foregoing to the facts of this case, Mr. Bristol argues that the question for the JLSC was not the length of the period in which Justice Ventose was engaged in the practice of law nor the time that elapsed from the time of his call to the Bar. Rather, the JLSC was tasked with enquiring whether Justice Ventose actually practised as an advocate subsequent to his call to the Bar. This is since it is quite possible to be called to the Bar as an attorney at law and not practise as an advocate *"…in the sense of carrying on the activity of exercising the right of audience before a court or tribunal on behalf of some person other than himself or herself or, indeed, …offering himself on hazard to take work as an advocate*.[23]" It was for Justice Ventose to so satisfy the JLSC that he had "… *for a period aggregating not less than 15 years, practised as an advocate in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth*."[24]

(ii) *Mr. Bristol on whether Justice Ventose has actually practised as an advocate*

[16] Mr. Bristol then examines the evidence that, in his submission, formed the basis of Justice Ventose's application to the JLSC. Permit me to recite in full paragraphs 25 to 31 of the submissions filed on 17th April 2026 on this issue –

"25.The primary evidence was provided by Professor Ventose in 3 documents:

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[21] Supra, note 3 at para 12
[22] Ibid para 13
[23] Supra, note 3 at para 22
[24] Ibid

(a)His application to the JLSC Dated the 27th June 2022. ("the JLSC Application"). Exhibit "JMS1" to the Defendant's affidavit.
(b)His application to the Search Committee dated the 27th September 2022 ("the SC Application"). Exhibit "JB1" to the Claimant's affidavit.
(c)His letter to the Search Committee dated the 30th April 2024 ("the Response Letter"). Exhibit "JB5" to the Claimant's affidavit.

26. Both Sections 5 "Professional Experience" of the JLSC Application and the SC Application (together "the Applications") are almost identical save as hereinafter stated.

27. The Applications show that Professor Ventose had first been admitted as a Solicitor and Barrister, Attorney at Law in Saint Lucia on 7 November 2007. He had been enrolled as an attorney at law in Barbados in July 2008 and that he had:

(a)been a senior legal adviser in the Attorney General's Chambers in the Commonwealth of Dominica for the period 20162017 (one year);
(b)served as a Master of the Eastern Caribbean Supreme Court assigned to Anguilla, Antigua and Barbuda, and the Territory of the Virgin Islands for the period November and December 2016 (2 months);
(c)been appointed a Judge of the Eastern Caribbean Supreme Court in 2018 and assigned to St. KittsNevis. He served as High Court Judge in St. KittsNevis until 2020 (2 years);
(d)"…served several stints as an acting Justice of Appeal from May to December 2023" (7 months); (this period should not count as Section 6(2) of the Courts Order only permits a person to act if that person is qualified for appointment to the substantive post).
(e)practised in Barbados as an advocate as
•Senior Legal Consultant Delany Finisterre, Barbados 2010 – 2018 (8 years). The one year in Dominica as above to be deducted as it is within the same period so effectively 7 years.
•Senior Legal Consultant Finisterre Attorneys, Barbados 20212022 (2 years).

28. The only place in which Professor Ventose claimed to have practised as an advocate was Barbados.

29. He makes no claim to have practised in St. Lucia or elsewhere.

30. In this regard, see paragraphs 16 and 17 of the Affidavit of JodiAnn Masters Singh filed herein on 3 March 2025:

"16. While his application does not indicate any litigation work being done in St. Lucia, it does indicate that he engaged in litigation since his calling in Barbados in 2008. Sir Hugh Rawlins indicated that Mr. Ventose acquired a comprehensive knowledge of rules of evidence and of court practice and procedure due, in part, to "his practice in Barbados and attendance in court there.

17. We understood from his application that since being called to the Barbadian Bar in 2008 he provided litigation support in matters before the courts and did so during the period between his call in that jurisdiction and his appointment as a High Court judge in 2018. After that stint came to an end Mr. Ventose became Dean of the Faculty of Law at UWI up until his appointment as a Justice of Appeal in 2024."

31. Also, see Section 5 of the Applications and Exhibit "JB5" to the affidavit of the Claimant:

Exhibit "JB5": …Since my admission to practice as an attorney at law in Saint Lucia, except for the period where I served as a High Court Judge, and over the past 16 years I have engaged in the practice of law in Barbados and Dominica…".

[17] The foregoing material is relied upon by Mr. Bristol to contend that, excluding the period during which Justice Ventose served on the Court of Appeal, his aggregate professional experience amounts to "*12 years and 9 months, or more accurately, 12 years and 2 months when the period on the Court of Appeal is excluded*."[25] Mr. Bristol further argues that, even if the period between Justice Ventose's admission to the Bar in Saint Lucia in 2007 and his admission to the Barbadian Bar in 2008 is included in the calculation, the aggregate period of qualifying experience still falls short of the 15 years required by section 5 of the Courts Order. On Mr. Bristol's calculation, the total period amounts to only 14 years and 4 months.

[18] Mr. Bristol further invites the Court to exclude an additional period of seven years from the calculation on the basis that Justice Ventose held a practising certificate authorizing him to practise law in Barbados only during the years 2014 and 2018. This information was obtained from the Registrar of the High Court of Barbados by letter dated 19th February 2025. In support of this contention, Mr. Bristol relies on the provisions of the Legal Profession Act, Cap. 370A of the laws of Barbados, which prohibit any person from practising law in Barbados unless he or she is the holder of a valid practising certificate[26].

[25] Supra, note 3 at paragraph 32

[26] See sections 2, 10, 11 and 44 of the Barbados Legal Profession Act.

(iii) *Mr. Bristol on questions of delay and relief*

[19] Finally, Mr. Bristol addresses the objection raised by the JLSC that he failed to act with sufficient promptitude in bringing this claim. He invites the Court to reject the allegation of delay on the basis that it was advanced in the JLSC's affidavit in answer without any supporting evidential foundation and without providing "*particulars of any detrimental effect on the administration of justice nor any substantial hardship or substantial prejudice to the rights of any person*"[27] as required by CPR 56.4(2). Mr. Bristol's view is that this omission constitutes a clear breach of CPR 56.8, by which rule, an affidavit in answer must comply with the pleading requirements prescribed by CPR 10 in relation to defences. Mr. Bristol laments that -

> "CPR Part 10.5 provides that the defendant must set out all the facts on which he relies to dispute the claim. CPR Part 10.7 prohibits a defendant from relying on any allegation or factual argument which is not set out in the defence but which could have been set out there, unless the Court gives permission. The Court has given no such permission nor has the defendant applied for such permission."[28]

[20] He further complains that the lack of particulars has hamstrung his ability to discern what case he has to answer on the issue of delay. The case of **The National Lotteries Authority v Jerome Deroche**[29] is presented as support for this view.

[21] Notwithstanding the alleged lack of evidence, Mr. Bristol makes the following points in answer to the delay issue –

(i) any delay was not unreasonable in the circumstances;

(ii) JLSC was well aware of the likely effect of permitting Justice Ventose to continue sitting in light of its knowledge that he may not have met the qualifying criteria;

[27] Supra, note 3 at paragraph 42
[28] Ibid at paras 44 and 45
[29] Civil Appeal No.GDAHCVAP2021/0025

(iii) JLSC could have de-rostered Justice Ventose whilst considering the observations of the Search Committee;

(iv) the observations of the Search Committee were communicated by Sir Dennis Byron, former Chief Justice of the Court of Appeal of the Eastern Caribbean Supreme Court and former President of the Caribbean Court of Justice and ought to have been accorded serious and further consideration by JLSC; and

(v) the claim concerns an issue of great public importance, namely the legality of the composition of our pinnacle Court and the effect of such illegality on the decisions and judgments of the Court of Appeal.[30]

[22] Further, with respect to whether the delay was unreasonable, Mr. Bristol recounts the history of the correspondence between the Search Committee, Justice Ventose, and the JLSC. The details of that exchange are outlined in the ruling dated 12th December 2025. Having regard to that history, Mr. Bristol submits that any delay in the commencement of these proceedings was not unreasonable.

[23] Mr. Bristol also submits that greater prejudice would be caused to the administration of justice if this court permits Justice Ventose to continue sitting as a Judge of the Court of Appeal despite not meeting the requisite qualifications for appointment to that office. In any event, he argues, the court retains a discretion to entertain an application for judicial review notwithstanding any delay, especially where the proceedings raise issues of significant public importance. **Re S**[31] is presented as support for this posture.

All in all, Mr. Bristol asks that the relief that he seeks be granted.

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[30] Supra, note 3 at para 47

[31] [1998] FLR 790 at 795

JLSC's stance

(i) How does the JLSC interpret section 5(2) (a)(ii)?

[24] The JLSC's position may be stated simply, but it carries considerable force. The JLSC acknowledges that section 5(2)(a)(ii) requires it to determine whether a candidate for appointment to the Court of Appeal has not only qualified as an advocate but also "has so practised" as an advocate for an aggregate period of at least fifteen years. It further accepts the traditional distinction between advocates and those who are not advocates, as outlined by Mr. Bristol. The point of divergence arises, however, in relation to the proper interpretation of section 5(2)(a)(ii). Unlike Mr. Bristol, the JLSC's case is that the provision should not be confined to the traditional meaning for which he argues.

[25] The JLSC offers a more expansive interpretation of the word "advocate" and the term "has so practised" as an advocate. In its closing submissions filed on 16th February 2026, the JLSC urges the court to interpret the phrase "… *to include substantive involvement in the preparation and presentation of a case for court including settling pleadings, drafting written submissions, preparing witness statements and other comparable litigation work*."[32]

[26] This approach to interpreting section 5(2)(a)(ii), JLSC opines, accords with the "always speaking" approach to statutory interpretation used by modern courts. That approach assumes that when Parliament passes a law, it intends the courts to read it in a way that allows the law to work sensibly as times change. Courts therefore often apply what is called an "updating construction", meaning that the words of a statute should be applied in light of current conditions, not only the conditions that existed when the law was first written."[33] **McCartan Turkington Breen (A Firm) v Times Newspapers[34]** and **Bennion on Statutory Interpretation[35]** are presented as authorities for this view.

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[32] Para 19 of JLSC's submissions filed on 16th February 2026
[33] Ibid at para 20
[34] [2001] 2 AC 277
[35] Chapter 14: Updating Construction, page 528

[27] The JLSC reasons that adopting this approach to interpretation would result in a broader understanding of the terms “advocate” and “advocacy”, one that is not limited to the conduct of oral advocacy before courts or tribunals. The JLSC observes, by way of example, that contemporary legal practice does not invariably require advocates to present oral submissions before a court. Advocacy may equally be undertaken through the preparation and presentation of written submissions, a process commonly referred to as “written advocacy” -

> “26. …Evidence is no longer given through lengthy oral examinations-in-chief, where counsel had to take care not to lead a witness into an answer. Instead, the witness’s evidence is set out in a written witness statement that is prepared and filed well before the witness even enters the witness box.
>
> 27. In the same way, attorneys-at-law often file written submissions in advance of hearings, and in many matters (especially interlocutory applications) the court may decide the issues on paper without the need for oral argument. Even trials, or parts of trials, may sometimes be dealt with in this way…”[36]

[28] JLSC relies on **Norfolk County Council v Webster and others**[37] to support the foregoing arguments and as underpinning the proposition that “…‘*practise as an advocate’ should be given an updating construction and be interpreted to mean ‘practise in litigation.’*”[38]

[29] JLSC’s case is that the “updating construction” is the proper way in which to interpret section 5. JLSC maintains that an interpretation of section 5(2)(a)(ii) along the lines proposed by Mr. Bristol would frustrate the legislative purpose underlying section 5, which is to ensure that only candidates who have attained a minimum threshold of competence may be appointed as Justices of Appeal. JLSC continues -

> “30. If it were to be accepted, an attorney who has spent over fifteen years doing essential litigation work (e.g. preparing pleadings, written submissions, witness statements and other documents needed to present a case) would be

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36 Supra, note 32 at paras 26 and 27
37 [2006] EWHC 2898 (Fam)
38 Supra, note 32 at para 28

> treated as lacking competence merely because he has not personally made oral submissions in the traditional manner of a barrister.
>
> 31. That approach places undue weight on oral advocacy, which is only one small part of modern litigation. It ignores the written and preparatory work that has become central to how cases are actually presented."[39]

(ii) JLSC on whether Justice Ventose "has so practised"

[30] The JLSC next addresses the question of whether Justice Ventose practised as an advocate for the aggregate period of fifteen years required by section 5(2)(a)(ii). It submits that he did so practise and therefore met the constitutional qualification. JLSC makes the following points in support –

> (1) Since his call to the Bar in Saint Lucia in 2007, Justice Ventose "*assisted with legal opinions and drafting documents for selected matters which have engaged the courts*."[40] JLSC refers to the reference provided by former Chief Justice Sir Hugh Rawlins as corroborating the assertion;
>
> (2) Justice Ventose's letter to the Search Committee dated 30th April 2024 stated that he had appeared in court as an advocate and had "*assisted persons involved in proceedings for the resolution of issues arising under law*"[41].

[31] JLSC submits that the foregoing material demonstrates that *"…between 2007, when he was called to the Bar in St Lucia, and 2024, when he was appointed as a Justice of Appeal, he was engaged in practice as an advocate (using its wider definition) except for those periods during which he was sitting in a judicial capacity*."[42]

[32] JLSC further argues that Mr. Bristol has failed to prove that Justice Ventose did not practise as an advocate throughout the 16 year period from the time of his call to the Bar in 2007 to his elevation to the Court of Appeal in January 2024.

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[39] Ibid at para 30 and 31
[40] Supra, note 32 at para 35
[41] Ibid at para 36
[42] Ibid at para 37

[33] JLSC accepts that Justice Ventose did not provide specificity about the particular litigation that he conducted. However, JLSC explains that, " *…in his letter dated April 30, 2024, he affirmatively states that since his admission, he performed tasks that, on our case, constitute the practice of advocacy, and he identifies only one exception- the period during which he served on the bench*."[43] The letter dated 30th April 2024 states the following –

> "I was called to the Bar of St Lucia on 7 November 2007, which means that [sic] have been qualified to practice as an attorney at law in Saint Lucia for over 16 years, thereby satisfying the requirements under paragraph 5(2). Since my admission to practice as an attorney at law in St Lucia, except for the period where I served as a High Court Judge, and over the past 16 years I have engaged in the practice of law in Barbados and Dominica by carrying out the following activities: (1) advising on the application of the law; (2) assisting persons involved in proceedings for the resolution of issues arising under the law; (3) appearing in court as an advocate; (4) drafting documents intended to affect persons' rights or obligations; and (5) teaching or research law."

[34] JLSC further states that the question of whether or not Justice Ventose has "*…practised as an advocate throughout the 16 years after his enrolment in St Lucia gives rise to a dispute of fact between the Claimant and Justice Ventose*."[44]

[35] The JLSC submits that this factual dispute must be determined "*on the basis of the facts as stated by the defendant, unless there is good reason to reject that account*."[45] It claims that this approach is warranted because, among other considerations, cross-examination is not ordinarily available in judicial review proceedings. See **The King (on the application of Denys Leonard-Elmaz) v Financial Ombudsman Service Limited**[46] where it was observed that –

> "However, judicial review is almost always conducted on the documents. Cross-examination in judicial review is exceptional (see the case of *R (Wilkinson) v Broadmoor Hospital* …, in the human rights context, and also *R*

[43] Ibid at para 42
[44] Supra, note 32 at para 43
[45] Ibid para 45
[46] [2024]EWHC 3681 (Admin)

> *(Bancoult (No. 3) v Secretary of State for Foreign and Commonwealth Affairs* … per Lord Justice Stanley Burnton in 2012, where, exceptionally, permission was granted to cross-examine).
>
> In almost all judicial review cases the court does not need to engage in fact-finding, even to the extent that there are disputed facts, because the court normally takes the facts as stated by the defendant unless there is a good reason not to."[47]

[36] The JLSC also invites the court to disregard Mr. Bristol's reliance on Justice Ventose's absence of a Practising Certificate in Barbados during the period 2018 to 2020. It submits that this evidence lacks probative value given that Justice Ventose was serving as a High Court Judge throughout that period. Consequently, the JLSC argues, that period cannot be regarded as disqualifying in light of section 5(3) of the Courts Order. The JLSC further points out that Justice Ventose is qualified to practise in a number of jurisdictions and contends that the fact that he did not hold a Practising Certificate in Barbados during the relevant period does not materially advance Mr. Bristol's case.

[37] JLSC further invites the court to accept the entire 16 year period discussed above as meeting the qualifications required by section 5(2(a)(ii). In this regard, JLSC recognizes that

> "…although Justice Ventose's account of his professional experience in his May 2024 letter provides some detail as to the nature of the activities he says constituted practise as an advocate during the sixteen-year period, it is not specific as to when, within that period, he performed each of those activities and to what extent. For example, Justice Ventose does not say whether any of the court appearances or assistance in proceedings took place between 2007 and 2010."[48]

[38] The JLSC further submits that the court should not approach the matter by examining the precise nature of the litigation work undertaken during the relevant periods. In particular, it contends that the absence of details concerning Justice Ventose's

[47] Ibid at para 43
[48] Supra, note 32 at para 51

litigation or litigation-related work between 2007 and 2010 does not warrant a detailed factual inquiry into the work performed during that period. The court -

> "…should not adopt that approach and unless there is specific evidence showing that the Interested Party was unable to offer or perform litigation-related services to the public during the years in question, those years should not be discounted."[49]
>
> **The State (Walshe) v Murphy**[50] is presented as authority supporting this view.

[39] JLSC cautions that -

> "58. A contrary interpretation of section 5 would mean that the résumé of every applicant (or appointed judge) would have to be examined to show that in every single year since being qualified to practise, he or she engaged in litigation before the court at least once. That approach does not reflect how legal practice actually works. An attorney may have an active litigation practice but, in a particular year, may simply not receive a brief that led to court hearings. For example, matters may settle before a claim form has been filed or before a hearing is needed.
>
> 59. A litigator may be in court almost every day one year and not appear at all the next. In these circumstances, we say that Parliament could not have intended that years in which litigation work was slow or non-existent, or where court appearances were not required for legitimate reasons, should fail to count toward a candidate's time as a practising advocate. As long as he was 'on hazard and offering himself to the public' (to use the language of President Finlay) the years should not be discounted."[51]

JLSC on questions of delay and relief

[40] Finally, the JLSC argues that Mr. Bristol should be denied the relief he seeks because of the substantial delay that elapsed before the commencement of these proceedings. According to the JLSC, the grant of relief at this stage would be contrary to the interests of good administration and would undermine the orderly administration of justice. JLSC relies on **Butterworths Civil Court Precedents**[52] to make the point that –

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49 Ibid at para 53
50 [1981] IR 275
51 Supra, note 32 at paras 58 and 59
52 Part I General Proceedings Under the Civil Procedure Rules 1998/ Division J Judicial Review, Statutory Review and Habeas Corpus/ E Remedies/ 3 The discretionary nature of a claim for judicial review para 34

> "… judicial review remedies are discretionary so that even if the claimant establishes that grounds for judicial review are made out, the court is not bound to grant a remedy. Judicial review is frequently refused in the exercise of the court's discretion where the claimant has failed to bring the claim within the three-month time limit, or has failed to act promptly, or where delay on the part of the claimant means that quashing the decision would be detrimental to good administration."[53]

[41] The JLSC relies on CPR 56.4(2) and the decision in **Bass v Director of Physical Planning**[54] as authority for the proposition that the court is entitled to consider issues of delay when exercising its discretion whether to grant relief in judicial review proceedings.

[42] The JLSC presents two reasons why granting relief in this case would be detrimental to good administration –

> (1) The JLSC points out that, during the period between April 2024 when the Search Committee first communicated its concerns regarding Justice Ventose's appointment, and December 2024, when Mr. Bristol commenced these proceedings, a span of some seven months, Justice Ventose participated in the determination of a number of appeals before the Court of Appeal. In those circumstances, the JLSC submits that the grant of relief would be detrimental to the orderly administration of justice;
>
> (2) The Court may be compelled to consider collateral attacks on a number of judgments in which Justice Ventose sat during that seven-month period. While the de facto officer doctrine may ultimately operate to uphold the validity of those judgments, the Court's time and resources would nonetheless be engaged in resolving such challenges, with the attendant risk of unnecessary expenditure of judicial resources.

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[53] Ibid

[54] Claim No. NEVHCV 2016/0014

Justice Ventose on interpretation

[43] At first reading, it may appear that Justice Ventose has attached his position on the interpretation to be given to the words "advocate" and "has so practised" to the interpretation adopted by the JLSC and, which interpretation I have outlined above. However, a closer reading indicates that Justice Ventose's interpretation extends a little beyond those advanced by the JLSC. At this juncture I must inject a note of caution : the central issue in this case is not whether Justice Ventose can demonstrate that he satisfied the qualifications prescribed by section 5, but whether the JLSC lawfully discharged its constitutional responsibilities when exercising its appointment powers under section 5(2)(a)(ii). The burden of justifying that decision rests squarely with the JLSC and not with Justice Ventose. For that reason, although Justice Ventose's submissions assist the court in understanding the factual and legal landscape, those submissions are of more limited value in determining whether the JLSC properly interpreted and applied the constitutional requirements at the time it made the appointment.

[44] Justice Ventose argues that JLSC's section 5(2)(a)(ii) powers should not merely be exercised in respect of those who are advocates in the court and those who are actively engaged in work connected to litigation management in court cases, but that it should extend a bit further. Justice Ventose views section 5(2)(a)(ii) as encompassing "… *those who have been engaged in 'law-related activities*'[55]. "Law related activities" are said to include –

- the carrying-out of judicial functions of any court or tribunal
- acting as an arbitrator
- practice or employment as a lawyer
- advising on the application of the law
- assisting persons involved in proceedings for the resolution of issues arising under the law
- acting as mediator in connection with attempts to resolve issues that are, or if not resolved could be, the subject of proceedings

[55] See paragraph 18 of Justice Ventose's submissions filed on 20th April 2026

- drafting documents intended to affect persons' rights or obligations
- teaching or researching law
- any activity that, in the relevant decision-maker's opinion, is of a broadly similar nature to those listed above."[56]

[45] Adopting this approach to his application for appointment as Justice of Appeal would mean that he "… *has, at the very minimum, been engaged in "law-related activities" including teaching and researching law and practice as a lawyer during the period 2007-2024."*[57] To apply Mr. Bristol's interpretation would "…*unduly limit the candidate pool, which must be contrary to the purpose of the provision and the statute as a whole*."[58] Justice Ventose further maintains that "*[S]ection 5(2)(a)(ii) should be widely construed so that it implicitly embraces and covers the words 'or has been engaged in 'law-related activities'' so that exceptional candidates with stellar legal qualifications and experience can be considered even though they have not been consistently advocating before the courts*."[59]

[46] The reasons that Justice Ventose presents for his "law related activities" approach to section 5(2)(a)(ii) are myriad. I will address them below.

Settled policy

[47] The JLSC has a settled policy of appointing judges to the court consistent with the "law related activities" approach. In this regard, Justice Ventose mentions the appointment of several persons to act as ECSC appellate judges. In particular he refers to the appointment of –

(a) "Mr. Jefferson Cumberbatch, a former Senior Lecturer in Law at the Faculty of Law, UWI Cave Hill Campus from 1984-2020, as an Acting Justice of Appeal. Mr. Jeff Cumberbatch was an academic since 1984 when he was appointed,

[56] Supra, note 55 at para 18
[57] Ibid at para 19
[58] Ibid
[59] Ibid

and his qualifications did not materially differ from that of Mr. Justice Ventose"[60];

(b) "Professor Rose Marie Antoine, a Professor of Law at the Faculty of Law UWI Cave Hill Campus and the current Principal of the St. Augustine Campus, as an Acting Justice of Appeal in 2019"[61];

(c) Himself, "Mr. Justice Ventose, then a Professor of Law and Dean at the Faculty of Law UWI Cave Hill Campus, was appointed an acting Master in 2016, Acting Justice of Appeal on numerous occasions in 2023 and as a Justice of Appeal in 2024."[62]

[48] The JLSC invited applications for the post of Chief Justice consistent with the "law related activities" interpretation of section 5(2)(a)(ii) and its settled policy. Accordingly, the JLSC's Search Committee for the post of Chief Justice issued the following -

"4.2 Appointment
The legislative guidelines for the appointment of a Chief Justice in the OECS are therefore as follows:

(1) A minimum of five years as a Judge of the High Court/Court of Appeal; or

(2) Having been qualified to practice before the above Courts, with a minimum of fifteen years standing as a practitioner.

Within this framework, the Lord Chancellor of England consults with relevant Heads of Government before tendering his advice to Her Majesty. The established procedure is that Heads of Government unanimously agree upon a nominee and advise the Lord Chancellor accordingly.[63]

[T]he Search Committee focused on the requirement only of a minimum standing of 15 years as an attorney at law. On the Search Committee's broad interpretation an academic lawyer would easily satisfy that requirement."[64]

[49] The court is urged not to easily depart from or disturb such an established practice of interpreting section 5(2)(a)(ii). "The developments in the legal profession (fusion), the legal culture (allowing lecturers to advise and practise), the challenges in attracting

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[60] Supra, note 55 at para 3
[61] Supra, note 55 at para 4
[62] Ibid
[63] Ibid at para 6
[64] Ibid at para 7

and retaining quality judicial officers and the maturing of constitutional democracies in the post-colonial era after the grant of independence would have influenced the Commission's interpretation. There would be other factors as well. Whatever the original legislative intention, the law is 'always speaking' and hence, '*as a general rule, a statute should be interpreted taking into account changes that have occurred since the statute was enacted. Those changes may include, for example, technological developments, changes in scientific understanding, changes in social attitudes and changes in the law. Very importantly it does not matter that those changes could not have been reasonably contemplated or foreseen at the time that the provision was enacted'*" **News Corp UK & Ireland Ltd v Commissioners for His Majesty's Revenue and Customs**[65]. In **Frenkel v LA Micro**[66] the issue is put this way -

> "[T]here comes a time in the life of a statutory provision when a particular construction becomes so well settled and for such a long time, that the contrary construction becomes unarguable, however attractive it might have been when the statute was originally enacted."

Broader considerations

[50] Justice Ventose commends the appointment process for judges of the United Kingdom's Supreme Court and the Caribbean Court of Justice as further evidence in aid of the "law related activities" interpretation of section 5(2) (a) (ii). I will not recite those provisions here since on the view of matters that I take below they do not carry the discussion very far.

[51] If section 5(2) (a) (ii) is designed, as it evidently is, to *"…create a pool of eligible candidates for the Commission to consider before it makes an appointment* …"[67] then a broad approach ought to be taken to its interpretation. This is particularly significant as the ECSC covers nine States and Territories. The pool of eligible candidates would be reduced if the narrow approach suggested by Mr. Bristol is embraced.

[65] [2023] UKSC 7 at [29]
[66] [2024] UKSC 42 at 53
[67] Supra, note 55 at para 24

[52] Justice Ventose finds added support for his interpretive posture in the eligibility criteria used by the JLSC to pick the most suitable candidate for the office of Court of Appeal judge. The listed criteria are –

> "(1) Legal Knowledge and Experience: (i) a high level of understanding of the principles of law and jurisprudence; (ii) a comprehensive knowledge of the rules of evidence and of court practice and procedure; (iii) a sound understanding of the functions of the Court of Appeal; (2) Skills and Abilities: (i) sound judgement; (ii) intellectual and analytical ability; (iii) decisiveness; (iv) communication and listening skills; (v) authority and case management skills; (vi) keeping abreast of legal developments and court technology; and (3) Personal Qualities: (i) integrity; (ii) fairness; (iii) understanding of people and society; (iv) maturity and sound temperament; (v) courtesy and humanity; (vi) commitment; and (vii) team player."[68]

[53] Justice Ventose insists that these criteria would be undermined if the narrow approach to interpreting section 5(2)(a()(ii) is adopted.

[54] Finally, Justice Ventose adverts to section 5(3) of the Courts Orders and submits that the subsection "…*even contemplates that a person may not practice law before the courts yet may still be appointed as a Justice of Appeal. If a person's job description requires them to appear as an advocate in court, irrespective as to whether they appear in court at all, they will be considered to have "practised as an advocate*".[69] **Badan Peguam Malaysia v Karajaan Malaysia** is presented as authority in support of this submission.

Justice Ventose on whether he "has so practised"

[55] Justice Ventose next applies the foregoing legal propositions to the facts of his case, submitting that those facts readily satisfy the constitutional interpretation that he has advanced.

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[68] Supra, note 55 at para 25
[69] Ibid at para 28

[56] In this regard, the submission is that the facts indicate that –

> "He is qualified to practice as an advocate through his admission to the Bar of Saint Lucia in 2007 and spent the following sixteen years combining his academic career (teaching and researching law) with law related activities, including practising law. On the Search Committee's broad interpretation, Mr. Justice Ventose satisfies the requirement of section 5(2) (a) (ii) of the Court's Order because since his qualification to practice as an attorney at law in Saint Lucia in 2007, he has, since November 2022, a minimum of 15 years standing as an attorney at law.[70]"

[57] Justice Ventose then narrates his legal journey from his enrollment as solicitor of the Supreme Court of England and Wales (now Senior Courts of England and Wales) in October 2006, until his appointment to the Court of Appeal in 2024. Much of this factual background except his enrollment in England as a solicitor is recited above in this judgment. This legal journey is presented as evidence that combined with his career in academics, he ventured into other law related activities such as –

> "1) the carrying-out of judicial functions of any court or tribunal; (2) practice or employment as a lawyer; (3) advising on the application of the law; (4) assisting persons involved in proceedings for the resolution of issues arising under the law; and (5) drafting documents intended to affect persons' rights or obligations."[71]

[58] The submission is that these activities, considered cumulatively and over the relevant period, amounted to compliance with the qualification requirements prescribed by section 5(2) (a) (ii). Accordingly, it is argued that the JLSC was entitled to find that Justice Ventose's experience as an academic lawyer satisfied the terms of section 5(2)(a)(ii) of the Courts Order. **Badan Peguam Malaysia v Karajaan Malaysia** is cited as supporting the case for the appointment of an "academic lawyer".

[70] Supra, note 55 at para 30
[71] Ibid at para 32

[59] At the risk of overly condensing the extensive arguments made by Justice Ventose, the crux of his case is -

> "… the evidence of both the Claimant and the Commission as contained in the resume of Mr. Justice Ventose shows that his Resume did not allege or state in any way whatsoever that he had practised exclusively as an attorney at law or as an advocate for a period of at least 15 years. What his Resume shows convincingly is that during the period under consideration, Mr. Justice Ventose had a varied experience as a legal academic, a judicial officer, an attorney at law, a legal consultant who engaged in many law related activities, including researching and teaching law and as a judicial officer. It was based on his engagement in these broad activities, all law related activities, that the Commission appointed Mr. Justice Ventose as a Justice of Appeal with effect from 8 January 2024."[72]

[60] Indeed, Justice Ventose insists that while he does not dispute Mr. Bristol's charge that he only held a Practising Certificate in Barbados for a period of two years, this was of no moment since, many of his "law related activities" did not require one.

[61] Justice Ventose claims that his experience as an advocate is evidenced by the following –

> (1) "For 10 years and 10 months, from November 2007 to September 2018, he engaged in law related activities in multiple jurisdictions, including teaching and researching law, acting as a master and practicing law as an attorney at law;
> (2) For 2 years 4 months, from September 2018 to December 2020, he sat as a high Court Judge (which is included in the 15-year calculation pursuant to section 5(3));
> (3) For 3 years, from January 2021 to January 2024, he engaged in law related activities in multiple jurisdictions, including teaching and researching law and acting as a justice of appeal."[73]

[62] Justice Ventose further relies on the presumption of regularity that attaches to administrative acts, namely, that such acts are presumed lawful unless and until the contrary is proved. On that basis, he contends that the JLSC must be presumed to have acted lawfully in appointing him, absent sufficient evidence demonstrating otherwise. He argues that Mr. Bristol has failed to provide such evidence. Justice

[72] Supra, note 55 at para 43
[73] Ibid at para 45

Ventose further submits that the determination of whether he met the qualifications prescribed by section 5(2) (a)(ii) was a matter committed to the judgment of the JLSC. Accordingly, he concludes that the court should not disturb that determination unless it is shown to be irrational in the Wednesbury sense. **Berryman v Wise**[74]**, R v Borrett**[75]**, Campbell v Wallsend Slipway and Engineering Co Ltd**[76] and **R v Hillingdon London Borough Council, ex parte Puhlhofer**[77] are presented in support of these submissions.

Justice Ventose on questions of delay, relief and possible alternative reliefs

[63] Justice Ventose next submits that, even if the court were to find that the JLSC acted unlawfully, it should nevertheless refuse the relief sought by Mr. Bristol. He advances two principal grounds in support of that submission: first, the delay in commencing the proceedings; and secondly, the court's discretionary power to grant alternative remedies.

[64] On the issue of delay, Justice Ventose emphasizes the period between November 2023, when the JLSC made the impugned appointment, and December 2024, when Mr. Bristol filed his claim. He submits that, because the appointment was publicly announced by the JLSC, Mr. Bristol, as a member of the Grenada Bar Association, either knew or ought reasonably to have known of it. Despite this, he delayed for some thirteen months before initiating these proceedings.

[65] Justice Ventose further relies on the fact that Mr. Bristol was himself a member of the Search Committee and therefore possessed direct knowledge of the matters giving rise to the challenge. In those circumstances, he views it as significant that Mr. Bristol waited approximately eight months after the Search Committee communicated its concerns to the JLSC before filing his claim.

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[74] (1791) 100 ER 1067
[75] (1833) 172 ER 1173
[76] [1978] ICR 1015
[77] [1985] 3 All ER 734

[66] The grant of relief being discretionary, the court ought to refuse relief in view of the delay because to do otherwise would (1) be detrimental to good administration (detriment); or (2) cause substantial hardship or prejudice to third persons (hardship) (See CPR 56.4). See the cases of **Roland Browne v The Public Service Commission**[78]**, Great North Eastern Railway Ltd v Office of Rail Regulation**[79] and **R v HM Coroner for Inner London South District Ex p. Douglas-Williams**[80]**.**

[67] Where detriment is concerned, Justice Ventose explains the reasons why relief ought to be refused –

> "First, Administration of Justice (a) Mr. Justice Ventose has been serving as a Justice of Appeal since January 2024; (b) Removing him from office would create immediate disruption to the Court of Appeal's operations; (c) The Court of Appeal's already stretched resources would be further strained. Second, Institutional Stability (a) Quashing the appointment would undermine public confidence in the stability of judicial appointments in the ECSC; (b) It would also mean that other similar judicial appointments (eg Professor Antoine) that were made in the past would have been invalid; (c) It risks deterring qualified candidates from accepting judicial office if appointments can be challenged retrospectively; (d) It risks applying a different standard to that which has been applied consistently by the JLSC contrary to the protection of the law guaranteed by the Constitution."[81]

[68] In respect of hardship, the reasons why relief should be refused are summarized as –

> "First, Mr. Justice Ventose has been performing judicial functions for nearly 12 months as a Justice of Appeal and has been appointed to and has been the chair of the Judicial Education Institute of the Eastern Caribbean Supreme Court.
>
> 2. Second, Mr. Justice Ventose has arranged his affairs in reliance on the appointment. He has developed legitimate expectations regarding security of tenure guaranteed by the Constitution. The delay has allowed these expectations to solidify through his relocation to St. Lucia and his continued judicial service.

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78 SLUHCVAP2010/02

79 [2006] EWHC 1942 (Admin) at [96]).

80 [1999] 1 All E.R. 344 at 347

81 Supra, note 55 at para 64

3. Third, the public and legal profession has operated on the basis of a valid appointment. If the claim were to proceed, public confidence in the stability of judicial appointments in the ECSC would be undermined. The orderly administration of justice requires certainty in judicial appointments once made"[82].

The cases of **Caswell v Dairy Produce Quota Tribunal[83], Bahamas Hotel Maintenance & Allied Workers v Bahamas Hotel Catering & Allied Workers[84], R v SSHD, ex p Harry[85]** are cited as authority supporting the charge against granting relief on grounds of hardship.

Alternative relief

[69] There is a final point made about relief. Justice Ventose invites the court to utilize its powers to grant alternative reliefs in the event that it disagrees with him. The court is asked to exercise this discretionary jurisdiction and make prospective declarations instead of the quashing order that Mr. Bristol seeks. Justice Ventose explains that to grant prospective declarations " … would preserve the validity of decisions already made; (b) It would allow for an orderly transition if necessary; (c) It would minimize disruption to the administration of justice; (d) It would protect legitimate third-party interests."[86] The cases of **In re Spectrum Plus Ltd (in liquidation)[87], Public Prosecutor v Hue An Li[88], R (Brown) v Secretary of State for Justice[89]** and **Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc and Others v Attorney General of Trinidad and Tobago[90]** are presented as authorities in support of the court's power to grant alternative remedies in the form of prospective declarations.

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[82] Supra, note 55 at para. 65
[83] [1990] 2 All ER 434
[84] [2011] UKPC 4
[85] [1998] 1 WLR 1737
[86] Supra, note 55 at para. 67
[87] [2005] 2 AC 680
[88] [2014] SGHC 171
[89] [2017] UKSC 81
[90] [2009] UKPC 17

Unravelling the mystery of section 5 (2) (a) (ii)

[70] The rival contentions concerning the meaning of the words "advocate" and "has so practised" as used in section 5(2)(a)(ii) reveal little, if any, substantial convergence. Accordingly, it is the task of this Court to sift the wheat from the chaff and, where necessary, to disregard the competing interpretations in order to ascertain the true meaning and purpose of the section. Matters of interpretation are consequently engaged.

Approaches to interpretation

[71] The methods by which Caribbean constitutions are interpreted are numerous and have been shaped by a long and distinguished line of judicial authority. Helpfully, the rich jurisprudential development of Caribbean constitutional interpretation has, over time, crystallised into a broad consensus on a number of well-established principles that inform the interpretive exercise. In **Moses Hinds v the Queen**[91], Lord Diplock puts the matter this way –

> "A written constitution, like any other written instrument affecting legal rights or obligations, falls to be construed in the light of its subject matter and of the surrounding circumstances with reference to which it was made."[92]

[72] In **AG v Grenada Bar Association**, Sir Denis Byron CJ also provided valuable guidance on the proper approach to interpreting constitutional provisions where disputes arise as to their meaning –

> "The basic principle is that the interpretation of every word or phrase of a constitutional provision is derived from the intention of the framers of the Constitution in regard to the meaning that word or phrase should bear. That intention is an inference drawn from the primary meaning of the word and phrase with such modifications as may be necessary to make it concordant with the context of the Constitution. In this regard the context of the Constitution

[91] [1977] A.C. 195

[92] Ibid at page 211

comprises every other word and phrase used in the Constitution as a whole, all the implications there from and all relevant surrounding circumstances which may properly be used as indications of the intention of the framers of the Constitution. The relevant surrounding circumstances include the antecedents from which underlying principles are drawn. In the well known case of *Minister of Home Affairs v Fisher* (1973) AER 21 Lord Wilberforce reminds that these antecedents include the European Convention for the protection of Human Rights and Fundamental Freedoms and the United Nations Universal Declaration of Human Rights 1948 which encourage a generous interpretation avoiding 'the austerity of tabulated legalism' to ensure that the full benefit of the constitutional provisions are enjoyed. In *Dow v Attorney General* [1992] LRC (Const) 623 Aguda J.A. painted his summation at 668:

> "In my view the overriding principle must be an adherence to the general picture presented by the Constitution into which each individual provision must fit in order to maintain in essential details the picture of which the framers could have painted had they been faced with the circumstances of today."[93]

[73] More significantly, Byron CJ observed that "[T]he nature of a Constitution requires that a broad, generous and purposive approach be adopted to ensure that its interpretation reflects the deeper inspiration and aspiration of the basic concepts on which the Constitution is founded."[94]

[74] Likewise, courts are not infrequently asked, these days, to employ a broad, generous and purposive approach that embraces the view that the Constitution is a "living instrument", always speaking. The process of so doing ought not to resemble that of interpreting ordinary statute in any event. In **Mathews v AG**, a Privy Council decision arising from Trinidad and Tobago, Lord Hoffmann made the following observation –

> "The correct approach to interpretation of a Constitution such as that of Trinidad and Tobago is well-established by authority of high standing. In *Edwards v A-G for Canada* [1930] AC 124 at 136, Lord Sankey LC, giving the judgment of the Board, classically described the Constitution established by the British North America Act 1867 as 'a living tree capable of growth and expansion within its natural limits'. The provisions of the Act were not to be cut down 'by a narrow and technical construction' but called for 'a large and liberal interpretation'. Lord Wilberforce spoke in similar vein in *Minister of Home Affairs v Fisher* [1980] AC 319 at 328–329, when he pointed to the need for a 'generous interpretation',

93 [2000] ECSCJ No. 1 at para 6
94 Ibid at para 7

'suitable to give to individuals the full measure of the fundamental rights and freedoms referred to' in the Constitution and 'guided by the principle of giving full recognition and effect to those fundamental rights and freedoms with a statement of which the Constitution commences'. The same approach was commended by Dickson J, giving the judgment of the Supreme Court of Canada in *Hunter v Southam Inc* [1984] 2 SCR 145 at 155:

> 'The task of expounding a Constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A Constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must, in interpreting its provisions, bear these considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American courts "not to read the provisions of the Constitution like a last will and testament lest it become one".'[95]

[75] The issue is put more succinctly by Lord Keith of Kinkel in **AG of Trinidad and Tobago v Whiteman**[96] where his Lordship opined that –

> "'The language of a Constitution falls to be construed, not in a narrow and legalistic way, but broadly and purposively, so as to give effect to its spirit..."[97]

[76] Jackson JA in the British Guyanese case of **IRC v Lilleyman**[98]**,** quoting from Lord Wright in **James v Commonwealth of Australia ((No 2)**[99] stated as far back as 1969 that –

> "It is true that a Constitution must not be construed in any narrow or pedantic sense. The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not

[95] Matthew v State [2004] 4 LRC 777 at 796
[96] [1991] 2 A.C. 240
[97] [1991] 2 A.C. 240 at 247
[98] 1964 7 WIR 496
[99] [1936] 2 All ER 1449

> that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning."[100]

[77] Interpreting the constitution in this manner does not give the court a licence or liberty to conjure up whatever meaning it wishes to attach to the constitutional provision. Byron CJ advised in **R v Hughes**[101] that –

> "Courts, while giving a generous interpretation, must carefully look at the language used so as to give effect to it and not resort to an application of distilled values which would result in divination and not interpretation (see *Matadeen v Pointu* [1998] 3 LRC 542)."[102]

[78] Thus while the Constitution imposes the obligation on courts to interpret and enforce its provisions, the interpretive analysis must be pursued in context. In this regard, the process of arriving at a meaning does not grant the court the liberty to make the law or to amplify it beyond its intention.

[79] For present purposes, the foregoing principles expose the interpretive tensions at play in this case. For the JLSC and Justice Ventose, section 5(2) (a) (ii) engages an "updating" construction, albeit to varying degrees, in order to ascertain the intention of its framers. Mr. Bristol, on the other hand, advances a more conservative construction. His analysis suggests that the framers approached the matter from a particular perspective prevailing at the time the section was drafted, and that this perspective is readily discernible from the language of the provision itself. Accordingly, the meaning and intention that the framers ascribed to the section are neither obscure nor uncertain and therefore require no clarification or "updating.

100 1964 7 WIR 496 at 506
101 [2002] 2 LRC 531
102 [2002] 2 LRC 531 at 541

My thoughts on interpretation

[80] Having considered the matter in the round and for the reasons to appear below, I must disagree with the construction offered by Mr. Bristol. It might assist to begin with the obvious. The framers of the Constitution did not offer a meaning for the term “advocate” or of the phrase “having so practised” as used in section 5. However, a contextual understanding of what the framers intended might commence by examining the manner in which the Grenada Constitution and specifically section 5 came about. In this regard it is of note that the document which became the Constitution was concluded through a consultative process involving Grenadian political leaders, advisors, British government officials and of particular significance to this discourse, British constitutional lawyers, experts and drafters. Constitutions such as Grenada’s, were as Lord Diplock elucidated in **Hinds –**

> “… negotiated as well as drafted by persons nurtured in the tradition of that branch of the common law of England that is concerned with public law and familiar in particular with the basic concept of separation of legislative, executive and judicial power as it had been developed in the unwritten constitution of the United Kingdom.”[103]

[81] For present purposes, it suffices to highlight the fact that the Constitution was drafted by persons skilled in matters concerning the judicial arm of the State. It is therefore logical to conclude, as Mr. Bristol does, that the drafters of section 5 employed the terms “advocate” and “practise as an advocate” in accordance with the meaning those expressions bore in their own understanding at the time the provision was drafted.

I also agree with Mr. Bristol that the deliberate inclusion of the expressions “advocate” and “has so practised” in section 5, and the context in which they are used, was intended to serve a distinct legislative purpose. That purpose is to ensure that any person appointed as a Judge of the Court of Appeal: first, possesses the requisite qualification to practise as an advocate (however the word “advocate” is properly

[103] [1977] AC 195 at 212

construed); secondly, has actually practised as an advocate (however that activity is properly understood); and thirdly, has so practised for an aggregate period of not less than fifteen years.

A basic history of advocacy.

[82] To determine the meaning the framers intended to ascribe to the language employed in section 5, it might be instructive to examine the historical development of the concept of advocacy and the understanding that the framers would likely have attached to that concept at the time of drafting. I find a useful historical study written by J. H. Baker, published in the Cambridge Law Journal[104], which traces the evolution of the professions of counsellors and barristers. In this discourse, I do not propose to recite the detailed historical tracing undertaken by the author. Instead, I shall endeavour to provide a general overview of that evolution so as to form a view as to what the framers of section 5 may have intended.

[83] Baker's exposition suggests that, in the early development of the legal profession, the distinctions between the respective roles and offices of legal practitioners were not clearly delineated. By the thirteenth century, however, a discernible distinction had developed between attorneys and solicitors, who were primarily responsible for the procedural and administrative conduct of litigation, and counsellors and barristers, who specialized in legal argument, pleading, and advocacy before the courts. Over time, counsellors and barristers came to enjoy considerable prestige, exclusivity, and gentlemanly status. Importantly, before the distinctions between the various branches of the legal profession became clearly established, a single practitioner could advise clients, prepare legal documents, conduct litigation, and appear before the courts to argue cases. By the 13th century however when roles and status began to be definitively drawn, there was the emergence of (1) attorneys who were persons engaged in procedural matters, filing documents, continuing suits, issuing writs and

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[104] J.H Baker, Counsellors and Barristers, A historical study.The Cambridge Law Journal, Vol. 27, No. 2 (Nov., 1969), pp. 205-299

general legal administration. These roles were considered more “mechanical” or ministerial; and, (2) narratores / pleaders who became the professional advocates who argued cases, developed legal reasoning, specialized in pleading and appeared before judges.

[84] Beyond courtroom advocacy, emerged the role of the counsellor in answer to clients seeking advice on such matters as land ownership, conveyancing, contracts, litigation strategy and technical legal drafting. Baker explains that counsellors were intellectual professionals whose role resembled that of physicians in medicine. They were viewed as learned advisers rather than mere legal agents. The counsellor’s role gradually merged with that of the pleader and later evolved into the barrister profession.

[85] The distinctions became firmly established over time. Of interest to our discourse is Baker’s observation that judges were increasingly appointed from the ranks of the pleaders rather than attorneys. A central feature of the developing distinction, Baker expounded, was that the barrister profession deliberately developed customs to differentiate itself socially from attorneys and solicitors. This exclusivity manifested through Inns of Court membership, educational requirements, courtroom privileges, etiquette rules and restrictions on direct dealing with clients. Barristers increasingly portrayed themselves as learned gentlemen, intellectually superior practitioners and members of a quasi-academic profession. Attorneys and solicitors, by contrast, were portrayed as commercial and procedural workers. Baker posited that these distinctions were not purely functional but deeply connected to class and social prestige.

[86] The Inns of Court played an essential a role in the growth of the barrister profession. Baker explains that the Inns served as educational institutions, controlling admission to advocacy and fostering professional identity. By the sixteenth and seventeenth centuries, the Inns had become highly influential in determining who could practise as counsel. With the growing distinctions, barristers gradually monopolized advocacy. Originally, many legal practitioners could appear in court and the distinction between

counsel and attorneys was fluid. Over time though, the Inns of Court restricted rights of audience, barristers asserted superiority and solicitors were increasingly excluded from advocacy roles. The courts eventually recognized barristers as the exclusive advocates in superior courts. This led not only to a loss in status for solicitors but somewhat of a relegation of solicitors to the domain of intermediaries instructing counsel, preparing cases, gathering evidence, and managing clients. Barristers became more focused on courtroom argument, legal opinions and appellate advocacy. These distinctions not only featured in the roles and functions of the legal professionals inter se but with the relations between legal professional and clients. Baker viewed this as an important feature of the emerging profession. Whereas initially any legal professional would have interacted directly with the client, with the emerging differentiations, particularly barristers becoming more specialized and focused on advocacy in the superior courts, solicitors took on the role of intermediaries between barristers and client, with barristers relying on the solicitors to prepare and present them with briefs. Baker viewed these divisions as laying the foundation for the modern English legal profession.

[87] **Halsbury's Laws of England** put the development of the profession of barrister more succinctly –

> "There has been a division of function between advocate ('barrister' in modern usage) and attorney or solicitor in the English legal profession, as in the civil law system, since a secular legal profession first emerged in England at the beginning of the thirteenth century. Originally, however, there was nothing to prevent a barrister from soliciting causes or dealing directly with clients as part of his profession, and many barristers did so. However, the practice of removing the barrister from direct contact with the lay client developed over the centuries until it became the 'almost uniform usage'. In 1888, the Attorney General gave a ruling that a barrister should not act or advise without the intervention of a solicitor in any contentious matter, and the rule was later extended to non-contentious matters."[105]

[105] Halsbury's Laws of England, 5th edition, Vol 65, para. 762

[88] Today, the landscape of advocacy has evolved significantly, and contemporary practice is largely shaped by legislation such as the Courts and Legal Services Act 1990 (United Kingdom). Stone's Justice Manual explains the present position –

> " Solicitors are entitled to conduct litigation in any court. They are also entitled to exercise any right of audience which solicitors had immediately before 7 December 1989, provided that the exercise of that right is in compliance with the Solicitors Code of Conduct 2007. Solicitors are also entitled to exercise additional rights of audience in the higher courts if they have obtained a relevant higher courts advocacy qualification under the Solicitors' Higher Rights of Audience Regulations 2010, or if they had already acquired a relevant higher courts qualification from another regulator before becoming a solicitor.
>
> Barristers are entitled to exercise rights of audience in any court. In magistrates' courts, barristers (unless employed by the litigant in question) receive instructions from solicitors or the Crown Prosecution Service. The instructing lawyer will rarely attend court with the barrister since remuneration from public funds seldom covers this. The barrister's remuneration for publicly funded defence work will be an agreed proportion of the fee payable for representation by a solicitor."[106]

[89] It appears to me from the foregoing that, by the time section 5 was drafted in the late 1960s or early 1970s, the framers of the Constitution would have understood advocacy principally as the exercise of rights of audience before the courts and the performance of functions incidental thereto. Put simply, the framers intended that the bench be populated by persons who were specially trained and skilled in the craft of presenting cases before the courts—individuals who, at that time, would have been more particularly described as barristers. This stood in contrast to solicitors, legal academics, and even barristers who, though qualified, did not engage in the actual conduct of litigation before the courts.

[90] In my view, this explains why the framers required not only that an appointee be qualified to practise as an advocate, but also that he or she must have actually practised in that capacity for an aggregate period of at least fifteen years. The

[106] 157th edition, para. 1.48

requirement of actual experience was plainly intended to ensure that those appointed to the bench possessed substantial practical experience in courtroom advocacy and the conduct of legal proceedings, rather than merely holding the formal qualifications necessary for admission to the practice of law.

[91] Mr. Bristol is quite correct, then, to refer to the differences between section 5 and the constitutions of other former British colonies of, for instance Gibraltar and The British Antarctic Territory which constitutions were drafted during the same period as the Grenadian Constitution. In those formulations, recited above, the drafters—who were, in all likelihood, drawn from the same cadre of British legal experts responsible for drafting the Grenadian Constitution—did not stipulate that an appointee must be a trained and skilled advocate. Rather, in those constitutions, the effort was to appoint persons who were merely qualified to practise but there was no emphasis on actual practise.

[92] This differentiation is highly relevant because, if the intention had merely been, as Justice Ventose suggests, to attract the most gifted lawyers irrespective of whether their field of expertise was advocacy (as then understood), the drafters could readily have employed a formulation similar to those adopted in other constitutions drafted during the same period, thereby making that intention explicit. The differentiation also addresses the contention that the meaning of advocacy may be updated to encompass "law-related activities" in the broad sense suggested by Justice Ventose and recited above.

[93] With respect, I consider the meaning advanced by Justice Ventose to extend the concept beyond its proper limits. As I have explained, where a constitutional provision does not carry a clear meaning on its face, a court is entitled to derive that meaning from its context, both internal to the constitution and from such external considerations as we have examined in this discourse, to arrive at the intentions and understanding of its framers. If my approach to the interpretation of the provision is correct, it ought

to be apparent that the framers deliberately crafted a provision requiring that appointments to the Court of Appeal be drawn from practising advocates.

[94] Even if one were to adopt an updated understanding of the terms “advocate” and “has so practised” to include those engaged in the preparation and management of litigation, as I discuss below, I cannot see how the framers could ever have intended it to encompass, for example, persons engaged mainly or exclusively in a conveyancing practice or, as Justice Ventose suggests, professors and academics whose principal or sole occupation was teaching or scholarship and who did not practise as advocates. Such professions bear little resemblance to a person who is not only qualified as an advocate but who is also actively engaged in such practice, whatever the precise scope of that practice may be. This distinction is important to bear in mind in the present case. The qualifying requirements of being entitled to practise as an advocate and having so practised must be construed together in order to ascertain the intention of the framer.

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Viewed through the foregoing lens, the Malaysian case of **Badan Peguam Malaysia v Kerajaan Malaysia** may readily be distinguished from the present case. In that case, the provision under consideration stipulated that an applicant for appointment as a Judicial Commissioner must be one who “...ha[d] been an advocate of those courts...” for a period of ten years. Significantly, there was no requirement that the applicant must have actually practised as an advocate during that ten-year period. It is therefore not difficult to understand why the court concluded that a person who was qualified as an advocate, but who had neither practised as such nor held a practising certificate, was nevertheless eligible for appointment. Had the qualification required actual experience as an advocate, the applicant in that case may well have failed to satisfy the requisite threshold, since she neither possessed a practising certificate nor had the necessary experience in the practice of law.

The fusing of the profession and intention

[96] That takes me to the argument that the profession was fused in the OECS. I do not think much turns on this point. The fusing of the profession means that in this region there is not much of the remarkable history of the development of the professions of barristers and solicitors as in the United Kingdom. All that the fusing means is that at some point in our regional courts, it became proper for barristers to do all of what the solicitors do and equally it became proper for solicitors to do what barristers do. The fusing became the blurring or fusing of who can do what. The fusing was not, in my view, a blurring, disassembling or dismantling of what each thing is. Thus where previously the solicitor may have been precluded from doing what the advocate does, the solicitor could now do what the advocate does. The converse also operates in much the same way. The advocate could now do what the solicitor did. More vivid is the combination of roles that permits both professions to exercise a right of audience before the court where previously appearing and making arguments in the court was the sole domain of the advocate (or barrister). And in my view, if one looks at the development of the profession through these lenses, this is one of the most distinctly defining features of advocacy. The fusing did not change the nature of advocacy. For instance, contrary to the argument for the JLSC and Justice Ventose, the fact that the advocate may now reduce his oral arguments to writing or that witnesses are to file their oral testimony by written witness statements does not make advocacy work or its nature a thing that is different to what it always was and in fact remains. Filing written submissions or witness statements are just different ways of conducting advocacy or doing what the advocate does when he or she appears before the court on behalf of the client. But what remain is that the advocate has the right to exercise audience before the court and is so doing.

[97] In the modern age therefore where the profession is fused, for one to determine whether a legal practitioner is an advocate and is so practising, one has to look at the nature of the work that the legal practitioner is producing. If for instance the work of the legal professional is mostly notarial or conveyancing and nothing else or is solely or mainly focused in academia, one hardly can say, without more, that he or she is an

advocate who has practised or is practising advocacy. This does not detract from the fact that at present day the legal practitioner who is a conveyancer or academic is endowed with a right, if he or she wishes, to get up from the office and go to the magistrate's court or to the high court to represent a client or is entitled to engage in litigation management related work.

[98] Even more unhelpful is the notion that since the JLSC has opted to appoint persons who are learned, esteemed and skilled in other areas of the law besides advocacy, that the definition of advocacy has been thereby uplifted or expanded. Applying that meaning to what is written in section 5 and explained in the context of what the framers understood and clearly intended, as I have explained above, in my respectful view, would stretch the definition to the point of almost if not, denuding it of its meaning. I note that the JLSC does not propose or endorse this latter posture and I believe, rightly so. A settled practice must aid ascertaining the intention of the statute. Settled practice should not rewrite the provision as the judge sees fit.

[99] Equally unreliable as an aid to interpretation is the approach of applying the meaning adopted in the instances where judges are appointed either in the United Kingdom or at the Caribbean Court of Justice. Even a cursory examination of the appointing powers in those instances do not bear resemblance to the deliberately crafted language of section 5. The scheme in those instances uses different language and do not aid the meaning that arises from the language in the context as if I have found.

JLSC stance on the framer’s intent advances the exercise

[100] Before marching on from this part of the discourse on intention, I must pause for a moment to delve into the proposed intention raised by the JLSC. I find it compelling and persuasive for a number of reasons.

[101] As set out above, the JLSC contends that, for the purposes of section 5, the concepts of “advocate” and “advocacy” should be understood as encompassing not only the

actual presentation of cases before the courts but also broader forms of “litigation management” or “litigation-related” work. By this, I understand the JLSC to refer to the full spectrum of activities involved in the conduct of litigation, from the receipt of a client's instructions to the preparation and presentation of the case before the court. Such activities may include taking instructions, conducting legal research, preparing pleadings and witness statements, attending to case management matters, researching and drafting interlocutory applications, filing court documents, pursuing avenues of alternative dispute resolution, and, of course, appearing before the court at various stages of the proceedings, including at trial.

[102] The JLSC characterizes this approach as an “updating construction” of the relevant constitutional language. According to the JLSC, such a construction recognises that the concept of advocacy has not remained static but has evolved since the time when the framers drafted section 5. The JLSC argues that to confine the meaning of “advocacy” solely to courtroom appearances would unduly restrict the scope of the provision and render it largely unworkable in the context of modern legal practice. Put another way, the JLSC contends that the purpose underlying section 5 would be exceedingly difficult, if not impossible, to achieve if the term were interpreted in so narrow a fashion.

[103] I agree that for the reasons propounded by the JLSC that the framers could not have intended to constrain the meaning of advocacy in the manner suggested by Mr. Bristol. The JLSC’s position is founded upon a “living instrument” approach to constitutional interpretation, under which the concept of advocacy is not treated as fixed or immutable but as capable of evolving to meet the changing needs and realities of the legal profession and the wider society it serves. In this connection, I recall the observation of Jackson JA in **Lilleyman**[107] that the words of a constitution are “necessarily general.” His Lordship also admonished that -

> “…their full import and true meaning can often only be appreciated when considered as the years go on, in relation to the vicissitudes of fact which from

[107] 1964 7 WIR 4

> time to time emerge. It is not that the meaning of the words change, but the changing circumstances illustrate and illuminate the full import of that meaning.[108]"

[104] Speaking of the concept of the "living instrument" approach to constitutional interpretation albeit in respect of savings clauses and fundamental rights provisions, Lord Hoffman made the following salient and salutary observation in **Boyce v AG**[109] –

> "Parts of the Constitution, and in particular the fundamental rights provisions of Chapter III, are expressed in general and abstract terms which invite the participation of the judiciary in giving them sufficient flesh to answer concrete questions. The framers of the Constitution would have been aware that they were invoking concepts of liberty such as free speech, fair trials and freedom from cruel punishments which went back to the Enlightenment and beyond. And they would have been aware that sometimes the practical expression of these concepts—what limits on free speech are acceptable, what counts as a fair trial, what is a cruel punishment—had been different in the past and might again be different in the future. But whether they entertained these thoughts or not, the terms in which these provisions of the Constitution are expressed necessarily co-opts future generations of judges to the enterprise of giving life to the abstract statements of fundamental rights. **The judges are the mediators between the high generalities of the constitutional text and the messy detail of their application to concrete problems. And the judges, in giving body and substance to fundamental rights, will naturally be guided by what are thought to be the requirements of a just society in their own time. In so doing, they are not performing a legislative function. They are not doing work of repair by bringing an obsolete text up to date. On the contrary, they are applying the language of these provisions of the Constitution according to their true meaning. The text is a 'living instrument' when the terms in which it is expressed, in their constitutional context, invite and require periodic re-examination of its application to contemporary life**."[110] (Bold emphasis mine)

The impact of section 5(3) of the Courts Order on meaning

[105] The applicant who has not had actual experience as an advocate may still present an application if he or she –

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[108] [1964] 7 WIR 496 at 506
[109] [2004] 4 LRC 749
[110] [2004] 4 LRC 749 at 760

(a) "…has been serving in the office of judge of any such court; or
(b) after having become qualified to practise as an advocate in any such court, has been serving in a public office in some part of the Commonwealth the functions of which include ·appearing as an advocate in any such court or in the office of magistrate, or registrar of a court, in some part of the Commonwealth."[111]

[106] At the hearing of this matter, I asked counsel to consider whether section 5(3) has any impact on meaning. In particular, I asked counsel to consider whether section 5 (3) supported the view that (1) the framers intended that the word "advocate" in section 5(2) (a)(ii) means a persons who has practised before the courts; and (2) the framers deliberately adumbrated the list of persons at section 5(3) as the only instance where a person who has not "so practised" before the courts, may nonetheless be considered as an appointee to the courts. Mr. Bristol, at paragraph 14 of this closing submissions filed on 14th April 2026 considered that this approach to meaning is appropriate.

[107] The JLSC, while agreeing that section 5(3) permits a person who has not "so practised" to present an application to be appointed as judge of the Court of Appeal, disagrees with the view that it has an impact on the nature of the litigation work that now classifies as litigation related work. Put another way, the class of persons to which section 5(2) (a)(ii) applies is not narrowed by the exceptions articulated in section 5(3) to those legal practitioners who appear before the courts.

[108] On this issue, I find considerable soundness in JLSC's arguments. JLSC suggests that reading section 5 (2)(a) (ii) and 5(3) together does not lead inevitably to the conclusion that the framers meant to confine or restrict the meaning of the phrase "has so practised" to the class of persons who appear before the courts. For instance, it may be proper to conclude that the applicant who sat as a judge (section 5(3)(i)) or a magistrate or registrar or as acting judge would not have been engaged in advocacy in the sense of arguing cases before the court or being involved in "litigation related activities". Equally, those who may have served in public offices whose functions

[111] Section 5(3) of the Courts Order.

include appearances before the court like an Attorney General. The entire period of service of the public servant or the judge, acting judge, magistrate and registrar is counted for the purposes of the qualifying period in section 5(2)(a)(ii) notwithstanding the fact that those persons have not "so practised" in the strict sense of appearing before the courts or being engaged in litigation related services. None of these exceptions helps conclusively to decide the nature or scope of advocacy for the purposive of section 5(2)(a)(ii).

My conclusion on interpretation

[109] As I have discussed above, if the framers' intention was to populate the bench with persons trained and skilled in issues related to litigation, then it could hardly be importing or legislating a different meaning to section 5 to find that, in a contemporary sense, the section embraces not just appearances before the court but all aspects of preparing and presenting a case or cases before the courts. I agree with the JLSC that to argue, as Mr. Bristol does, that advocacy should be viewed only as appearing and arguing claims before the court would put "…*undue weight on oral advocacy, which is only one small part of modern litigation*."[112] Modern litigation and by extension, advocacy, entails a great deal more than mere appearances. In the face of the advancing breadth and scope of advocacy, limiting its meaning to only those who appear before the court to advocate on behalf of clients would have the chilling effect of restricting the field of eligible applicants to such paltry few as to render the process of appointing judges to the Court of Appeal unproductive.

[110] Moreover, I am of the view that the modern incarnation of advocacy as suggested by the JLSC, would not, to borrow the phraseology used by Lord Hoffman in **Boyce**, have "… *come as a surprise to the framers of the Constitution*…"[113] This is because, as demonstrated by our overview of the history of the barrister's profession, advocates were, prior to the formal separation of the legal professions, engaged in all, if not most,

[112] Supra, note 32 at para 31
[113] [2004] 4 LRC 749 at 760

aspects of litigation and litigation-related activities at various stages of the development of advocacy. Equally, the reasoning underlying the fusion of the legal profession within the region, particularly concerning the conduct of advocacy and the persons entitled to undertake it, provides substantial support for the JLSC's position and is neither inconsistent with nor a departure from the purpose intended by the framers, as I have outlined it.

[111] I would also agree with the JLSC that accepting, as Mr. Bristol asserts, that the concept of advocacy was restricted to persons arguing cases before the court, there is nothing in section 5(2) (a)(ii) and indeed section 5(3) to indicate that the framers would have insisted that section 5(2)(a)(ii) should be applied *"…in the same way, regardless of changes in legal practice occurring after its enactment*."[114]

[112] Understandably, there are limits to reading the Constitution with an uplift. The task is to find meaning and not to guess or invent a meaning. We recall Byron CJ's caution in **AG v Grenada Bar Association** to the effect that –

> "Courts, while giving a generous interpretation, must carefully look at the language used so as to give effect to it and not resort to an application of distilled values which would result in divination and not interpretation."[115]

[113] Lord Hoffman warned that "The Constitution does not confer upon the judges a vague and general power to modernise it."[116]

[114] More pointedly, his Lordship cautioned against treating the 'living instrument' doctrine as licence to ascribe to the Constitution whatever meaning a judge may desire or to import the judge's own values into the process of constitutional interpretation –

> "The 'living instrument' principle has its reasons, its logic and its limitations. It is not a magic ingredient which can be stirred into a jurisprudential pot together with 'international obligations', 'generous construction' and other such phrases,

[114] JLSC's 17th April 2026 submissions at para.11
[115] [2002] 2 LRC 531 at 541
[116] Boyce v AG [2004] 4 LRC 749 at 761

> sprinkled with a cherished aphorism or two and brewed up into a potion which will make the Constitution mean something which it obviously does not."[117]

[115] The foregoing caution is precisely the reason that I do not consider it appropriate to adopt the meaning suggested by Justice Ventose. The learned judge's method of interpretation would impermissibly extend the definition of advocate in section 5 to include academics, possibly conveyancers, and other legal professionals whose practice has no connection, correlation, or association with advocacy, whether in its historical or contemporary manifestation. Although it may be accepted that advocacy today is not what it was in the 1960s and 1970s when the Constitution was drafted, advocacy has always possessed a distinctive character, and its essential attributes have endured notwithstanding changes in the manner and modalities by which it is practised.

The "has so practised" question.

[116] Having determined the intention of the framers at the time section 5(2) (a)(ii) was drafted, the question that remains is whether the JLSC properly satisfied itself that Justice Ventose met the requirements of section 5 before his appointment to the Court of Appeal? There is, understandably no quarrel with the learned judge's qualifications as an advocate. Justice Ventose has been called to the Bar of a number of ECSC jurisdictions which qualifies him to practise in those jurisdictions and more specifically to practise as an advocate in the ECSC as a consequence of the fusing of the professions of barristers and solicitors. The more contentious query centers on whether he has so practised as an advocate. This is a question that the JLSC is obliged to answer on these proceedings. As I have stated above, Justice Ventose is under no obligation to satisfy this Court of anything, as section 5 entrusts the JLSC with the responsibility of ensuring that an appointee to the office of Judge of the Court of Appeal satisfies the requirements prescribed by that section.

[117] Boyce v AG [2004] 4 LRC 749 at 768

[117] With respect, my assessment is that the JLSC did not do properly assess the question of whether Justice Ventose had so practised as an advocate and that he had done so for the requisite aggregate period of 15 years before it appointed him as a judge of the Court of Appeal. The drafting and use of the words "has so practised" and "… for an aggregate period of 15 years" is deliberate language and demands a positive approach to the question that arises from those words. Therefore, in my opinion, it is JLSC's duty to obtain - (1) adequate details that the applicant is qualified as an advocate; and (2) information that would indicate that the applicant practised advocacy for an aggregate of 15 years. The evidence discloses the former and not the latter.

[118] Where the question of Justice Ventose's actual experience as an advocate is concerned, JLSC considered a number of matters which I will address.

[119] Firstly, at paragraph 34 of its 16th February 2026 submissions JLSC points out that *"…the description of the work he said he performed, qualifies as practice in advocacy.*" The description of the work is set out at paragraphs 35 and 36 which explain that *"…since being called to the Bar in St. Lucia in 2007, he had assisted with legal opinions and drafting documents for selected matters which have engaged the courts."* Further description indicates that "… in his later application to the Search Committee to be appointed Chief Justice, Justice Ventose described his post-call professional work as "litigation and litigation management**"**, and in his letter to the Search Committee dated 30th April 2024 he stated that he had "appeared in court as an advocate" and had "assisted persons involved in proceedings for the resolution of issues arising under law."[118]

[120] JLSC adds that the foregoing information is underpinned by testimonial from esteemed former Chief Justice Sir Hugh Rawlins which reference states that *"…Justice Ventose's knowledge of the rules of evidence and of court practice and*

[118] Supra, note 32 at para 36

procedure arose, among other things, from his attendance at court in various Caribbean countries."[119]

[121] None of the foregoing evidence from the JLSC is queried by this court. In fact, I attach the highest regard and credence to all of it. What is graphically absent however is the basis on which JLSC satisfied itself that any of these general assertions were made out in fact. It is my view that JLSC was duty bound to do so. As I have stated above, the language used by the framers is deliberate. The framers took the time to insist that the appointee must be qualified as an advocate **and must be shown to have practised as such and be shown to have done so for a determinate period (15 years)**. This list of criteria is different to the ones in other constitutions where the framers there required applicants who were purely advocates or qualified legal practitioners without more. In the section 5 (2) (a) (ii) formulation, the applicant must be shown to be a qualified advocate who has **practical experience as an advocate for 15 years**. There is no evidence that was presented to the JLSC to show that Justice Ventose possessed any of the experience expressly stated in the section. Without condescending to an enumeration of the sort of evidence required, it would have been entirely proper of the JLSC to insist that the applicant provide cases in which he practised as an advocate and the years in which he did so. I am hard-pressed to see how the JLSC could satisfy itself that the stipulations of section 5 (2) (a) (ii) (practised as an advocate for 15 years) were met by the applicant without having that sort of material in its possession to assess.

[122] In some respects, JLSC sought to preempt this criticism. See paragraphs 16 and 17 of the affidavit of Jodi Ann Masters Singh, sectary to the JLSC filed herein on 3rd March 2025 where JLSC states that -

> "16. While his application does not indicate any litigation work being done in St. Lucia, it does indicate that he engaged in litigation since his calling in Barbados in 2008. Sir Hugh Rawlins indicated that Mr. Ventose acquired a comprehensive knowledge of rules of evidence and of court practice and

[119] Ibid at para 35

procedure due, in part, to "his practice in Barbados and attendance in court there".
17. We understood from his application that since being called to the Barbadian Bar in 2008 he provided litigation support in matters before the courts and did so during the period between his call in that jurisdiction and his appointment as a High Court judge in 2018. After that stint came to an end Mr. Ventose became Dean of the Faculty of Law at UWI up until his appointment as a Justice of Appeal in 2024."

[123] In this context JLSC submits that –

> "It is true that the application before the Commission did not specify the particular litigation work Justice Ventose undertook between 2007 and 2010. However, in his letter dated April 30, 2024, he affirmatively states that since his admission, he performed tasks that, on our case, constitute the practice of advocacy, and he identifies only one exception- the period during which he served on the bench."[120]

[124] With respect to the question of whether the 15 year requirement was met, JLSC explains that –

> "We recognise that, although Justice Ventose's account of his professional experience in his May 2024 letter provides some detail as to the nature of the activities he says constituted practise as an advocate during the sixteen-year period, it is not specific as to when, within that period, he performed each of those activities and to what extent. For example, Justice Ventose does not say whether any of the court appearances or assistance in proceedings took place between 2007 and 2010."[121]

[125] JLSC accepts that these are factual matters of which it ought to be satisfied. It says that it was so satisfied. Further, the JLSC contends, to the extent that JLSC's assessment is disputed by Mr. Bristol, that is a factual disputation that the court must resolve *"…on the basis of the facts as stated by the defendant, unless there is a good reason to reject that*.[122]" JLSC goes on to elucidate at paragraphs 53 et seq of its 16th February 2026 submissions that the court should consider the 15 year period as one

[120] Supra, note 32 at para. 42
[121] Ibid at para. 51
[122] Supra, note 32 at para. 45

who has offered himself as an advocate for 15 years. To do otherwise, the court would mean -

> "…that the résumé of every applicant (or appointed judge) would have to be examined to show that in every single year since being qualified to practise, he or she engaged in litigation before the court at least once. That approach does not reflect how legal practice actually works."[123]

[126] I have no difficulty with JLSC's proposition that the disputed facts may be resolved on the material that it has presented to this court. However, as I have stated above, the material that was presented by the JLSC does not meet the standard required by section 5. Additionally, I do not accept the suggestion that the requirement of having "so practised" could be met by an advocate who was *"…on hazard and offering himself as a barrister to the public at large"*[124] as such. I reiterate the point that the framers deliberately used the words "…has so practised" to achieve a certain outcome. It cannot be the case that the object of that terminology could be met by an advocate simply asserting that he or she was "… *on hazard and offering himself to the public*" as an advocate. It must not only be averred that the legal professional offered him or herself to the public as an advocate but must be shown to have been so utilized.

[127] Interestingly, I note that in the **Walshe** case presented by JLSC as authority for its proposition, the court looked at constructions of the phrases "…a practising barrister or solicitor of not less than ten years' standing" and "…a barrister or solicitor who actually practised his profession for not less than ten years". The former represented the phrase being considered by the court. Based on reasons of statutory context the court in that case arrived at a meaning that did not call for actual practise by the advocate. In this case, section 5(2) (a) (ii) contains language similar to the phrase "…a barrister or solicitor who actually practised his profession for not less than ten years". For the purposes of section 5 (2) (a) ii) therefore, I have no hesitation in finding that the section stipulates that evidence must be presented of the applicant having

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123 Ibid at para. 58
124 Ibid at para. 59

actually practised and of he or she having done so for a period or periods amounting to an aggregate of 15 years.

The parties' quarrels on evidence of experience

[128] The parties expended a great deal of their energy on assessing each of Justice Ventose's years since his call to the Saint Lucia Bar in 2007 to his elevation to the Court of Appeal in January 2024. I do not believe that the exercise was necessary since I have concluded that the JLSC did not properly satisfy itself that Justice Ventose had practised as an advocate for an aggregate of 15 years (even on JLSC's expanded view of advocacy).

[129] But even if I look at the limited evidence provided by the parties about Justice Ventose's actual practical experience, I do not find that he met the requirement of having so practised for an aggregate of 15 years. For instance JLSC posits in its 16th February 2026 submissions that –

> "…We recognise that, although Justice Ventose's account of his professional experience in his May 2024 letter provides some detail as to the nature of the activities he says constituted practise as an advocate during the sixteen-year period, it is not specific as to when, within that period, he performed each of those activities and to what extent. For example, Justice Ventose does not say whether any of the court appearances or assistance in proceedings took place between 2007 and 2010."[125]

[130] The JLSC accepts that there may be a basis for excluding this period (2007 to 2010) from the calculation, owing to the limited information available as to whether Justice Ventose actually practised as an advocate, even when assessed by reference to the JLSC's own understanding of advocacy. In this regard, JLSC proposes that *"…the court should not adopt that approach and unless there is specific evidence showing that the Interested Party was unable to offer or perform litigation-related services to the public during the years in question, those years should not be discounted."*[126] As

[125] Supra, note 32 at para 51
[126] Ibid at para. 53

attractive as this proposal may appear, I must repeat, it does not assist in resolving the fundamental question before the court, namely, whether the JLSC complied with section 5(2) (a)(ii) when it appointed Justice Ventose. On this very evidence, the JLSC accepts that it was presented with limited material, and in respect of the period from 2007 to 2010, no information at all, upon which it could properly reach that conclusion. It cannot suffice to assume (as JLSC does) that –

> "An attorney may have an active litigation practice but, in a particular year, may simply not receive a brief that led to court hearings. For example, matters may settle before a claim form has been filed or before a hearing is needed.
> 59. A litigator may be in court almost every day one year and not appear at all the next. In these circumstances, we say that Parliament could not have intended that year in which litigation work was slow or non-existent, or where court appearances were not required for legitimate reasons, should fail to count toward a candidate's time as a practising advocate. As long as he was "on hazard and offering himself to the public" … the years should not be discounted."[127]

[131] In my view, if an applicant cannot provide details of the advocacy work he or she undertook during a particular year, or over periods that would amount to 15 years of actual experience as an advocate (even on the JLSC's updated construction), that deficiency is the applicant's burden, not the JLSC's. To reiterate the point. JLSC has a constitutional mandate with a specific practical element. The specificity of that mandate does not allow for speculations or suppositions as to whether or when the advocate may or may not have worked on a case (whether in court or litigation related activities). Rather, the mandate requires positive action to ensure that the advocate "has so practised" as an advocate for the identified period.

Mr. Bristol's quarrels about experience as an advocate

[132] Mr. Bristol has undertaken an almost forensic scrutiny of the period from Justice Ventose's call to the Saint Lucia Bar in 2007 to his elevation as Justice of Appeal in 2024. I agree with his view that Justice Ventose did not qualify due to his lack of the requisite advocacy experience (even on JLSC's interpretation). However I come to

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[127] Supra, note 32 at para. 58

that conclusion for the reasons that I have stated above. Nonetheless, I am of the view that I would reach the same conclusion, namely, that the learned judge did not possess the requisite advocacy experience, even if I were to follow the assessment framework proposed by Mr. Bristol. Looking at the only available evidence of the periods during which Justice Ventose could be said to have conducted advocacy (on the updated construction of the word advocacy presented by the JLSC and accepting the stated periods, for the moment, as years of actual experience)), I observe the following periods -

> (1) Senior legal adviser in the Attorney General's Chambers in the Commonwealth of Dominica for the period 2016 to 2017. This period is subsumed within the period following since they fall within the same time line;
> (2) Senior Legal Consultant Delany Finisterre, Barbados 2010 – 2018 **(8 years)**.
> (3) Senior Legal Consultant Finisterre Attorneys, Barbados 2021 - 2022 **(2 years)**.

[133] The total of the foregoing period amounts to 10 years of advocacy. Section 5(3) of the Courts Order credits the period during which Justice Ventose sat as a High Court Master, High Court Judge and acting Court of Appeal judge to his overall years of experience for the purposes of the years of advocacy required by section 5(2) (a) (ii). Those periods are –

> (1) Master of the Eastern Caribbean Supreme Court assigned to Anguilla, Antigua and Barbuda, and the Territory of the Virgin Islands for the period November and December 2016 (2 months);
> (2) Judge of the Eastern Caribbean Supreme Court in 2018 and assigned to St. Kitts-Nevis. He served as High Court Judge in St. Kitts - Nevis until 2020 (2 years); and
> (3) Acting Justice of Appeal from May to December 2023 (7 months)

[134] I note that there is no evidence that Justice Ventose engaged in advocacy prior to his commencement of service in Barbados in 2008. Consequently, the addition of the credited two years and nine months of judicial service to the ten years of advocacy experience yields an aggregate period of twelve years and nine months, rather than fifteen years.

The Barbados practising certificate issue

[135] Mr. Bristol asks the court to deduct a number of years from the total period that Justice Ventose claims to have practised in the Barbados jurisdiction. Mr. Bristol pleaded and presented copies of the Barbados Legal Profession Act in aid of his submission that in order to practise law in Barbados, the legal practitioner needs to obtain a practising certificate in that jurisdiction.

[136] These submissions raise questions of the applicability of a foreign law. It by now settled legal principle that, as a general rule, foreign law is treated is a question of fact by our courts[128]. That fact "…must be specifically pleaded by the party relying upon it, and must be proved to the court." [129] It has also been established that "… the court will not, in general, make its own researches into foreign law." [130] Accordingly, the party who wishes to rely on foreign law must prove "…that foreign law … by properly qualified witnesses." [131] Expert evidence is the usual mode of proving foreign law. In **Brownlie v FS Cairo (Nile Plaza) LLC[132]**, Lord Legatt offered some insight into the modern approach to proving foreign law in court proceedings –

> "The old notion that foreign legal materials can only ever be brought before the court as part of the evidence of an expert witness is outdated. Whether the court will require evidence from an expert witness should depend on the nature of the issue and of the relevant foreign law. In an age when so much information is readily available through the internet, there may be no need to consult a foreign lawyer in order to find the text of a relevant foreign law. On some occasions the text may require skilled exegesis of a kind which only a lawyer expert in the foreign system of law can provide. But in other cases it may be sufficient to know what the text says."[133]

[137] Although His Lordship's sagacious guidance is not binding on this Court, it carries significant persuasive weight in the circumstances presently before me. No expert

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[128] Supra, note 32 at para. 58
[129] Halsbury's Laws of England, 5th edn, Vol 19 at para. 230
[130] Ibid
[131] Ibid at para 231
[132] [2021] 3 WLR 1011
[133] [2021] 3 WLR 1011 at 1054

testimony was presented with respect to the text of the Barbadian law in question. Nonetheless, with respect, there is nothing in the text of the law before me that calls for any extensive or eloquent exegesis. The terms of the Barbadian law are rather explicit and easily comprehensible. Equally, there is no suggestion that the Barbados Legal Profession Act did not apply at the time in question to the issues under consideration by this court.

[138] Section 10(2) of the Barbados Legal Profession Act, Cap. 370A provides –

> "Subject to any other enactment to the contrary, no person may practise law unless he is the holder of a valid Practising Certificate…"

[139] The person who wishes to practise law must possess a valid practising certificate in accordance with section 11(1) of the Barbados Act which reads –

> "A person who is registered on the Roll and who desires to practise law in any year shall, in the month of January in that year, apply to the Registrar for a certificate, to be called a Practising Certificate; and the Registrar shall, on payment of the annual registration fee, unless that person is exempt from such payment, but subject to section 49, issue to him a Practising Certificate."

[140] Practising law is defined in section 2 of the Barbados Act to mean –

> "to practise as a barrister or solicitor or as an attorney-at-law, or to undertake or perform the functions of a barrister, solicitor or attorney-at-law as recognised by any law."

[141] The definition of practising law contained in section 2 of the Barbados Act is, in my view, sufficiently broad to encompass the JLSC's assessment that advocacy extends beyond appearances before the courts and includes all forms of "litigation-related activities". If that assessment is correct, it would follow that, in order to lawfully practise as an advocate in Barbados, Justice Ventose was required to hold a valid practising certificate throughout the period during which he claims to have practised in that jurisdiction. Indeed, the Barbados Act provides that a person who practises law without a valid practising certificate "is not entitled to maintain any action for the

recovery of any fee on account of or in relation to any legal business done by him in the course of such practice." See section 10 (3) of the Barbados Act. That person also commits an offence. Section 11(7) of the Barbados Act reads –

> "A person who after the month of January in any year practices law without first obtaining a Practising Certificate is guilty of an offence and liable on summary conviction to a fine of $250 and to a further fine of $25 for every day on which the offence continues after conviction thereof."

[142] The JLSC and Justice Ventose do no object to the court's consideration of the Barbados Legal Profession Act. Contrarily, they take the view that the material does not take matters very far.

[143] For the JLSC it is reasoned that –

> "…. this material is not particularly probative. Between 2018 and 2020, Justice Ventose served as a High Court Judge in St Kitts, and section 5(3) of the Supreme Court Order expressly provides that time spent in judicial office counts towards the required years of "practice as an advocate." That period therefore unquestionably qualifies.
>
> 48. More importantly, Justice Ventose is called to the Bar in several jurisdictions. Highlighting his lack of a practising certificate in Barbados for a particular period does not establish that he did not legally practise as an advocate in any of the other jurisdictions in which he is admitted."[134]

[144] I have already addressed the application of the periods during which Justice Ventose served in various judicial capacities as being sufficient for the purposes of section 5(2) (a) (ii) by reason of what is stated in section 5(3) of the Courts Order.

[145] The JLSC is also correct that highlighting a lack of a practising certificate for Barbados does not establish that Justice Ventose did not practise elsewhere. But that is as far as one can speculate. As I have maintained throughout this discourse, there must be positive evidence that Justice Ventose practised as an advocate, and the pacucity of evidence in that regard has already been highlighted hereinabove.

[134] Supra, note 32 at para. 47

Justice Ventose's take on the practising certificate issue

[146] Justice Ventose's position regarding the absence of a practising certificate is that the issue is of no consequence when section 5 is interpreted through the lens of his "law-related activities" approach. I have already expressed my view that the "law-related activities" approach does not accord with the intention of the framers. Accordingly, I do not consider it to advance this aspect of the discussion in any material respect.

Conclusion on the practising certificate issue.

[147] On the issue of the practising certificate, I agree with Mr. Bristol that there is insufficient evidence to satisfy this Court that Justice Ventose was entitled to practise law in Barbados during the period he claims, save for the years 2014 and 2018. Accordingly, even if one were to credit him with having practised as an advocate notwithstanding the evidential deficiencies highlighted above, only those two years can properly be counted, leaving eight years unaccounted for. Deducting those eight years from the claimed ten years of actual experience as an advocate leaves a period of two years. When that period is added to the two years and nine months of judicial service relied upon, the result is that Justice Ventose can be said to have "so practised" as an advocate for a total of four years and nine months, rather than the requisite fifteen year required by section 5(2)(a)(ii).

My conclusion on whether JLSC acted in breach of section 5 (2)(a)(ii)

[148] All in all, I have arrived at the conclusion that the JLSC did not comply with section 5(2)(a) (ii) of the Courts Order when it sought to appoint Justice Ventose as judge of the Court of Appeal on 8th January 2024. The question of what remedies avail this court for the breach now arises. But before venturing into that issue, JLSC and Justice Ventose raise a question about delay. I must say a word about it.

Delay

[149] CPR 56.4 contains the procedural rule on delay –

> 56.4
> (1) In addition to any time limit imposed by any enactment, the judge may refuse to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.
> (2)When considering whether to refuse to grant relief because of delay the judge must consider whether the granting of relief would be likely to –
> (a) be detrimental to good administration *(detriment)*; or
> (b) cause substantial hardship to or substantially prejudice the rights of any person (hardship).

[150] Where detriment is concerned, the learning is fairly settled. Lord Walker in **Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union and others**[135] restated the relevant principles –

> "All relief granted by way of judicial review is discretionary, and the principles on which the court's discretion must be exercised take account of the needs of good public administration. In *Caswell v Dairy Produce Quota Tribunal for England and Wales* [1990] 2 AC 738, 749, [1990] 2 All ER 434, [1990] 2 WLR 1320, Lord Goff of Chieveley quoted Lord Diplock in *O'Reilly v Mackman* [1983] 2 AC 237, 280-281, [1982] 3 All ER 1124, [1982] 3 WLR 1096:
> "The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision. Lord Goff continued:
> "I do not consider that it would be wise to attempt to formulate any precise definition or description of what constitutes detriment to good administration. This is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) [of the Supreme Court Act 1981] recognises that there is an interest in good administration independently of hardship, or prejudice to the rights of third parties, and that the harm suffered by the Applicant by reason of the decision which has been impugned is a matter which can be taken into account by the court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the Applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the court is at that stage looking at the interest in good administration independently of matters

[135] [2011] UKPC 4

> such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision."[136]

[151] The arguments concerning delay, including the issues of detriment, hardship, and prejudice, have been set out earlier in this judgment. I agree with the JLSC and Justice Ventose that Mr. Bristol has provided no satisfactory explanation for the delay between April 2024, when the Search Committee first expressed its concerns to the JLSC regarding Justice Ventose's appointment to the Court of Appeal, and December 2024, when these proceedings were commenced.

[152] However, a claimant's failure to act promptly does not, without more, preclude the grant of relief under CPR 56.4. A lack of promptitude, even where unexplained, is not in itself determinative. Rather, the rule requires the court, when considering whether to refuse relief on account of unreasonable delay, to have regard to whether the grant of relief would be likely to cause substantial hardship or substantial prejudice to the rights of any person, or otherwise be detrimental to good administration.

[153] Accordingly, the question of delay cannot be considered in isolation. The absence of a satisfactory explanation for the delay, together with any resulting hardship, prejudice, or detriment to good administration, must be assessed holistically. Where the court is satisfied that the grant of relief, notwithstanding unreasonable delay, would occasion substantial hardship or prejudice, or would adversely affect good administration, it ought to exercise its discretion to refuse relief. Although **Maharaj v National Energy Corporation of Trinidad and Tobago**[137] was primarily concerned with the Trinidad and Tobago procedural rules relating to delay in the context of an application for an extension of time to seek leave to apply for judicial review, the decision contains a useful discussion of the principles relevant to the present issue.

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[136] [2011] UKPC 4 at para 40
[137] [2019] UKPC 5

[154] I find that the reasons advanced by the JLSC and Justice Ventose fall short of establishing the degree of detriment, hardship, or prejudice necessary to justify this Court refusing relief for the constitutional breach established in this case. In my view, the considerations relied upon are not sufficient to outweigh two more fundamental concerns. In this context, one must consider, firstly, the constitutional duty entrusted to the courts under the Grenada Constitution and, indeed, under the constitutions of all participating Member States of the ECSC. Those constitutions confer upon the courts the vital role of guardian of the constitutional order upon which each State is founded. This responsibility is no less significant in respect of the independent Member States of the ECSC than it is in relation to those Member States that remain British Overseas Territories. **Robinson Bulkan and Saunders** in their instructive treatise, **Fundamentals of Caribbean Constitutions**[138] put the matter very well –

> "A written constitution that is supreme invariably produces an expansion in the role of the judiciary. Constitutional supremacy is predicated on an institution that is empowered authoritatively to interpret the constitution, resolve conflict between the branches of government, assess the constitutionality of governmental acts and safeguard the fundamental rights of the individual prescribed by the constitutions."[139]

[155] The same logic, to a great extent, applies to the constitutions of the members of the ECSC who are British overseas territories and whose constitutions do not include a supreme law clause as those of the members who are independent states. **Robinson Bulkan and Saunders** continue –

> "The constitutions of overseas territories, though not supreme, are the fundamental law for the territories and direct all aspects of local governance. The power of the local legislature to make laws for the peace, order and good governance of the territory comes from the constitutions. Laws made by the local legislature are subject to the constitutions, as are the actions of the local executive, who also derive their authority from the constitutions. The judiciary exercises the power to review laws made by the local legislature and acts of

[138] Fundamentals of Caribbean Constitutions at page 178
[139] Ibid at page 178

> the executive to determine their consistency with the constitutions – features of systems of constitutional supremacy."[140]

[156] Secondly, and closely connected to the first consideration, regard must be had to the foundational role that the judiciary occupies in the constitutional structure and orderly governance of each Member State of the ECSC. In this context, the proper appointment of a judge of the ECSC Court of Appeal transcends concerns relating merely to public trust and confidence in a properly constituted judiciary. While it is undoubtedly true that a failure by the courts of the ECSC to govern themselves in accordance with the constitutional and legal standards by which they are constituted may undermine public confidence and erode the Court's institutional legitimacy, a more fundamental consideration arises.

[157] A properly constituted and independent judiciary is an indispensable pillar of the constitutional and democratic order upon which each Member State of the ECSC is founded and governed. It is through an independent judiciary, constituted in accordance with the Constitution and the law, that the rule of law is maintained, constitutional limits are enforced, and the rights and freedoms of citizens are protected. Indeed, the existence of a properly constituted judiciary is not merely a matter of institutional legitimacy; it is an essential characteristic of any functioning constitutional State. Consequently, it is because the judiciary forms an indispensable part of the constitutional architecture of the State that the ECSC must not only comply meticulously with the constitutional and legal requirements that govern its composition and operation, but must also be seen by the public to do so.

This is not to say that the concerns raised by the JLSC and Justice Ventose are somehow de minimis. But fears about diminishing the court's resources, affecting other judicial appointments, public perception if a judge is removed from the court or concerns about the personal affairs of the judge being affected must inevitably yield to the overarching principles that I have outlined above.

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[140] Supra, note 137 at page 179

Relief

[158] I have concluded that the JLSC acted in breach of its constitutional authority in making the appointment in question. This is not a conclusion that I have reached lightly. There is nothing in the evidence before me to suggest that the JLSC acted capriciously, in bad faith, or with any deliberate disregard for the limits of its constitutional powers. Rather, it appears that the error arose from an interpretation of the terms "advocate" and "has so practised" in section 5 of the Courts Order which, although erroneous, was plainly adopted in good faith and with the best of intentions. It is my hope that the resolution of these proceedings will provide much-needed clarity regarding the meaning and application of those provisions, thereby assisting future appointments pursuant to section 5(2) (a)(ii).

[159] Mr. Bristol seeks the following relief for the breach –

> (1) An order of certiorari quashing the decision of The Judicial and Legal Services Commission appointing the Interested Party as a Justice of Appeal of the Eastern Caribbean Supreme Court with effect from the 8th January, 2024, ("the Appointment").
> (2) A declaration, pursuant to section 101 of the Grenada Constitution Order 1973, that the Appointment is unconstitutional, null, void and of no effect, the Interested Party not meeting the qualification requirements set out in Section 5(2) of the Courts Order.

[160] For JLSC, the submission is that the court ought to refuse relief. I disagree that relief of some sort ought to be refused.

[161] Justice Ventose asks the court to consider alternative remedies or refuse relief. The reasons for seeking an alternative relief of a prospective order instead of a quashing order have been set out above. I am not persuaded that I ought to exercise the discretion to make alternative orders. No evidence has been presented that an orderly transition would be irreparably or significantly affected by a quashing order. I cannot

imagine how it could be. The same reasoning applies to the broad generalization that a quashing order would disrupt the administration of justice and that it would affect third party interests.

[162] In relation to the concern that the validity of decisions already made by the court on which Justice Ventose sits may be affected, I join with JLSC in the view that the de facto doctrine will preserve the legitimacy of those rulings. In **Fawdry & Co (a firm) vs Murfitt**[141], the de facto doctrine is restated thus –

> “"The acts of [an] officer or judge may be held to be valid in law even though his own appointment is invalid and in truth he has no legal power at all. The logic of annulling all his acts has to yield to the desirability of upholding them where he has acted in the office under a general supposition of his competence to do so."[142]

[163] The court in **Fawdry & Co (a firm) vs Murfitt** also recites the learning on the principle stated in **Curtin v Barton** (1893) 139 NY 505, 511, :–

> "When a court with competent jurisdiction is duly established, a suitor who resorts to it for the administration of justice and the protection of private rights should not be defeated or embarrassed by questions relating to the title of the judge, who presides in the court, to his office."

[164] **Fawdry & Co (a firm) vs Murfitt** outlines circumstances in which the de facto principle would apply –

> “"An officer de facto is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the office were exercised, First, without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be. Second, under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent requirement or condition, as to take an oath, give a bond, or the like.

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[141] [2002] 3 WLR 1354; see also Coppard v Customs and Excise Commissioners [2003] QB 1428, [2003] QB 1428

[142] Fawdry & Co (a firm) vs Murfitt [2003] QB 104 at 112

> Third, under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public. Fourth …"—under an unconstitutional statute..."[143]

[165] The third set of circumstances easily apply to this case. Justice Ventose was not eligible for appointment under section 5 for want of the requisite experience as an advocate. Equally, the JLSC acted irregularly or improperly in the exercise of their power to appoint him to the Court of Appeal. Nonetheless, the judgments which Justice Ventose wrote are as valid as the acts of a de facto officer of the court. The de facto doctrine is usually inapplicable to instances where the officer may be described as a "usurper". The "usurper" is one –

> "… who is known to have no such colourable authority. The doctrine depends upon his having been generally thought to be competent to act and treated as such by those coming before him."[144]

[166] As I observed in my ruling of 12th December 2025, no issue has been raised in these proceedings concerning Justice Ventose's competence, his extensive knowledge of the law, or his widely recognised legal accomplishments. Indeed, Mr. Bristol, the claimant, reiterated that position during this substantive hearing. The evidence further suggests that, until the Search Committee raised its concerns, the JLSC, Justice Ventose, the Court, the members of the Search Committee, and the public whom he served all proceeded on the common understanding that his appointment was valid. There is therefore no basis upon which to conclude that Justice Ventose knew, or ought reasonably to have known, that he was unlawfully occupying the office to which he had been appointed. Accordingly, the de facto officer doctrine applies to the proceedings in which he has sat and to the judgments he has delivered in those matters. Those proceedings and judgments are therefore not rendered invalid by reason only of the defect in his appointment.

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143 Fawdry & Co (a firm) vs Murfitt [2003] QB 104 at 113
144 Ibid

[167] It is thus for all the foregoing reasons that Mr. Bristol is granted the following relief –

(1) An order of certiorari quashing the decision of The Judicial and Legal Services Commission appointing the Interested Party as a Justice of Appeal of the Eastern Caribbean Supreme Court with effect from the 8th January, 2024;

(2) A declaration, pursuant to section 101 of the Grenada Constitution Order 1973, that the Appointment is unconstitutional, null, void and of no effect, the Interested Party not meeting the qualification requirements set out in Section 5(2) of the Courts Order;

(3) No order as to costs.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar