

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCConst/Cr App. No. 125 of 2021**

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

AND

CANES VILLUS

Respondent

BEFORE: **The Honourable Sir Michael Barnett, President
The Honourable Mr. Justice Isaacs, JA
The Honourable Madam Justice Crane-Scott, JA**

APPEARANCES: **Mr. Garvin Gaskin, Director of Public Prosecutions with Mr. Vernal
Collie and Timothy Bailey Counsel for the Appellant
Mr. David Cash, Counsel for the Respondent**

DATES: **5 October 2021; 2 December 2021**

**Criminal Appeal - Constitutional - Voluntary Bill - Legal Practitioner - Supreme Court
Jurisdiction – CPC s 258 (2) - Article 78A (4)**

The respondent was charged with numerous sexual infractions and a Voluntary Bill of Indictment was served on him. The VBI was signed by a lawyer in the office of the Director of Public Prosecutions who is not a legal practitioner as defined in the Criminal Procedure Code. Counsel for the respondent made an application in the Supreme Court with reference to section 258 of the CPC, challenging the validity of the VBI and submitted that the matter should be reverted to the Magistrate’s Court for a preliminary inquiry to be conducted, or for the provisions of section 258(2) CPC to be strictly complied with by the Director of Public Prosecution. The judge ruled that the VBI was invalid and remitted the matter back to the Magistrates Court. The DPP now appeals that decision on numerous grounds inter alia, that “the Learned Judge erred in law when she declared that Mr. David Bakibinga, could not sign a VBI “for” the DPP, pursuant to Article 78A (4) of the Constitution.” The Court heard the parties and reserved its decision.

Held: appeal allowed.

Per Barnett P; In order to properly construe the effect of 258, it has to be considered against the background of the constitutional authority of the Attorney General and the DPP. Article 78 specifically provided that the powers of the Attorney General may be exercised by him personally

or through other persons as he has instructed to exercise powers in his name and on his behalf. There is no limitation of the width of this power to delegate.

The submission that the words “or on his behalf by any legal practitioner acting on his instructions” are restrictive on the wide power and therefore ultra vires Article 78 do not find favour with me and such a finding is in my judgment unnecessary. If it were ultra vires then certain words in section 54 of the CPC would also be ultra vires.

Section 258 as well as section 54 of the CPC should be construed in a manner consistent with this wide power of the Attorney General to delegate the exercise of his power “to any person”.

Section 258 empowers the Attorney General/DPP to exercise his powers personally by signing the VBI through any person he authorizes to sign in his name.

There is nothing in that section which prevents the Attorney General/DPP from authorizing any person from acting as his agent in signing the VBI. It specifically authorizes a legal practitioner to do so, but in my judgment it would be impermissible to construe it as restricting the Attorney General/DPP from exercising his constitutional right to act through any other person he chooses.

General Legal Council ex P Whitter v Frankson [2006] UKPC 42
Ibrahim v the State [1987] LRC (Const) 642

Per Isaacs JA; On a plain reading of sections 54, and 141 of the CPC, it is pellucidly clear that the Attorney-General could authorise any person to institute and undertake criminal proceedings and to sign on information. This is consonant with the provisions of Article 78(2) of the Constitution prior to the 2017 Act.

Although there may be occasions when the personal signature of the person is required, I am satisfied that in the construction of this procedural provision, that is section 258(2) of the CPC, the maxim (qui facit per alium facit per se which when translated means, "He who acts through another does the act himself"), is applicable and appropriate so as not to frustrate the breadth of the powers of the DPP pursuant to Article 78A(4) of the Constitution. Therefore, Mr. Bakibinga was competent to sign the VBI "for" the DPP.

Pursuant to the appellant's Ground 4, I am satisfied that the Judge erred when she found that the VBI signed by Mr. Bakibinga for the DPP was invalid because, as the Privy Council found in **Whitter “the hand and signature of the agent counts as the hand and signature of the principal”**. In the premises, I would allow the appeal.

The Queen v The Justices of Kent (1873) L.R. 8 QB 305
General Legal Council ex parte Basil Whitter (at the instance of Monica Whitter) v. Barrington Earl Frankson [2006] UKPC 42

J U D G M E N T

Judgment by the Honourable Sir Michael Barnett P,

1. The issue raised by this appeal is a short point of law.
2. The issue is whether a voluntary bill authorized by the Director of Public Prosecutions (“DPP”) but signed by a person who is not a legal practitioner is a nullity and therefore deprives the Supreme Court of the jurisdiction to proceed to hear the information.
3. The facts are not in dispute.
4. VBI No. 136/9/2020 was in the following terms:

**“THE BAHAMAS
IN THE SUPREME COURT
Criminal Division**

THE DIRECTOR OF PUBLIC PROSECUTIONS

versus

CANES VILUS

**Statement pursuant to section 258 (2) (b) Criminal Procedure
Code, Chapter 91**

**It is hereby stated that the evidence shown by the statement filed
herein will be available at the trial and the case disclosed by the
statement is, to the best of my knowledge, information and belief
substantially a true case.”**

signature

FOR: DIRECTOR OF PUBLIC PROSECUTIONS

“CANES VILUS is charged with the following offences:

First Count

Statement of Offence

UNLAWFUL SEXUAL INTERCOURSE WITH A PERSON UNDER FOURTEEN YEARS contrary to section 10(1) (a) of the Sexual Offences Act, Chapter 99.

Particulars of Offence

That you, CANES VILUS, sometime between 1 March, 2020 and 31st March, 2020, at New Providence, had unlawful sexual intercourse with [REDACTED], a female under 14 years old.

Second Count

Statement of Offence

UNLAWFUL SEXUAL INTERCOURSE WITH A PERSON UNDER FOURTEEN YEARS contrary to section 10(1)(a) of the Sexual Offences Act, Chapter 99.

Particulars of Offence

That you, CANES VILUS, sometime between 15^t April, 2020 and 30^t April, 2020, at New Providence, had unlawful sexual intercourse with [REDACTED], a female under 14 years old.

Third Count

Statement of Offence

UNLAWFUL SEXUAL INTERCOURSE WITH A PERSON UNDER FOURTEEN YEARS contrary to section 10(1)(a) of the Sexual Offences Act, Chapter 99.

Particulars of Offence

That you, CANES VILUS, sometime between 15th May, 2020 and 31st May, 2020, at New Providence, had unlawful sexual intercourse with [REDACTED], a female under 14 years old.

Fourth Count

Statement of Offence

UNLAWFUL SEXUAL INTERCOURSE WITH A PERSON UNDER FOURTEEN YEARS contrary to section 10(1)(a) of the Sexual Offences Act, Chapter 99.

Particulars of Offence

That you, CANES VILUS, sometime between 1st June, 2020 and 30th June, 2020, at New Providence had unlawful sexual intercourse with [REDACTED], a female under 14 years old.”

(signature)

FOR: DIRECTOR OF PUBLIC PROSECUTION

5. The signature on the VBI is that of David Bakibinga a lawyer in the office of the DPP but who is not a legal practitioner as defined in the Criminal Procedure Code (“CPC”).
6. The VBI was served on the respondent and he was arraigned in the Supreme Court.
7. The Respondent on June 8, 2021, through his attorney, made an application with reference to section 258 of the CPC. The respondent contended that the person who signed the VBI is not a legal practitioner which he submits makes the said document noncompliant with section 258 of the said Act. The respondent further submitted that the matter should be reverted to the Magistrate’s Court for a preliminary inquiry to be conducted, or particularly, for the provisions of section 258(2) CPC to be strictly complied with by the DPP.
8. The judge acceded to that application and held that the VBI was invalid and remitted the matter back to the Magistrates Court.
9. The DPP has appealed that decision and has submitted that the decision is wrong on the following grounds.

“Ground One - That the Learned Judge erred in law, when she declared that section 258 (2) of the CPC is not inconsistent with Article 78A (4) of the Constitution, to the extent, that section 258 (2) of the CPC mandates that only the DPP or a legal practitioner (as defined by the CPC) can sign a VBIL

Ground Two - That the Learned Judge erred in law, when she declared that Article 117 (2) of the Constitution requires “such persons” appointed as legal public officers (that is, who are appointed to public offices) to be legal practitioners (as defined by the CPC), as opposed to declaring that Article 117 (2) applies to “such public offices” as may be prescribed by Parliament

Ground Three - That the Learned Judge erred in law, when she declared that there is no (and cannot in law be a) distinction between a legal public officer and a legal practitioner.

Ground Four - That the Learned Judge erred in law when she declared that Mr. David Bakibinga, could not sign a VBI “for” the DPP, pursuant to Article 78A (4) of the Constitution.”

10. As the appeal involves a point of law, the grounds can in my judgment be dealt with together.
11. In my judgment, the material question is what is the proper construction of section 258 of the CPC and what is the effect of the VBI if it is authorized by the DPP but signed by another lawyer in his employ, who is not a legal practitioner.

12. Section 258 of the CPC provides as follows:

“258. (1) Notwithstanding any rule of practice or anything to the contrary in this or any other written law, the Attorney-General may file a voluntary bill of indictment in the Supreme Court against a person who is charged before a magistrate’s court with an indictable offence whether before or after the coming into operation of this section, in the manner provided in this section.

(2) Every voluntary bill shall be signed by the Attorney-General or on his behalf by any legal practitioner acting on his instructions, and shall be filed with the Registrar of the Supreme Court, together with —

(a) statements of the evidence of witnesses whom it is proposed to call in support of the charge;

(b) a statement signed by the Attorney-General or by any legal practitioner acting on his behalf, to the effect that the evidence shown by the statements will be available at the trial and that the case disclosed by the statements is, to the best of his knowledge, information and belief, substantially a true case; and

(c) such additional copies of the voluntary bill and of the respective statements mentioned in paragraphs (a) and (b) as are necessary for service upon the accused person.”

13. In my judgment in order to properly construe the effect of 258, it has to be considered against the background of the constitutional authority of the Attorney General and the DPP.

14. Prior to 2017, the Attorney General was responsible for all criminal prosecutions.

15. Article 78 of the Constitution provided:

“78. (1) The Attorney-General shall have power in any case in which he considers it desirable so to do —

(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(2) The powers of the Attorney-General under paragraph (1) of this Article may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney General by subparagraphs (1) (b) and (c) of this Article shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this Article shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) In the exercise of powers conferred upon him by this Article the Attorney-General shall not be subject to the direction or control of any other person or authority.

(5) For the purposes of this Article, any appeal from any determination in any criminal proceedings before any court or any case stated or question of law reserved for the purpose of any such proceedings to any other court shall be deemed to be part of those proceedings.” [Emphasis added]

16. Article 78 specifically provided that the powers of the Attorney General may be exercised by him personally or through other persons as he has instructed to exercise powers in his name and on his behalf. There is no limitation of the width of this power to delegate.
17. As was said in **Ibrahim v the State [1987] LRC (Const) 642** the provision “does not admit any limitation on the power of the Attorney General to delegate”.
18. The submission that the words “or on his behalf by any legal practitioner acting on his instructions” are restrictive on the wide power and therefore ultra vires Article 78 do not find favour with me and such a finding is in my judgment unnecessary.
19. If it were ultra vires then certain words in section 54 of the CPC would also be ultra vires. That section provides:

“54. The Attorney-General may, subject to any special or general instructions which the Attorney-General may give in any case or class of cases, authorise any legal officer subordinate to him —

(a) to institute and undertake criminal proceedings against any person in any court in The Bahamas in respect of any offence; and

(b) to exercise any powers conferred upon the Attorney-General by any provision of this Code :

Provided that the Attorney-General may himself, at any time, and at any stage in any proceedings, exercise any power conferred upon him by any provisions of this Code notwithstanding any authority given by him to any other officer under the provisions of this section, and may at any time revoke any such authority.”

20. I do not accept that the words “authorise any legal officer subordinate to him” is ultra vires Article 78 because it restricts the wide power of the Attorney General to exercise his powers through any person.
21. It my judgment section 258 as well as section 54 of the CPC should be construed in a manner consistent with this wide power of the Attorney General to delegate the exercise of his power “to any person”.
22. Section 258 of the CPC should be construed in a manner consistent with this wide power of the Attorney General to delegate the exercise of his power “to any person”.
23. The powers of the Attorney General to institute and under criminal prosecutions were devolved to the Director of Public Prosecutions by the Constitutional (Amendment) Act 2017 which came into effect on 10th May, 2018. It provides;

“78A. Establishment of the office and functions of Director of Public Prosecutions.

- (1) There shall be a Director of Public Prosecutions of The Bahamas whose office shall be a public office.**
- (2) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Justice of the Supreme Court.**
- (3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do-**
 - (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;**
 - (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and**

- (c) to discontinue, at any stage before judgement is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.
- (4) The powers of the Director of Public Prosecutions under paragraph (3) of this Article may be exercised by him in person or through any other person acting under and in accordance with his general or specific instructions.
- (5) Where any other person or authority has instituted criminal proceedings, nothing in this paragraph shall prevent the withdrawal of those proceedings by or at the instance of the Director of Public Prosecutions.
- (6) Subject to the provisions of Article 78 (3) and (4), in the exercise of the powers conferred upon the Director of Public Prosecutions by paragraph (3), the Director of the Public Prosecutions shall not be subject to the direction or control of any other person or authority.
- (7) For the purposes of this Article, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court in The Bahamas or to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament pursuant to this Constitution, shall be deemed to be part of those criminal proceedings:

Provided that the power conferred upon the Director of Public Prosecutions by paragraph (3)(c) shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such person.”

24. Again the Constitution provided that the DPP wide powers may be exercised by him in person or through “any” other person acting under his instructions. Again there was no limitation on the persons through whom the DPP may exercise his powers.

25. The issue therefore is should section 258 be construed as limiting the wide powers of the DPP to act through whomever the constitution says that he may act. Does it prevent the DPP from signing the VBI though any person he authorizes to sign in his name or on his behalf?
26. In my view, it is not a question as to whether the provision referring to the legal practitioner is ultra vires the constitution. The question is whether it should be construed as so limiting the power of the Attorney General now DPP.
27. In my judgment the answer is in the negative.
28. Section 258 empowers the Attorney General/DPP to exercise his powers personally by signing the VBI though any person he authorizes to sign in his name.
29. In effect it says the voluntary bill may be signed (a) by the Attorney General/DPP; or (b) by any legal practitioner acting on his instructions.
30. There is nothing in that section which prevents the Attorney General/DPP from authorizing any person from acting as his agent in signing the VBI. It specifically authorizes a legal practitioner to do so, but in my judgment it would be impermissible to construe it as restricting the Attorney General/DPP from exercising his constitutional right to act through any other person he chooses.
31. This construction does not do any violence to the language of section 258 and more importantly it gives effect to his wide powers conferred by Article 78.
32. In **General Legal Council ex P Whitter v Frankson [2006] UKPC 42** section 12(1)(a) of the Legal Profession Act 1971 of Jamaica provided:

'Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the [Disciplinary] Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the registrar or any member of the [General Legal] Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say – (a) any misconduct in a professional respect ...'

33. The Privy Council held that on the true construction of s 12, an aggrieved person may authorise some other person to swear and file an affidavit.

34. It said:

“The point about the principle qui facit per alium facit per se, as explained by Blackburn J in R v The Justices of Kent (1873) LR 8 QB 305, 37 JP 644, 42 LJMC 112, is that the hand and signature of the agent counts as the hand and signature of the principal.”

35. It is not disputed that the person who signed the VBI was agent of the DPP and authorized by him to sign the VBI. Indeed, the DPP is strenuously defending that action as his own.
36. In the result there is no basis for saying that the VBI was not signed by the DPP or by that the signature on the VBI does not count as the signature of the DPP.
37. For these reasons I do not agree that the VBI is invalid. The Supreme Court cannot treat it as a nullity. It is obliged to act on it.
38. Having said that I am obliged to note that this dispute ought never to have arisen. The DPP has caused it by acting through persons who are not legal practitioners when he has persons in his employ who are in fact legal practitioners.
39. Moreover, it is unclear why DPP has not invited Parliament to amend section 258 by providing that the VBI may be signed by the DPP or any legal officer in his employ. This would make it consistent with sections 54 and 141 of the CPC as it relates to proceedings on Information otherwise than through the VBI.
40. I would allow the appeal.

The Honourable Sir Michael Barnett, P

Judgment by The Honourable Mr. Justice Jon Isaacs, JA;

41. This is an appeal from the judgment of the Madam Justice Deborah Fraser ("the Judge") given in the matter of Voluntary Bill of Indictment No.136/9/2020 on 7 October 2021, whereby she held, inter alia, that section 258(2) of the Criminal Procedure Code Act ("the CPC") is not inconsistent with Article 78A(4) of the Constitution, to the extent that section 258(2) of the CPC mandates that only the Director of Public Prosecutions ("DPP") or a legal practitioner (as defined by the CPC) can sign a Voluntary Bill of Indictment ("VBI").
42. The order sought is for the appeal to be allowed and a Declaration be made that to the extent section 258(2) of the CPC mandates that only the DPP or a legal practitioner can sign a VBI, the said section 258(2) of the CPC is inconsistent with Article 78A(4) of the Constitution, and to that extent, it is void.
43. The grounds of the appeal are as follows:

Ground One

"That the Learned Judge erred in law, when she declared that section 258(2) of the CPC is not inconsistent with Article 78A(4)

of the Constitution, to the extent, that section 258(2) of the CPC mandates that only the DPP or a legal practitioner (as defined by the CPC) can sign a VBI.

Ground Two

That the Learned Judge erred in law, when she declared that Article 117(2) of the Constitution requires “such persons” appointed as legal public officers (that is, who are appointed to public offices) to be legal practitioners (as defined by the CPC), as opposed to declaring that Article 117(2) applies to “such public offices” as may be prescribed by Parliament.

Ground Three

That the Learned Judge erred in law, when she declared that there is no (and cannot in law be a) distinction between a legal public officer and a legal practitioner.

Ground Four

That the Learned Judge erred in law when she declared that Mr. David Bakibinga, could not sign a VBI “for” the DPP, pursuant to Article 78A(4) of the Constitution."

44. I have read in draft the judgment of my brother, the President, who has rehearsed much of the Judge's decision therein. For the purposes of my judgment I adopt the reasoning of the Judge and the President to read "Attorney-General" in those sections in the CPC pertaining to criminal prosecutions as relating to the DPP.
45. Hence, I do not propose to rehearse the history of the Constitution or that of the CPC but will launch directly into the bases of the appellant's grievances with the Judge's decision once I have made a few introductory observations.
46. This case illustrates the importance of a properly functioning law revision body since much of the controversy in this case stems from what I would characterise as a failure to ensure that there is harmony between legislation that is being amended and other statutes that touch and concern matters in the amended legislation.
47. I see no need to enter into more than a brief consideration of ground one in light of the view I hold in respect to ground four; and my alignment with the views of the President on this ground. I address grounds three and four simply because allowing the findings of the Judge on those issues to go unresolved will create the impression that they are correct.

Ground One - That the Learned Judge erred in law, when she declared that section 258(2) of the CPC is not inconsistent with Article 78A(4) of the Constitution, to the extent, that section 258(2) of the CPC mandates that only the DPP or a legal practitioner (as defined by the CPC) can sign a VBI

48. I propose to set out those enactments that I consider to be of some moment to this ground of appeal. I would begin with section 258 of the CPC which provides, inter alia:

"258.(1) Notwithstanding any rule of practice or anything to the contrary in this or any other written law, the Attorney-General may file a voluntary bill of indictment in the Supreme Court against a person who is charged before a magistrate's court with an indictable offence whether before or after the coming into operation of this section, in the manner provided in this section.

(2) Every voluntary bill shall be signed by the Attorney-General or on his behalf by any legal practitioner acting on his instructions, and shall be filed with the Registrar of the Supreme Court, together with..." [Emphasis added]

49. Section 54 of the CPC states:

"54. The Attorney-General may, subject to any special or general instructions which the Attorney-General may give in any case or class of cases, authorise any legal officer subordinate to him —

(a) to institute and undertake criminal proceedings against any person in any court in The Bahamas in respect of any offence; and

(b) to exercise any powers conferred upon the Attorney-General by any provision of this Code:

Provided that the Attorney-General may himself, at any time, and at any stage in any proceedings, exercise any power conferred upon him by any provisions of this Code, notwithstanding any authority given by him to any other officer under the provisions of this section, and may at any time revoke any such authority." [Emphasis added]

50. Section 55(1) of the CPC states:

"55. (1) The Attorney-General and any legal practitioner instructed for the purpose by the Attorney-General, may appear to prosecute on behalf of the Crown or the Commissioner of Police or any public officer, public authority or department of Government in any criminal proceedings before any court." [Emphasis added]

51. Section 56 of the CPC states:

"56. Notwithstanding any power conferred upon any person by or under the provisions of section 54 or 55 of this Code, to institute or conduct any criminal proceedings, any such person shall at all times in respect thereof be subject to the directions

of the Attorney-General who may in any case himself institute or conduct any criminal proceedings or may take over and continue, or direct any legal officer subordinate to him to take over and continue in accordance with his instructions, any criminal proceedings instituted or undertaken by any such person as aforesaid or by any other person acting as or on behalf of a private prosecutor.

52. Section 141(1) of the CPC states, inter alia:

"141. (1) Every person committed for trial before the Supreme Court shall be tried on an information preferred by the Attorney-General, and such trial shall be had by and before a judge and a jury to be summoned, drawn and empanelled according to the provisions of the Juries Act or any law for the time being in force repealing and replacing that Act.

(2) Every such information shall be drawn up in accordance with the provisions of this Code and, when signed by the Attorney-General, or by any person authorised by him under the provisions of section 54 of this Code, ..." [Emphasis added]

53. On a plain reading of sections 54, and 141 of the CPC, it is pellucidly clear that the Attorney-General could authorise any person to institute and undertake criminal proceedings and to sign an information. This is consonant with the provisions of Article 78(2) of the Constitution prior to the 2017 Act.
54. During the hearing before us I did enquire of Mr. Gaskin whether such a broad interpretation of "other person" meant that a janitor or messenger could be authorised to sign an information; and his response was in the affirmative, that the Article was sufficiently broad to encompass such persons. He did say that such a delegation may be challenged as being unreasonable but it seemed to me that in keeping with his stated position he did not anticipate that such a challenge could be maintained successfully.
55. The problem which faces the Court today, arose in 2011 when Parliament determined to speed up the process whereby indictable criminal offences could be placed before the Supreme Court. Whether this was due to the uptick in the commission of such offences or to the slow pace at which preliminary inquiries were being conducted in the magistrates' courts may be a source for debate. What is not debatable is that the amendment to the CPC - s. 3 of No. 8 of 1995 - effected a sea change in the transition of cases from the magistrates' courts to the Supreme Court.
56. Section 258(2) of the CPC, unlike the earlier provisions in that Act, appeared to limit the persons who could sign an information on behalf of the Attorney-General to a particular class, to wit, that of "legal practitioner". The term "legal practitioner" is defined in section 2 of the CPC as follows:

"“legal practitioner” means any person admitted and enrolled as counsel and attorney under the provisions of the Legal Profession Act;”

57. When one has regard to the Legal Profession Act ("the LPA"), one sees that to be enrolled as counsel and attorney in The Bahamas, one must satisfy the Bar Council that one is qualified to be so enrolled pursuant to section 10 of the LPA; and then one must be called to the Bar pursuant to section 13 of the LPA. All other persons would fall within the category of an "unqualified person" contemplated by section 20 of the LPA.
58. Notwithstanding sections 10 and 20 of the LPA, section 25 of the LPA provides as follows:

"25. Nothing in this Act shall derogate from any enactment empowering an unqualified person to conduct, defend or otherwise act in relation to any legal proceedings."

59. This section is, inter alia, a recognition, no doubt, that there are proceedings conducted in the courts of The Bahamas by persons who are not counsel and attorneys pursuant to particular statutes, for example, police officers who prosecute criminal cases: s. 55(2) of the CPC; and environmental health officers who prosecute persons under the Environmental Health Services Act: s. 26.
60. I am satisfied, as will be more fully explained in my treatment of ground four, that section 258(2) of the CPC does not place a fetter on the undoubted unlimited discretion of the Attorney-General to authorise any person to act on his behalf pursuant to Article 78(2) of the Constitution; and consequently, the Judge did not fall into error when she decided that section 258(2) of the CPC is not inconsistent with Article 78A(4) of the Constitution.

Ground Two

That the Learned Judge erred in law, when she declared that Article 117(2) of the Constitution requires “such persons” appointed as legal public officers (that is, who are appointed to public offices) to be legal practitioners (as defined by the CPC), as opposed to declaring that Article 117(2) applies to “such public offices” as may be prescribed by Parliament.

61. We are asked to find that the Judge erred when she concluded that persons who are appointed under Article 117(2) of the Constitution must be legal practitioners. At paragraph 19 of her decision the Judge said:

"19. Subparagraph 2 of this Article requires that such persons possess legal qualifications as may be prescribed by Parliament. Hence in the enactment of the 1973 Bahamas Bar Act now repealed and replaced by the Legal Profession Act Ch 64. Legal qualifications for all persons wishing to practice law in the Commonwealth of The Bahamas must satisfy the requirement of this Act. Parliament has to date not legislated any exceptions to that law."

62. Insofar as a person wishes to practice law in The Bahamas as counsel and attorney, the Judge's statement is correct. However, she falls into error, in my view, when she suggests that Parliament has through the instrumentality of the LPA, prescribed legal qualifications for legal public officers.

63. The Judge opined later at paragraph 32 of her decision that:

"32. Likewise certain legal public officers existing in the office of the Attorney General were and can at any time be transferred to the Office of the DPP in assisting him to carry out his constitutional duties. Such officers however must be qualified to practice law under the Legal Profession Act."

64. Article 117(2) of the Constitution states:

117. (1) Subject to the provisions of this Constitution, power to make appointments to public offices to which this Article applies and to remove and to exercise disciplinary control over persons holding or acting in such office is hereby vested in the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) This Article applies to such public offices for appointment to which persons are required to posses legal qualifications as may be prescribed by Parliament. [Emphasis added]

65. Article 137 of the Constitution defines "prescribed" as follows:

" "prescribed" means provided by or under an Act of Parliament;"

66. Mr. Gaskin posits that a legal public officer need not be a legal practitioner as defined by the CPC. He argued that it is the Judicial and Legal Services Commission who makes a person a legal public officer. It seems to me that what is to be resolved is what legal qualifications have been prescribed by Parliament for a person to be appointed in a prescribed public office.

67. Section 2 of the Judicial and Legal Service (Prescribed Public Office) Act ("the JLS Act") lists the offices that are regarded as public offices for the purposes of Article 117 of the Constitution. Among the offices listed are that occupied by, inter alios, the Director of Public Prosecutions, Deputy Director of Public Prosecutions, Senior Counsel, Counsel and Assistant Counsel. What is immediately evident is that there is no legal qualification prescribed for appointment to the mentioned offices unlike in Barbados where Parliament had, pursuant to the Public Service Act, conferred on a Minister the power to make the Public Service (Qualifications) Order, 2016 ("the PSQ").

68. In the PSQ, the requirements for appointments in the offices are set out in the Schedule to the PSQ, for example, under the rubric "Attorney General, Department of Public Prosecutions and Magistracy", the following appears:

"1. Solicitor General

2. Director of Public Prosecutions

An Attorney-at-Law of not less than ten years' standing."

69. I readily accept that the post of "Assistant Director of Public Prosecutions" does not appear in the JLS Act.
70. I can see the force of the Judge's reasoning that the PLA is Parliament prescribing legal qualifications for those who seek admission to practice as counsel and attorneys-at-law in The Bahamas. However, her reasoning ignores the possibility of a post being established in the public service that does not require the occupant to appear in court; but does require that the person possess certain legal qualifications.
71. In my view, there appears to be a distinction between a person who may perform what I would call "back office work legal work" but who is not a legal practitioner and a person who may appear in courts of The Bahamas under the general authority of the Attorney-General to prosecute individuals in criminal cases pursuant to section 55(1) of the CPC; and who must be a legal practitioner.
72. Nevertheless, as will become apparent when I address ground 4 later in my judgment, there is no dissonance between Article 117 and section 258 of the CPC.

Ground 3 - That the Learned Judge erred in law, when she declared that there is no (and cannot in law be a) distinction between a legal public officer and a legal practitioner

73. At paragraph 40 of her decision the Judge, having pointed out that the post of "Assistant Director of Public Prosecutions" does not appear to have been gazetted - as required by the JLS Act - stated:

"It is clear that the "Assistant Director of Public Prosecutions" did not hold such qualifications as he was not approved for admission to The Bahamas Bar."

74. Again, the Judge connects a legal public officer to a person approved for admission to the Bar; and as I indicated earlier in my judgment, the two terms are not necessarily coterminous.
75. There is a pellucid distinction between a legal public officer and a legal practitioner inasmuch as the term "legal practitioner" refers to a distinct class of persons, namely, a person who is on the Roll of the Court having been admitted to practice as counsel and attorney pursuant to section 13 of the LPA. However, a Legal public officer need not be a person who will appear before the courts thereby requiring that he be admitted to practice generally or specially. A person possessing qualifications as a draftsman gained by satisfying the requirements of an institution such as the University of the West Indies, may be employed as a draftsman in the Office of the Attorney-General without being admitted to practise in the courts.

Ground Four - That the Learned Judge erred in law when she declared that Mr. David Bakibinga, could not sign a VBI “for” the DPP, pursuant to Article 78A(4) of the Constitution

76. At paragraph 46 of the Judge's decision she found:

" The Court finds that Mr. Bakibinga, the person who signed VBI136/9/2020, pursuant to section 258 of the CPC could not validly sign the same."

77. The respondent took issue with the formulation of this ground because the Judge had not declared that Mr. Bakibinga could not sign the VBI "for" the DPP pursuant to Article 78A(4) of the Constitution. She had said, "... could not validly sign the same".
78. Whatever the term used, the effect of the Judge's ruling is the same, that is, the VBI is bad because the signature thereon does not fall within the language of section 258(2) of the CPC; and, as a consequence, the case in the Supreme Court could not proceed.
79. The appellant submitted that given the wide power given to the DPP under Article 78A(4) of the Constitution, Mr. Bakibinga could sign a VBI "for" the DPP as it appears on the VBI.
80. Mr. Gaskin relied upon the Latin maxim, *qui facit per alium facit per se* ("the maxim"), which when translated means, "He who acts through another does the act himself", to submit that Mr. Bakibinga's signature to the VBI having been affixed by the authority of the appellant, the VBI is valid.
81. The maxim was applied as early as 1873 in the case of **The Queen v The Justices of Kent** (1873) L.R. 8 QB 305. The head note reveals that;

"On the 29th of May, 1872, the Commissioners of the Rother Levels duly made a scott or rate of certain sums per acre on all lands lying within their jurisdiction, which scott or rate was payable on the 18th of October, 1872, and the lands of Weld, amongst others, were so rated. On the 30th of November, Weld appealed against the rate to the quarter sessions. On the 31st of December the appeal was heard, and it was proved that the notice of appeal was signed in Weld's name by the clerk to his attorney, by Weld's authority. It was then objected, on behalf of the commissioners, that the notice of appeal was insufficient, as the signature of the appellant was not in his handwriting."

82. Upon a Rule to show cause why a mandamus should not issue to require the Justices of Quarter Sessions to act, the judges of the Queen's Bench Division (Blackburn, Quain and Archibald) supported the Rule and in doing so, Blackburn said, *inter alia*:

" No doubt at common law, where a person authorizes another to sign for him, the signature of the person so signing is the signature of the person authorizing it;"

83. In the first three paragraphs of the Privy Council's decision in **General Legal Council ex parte Basil Whitter (at the instance of Monica Whitter) v. Barrington Earl Frankson** [2006] UKPC 42 Lord Hoffman provides the backdrop of this case:

"1. Mrs Monica Whitter was aggrieved by what she alleged to be professional misconduct by her former attorney Mr Barrington Frankson. As she lived in England, she instructed her son Mr Basil Whitter to make a complaint on her behalf to the Disciplinary Committee of the General Legal Council, pursuant to section 12 of the Legal Profession Act (No 15 of 1971). Mr Whitter made the necessary affidavit, saying that he did so on behalf of his mother. The Committee heard the complaint and ordered Mr Frankson to be struck off the roll and to make restitution of moneys due to Mrs Whitter. The Court of Appeal, by a majority, (Downer and Langrin JJA, Panton JA dissenting) held that section 12 did not give the Committee jurisdiction to hear an application by Mr Whitter on behalf of his mother. She had to swear the affidavit herself. Their Lordships consider that this is too narrow a view of the statute and that the application was properly made.

2. The question turns upon the construction of section 12 of the Act:

"(1) Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say - (a) any misconduct in a professional respect..."

3. The question is whether an aggrieved person must apply in person or whether he can authorise someone to apply on his behalf and (although this may be another way of saying the same thing) whether he must make the necessary affidavit in person or whether he can authorise someone to make the affidavit on his behalf."

84. At paragraph 12 Lord Hoffman stated, inter alia:

"The point about the principle *qui facit per alium facit per se*, as explained by Blackburn J in *R v The Justices of Kent* (1873) LR 8 QB 305, is that the hand and signature of the agent counts as the hand and signature of the principal. It therefore satisfies the requirements of the rules."

85. Although there may be occasions when the personal signature of the person is required, I am satisfied that in the construction of this procedural provision, that is section 258(2) of the CPC, the maxim is applicable and appropriate so as not to frustrate the breadth of the powers of the DPP pursuant to Article 78A(4) of the Constitution. Therefore, Mr. Bakibinga was competent to sign the VBI "for" the DPP.

Conclusion

86. Pursuant to the appellant's Ground 4, I am satisfied that the Judge erred when she found that the VBI signed by Mr. Bakibinga for the DPP was invalid because, as the Privy Council found in **Whitter** (Supra): **"the hand and signature of the agent counts as the hand and signature of the principal"**.
87. I am also satisfied that grounds 2 and 3 have merit.
88. In the premises, I also would allow the appeal on grounds 2, 3 and 4. However, I dismiss the appellant's ground 1 for the reasons stated earlier in my judgment.
89. Before I leave this matter, I associate myself with the remarks of the President at paragraphs 38 and 39 of his judgment.

The Honourable Mr. Justice Isaacs, JA

90. For the reasons set out in the respective judgments of my learned brothers, Barnett, P and Isaacs JA, I agree that this appeal should be allowed on grounds 2, 3 and 4. There is no merit in ground 1 which should be dismissed.

The Honourable Madam Justice Crane-Scott, JA