

IN THE HIGH COURT OF BELIZE, A.D. 2022

CLAIM No. 761 of 2019

BETWEEN

JULIAN JONATHAN MYVETT CLAIMANT

AND

COMPTROLLER OF CUSTOMS	1ST DEFENDANT
MINISTERS OF FINANCE	2ND DEFENDANT
MINISTER OF PUBLIC SERVICE	3RD DEFENDANT
ATTORNEY GENERAL OF BELIZE	4TH DEFENDANT
PUBLIC SERVICE COMMISSION	5TH DEFENDANT

DECISION OF The Honourable Madam Justice Patricia Farnese

FINAL HEARING DATE: July 27, 2022

APPEARANCES

Ms. Audrey B. Matura for the Claimant
Ms. Samantha Matute and Mr. Jorge Matus for the Defendants

DECISION AFTER TRIAL

INTRODUCTION

[1] The heart of this dispute centers on the Defendants' 2010 decision to require academic qualifications to be eligible for promotion to Senior Customs Examiner. Prior to this decision, Mr. Myvett was eligible for a promotion to the Senior Customs Examiner post without these qualifications when a post became vacant. Mr. Myvett does not currently possess the requisite qualifications to be promoted beyond his current post.

[2] Mr. Myvett holds the post of Customs and Excise Clerk I. He was promoted to this position in 2007 after the Defendants released Circular No. 18 of 2001, which mandated that all employees be recommended within 6 years of meeting the eligibility requirements. Before this directive, Mr. Myvett had to wait until a vacancy appeared to be considered for a promotion. Promotion within the Customs and Excise Department (the Department) has never been guaranteed.

[3] Prior to the 2010 changes, Mr. Myvett's next promotion would have been to Senior Customs Examiner. There were no explicit requirements related to academic qualifications for promotion from Customs and Excise Clerk I to Senior Customs Examiner in the *Public Service Regulations (PS Regulations)* at that time.

[4] Circular No. 22 of 2010 changed the rules in two significant ways. First, two new posts (Customs & Excise Assistant II and I) between the Customs and Excise Clerk I and Senior Customs Examiner were created. Second, promotions to the Customs & Excise Assistant posts required, respectively, a certificate/diploma and a bachelor's degree. A consequence of the 2010 changes is that those who had already been promoted to Senior Customs Examiner without post-secondary academic credentials were allowed to remain in that post despite no longer meeting the criteria for promotion to that post.

[5] From Mr. Myvett's perspective, the 2010 changes deprived him of further career advancements even though persons with the same academic qualifications had been promoted beyond his current post. Mr. Myvett was not the only one upset by the 2010 changes. After consultations with staff, the Defendants issued several circulars that offered one-time elevations to address different categories of persons who lost promotion opportunities because of the 2010 changes.

[6] As a result of the release of Circular No. 39 of 2013, Mr. Myvett received an elevation in his pay scale, but was not promoted. The subsequent release of Circular No. 7 of 2018 elevated anyone who had held the post of Customs Examiner (the name for Customs and Excise Clerk in 2018) for 14 years prior to the release of Circular No. 22 of 2010 to the post of Customs and Excise Officer III. Customs and Excise Officer III was an equivalent position to Senior Customs Examiner under the pre-2010 system.¹ Mr. Myvett was not eligible for this elevation because he began his employment in 1997. Consequently, anyone promoted ahead of Mr. Myvett to Senior Customs Examiner before the 2010 changes and anyone who began their employment the year before Mr. Myvett would have been promoted to Senior Customs Examiner regardless of their academic credentials.

¹ To avoid confusion, I will continue to refer to the post Mr. Myvett believes he should be promoted to as Senior Customs Examiner. The Department has renamed posts and reverted back to original names many times.

[7] Mr. Myvett has brought a claim for judicial review of the Defendants' decision not to promote him to Senior Customs Examiner during the Department's restructuring process that began with the release of Circular No. 22 of 2010.² Mr. Myvett asserts that he is being denied equal protection of the law as guaranteed by sections 3 and 6(1) of the *Constitution* because he is no longer eligible for promotion to Senior Customs Examiner without academic qualifications when a vacancy arises. Circular No. 22 of 2010 established new criteria for promotion. He must now obtain academic qualifications and be promoted through two additional posts before he can become a Senior Customs Examiner. He claims others have been grandfathered into the post of Senior Customs Examiner without overcoming these hurdles. Mr. Myvett further asserts that past practice and the Defendants' conduct during the restructuring process created legitimate expectations that he would be promoted to Senior Customs Examiner despite the new promotion criteria. He asks for orders promoting him to Senior Customs Officer. In the alternative, Mr. Myvett asks that I quash Circulars Nos. 22 of 2010, 39 of 2013, and 7 of 2018 on the grounds that they are *ultra vires*. The addition of academic requirements to the promotion criteria in Circular No. 22 of 2010 predate regulatory changes in 2014 that expanded the criteria for promotion.

[8] The Defendants dispute that Mr. Myvett had a legitimate expectation of promotion and assert that they satisfied their only obligation during the restructuring to hear his grievances and determine whether he qualified for promotion. The Public Service Commission (the Commission) considered the issue and determined that Mr. Myvett was not eligible for promotion. In making this determination, Mr. Myvett was not denied his constitutional rights because there are significant distinctions between his circumstances and those of the Public Officers that have been promoted. He has also not pled that the decision not to promote him was based on an identifiable characteristic. Finally, the Defendants argue that Mr. Myvett has not overcome the presumption of constitutionality with respect to the circulars he claims are *ultra vires*.

[9] I find that the inclusion of academic qualifications as a promotion criterion prior to the 2014 regulatory amendments was *ultra vires*. Mr. Myvett has not established, however, that he was denied a promotion based on his academic qualifications during the time that the criterion was unenforceable. Mr. Myvett has also failed to meet the burden of proving that past practice or the Defendants' conduct created a legitimate expectation that he would receive a promotion to Senior Customs Examiner without meeting the new criteria or moving through the additional posts.

² Leave to apply for judicial review was granted by the Hon. Justice Westmin R.A. James on 15 March 2021.

ISSUES

[10] After reviewing the submissions of the parties, the following issues must be decided in this matter:

- (1) Is Mr. Myvett entitled to a remedy because Circular No. 22 of 2010 does not reflect the promotion criteria mandated by the *PS Regulations* when the circular was published?
- (2) Did Circular No. 22 of 2010 interfere with Mr. Myvett's legitimate expectation that he would be promoted to Senior Customs Examiner based on past practice?
- (3) Did the government's actions in response to complaints about the 2010 changes create a legitimate expectation that Mr. Myvett would be promoted to Senior Customs Examiner?
- (4) Were Mr. Myvett's constitutional rights breached?

ANALYSIS

(1) Is Mr. Myvett entitled to a remedy because Circular No. 22 of 2010 does not reflect the promotion criteria mandated by the PS Regulations when the circular was published?

[11] Mr. Myvett correctly identifies that the inclusion of academic credentials as a promotion criterion prior to the 2014 regulatory amendments was improper. When Circular No. 22 of 2010 was introduced, the criteria for promotion were exhaustively listed in section 11 of the *PS Regulations, 2001* as:

- 11(1) No officer shall be appointed or promoted to a post for which he is not qualified.
- (2) The Promotion of officers to fill vacancy shall be approved by the relevant Commission, and the Commission shall base its decision on the following factors in descending order of importance:-
 - (a) Performance/Merit;
 - (b) Integrity/Professionalism;
 - (c) Experience/Employment History.

I do not agree with the Defendants that the general power granted to the Commission and the Minister to manage the Department allows the list of factors in section 11 to be expanded.

[12] Likewise, section 6, which authorizes the CEO of the Public Service to determine the "educational...qualifications" for appointment to a permanent post, cannot be relied upon to

expand the list of promotion criteria found in section 11. Promotion and appointment to a permanent post are treated separately in the *PS Regulations*.

[13] An interpretation that academic qualifications were permitted to be considered in promotion decisions prior to 2014 is not supported by what can only be a deliberate choice to move away from an exhaustive list in *PS Regulations, 2014*:

- 38 (2) The Commission, in considering the promotion of a public officer to fill a vacancy, shall base its decision, in descending order of importance, on the following-
- (a) in relation to academic qualifications-
 - (i) the educational qualifications and any special qualifications of that public officer; and
 - (ii) the result of special courses of training, which he may have undergone;
 - (b) in relation to performance and merit-
 - (i) the grades and comments made in the performance appraisal report of that public officer; and
 - (ii) any letters of commendation for special work done by that public officer;
 - (c) in relation to integrity and professionalism-
 - (i) an in-depth assessment made by the Chief Executive Officer or head of department as the case may be; and
 - (ii) the public officer's capacity to function efficiently in the post which he is seeking to fill;
 - (d) in relation to experience and employment history-
 - (i) employment history of that public officer; and
 - (ii) the general fitness of the public officer;
 - (e) the level of seniority of the public officer compared to other public officers in the hierarchy; and
 - (f) any other report or information which the Commission may require.

In addition to explicitly prioritizing academic credentials, subsection 38(2)(b)(f) reflects the government's choice to move to a non-exhaustive list of criteria in the 2014 amendments.

[14] Mr. Myvett argues that Circular No. 22 of 2010 is void and should be quashed along with Circulars Nos. 39 of 2013 and 7 of 2018 because, by necessary implication, they incorporate Circular No. 22 of 2010. He asserts that Circular No. 22 of 2010 is inherently flawed and cannot be corrected by the 2014 regulatory changes. The government disagrees and argues that a declaration is sufficient relief if the circulars are found *ultra vires*. Moreover, quashing would prejudice third parties who have been promoted based on those circulars.

[15] I find that quashing Circular No. 22 of 2010 is not an appropriate remedy to resolve the conflict with section 11 of the *PS Regulation, 2001*. While section 2(1) of the *Constitution* provides "...if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void," a circular is not a law to which this section 2(1) applies.

Unlike a regulation, circulars are not binding *per se* because the *Constitution* exclusively empowers the court to interpret the law. The government must defer to the court's interpretation.

[16] Inconsistency or conflict with the regulations they are based upon renders the offending portion of the circulars unenforceable. Circulars are published to reflect the government's understanding of regulatory provisions and to outline how the regulations will be implemented. The nature of circulars is captured by subsection 243(2) of the *PS Regulations, 2014* which outline that "Heads of Departments shall communicate instructions conveyed by circulars to all members of their staff" (emphasis added). It does not follow that circulars are void if an inconsistency or conflict with a law arises. Circulars have no illegality until the government acts in contravention to a law upon which they are based. There are very few circumstances, if any, where a mere statement by government of conduct they *intend* to undertake would amount to a legal breach. As a result, the academic qualification requirements of Circular No. 22 of 2010 have been enforceable since the 2014 regulatory amendments.

[17] Mr. Myvett is entitled to a declaration that Circular No. 22 of 2010 was unenforceable between 2010 and 2014. Mr. Myvett is only entitled to a further, personal remedy if he can show that Circular No. 22 of 2010 created legitimate expectations which governments ought to protect or if I find Mr. Myvett's constitutional rights have been breached.

(2) Did Circular No. 22 of 2010 interfere with Mr. Myvett's legitimate expectation that he would be promoted to Senior Customs Examiner based on past practice?

[18] The Court of Appeal has adopted the following test for when a person, who does not have a legal right to a benefit or privilege, may nonetheless have a legitimate expectation that the courts will protect:³

Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.

Mr. Myvett argues that Circular No. 22 of 2010 interfered with his legitimate expectation of promotion because it disrupted his expected course of promotion based on past practice. Mr. Myvett believes he either should have been promoted to Customs and Excise Clerk I in 2001 when he met the promotion criteria, or his 2007 promotion should have been made retroactive to 2001. If 2001 was his promotion date, he would have met the promotion criteria for the Senior Customs Examiner post prior to the 2010 changes in promotion requirements that now mandate a University Degree.

³ *Prime Minister and Attorney General v. Vellos, Dawson, Shoman, and Carter*, Civ. App. No.17 of 2008 quoting *Council of Civil Service Unions et al v. Minister for the Civil Service* [1985] A.C. 374 at 401.

[19] The promotion criteria prior to the 2010 changes were outlined in Circular No. 18 of 2001. Those criteria for promotion were:

1. Success in the clerk and clerical promotional examinations
2. Serve at least four (4) years as a Second Class Clerk
3. Fulfill criteria as stipulated in the *Public Service Regulations*

The criteria outlined in the *PS Regulations, 2001* emphasised experience, integrity, and performance.

[20] Prior to Circular No. 18 of 2001, promotions to a Customs and Excise Clerk I were only possible if there was a vacancy. At the time Mr. Myvett met the criteria, there were more persons holding Customs and Excise Clerk II posts eligible for promotion than vacancies. When vacancies arose, persons were promoted based on when they satisfied the promotion criteria. Under this promotion regime, a clerk with less seniority could be promoted before a clerk with more seniority if the junior passed their promotion exam before the senior.

[21] Mr. Myvett, was promoted in 2007 in accordance with the following provision in Circular No. 18 of 2001:

With effect from 1 July 2001, all officers, on meeting the full eligibility requirements for promotion to positions of First Class Clerk, will be recommended for promotion within a period of not more than six (6) years period recommendations will be made to the Public Services Commission for the promotion of officers who are presently eligible for promotion to post of first class clerk.

The Defendants implemented this provision to address the backlog of promotions caused by the lack of vacancies.

[22] Prior to 2010, a further promotion to Senior Customs Examiner Officer from Customs and Excise Clerk I was based on section 11 of the *PS Regulations, 2001*:

- (1) No officer shall be appointed or promoted to a post for which he is not qualified.
- (2) The Promotion of officers to fill vacancy shall be approved by the relevant Commission, and the Commission shall base its decision on the following factors in descending order of importance:-
 - (a) Performance/Merit;
 - (b) Integrity/Professionalism;
 - (c) Experience/Employment History.

Lopez v. Belize Advisory Council outlines that the expiry of timelines for promotion do not create an automatic right to an appointment because section 106 of the *Constitution* vests the

Commission with the authority to appoint persons to hold or act in offices in the Public Service.⁴ Likewise, satisfying criteria does not create a right to an appointment. As the Defendants correctly assert, the decision to promote is one of the Commission alone.

[23] In addition to adding academic qualifications to the promotion criteria, Circular No. 22 of 2010 added two posts, which I will refer to as Assistant I and II, between Customs and Excise Clerk I and the Senior Customs Examiner. I find nothing improper or unlawful about the decision to create two additional posts. The creation and classification of posts falls within the scope of the government's authority to manage the Public Service and is enforceable. Subsection 106(1) of the *Constitution* authorized the Commission to appoint persons, such as Mr. Myvett to public office. The Constitution also empowers the government to pass regulations that outline "the principles governing the promotion and transfer of public office" an "generally for the management and control of the public service."⁵

[24] A review of Circular No. 39 of 2013 reveals nothing that justifies a further finding that the circular is unenforceable because it is *ultra vires*.⁶ Following meetings between Senior Management and staff to address staff concerns with the 2010 changes, Circular No. 39 of 2013 was released. Circular No. 39 moved Mr. Myvett from pay scale 7 to 10 based on his years of service from his first appointment, but he remained a Customs and Excise Clerk I. Circular No. 39 would have elevated Mr. Myvett to pay scale 14 if he held a bachelor's degree.

[25] I accept Mr. Myvett's assessment that a change in pay scale is not a promotion. Therefore, pay differentials based on academic qualifications in Circular No. 39 of 2013 do not contravene the *PS Regulations, 2001*. The Defendants' decision to rely on academic qualifications to elevate Officers at the same rank as Mr. Myvett to pay scale 14 could not have interfered with Mr. Myvett's legitimate expectation of promotion because it was not a promotion decision. The inclusion of academic qualifications as promotion criteria in Circular No. 7 of 2018 is also not *ultra vires* because this change followed the *PS Regulations, 2014* amendments.

[26] I find Mr. Myvett's legitimate expectations of promotion were not interfered with by Circular No. 22 of 2010 because he had neither an automatic right to be promoted nor a guarantee that the normal course of promotion would not change during his career. Past practice supports a finding that prior to 2010, promotions were contingent on vacancies and candidates were assessed based on the criteria applicable at the time each vacancy arose. No direct evidence was presented to show that any vacancies arose between 2010 and 2014 when the criteria in Circular No. 22 of 2010 related to academic qualifications were unenforceable. Mr. Myvett has also not proven that he was next to be promoted to Senior Customs Examiner if academic

⁴ Claim No. 759 of 2020.

⁵ Subsection 106(3)(d) and (g) of the Constitution of Belize.

⁶ As outlined in the previous section, the portions of Circular No. 39 of 2013 that included academic qualifications in the promotion criteria were unenforceable before the 2014 amendments to the *PS Regulations*.

qualifications were not considered. Consequently, I cannot infer that only his academic qualifications prevented him from being promoted over others. Mr. Myvett has failed to prove that his legitimate expectation of promotion based on past practice was breached.

(3) Did the government's actions in response to complaints about the 2010 changes create a legitimate expectation that Mr. Myvett would be promoted to Senior Customs Examiner?

[27] Mr. Myvett claims that the Defendants' conduct created a legitimate expectation that he would be promoted to Senior Customs Examiner without satisfying the academic criteria after Circular No. 22 of 2010 was implemented. He alleges that Senior Management promised staff that anyone who was adversely affected by the 2010 changes would be made whole. Mr. Myvett claims that the release of subsequent circulars that promoted other staff added to his legitimate expectation.

[28] The Defendants deny their conduct created a legitimate expectation. The Defendants dispute that Senior Management promised that anyone adversely affected by the 2010 changes would have their grievances addressed. If a promise was made, it was of a general nature to all staff to consider their grievances and respond where appropriate. They also claim that no explicit promises were made to Mr. Myvett that he would be promoted to Senior Customs Examiner without meeting the new academic qualifications of the post. No promises were made because only the Commission is authorized to decide promotions. Finally, Mr. Myvett benefitted from adjustments the Defendants subsequently made to address any adverse impacts of the 2010 changes. If he had a legitimate expectation of a remedy, the elevation of his pay scale was that remedy.

[29] A promise must be "clear and unambiguous and devoid of relevant qualification" to give rise to a legitimate expectation that court ought to protect.⁷ The evidence, including the release of subsequent circulars, supports a finding that in 2010, Senior Management decided to prioritize academic qualifications in promotion decisions, but promised staff they would work to address the grievances of those adversely affected. These promises were reinforced in a 2016 letter to Mr. Myvett from the Commission that stated, "It is our hope to find some medium to reasonably address the core of your grievance."

[30] Mr. Myvett has not met the burden of proving, however, that the Defendants made a clear, unambiguous, and unqualified promise that he would be promoted to Senior Customs Examiner without additional academic qualifications. Such a broad expectation is not reasonable from the language of the letter sent from the Commission to Mr. Myvett quoted above. I find the letter expresses a desire for a mutually satisfactory resolution of Mr. Myvett's grievances, not a

⁷ *Francis Paponette and Ors v Attorney General of Trinidad and Tobago* [2010] UKPC 32 at 37.

promise. Nonetheless, if a resolution was promised by this letter, the form of that resolution was not specified. The decision to elevate Mr. Myvett's pay scale would satisfy that promise.

[31] The challenge for Mr. Myvett is that after the *PS Regulations* were amended in 2014, the Defendants were lawfully authorized to prioritize academic qualifications in promotion decisions. Whether the Defendants' conduct after 2014 created a legitimate expectation the court ought to protect cannot fail to also consider that throughout the relevant period, but for one-time corrections to address specific employees who were adversely affected by the 2010 changes, academic qualifications have continued to be a key factor in promotion decisions. I have not been provided any evidence that, since the 2010 changes in promotion criteria were implemented, anyone has been promoted without the requisite academic qualifications other than through the one-time corrections. Consequently, Mr. Myvett will only be entitled to a promotion as a remedy for a legitimate expectation if, in 2010, Mr. Myvett was similarly situated to those that have received a one-time promotion to address the adverse effects of the 2010 changes. Persons promoted for other reasons are not relevant comparisons.

[32] Mr. Myvett has presented three other Public Officers (Messrs. Chimel, Samuels, and Cawich) as examples of persons without academic qualifications who have been promoted to Senior Customs Examiner since the 2010 changes. Mr. Myvett, however, has not satisfied me that Mr. Chimel was promoted because of the Defendants' efforts to remedy the adverse effects of the 2010 changes. The Defendants have presented evidence that he was promoted because of his specialized skills and advanced academic qualifications. Mr. Myvett has not brought evidence to challenge that fact. The Defendants, however, do not dispute that Messrs. Samuels and Cawich were promoted to address the adverse effects of Circular No. 22 of 2010. The Defendants ask this court to find that Mr. Myvett's circumstances differ from Messrs. Samuels and Cawich because they had already been promoted to Senior Customs Examiner in 2010.

[33] Circulars No. 39 of 2013 and 7 of 2018 used years of service to determine eligibility for the one-time promotions.⁸ Circular No. 7 of 2018 promoted several Public Officers, such as Messrs. Samuels and Cawich, with 14 years of service or more as a Custom's Examiner (the name used at that time for Customs and Excise Clerk) prior to April 2010 to Customs and Excise Officer III (the name used at that time for Senior Customs Examiner). This one-time promotion allowed these Public Officers to bypass the Assistant I and II posts. Mr. Myvett did not qualify for this one-time promotion because he was hired in 1997 and only had 13 years of service.

[34] Mr. Myvett argues that relying on one year of service to distinguish between himself and Messrs. Samuels and Cawich is arbitrary and unfair. As a result, he must now obtain academic

⁸ Circular No. 39 of 2013 promoted any Senior Customs Examiner who had held that post for 10 years as of April 1, 2010. There is no circumstance where Mr. Myvett could have been a Senior Customs Examiner by 2000 to have the requisite years of service to qualify for the promotion outlined in Circular No. 39.

qualifications and promote through two additional posts while Messrs. Samuels and Cawich are grandfathered into the post of Senior Customs Examiner without these additional hurdles. The Defendants dispute that 14 years is arbitrary and unfair because 14 years of service captures those Officers, who had already been promoted to that post of Senior Customs Examiner before the 2010 changes.

[35] Mr. Myvett has not satisfied the burden of establishing that those who benefitted from the one-time promotions offered in Circulars No. 39 of 2013 and No. 7 of 2018 created a legitimate expectation that he would also be promoted. While I accept that Mr. Myvett was eligible for promotion to Senior Customs Examiner when a vacancy arose, I find the fact that he had not been promoted distinguishes him from Messrs. Samuels and Cawich. The significance of this distinction does not support a finding that Mr. Myvett had a legitimate expectation of also being promoted to Senior Customs Examiner.

[36] Subsection 4(3) of the *PS Regulations, 2014* grants the Ministry of the Public Service the authority to:

...

(b) develop and maintain a system of classification of the positions in the public service and ensure that system is observed;

(c) determine eligibility criteria for appointment and promotion to posts in the horizontal and technical grades;

...

Nothing in the *PS Regulations* prevents the Ministry from changing the classifications and criteria. It is evident from even a cursory review of the *PS Regulations* and the many circulars considered in this case, that the Public Service is managed through a hierarchical system. Staff advance by meeting promotion criteria at each level of the hierarchy. Promotions are rarely, if ever, automatic under this system. That the Defendants chose to honor that system by grandfathering in persons who had achieved a promotion is not arbitrary or unfair.

[37] Moreover, promotion has not been foreclosed or made impossible by the 2010 changes. Mr. Myvett's own evidence establishes that others have successfully obtained the academic requirements to be promoted above his current rank since 2010. That option has been and remains open to Mr. Myvett.

(4) *Were Mr. Myvett's constitutional rights breached?*

[38] Mr. Myvett's claim of a breach of his constitutional rights is misconceived. Section 3(1)(a) of the *Constitution* guarantees "the protection of the law." Subsection 6(1) similarly states that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law." The right to equal protection of the law, however, does not preclude differential treatment under the law. Rather, section 3 outlines that only differential

treatment because of one’s identifiable characteristics of “race, place of origin, political opinions, colour, creed or sex” is prohibited.⁹ Mr. Myvett has not presented evidence that the reason he was not promoted was due to a characteristic listed or analogous to one listed in section 3.

[39] Equal protection of the law also prevents “the arbitrary and unfair exercise by the Crown of its sovereign powers” and “guarantees the right to have access to a court of justice for the purpose of obtaining relief.”¹⁰ These guarantees are protected through the right to due process when the government exercises its powers. Mr. Myvett does not claim that he has been denied due process. He, instead, claims that the outcome of the Defendants’ decision not to promote him to Senior Customs Examiner is unfair because he has been treated differently than others. As just explained, Mr. Myvett is only entitled to a remedy if that differential treatment was based on an identifiable characteristic. Mr. Myvett’s constitutional rights have not been breached.

DISPOSITION

[40] Mr. Myvett is entitled to a declaration that prior to the enactment of the *PS Regulations, 2014*, the promotion criteria related to academic qualifications in Circular No. 22 of 2010 were unenforceable as they were *ultra vires*. An entitlement to any other remedy has not been proven.

[41] The Commission’s decision to deny Mr. Myvett’s request for promotion to Senior Customs Examiner is upheld. Mr. Myvett has not established that this decision breached a legitimate expectation or his constitutional rights.

[42] Each party will bear their own costs.

Dated January 10, 2023

Patricia Farnese
Justice of the High Court of Belize

⁹ *Cunha v. The Belize Defence Force*, Claim No. 175 of 2020 at para 17.

¹⁰ *Caribbean Investment Holdings Ltd. and anor v Attorney General of Belize*, Claims No. 66 and 77 of 2017 at paras. 132 and 133.