

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF MONTSERRAT
(CIVIL)
AD 2005**

CLAIM NO. MNIHCV2004/0012

DAVID R. TUITT

Claimant

AND

COMPTROLLER OF INLAND REVENUE

1st Defendant

HONOURABLE ATTORNEY GENERAL

2nd Defendant

APPEARANCES:

Mr. David S. Brandt and Mr. Warren Cassell for the Claimant

Ms. Esco Henry Greer, Attorney General and Ms. Radha Permanand for the Defendants

**Date: 22 – 23rd November, 2004
21st March, 2005**

JUDGMENT

- [1] **GEORGE-CREQUE, J.:** The reliefs claimed in this action are in the main in the nature of administrative orders under Part 56.7 of the Civil Procedure Rules 2000 ("CPR 2000") and arises under the Income Tax Act ("The Act") and the requirement of the Claimant to have a tax exit certificate under section 84(1) of The Act. By Fixed Date Claim Form, issued on March 24th 2004, the Claimant sought as against the Defendants, inter alia, the following orders:

- (1) An injunction to restrain the 1st Defendant by himself his servants or agents or otherwise howsoever from taking any steps whatsoever to prevent the Claimant from leaving the island;
- (2) An order that 1st Defendant issue or cause to be issued to him a tax exit certificate. (This relief is no longer being pursued as the requirement for tax exit certificates has now been suspended by government).
- (3) A declaration that the actions of the 1st Defendant are not reasonably justifiable in a democratic society and is unconstitutional;
- (4) A declaration that section 84(1) of The Act was impliedly repealed by the Montserrat Constitution Order 1989;
- (5) A declaration that section 84(1) of The Act is in conflict with the Montserrat Constitution Order 1989.
- (6) A declaration that the action of the 1st Defendant is illegal.

The 1st Defendant, The Comptroller of Inland Revenue (“the Comptroller”) has claimed against Claimant, arrears of income tax for the years, 1998, 1999, 2000, 2001 and 2002 and seeks an order for payment of said arrears penalties and interest said to be due under The Act.

The 2nd Defendant, the Attorney General, is named as a party to the proceedings by virtue of the Crown Proceedings Act.

The Background

[2] The reliefs claimed arise against the following background:

- (a) In or about the month of September, 2002, the Claimant a citizen and resident of Montserrat, and a building contractor by profession, held discussions with the

Comptroller in respect of a refund of monies he considered as due to him as overpaid on income taxes.

- (b) Having not received the refund he inquired of the Comptroller as to the reason for non refund and was referred to a Colin Usherwood a senior member of staff in the Department of the Comptroller and the outcome was that the Claimant would be allowed time to employ an accountant so as to finalize his tax situation.
- (c) Accounting services were in short supply in Montserrat at the time due to the volcanic activity, and an accountant from Antigua was employed and accounts presented to the Comptroller, but the Claimant was informed by letter dated **25th September, 2002** from Mr. Colin Usherwood, Comptroller of Inland Revenue, that these accounts were unacceptable as not meeting generally accepted accounting standards. That letter also stated that **notices of assessments** for the years, **1995, 1996, 1998 and 1999** income years were attached and further advised how the Claimant's tax credit had been applied as well as the basis of assessment for the years **1998** and **1999**. He was also advised that his financial statements for the years **2000** and **2001** were overdue and should be filed forthwith.
- (d) The Claimant by letter from his solicitors dated **17th January, 2003** advised the Comptroller that he had employed another accountant in Montserrat namely Mr. Vincent Placide to prepare and submit accounts on his behalf and sought an extension of time for their submission and stated that he objected to the assessments made against him. No ground for the objection was stated.
- (e) The Claimant says that he went to the Tax Department on **17th January 2003** to obtain a tax exit certificate as he had heard on **ZJB** Radio, that all persons leaving the island must first receive a tax exit certificate. He says that he was informed by Mr. Usherwood in a meeting, that he owed sizable amounts in taxes according to his files and that if he could not make immediate arrangements to pay off the taxes or make a substantial payment, a tax exit certificate would not be issued. He also

says that during the said discussions with Usherwood he informed him that he needed to go off island to check on a medical condition. He was refused a tax exit certificate.

- (f) On **20th January, 2003**, the Comptroller wrote to Claimant's solicitor's in which he stated that he was replying to the Claimant's solicitor's letter to him of 17th January, 2003 in which he stated inter alia, "**I would hope that Mr. Tuitt has briefed you in regards to his 'tax affairs'; the sum determined by the Department that he owes, his non filing of returns and the other conditions which place him in the category of persons to whom Exit Certificates are refused.**" This letter was copied to the 2nd Defendant and of significance, to the Commissioner of Police. I shall revert to this later.
- (g) On **30th January, 2003** the Comptroller wrote to Mr. Placide, the Claimant's new accountant in essence advising that a tax exit certificate would be issued to the Claimant for a **two-month period**, on certain conditions which were that (i) the accountant confirm in writing his commitment to prepare and file financial statements on behalf of the Claimant for the years 1998 and 1999 by 15th March 03, (ii) the Claimant completes and files a Statement of Financial Position as earlier provided to him by 15th March, 2003 and (iii) a written commitment from the Claimant by 14th February, 2003 to file financial statements in respect of the income years 2000 and 2001 within a reasonable time frame. This letter does not appear to have been copied to the Claimant and he says that the first time he became aware of it was when it was exhibited before the Court in this cause.
- (h) On **24th March, 2004**, the Claimant launched these proceedings. On 4th May, 2004, on application being made by counsel for the Claimant, un-opposed by counsel for the Defendants, an order was made for the grant of an exit certificate to the Claimant to remain in effect until the hearing and determination of the action herein.

- (j) The Comptroller, in his affidavit sworn on 22nd April, 2004 admits that Claimant applied for a tax exit certificate but says that Claimant was advised that he would be issued such a certificate only if he made satisfactory arrangements to pay taxes. This is denied by the Claimant.

Is section 84 (1) of the Income Tax Act in conflict with the Montserrat Constitution Order, 1989 and was thus impliedly repealed thereby?

- [3] The reliefs set out at paragraphs (3) to (6) inclusive of the Fixed Date Claim Form are all interconnected and to one extent or the other, grounded in the issue of the constitutionality of section 84 (1) of The Act which deals with exit certificates. The Claimant asserts that the refusal of the 1st Defendant to issue to him an exit certificate deprived him of his constitutional right to freedom of movement as guaranteed by section 62 of the Constitution of Montserrat ("The Constitution") in that he was prevented from leaving the island Territory of Montserrat.

- [4] Section 84 of The Act must therefore be considered in conjunction with Section 62 of The Constitution. In order to gain an appreciation of the issues raised, it is necessary to set out in part, section 84 of The Act and section 62 of The Constitution which I now do. Section 84 of The Act states as follows:

Exit Certificates

84. (1) Subject to the provisions of subsection (4) of this section no person shall leave or attempt to leave (my emphasis) *Montserrat nor shall any ticket entitling any person to leave Montserrat be issued to any person nor shall any accommodation on any aircraft or ship be provided for any person to leave Montserrat unless such person has in his possession and produces to the airline or shipping agents and the immigration authority an exit certificate, dated not more than one year before the date of departure, duly signed by or on behalf of the Comptroller, certifying that such person—*

(a) *does not owe any income tax; or*

(b) *has made satisfactory arrangements for the payment of any income tax payable by him.*

(2) *Notwithstanding the provisions of any law to the contrary, the provisions of subsection (1) of this section shall not apply to any member of the Executive Council or of Legislative Council.*

(3) *Any person who neglects to comply with or acts in contravention of the provisions of this section shall be guilty of an offence against this Act:*

Provided.....

(4) Subsection (1) of this section shall not apply to—

(a)

(b)

(c)

(d)

(e);

(f) any person who—

(i)

(ii) is not a person whose name has been notified to the Commissioner of Police by the Comptroller as owing income tax; (my emphasis)

(g)

(5)

(6)

Section 62 of The Constitution states as follows:

Protection of freedom of movement.

62.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, that is to say, the right to move freely throughout Montserrat, the right to reside in any part thereof the right to enter Montserrat and immunity from expulsion therefrom.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) for the imposition of restrictions on the movement or residence within Montserrat or on the right to leave Montserrat (my emphasis) of persons generally or any class of persons that are reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health, or

(ii) for the purpose of protecting the rights and freedoms of other persons, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(b)

(c)

(d)

(e)

(f)

(g) for the imposition of restrictions on the right of any person to leave Montserrat that are reasonably required in order to secure the fulfillment of any obligation imposed by law, except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

In the case at bar, it is section 62(2)(g) of The Constitution which is directly relevant as the matter turns on whether section 84(1) of The Act is reasonably required in order to secure the fulfillment of an obligation, namely the obligation to pay income tax.

The applicability of section 84(4) to the Claimant and the requirement for an exit certificate under section 84(1) of The Act.

- [5] Firstly, I think it necessary to address section 84 (4)(f) (ii) of The Act and its applicability to the Claimant in the context of subsection 84(1) in the case at bar as it appears to me, on a reading of section 84 of The Act in its entirety, that subsection 4(f) (ii) of Section 84 has a bearing on the case. In this regard I requested on 7th March 2005, that counsel for both sides furnish the court with further written submissions dealing with this aspect of the matter as this had not been addressed in arguments or in any manner at all during the trial. This they have done. Section 84(1) is expressly stated to be **subject to subsection (4)**. It is clear from a reading of subsection (4), specifically (4)(f)(ii) that unless the Comptroller has notified the Commissioner of Police that the Claimant is a person owing income tax, then section 84(1) requiring an exit certificate in order to leave Montserrat would not

be applicable to the Claimant and he would have been free to leave Montserrat without first obtaining such an exit certificate. Section 3 of the Immigration Act of Montserrat designates the Commissioner of Police as Chief Immigration Officer. By virtue of section 12(4) of the Immigration Act the Chief Immigration Officer and immigration officers control the entry and exit of all persons entering and leaving Montserrat.

- [6] The learned Attorney General contends that the Claimant's claim is misconceived and the reliefs which he seeks ought to be denied for these reasons:
- (a) refusal to issue an exit certificate without more is ineffectual to prevent a person leaving Montserrat for two things are required namely:
 - (i) an exit certificate and
 - (ii) Notice to the Commissioner of Police/ Chief Immigration Officer advising that such person owed income tax.
 - (b) It is the immigration officers who must then act on that notification and the production or lack of production of an exit certificate in denying a person the right to leave Montserrat.
 - (c) In the absence of such a notification then, there would be no basis for an immigration officer to deny a person the right to leave for lack of having an exit certificate.
 - (d) there is no evidence that the Claimant was denied leave by any immigration officer and no evidence that The Comptroller had issued any notification to the Commissioner of Police pursuant to section 84(4) so as to bring the Claimant within the ambit of section 84(1) of The Act for the relevant period. The Claimant does not assert nor was any evidence led that he attempted to leave Montserrat. That the Claimant must have demonstrated that he attempted to board an outgoing vessel and he was prevented from so doing as the result of the notice to the Commissioner of Police. He failed to do so, and thus cannot be heard to say that his right to freedom of movement has been infringed.
 - (e) The Claimant misdirected himself as to the effect of section 84(1) and any impediments he suffered were as a result of his own mistake as to the law.

- (f) The person against whom the challenge should properly have been brought is the Commissioner of Police/ Chief Immigration Officer as the person with the power and authority to prevent a person from leaving the island and not the Comptroller of Inland Revenue.
- (g) That since there was no notification to the Commissioner of Police that the claimant owed taxes he had failed to bring himself within the ambit of section 84(1) as a person affected thereby and thus has no locus standi to bring the instant proceedings which were brought prematurely and thus unmeritorious.

[7] Counsel for the Claimant contends that the Comptroller would have been under a duty to notify the Commissioner of Police under section 84(4)(f) (ii) of The Act, for unless and until that was done then the Comptroller had no power to activate section 84(1) of The Act. He contends that the fact that he refused to grant the exit certificate must be taken to mean that he must have informed the Commissioner of Police that the Claimant owes taxes and such notification- whether he did or did not- would be peculiarly within his knowledge as the notification could have been oral or written. He concedes however, that no evidence was given in this regard. He contends in the alternative, that if the Comptroller did not notify the Commissioner, then his purporting to act pursuant to Section 84(1) with regard to the Claimant would be illegal. He further contends, in any event, that because of the statement made by the Comptroller to the effect that he would not be issued a tax exit certificate, the Claimant was justified in believing that his fundamental right to freedom of movement was being or **likely to be contravened** in relation to him and thus would be justified under section 66 of the Constitution which contemplates not only a breach which has occurred or is occurring, but also a threatened or anticipatory breach.

[8] What emerges from the affidavit evidence and the oral evidence of the Claimant and the Comptroller is that on the 17th January, 2003 when the Claimant requested an exit certificate from the Comptroller, he was refused. There is no evidence that the Comptroller at that time addressed his mind to giving any notification to the Commissioner of Police that the Claimant owed income tax. However by the 20th January, 2003 it is reasonable to infer that the Comptroller by then, must have addressed his mind to this to

some extent as his letter to the Claimant's solicitor dated 20th January, 2003, was stated on its face as being copied not only to the Attorney General but was also to the Commissioner of Police. The said letter carries this caption: **"Department's Action in Refusing Exit Certificate – Mr. David Tuitt"**. I do not hesitate for one moment in saying that a letter addressed to the Claimant's solicitors in which reference is made to the fact that his client owes taxes is not sufficient to fulfill the requirement of section 84(4)(f)(ii) of The Act. As has been said in **Attorney General –v- Hosein**¹, a decision of the Court of Appeal of Trinidad and Tobago, legislation which imposes taxes must be strictly construed and there must be strict compliance with its provisions. Accordingly, I do not consider that the Comptroller's letter of 20th January, 2003 serves to bring the claimant within the letter of the law, so as bring him within the sphere of the operation 84(1) of The Act. At the relevant time therefore, there was no need for him have an exit certificate. Even less so would the Comptroller be empowered to issue or deny an exit certificate as the action pursuant to section 84(4) (f) (ii) which is a requisite for breathing life into section 84(1) had not occurred.

- [9] I do not accept that as a prerequisite to seeking relief under The Constitution that the Claimant is required to demonstrate that he was actually prevented from leaving Montserrat by attempting to board an outgoing vessel even though this may appear to be the logical or practical way of putting the provisions of Section 84(1) of The Act to the test. Section 66 of The Constitution gives a right of redress in respect of a threatened breach.
- [10] When the whole history of this matter is considered as disclosed on the affidavits and the oral evidence of the witnesses it becomes clear that section 84 of The Act has been misconstrued and misapplied for it seems to start from the premise that residents of Montserrat who are liable to pay income tax require an exit certificate in order to enable them to leave Montserrat when this, as a matter of law, is not the case. Income tax can only be considered to be owing at the stage when it has been assessed as it is at that stage that it becomes payable. **[See Hosein's case page 335]** Even at that stage there

¹ (1986) 42 WIR 328

is still no requirement to have an exit certificate unless and until the Comptroller has notified the Commissioner of Police naming such person as a person owing income tax.

[11] There is no evidence as to who placed the announcement on **ZJB** Radio, but the announcement was clearly misleading to the public and appears to have misled the Claimant. It is reasonable to infer that had the Claimant not heard the announcement on ZJB Radio, that he would not have visited the offices of the Comptroller and apply for the issuance to him of an exit certificate. It is further reasonable to infer that in requesting such a certificate he was further misled by the Comptroller into believing at the time that he required an exit certificate to leave Montserrat and since the Comptroller refused to issue to him such a certificate that he would be prevented from leaving Montserrat.

[12] Based on the evidence of the Comptroller himself and the exchange of correspondence between the office of the Comptroller and the Claimant's accountant and solicitors, it can only be concluded that the Comptroller and his staff all appear to have laboured under the mistake of failing to appreciate that section 84(1) of The Act requiring an exit certificate is expressly stated as being **subject to subsection (4)**, and that section 84(1) simply does not stand by itself and would only come into play in relation to the Claimant if and when the Comptroller gives notification to the Commissioner of Police naming the Claimant as a person owing income tax. Their action, in my view, though not malicious, only served to reinforce the Claimant's erroneous belief at the relevant time that the provisions of section 84(1) of The Act applied to him which meant that since he was denied such a certificate then he was not free to leave the island of Montserrat and gave cause to the Claimant to seek constitutional and other redress against the Comptroller's actions. Given this state of affairs it was reasonable, in my view, for the Claimant to apprehend a breach of his constitutional right to freedom of movement and to challenge the constitutionality of the provisions of the law under which the Comptroller was admittedly acting in restricting his freedom as he believed it to be. Accordingly, I am of the view that the Claimant is properly within the ambit of Section 66 of the Constitution to seek redress in respect of the fundamental right which he believed to be threatened.

The presumption of constitutionality

- [13] In **Attorney General & Anr.-v- Antigua Times Ltd.**² Lord Wilberforce in delivering the Judgment of the Privy Council at page 90 stated thus:
- “In some cases it may be possible for a court to decide from a mere perusal of an Act whether it was or was not reasonably required. In other cases the Act will not provide the answer to that question the proper approach to the question is to presume until the contrary appears or is shown, that all acts passed by the Parliament were reasonably required. This presumption will be rebutted if the statutory provisions in question Are so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes in substance and effect the direct execution of a different and forbidden power.”**
- [14] Section 45 of the Constitution states in effect that the Legislature shall have power to make laws for the peace, order and good government of Montserrat subject to the provisions of the Constitution. (*my emphasis*). What this means, as was aptly said by Wooding CJ in **Collymore –v- Attorney General** ³ at page 8 is, that **“Parliament is sovereign within the limits set but if and when ever it should seek to make any laws such as the constitution forbids it will be acting ultra vires”**. In relation to section 66 of the Constitution, at page 9, he went on to say **“ Our supreme court is the guardian of the Constitution, so it is not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an enactment passed by the Legislature is ultra vires and therefore void and of no effect because it abrogates , abridges or infringes or authorizes the abrogation, or infringement of one or more rights and freedoms recognized and declared.”**
- Likewise, it is not being contested that this court has not the power to declare a pre-existing law unconstitutional if it turns out that such law abrogates, abridges or infringes or authorizes the abrogation, abridgement or infringement of a fundamental right or freedom guaranteed and declared under The Constitution.

² [1975] 3 All ER 81

³ (1967) 12 WIR 5

- [15] The Act is a pre-existing law same having been passed in 1967. The Montserrat Constitution Order 1989 ("The Order") came into force on the appointed day being 31st July, 1991. Counsel for the Claimant contends that there is no presumption of constitutionality in respect of a pre-existing law and cites section 5 of The Order. The Attorney General in construing the same section contends that this section, having regard to subsection 2 thereof, bolsters the presumption of constitutionality of pre-existing laws which had not been modified under section 5(2) of The Order.

Section 5 of The Order states in part, as follows:

5.-(1) Subject to the provisions of this section, the existing laws shall have effect on the appointed day as if they had been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them in conformity with the provisions of the Constitution.

(2) The Governor may, by regulations published in the Gazette, at any time within twelve months of the appointed day make such modifications or adaptations to any existing law as appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution or other wise for giving effect or enabling effect to be given to those provisions; and any existing law shall have effect accordingly from such day (.....) as may be specified in the regulations.

(3)

(4)

- [16] The case of **Attorney General -v- Reynolds**⁴ cited by the Attorney General does not in my view make any pronouncement as to the presumption of constitutionality of a pre-existing law, but is authority for saying that section 5 of The Order says what it means and means what it says - that is, that pre-existing laws are to be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them in conformity with the provisions of the Constitution. Lord Diplock in the case of **Attorney General of The Gambia -v- Momodou Jobe**⁵ at page 700H of his judgment said thus: *"A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled, is to be given a generous and purposive construction"*. It appears to me then that the starting

⁴ (1979) 43 WIR 108

⁵ [1948] AC 689

point is to see whether section 84(1) of The Act is capable of being construed with such modifications, adaptations, qualifications or exceptions as may be necessary to bring it into conformity with The Constitution.

- [17] The learned Attorney General conceded that on a proper construction of section 62 of the Constitution, the freedom of movement recognised and declared under that section also includes the freedom to leave Montserrat but that freedom is itself subject to limitations imposed by the very section as can be seen from those parts of section 62 reproduced above. Further, it is accepted by her that section 84 of The Act imposes a restriction on a person's freedom of movement, specifically the freedom to leave Montserrat. The restrictions imposed however, must be reasonably justifiable in a democratic society. The main thrust of the arguments of Counsel for the Claimant is that section 84(1) of The Act cannot be said to be a provision which is reasonably justifiable in a democratic society. If it is shown that this provision or any act done under the authority thereof is not reasonably justifiable in a democratic society, then it would be an unjustifiable infringement upon the right to freedom of movement and as such would be in conflict with the provisions of the Constitution. It would then follow that as a pre-existing law, the said provision would call for an examination to see whether it can be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary, to bring it into conformity with the Constitution. If not, then it must be treated as having been impliedly repealed by the provisions of the Constitution.

The test of reasonableness and the principle of proportionality

- [18] In considering the test of reasonableness I think it useful to quote the dictum of Sastri CJ. in the case of the **State of Madras –v- Row AIR⁶** (cited with approval by Singh J (as he then was) in the case of **Richards & Anr.-v- The Attorney General of St. Vincent & the Grenadines& Anr.⁷**) thus:

“It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no

⁶ 1952 SC 196

⁷ [1991]JLRC 311

abstract standard, or general pattern of unreasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that, the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self – restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them reasonable.”

[19] I consider it useful to make the following observations some of which are notorious facts:

- (a) Montserrat is a small island state where residents make return trips to neighbouring islands on a daily basis in particular the island of Antigua to which it is directly linked in terms of persons entering or leaving Montserrat by air and sea.
- (b) Further the island has been adversely affected by the volcanic activity which has caused a drastic reduction in its population as well as services which it can provide.
- (c) The ability to provide services requiring certain medical skills and facilities is restricted and these must invariably be obtained off island. It comes as no surprise then when the Comptroller says, as he does, in his affidavit of 22nd April, 2004 that **“the Inland Revenue Department routinely issues tax exit certificates to persons wishing to travel abroad for medical attention”**. By way of comment only, I remark that I have found no provision in The Act which permits the issuance of an exit certificate on this basis, but it may reasonably be inferred that the Comptroller recognised the need to relieve against the hardship which this provision may cause to residents of the Territory. Interestingly, section 84(4)(g) of The Act makes the requirement for obtaining an exit certificate **not applicable** to any patient or nurse or companion traveling with a patient who is going abroad for emergency medical treatment. (This particular provision was inserted in

1998). It also not surprising that the Comptroller in his oral testimony stated that Government suspended the provision requiring exit certificates between 1995 and 1999. It is public knowledge that this period was during the height of the volcanic crisis.

- (d) Montserrat is still in a state of public emergency as declared by law.
- (e) The measure requiring an exit certificate was re- introduced again in 2000 but has again been suspended by Government, occurring sometime in May, 2004, fairly shortly after this action was commenced.

[20] The criteria by which reasonableness is to be assessed in determining what is reasonably justifiable in a democratic society are well enunciated in **Richard's case**, and also in the case of **De Frietas-v- P. S. of Min. of Agriculture**⁸ and have been succinctly stated by the Learned Attorney General in her written submissions as follows:

- (i) is the legislative objective sufficiently important to justify limiting a fundamental right,
- (ii) is the measure designed to meet the legislative objective rationally connected to it; and
- (iii) is the means used to impair that right or freedom no more than is necessary to accomplish the objective.

[21] The Attorney General argues that section 84 of The Act satisfies all three (3) criteria as set out above. With respect to the first criterion, she contends that the legislative objective is to prevent persons who may owe income tax from leaving the Territory before meeting their tax obligations. This was clearly stated to be so in the case of **Hosein**. [See the *Judgment of Persuad JA at pages 336-337*]. The case at bar, in some respects is similar to the case of **Hosein** which is relied upon by the Attorney General. There, the court was also dealing with the requirement of a tax exit certificate, and whether the Respondent Hosein, a businessman, had been wrongfully hindered from leaving Trinidad and Tobago, when he attempted to leave, he not having in his possession a tax exit certificate and thus, whether his constitutional right to freedom of movement had been infringed. The case did

⁸ (1999) AC 69

not turn so much on the examination to any great extent on the reasonableness of the requirement for a tax exit certificate, but focused more on the issue as to whether it had been determined that Hosein was a person by whom tax was payable so as to bring him within the ambit of the tax regulations requiring him to obtain a tax exit certificate. As Persuad JA said at page 335 of the Judgment, when “ **... his tax is assessed or computed ... only then does tax become payable and it is only when tax becomes payable that resort can be had to regulation 6(2) of the Exit Regulations.** Mr. Hosein, at the time when he sought to leave the country, had not been assessed for income tax and thus could not be said to be a person by whom tax was payable as required by regulation 6 (2). It was accordingly held that his constitutional right to freedom of movement had been infringed. The learned Attorney General says that the legislative objective is reasonable as the responsibility for good government entails an element to ensure that revenues are raised to defray governmental expenses incurred in carrying out its responsibilities for the benefit of all residents and thus depends on all residents bearing their share of responsibility by the payment of taxes. This would be in the public interest. With this, no issue can or has been taken by the Claimant.

- [22] In respect of the second criterion, she says that the measure requiring an exit certificate so as to ensure that residents did not leave the island without fulfilling their tax obligations or at least making satisfactory arrangements for their fulfillment is, obviously, rationally connected to this objective.

- [23] In respect of the third criterion, she says that section 84 of The Act goes no further than is necessary to accomplish the objective and this must be construed objectively – in essence whether the measure is one which can be defended as being reasonably required, and thus reasonably justifiable in a democratic society. It is in respect of this third criterion that there is a strong divergence of opinion between learned counsel for the Claimant and the Attorney General. Learned Counsel for the Claimant immediately pointed to the apparent concession made in the Attorney General's written submissions in which she indicated that it was somewhat difficult to argue that the means used to impair the right to freedom of movement was no more than was necessary save, she said, for reliance on

historical cases which demonstrate a propensity and willingness of taxpayers to avoid their obligation to pay taxes by leaving the jurisdiction. Counsel for the Claimant contends that it is the third criterion which is critical to the case at bar.

- [24] Counsel for the Claimant referred the court to a plethora of authorities in demonstrating the approach taken by democracies around the world in interpreting the Constitution or a convention on Human rights which is (as stated earlier in this judgment) to give to it a generous and purposive construction.⁹

In **Sporrong and Lonnroth -v- Sweden**¹⁰ a case dealing with the right to peaceful enjoyment of possessions, which was considered to have been breached, by the Government, local authority and Planning Board, the European Court of Human Rights at paragraph 69 of the majority Judgment of the Court, in considering the permits which were being challenged as offending the right to enjoyment, had this to say:

“..... The Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The search for this balance is inherent in the whole of the Convention.... .”

- [25] Counsel for the Claimant went on further to submit that the doctrine of proportionality is central to the principle of ‘**fair balance**’. He also placed reliance on **R-v- Oakes**¹¹ a decision of the Supreme Court of Canada engaged in the interpretation of the Canadian Charter of Rights and Freedoms and section 1 thereof which in essence provides that the said charter guarantees the rights and freedoms set out in it ***subject only to such reasonable limits prescribed by law as can be demonstrably justified*** in a free and democratic society (*my emphasis*). By comparison, the preamble contained in Part IV of The Constitution says in essence, that every person in Montserrat is entitled to the fundamental rights and freedoms of the individual such as life and liberty (to name a couple) but **subject to** respect for the rights and freedoms of others and for the public interest. Section 52 of the Constitution goes on to state as follows:

⁹ See: *Minister of Home Affairs-v- Fisher* (1980) AC 319 – Per Ld. Wilberforce at page 328 para.G-H
Attorney General of Hong Kong-v- Lee Kwong- Kut [1993] AC 95 at page 966
Soering-v- United Kingdom (1989) EHRR 439 at para 87
Edwards-v- the Attorney General of Canada [1930] AC 124. per Ld. Sankey LC at page 136

¹⁰ (1983) 5 EHRR 35

¹¹ (1986) 26 DLR (4th) 200

“Fundamental rights and freedoms of the individual.

52. *The subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. (my emphasis)*

- [26] Section 62 of the Constitution has already been reproduced earlier in this Judgment. As is clearly apparent, section 62 (2) (g) thereof in itself contains a limitation on the freedom of movement which in essence says, that a law which imposes a restriction on the right of a person to leave Montserrat where such a restriction is reasonably required in order to secure the fulfillment of any obligation imposed by law would not be in contravention of The Constitution. Accordingly, such a restriction, if reasonably required per se, would not be inconsistent or in contravention of section 62. However, this is further qualified in that such a law or the thing done under the authority thereof would be inconsistent or in contravention of section 62 if it is shown not to be reasonably justifiable in a democratic society.
- [27] It is established by authority¹² and accepted that the concept of proportionality is a recognised and applicable concept in determining whether a limitation imposed on the fundamental rights and freedoms of an individual is one which is reasonably required or is reasonably justifiable in a democratic society, for, to my mind, implicit in the very provisions of the Constitution which expressly imports the element of reasonableness is the doctrine of proportionality. A court in determining reasonableness would be required to carry out a balancing exercise between the protection of the rights and freedoms of the individual and the interests of others and the State. The concept of proportionality is

¹² See: *Handyside-v- UK* (1979) 1 EHRR 737 para. 49
Fayed -v- UK (1994) 18 EHRR 393 para. 71
Vogt-v- Germany (1996) 21EHRR 205 para. 55, 56 59,& 89
Campbell -v- UK (1993) 15 EHRR 137 paras. 52-53
R-v- Ministry of Agriculture Fisheries Case C-331/88 ECR 4023 pg. 4032 and para. 13
R-v-A [2001] 2 WLR 1546 Per Ld. Steyn at page 1560 paras 37-38.
De Freitas -v- P.S of Min. of Agriculture (supra)

R(Daly) -v- Sec. of State for Home Dept. [2001] WLR 1662

integral to the conduct of such an exercise in striking a fair balance. The test of proportionality is established to be that as expounded by Lord Clyde in the **De Freitas case** a decision of the Judicial Committee of the Privy Council on appeal from the Eastern Caribbean Court of Appeal arising in respect of the right to freedom of expression and assembly enshrined in the Constitution of Antigua & Barbuda. The criteria have already been set out in paragraph 20 above. Sedley L.J. in **B-v- Secretary of State for Home Department**¹³ stated the principle of proportionality thus:

“ a measure which interferes with a community or human right must not only be authorized by law but must correspond to a pressing social need and go no further than is strictly necessary in a pluralistic society to achieve its permitted purpose; or, more shortly, must be appropriate and necessary to its legitimate aim”

This principle is been stated and restated in several authorities.¹⁴

[28] I now turn to the case at bar in applying the test of reasonableness in accordance with the principles as enunciated in the authorities above cited. Whilst I am reasonably satisfied that the first and second criteria are not problematic in answering them in the affirmative, the third calls for in depth consideration. Is the means used to impair the right to leave Montserrat under The Act no more than is necessary to accomplish the objective of ensuring that persons do not leave Montserrat without paying their taxes owed or securing compliance of the obligation of a tax payer to pay taxes? Is there a less restrictive alternative, or, put another way, are there less drastic means for achieving the same purpose? The case of **Hosein** although helpful in certain respects, does not provide much guidance on this aspect. There is a noticeable absence of any authorities placed before that Court on this point. Also I am mindful that this authority is of persuasive weight only.

[29] It is not disputed that the Claimant is a citizen and resident of Montserrat along with his wife and family. He is not a member of the Executive or Legislative Council and thus

¹³ [2002] 2 CMLR 1086

¹⁴ See: *Mc. Veigh, O’Neal & Evans-v-* UK 5EHRR 71 para. 191
Barthold -v- Germany [1985] EHRR 149 para.59
Dudgeon-v- UK (1982) 4 EHRR 149 para. 58
Abdulaziz Cabales and Balkandali -v- UK (1985) 7 EHRR 471 para. 78

would not fall under the blanket exception contained in section 84(2) of The Act to members of those bodies. He is a building contractor by profession and owns lands, houses and personal property which he says is valued in excess of \$1 Million real property which he says is far in excess of any taxes owed by him to Government. Further, on the evidence, it is not disputed that the Claimant has been engaged as a building contractor for the Government of Montserrat. He has exhibited to his affidavit of 5th May, a list of government building contracts spanning the years 2000 to 2003 where the total of those building contracts are in excess of \$4.5 Million. It is further not disputed that Government deducted taxes on said contracts at source, at the rate of 15% as permitted under section 38 of The Act. The Comptroller admitted that he was aware of this. The Claimant also says that during that period he worked exclusively for Government. This has not been contradicted.

- [30] The Comptroller rightly conceded in cross examination that the Act contains a number of measures all designed to secure the payment of income tax. For instance the Comptroller said that in relation to income tax owed he could sue the Claimant; he could issue a warrant to the Bailiff and levy upon the goods chattels and lands of the Claimant and sell them in satisfaction of the amounts owing; he could make demand of a third party whom he believes to be in possession of or has access to money belonging to the Claimant. He could also apply to the Magistrate for a warrant committing the delinquent tax payer to prison, where a distress proves insufficient to satisfy the amount owed, on satisfying the Magistrate that the person has or had since the date of the levy the means to pay the same and has refused or neglected to pay the taxes owed. These powers among others are all contained within the provisions of The Act. The Comptroller conceded that these are alternative remedies to preventing a person from leaving Montserrat. He also said that he knew that money was being paid for the Claimant by the Treasury Department. He says that one of the reasons for not issuing to the Claimant a tax exit certificate was his failure to submit income tax returns. He further conceded in cross examination that accounts were presented by Mr. Placide on behalf of the Claimant in January 2004 and that time was given to present other accounts and that he was given the opportunity to support his contention of how much taxes he

actually owed. The Comptroller said further that accounts presented in January, 2004 were accepted and reviewed and that he never told the Claimant that he was already assessed in respect of those accounts. The Comptroller further conceded that it would have been reasonable for the Claimant to believe that his tax liability would be finalized once his accounts were settled and that it was not fair having given him time to finalize the accounts behind his back. He also said that a letter dated 26th January, 2004 to Mr. Placide spoke of conducting an audit of the Claimant's business. That letter has not been produced or exhibited to any affidavits in evidence.

[32] It seems to me that section 84(4)(f) (ii) gives to the Comptroller a discretion as to whether or not he gives notice to the Commissioner naming any person as owing income tax. He is not duty bound to do so. But certainly before he can activate the issuance or non issuance of an exit certificate he must first comply with section 84(4) (f)(ii) by giving such notification. There appear to be no criteria or guidelines set out for the exercise of this discretion, or put another way there are no built in safeguards in that section to prevent abuse. For example, there is nothing contained within The Act which says that the Comptroller should first seek to utilize any of the other less invasive methods for securing the payment of income tax before resort to section 84. The most that could be hoped for is that the discretion would be reasonably and not arbitrarily exercised.

[33] The fact that the Comptroller himself has sought to find an avenue for issuing exit certificates for medical purposes or 'temporary' exit certificates and the fact that Government has seen it fit to suspend its operation from time to time itself begs the question as to whether it can be said that the means used to impair the right or freedom to leave Montserrat is no more than is necessary to accomplish the objective of securing the obligation of the tax payer to pay income tax. Does this measure contained in section 84(1) though linked to section 84(4) of The Act correspond to a pressing social need and go no further than is strictly necessary in a pluralistic society to achieve its permitted purpose? I think not. It fails in my view to satisfy the test of reasonableness when viewed against the backdrop of the socio- economic realities and all the prevailing circumstances of Montserrat as a free and democratic society. The measure as framed is

disproportionate to the objective which it is designed to achieve when one takes into account the quality of life of Montserratians and residents alike which is critically connected to their ability to move in and out of Montserrat virtually on a daily basis which is more or less on the same level as their ability to move freely within the island of Montserrat. By this I do not mean to convey that such a measure once carefully designed and framed and specifying the circumstances under which it is to be utilized cannot be enforceable and effective in achieving its legitimate aim.

- [34] I must consider whether section 84(1) of The Act can be construed with modifications, adapted or qualified so as to bring it into conformity with the Constitution. I do not think that this is feasible. It is a measure which needs, in my view, considerable refinement specifying the circumstances under which it may be utilized, all steps necessary for invoking same, and provisions ensuring that a person or persons affected by it have notice of it. I must point out that under section 84(4)(f)(ii) or under section 84 as a whole no provision is made for the person whose name has been notified to the Commissioner of Police as a person owing income tax, for any notice to be given to the person by the Comptroller that the person's name has been so notified to the Commissioner of Police. This could result in a person attempting to leave Montserrat being totally unaware of the fact that he should have an exit certificate. The ticketing, shipping agent or immigration authority has no discretion in the matter and would have to prevent such a person from leaving. By then, the person would no doubt have committed the offence of attempting to leave under section 84(1) of The Act which renders the person liable if convicted to a fine of up to \$2,000 and possible penalties simply because it was not brought to his notice that his name had been given to the Commissioner of Police as a person owing income tax.

The Comptroller's Counterclaim

- [35] I now turn to the Comptroller's counterclaim. I think it useful to address firstly, the appropriateness of the Comptroller's counterclaim herein for an order for payment of tax arrears, penalties and interest, said to be outstanding as against the Claimant.

- [36] Assessment notices for the years **2000, 2001, and 2002** were sent to the Claimant by registered mail dated sometime in October, 2003. A copy of the registered mail receipt was exhibited to the Supplementary Affidavit of the Comptroller filed on 18th May, 2004. The Claimant admits in cross examination that he received the assessment notices for 1998 and 1999 and that it was possible that he received notices of assessments for 2000 and 2001. He says however that he objected to the assessments for the years 1998 and 1999 sometime in January, 2003.
- [37] The Comptroller, in his Supplementary Affidavit filed on 18th May, 2004 claims (in essence, counterclaims) against the Claimant the total sum of \$385,753.07 being income tax for the years, 1998, 1999, 2000, 2001 and 2002 and penalty and interest at the rate of 12% per annum pursuant to the Act arising from the assessments made in respect of the Claimant for the said years. A Notice of Arrears was sent to the Claimant, dated **18th May 2004** for payment or satisfactory arrangements for payment to be made by **July 2nd 2004**. At the date of trial, the Comptroller testified that no objections had been lodged for income years, 2000 – 2003 and that Claimant had not discharged his tax liability for the years 1998, 1999, 2000, 2001, and 2002.
- [38] Counsel for the Claimant submits that such a counterclaim is not appropriate and cannot be brought in the instant proceedings, the claim being one under Part 56 of CPR 2000, and must be pursued as a civil debt by action pursuant to the provisions of section 74 of The Act. He says that Part 56 deals with other relief which a Claimant may be allowed to obtain and not a Defendant. Further he says that the types of relief which may be allowed under CPR 2000 Part 56.8(2) are limited to damages, restitution, or return of property. Counsel for the Comptroller, on the other hand, contends that a Defendant who makes a claim (or counterclaims) is for that purpose a claimant and relies on CPR Part 2 on the definition of “claimant” which refers to a person who makes a claim and also the meaning of “statement of case” which includes a ‘counterclaim’ and a ‘defence’. Further, she cites Part 8.1(1)(c), and Part 56.10 for the same being comprised in the form of an affidavit. On this basis, she contends that Part 56.8 is not exhaustive and relies on Part 56.8 (1) and (2)(c) which in essence says an application may include a claim for any other relief or remedy that (a) arises out of or (b) is related or connected the subject matter of the

application for an administrative order. She further contends that the court has a discretion under Part 56 to grant such an order. Part 56.8(3) empowers the court to direct any claim for other relief be dealt with separately or direct that the whole of the application be dealt with as a claim.

[39] I am persuaded that the claim is related or connected to the claimant's claim hereunder and can properly be entertained and determined as part of the claim within these proceedings. Part 56 does not, in my view, impose a bar on a Defendant making a claim which is connected or related for he is then for those purposes to be treated as a claimant. It is clear that Part 56 contemplates reliefs which may be sought which are not in the category of administrative claims, and gives the court the discretion to decide how best to deal with and dispose of all the claims made. The wisdom of this is apparent when one considers the overriding objective of CPR 2000 contained in Part 1 thereof which is to enable the court to deal with cases justly. I now propose to examine the evidence in more detail on this aspect.

[40] The Claimant in cross examination made the following statements:

- (a) he knew he was required to file income tax returns each year;
- (b) he filed returns for the years 1998 and 1999 but not for the years, 2000, 2001, 2002, and 2003; he had difficulty retaining the services of an accountant.
- (c) he received notices of assessments for the years, 98, 99, 2000, 2001;
- (d) he knew he could make written objection to the notices of assessment but was not aware he had to state the grounds for the objection therein or that there was a time limit for making the objection;
- (e) he objected to the 98 and 99 years of assessments in January, 2003; he received the letter of 25th September 2002 advising of the 98 and 99 assessments.
- (f) that tax begins to accrue on income made as from \$15,000 and upwards and his income for the 98 year was not under \$15,000;
- (g) he paid taxes for the years 98 and 99 but couldn't say how much, and whether his tax obligations had been discharged.

- (h) that the cumulative figure for taxes assessed for the years 1998 to 2002 exceeded the credit accruing to him for 1995.
- (i) the sums due to him by the Comptroller were less than the sums due the Comptroller from him.
- (j) he knew how to complete an income tax return form;
- (k) he is aware that all governments have a duty to raise revenue by imposition of taxes on its citizens and residents;
- (l) he received the notices of assessment for the years 2000, 2001 and 2002 after he had been refused an exit certificate – sometime in October, 2003;
- (m) he presented fresh accounts again in or about January or February, 2004 for the 98 and 99 years which were once more rejected.

[41] From the comptroller's evidence the following statements are taken:

- (a) notices of assessment for the years 1998 and 1999 were sent to the Claimant by registered mail sometime in December, 2002;
- (b) the claimant was later assessed for income years, 2000- 2003 and sent him notice by registered mail sometime in October, 2003, and no objections were received in respect of those assessments.
- (c) that to the best of his knowledge the Claimant had not discharged his tax liability for the years 98, 99, 2000, 01, and 02, and thus his claim against the Claimant for the cumulative sum as assessed in respect of those years.

I have already referred to the various concessions made by the Comptroller in respect of how Claimant was treated with regard to his presentment of accounts, and time allowed to him to present his accounts earlier in this judgment but the Comptroller also said that in February, 2004 the Claimant's accountant was informed that the accounts submitted were not acceptable and in May, 2004 a letter was sent to the Claimant confirming the 98 and 99 years of assessment.

Is arrears of Income Tax due and payable by the Claimant?

- [42] The Claimant himself accepts that income tax is payable by him. The real issue appears to be how much should the sums payable be. Part IX of The Act deals with Returns and Assessments. Section 58 of The Act says in essence that the Comptroller shall proceed to assess every person chargeable with tax as soon as may be after the date prescribed for delivering the returns. It goes on further to say in effect that the Comptroller may:
- (i) where a person has delivered a return, accept the return and make an assessment accordingly; or
 - (ii) refuse to accept the return and to the best of his judgment determine the amount of the person's chargeable income and assess him accordingly; or
 - (iii) where a person has not delivered a return, again using best judgment principles, assess that person accordingly.
- [43] Part X of The Act deals with Objections and Appeals. Section 66 of The Act says in essence that if a person objects to his assessment then he may within 21 days (or longer if the Comptroller allows in a particular case) give written notice of his disagreement with the assessment stating the precise grounds on which the assessment is being disputed. Applying these provisions to the case at bar, the position in respect of the Claimant would appear to be this: In respect of the 98 and 99 assessments the Claimant did give written notice objecting to these assessments but no grounds were stated therein. This would not therefore qualify as being an objection under The Act. In any event even if was taken as an objection the Comptroller after receipt of fresh accounts in January, 2004 said that in February, these accounts were rejected and in May 2004 the assessments were confirmed. In respect of the 2000, 01 and 02 assessments no objections were received at all and thus they must be taken to stand. Income taxes, as assessed, for the years 1998, 1999, 2000, 2001, and 2002 are therefore payable by the Claimant.
- [44] Counsel for the Claimant urges upon the court that since the Comptroller had given to the Claimant time to get in his accounts then it was reasonable for the Claimant to have a legitimate expectation that his accounts would not be finalized until he presented his accounts and that same would not be finalized behind his back. That may be so, but in the circumstances of this case it is clear that the Claimant knew of the assessments and knew

he could challenge the assessments. Time had been given and no notices of disagreement as required under The Act had been made.

[45] The Comptroller under section 56 of The Act is under a duty to proceed to assessment once the date prescribed for delivery of returns has passed. It would appear on a proper construction of The Act that the Comptroller may allow time in respect of delivering written objection (stating the precise grounds for disagreement) to an assessment. There is no evidence that the Claimant asked for time to deliver notices of disagreement to the assessments but in essence sought time for submitting his returns. This would take the process back to the stage before the Comptroller makes his assessments. The Comptroller has no discretion to extend time in respect of this stage. In fact, The Act imposes the obligation on the tax payer to submit returns by the dates prescribed and makes it an offence if any person willfully fails to so do¹⁵.

[46] Even taking into account the fact that the Claimant may have had difficulty retaining the services of an accountant so as to present his accounts, I have been left with the distinct impression that the Claimant simply did not take seriously enough his obligation to pay taxes or to ensure that he discharged his obligations promptly or within a reasonable time. He must have appreciated that he could not be allowed time ad infinitum. Accordingly, I am not persuaded that it was reasonable for the Claimant to have a legitimate expectation that his accounts would not be finalized, or put another way that the Comptroller would not proceed to assess him, which they have clearly and properly done in accordance with section 58 of The Act. He has failed to satisfy the criteria succinctly set out in **Blackstone's Civil Practice**¹⁶ (as distilled from the cases referred to therein) which would enable him to rely on this ground

Conclusion

¹⁵ See: Section 56(3) of The Act.

¹⁶ Blackstone's Civil Practice 2001 para. 74.17

[47] Based upon the foregoing, in relation to the Claimant, I make the following declarations and orders:

- (1) Section 84(1) The Act is in conflict with the provisions of the Constitution as it infringes the constitutionally guaranteed right to freedom of movement and thus must be taken to be impliedly repealed by the provisions of the Constitution.
- (2) The 1st Defendant acted unlawfully, when he purported to act pursuant to section 84(1) of The Act, the provisions of section 84 of The Act in itself not having been strictly complied with by him.
- (3) That the 1st Defendant be restrained whether by himself his servants or agents, or other wise howsoever from taking any steps preventing the Claimant from leaving the island of Montserrat for not having in his possession an exit certificate.
- (4) That an inquiry into compensatory damages which may have been suffered by the Claimant be held by the Master in Chambers and such award paid by the 1st Defendant.

[48] In relation to the 1st Defendant I make the following orders.

- (1) That the Claimant pays to the Comptroller the sums assessed and in arrears in respect of income tax for the years 1998, 1999, 2000 2001 and 2002 as follows:
 - (a) income year 1998 as assessed, \$55,773.53;
 - (b) income year 1999, as assessed, \$211,209.57;
 - (c) income year 2000, as assessed, \$52,020.49;
 - (d) income year, 2001, as assessed, \$53,783.41; and
 - (e) income year, 2002, as assessed, \$12, 966.07
- (2) The said sums are to be paid together with penalty of five (5) per centum and interest at the rate of twelve (12) per centum per annum as from the due date of payment as contained in each notice of assessment in accordance with section 75 of The Act.

[49] In respect of costs, I award costs to the Claimant in the sum of \$15,000.00. I also award costs to the Defendants in the sum of \$15,000.00.

[50] Finally, I express thanks to learned counsel for Claimant and the learned Attorney General for the all the helpful assistance rendered to the Court in this matter.

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Janice George-Creque
HIGH COURT JUDGE