IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M. 063/2000

BETWEEN	*JENNIFER CAROLYN GOMES*	*1st APPLICANT*
A N D	*MADGE HYLTON*	*2nd APPLICANT*
A N D	*SUSAN GOFFE*	*3rd APPLICANT*
A N D	*THE ATTORNEY GENERAL*	*RESPONDENT*

Hugh Small Q.C., Clyde Williams for 1st and 2nd Applicants and Dennis Goffe, Q.C, for 3rd Applicant instructed by Mrs.Sharon Usim of Chancellor & Co.

Evan Oniss & Miss Annaliesa Lindsay for Respondent

Heard: June 29 & July 3, 2000

Harris, J.

By a Notice of Motion issued on the 16th June, 2000, the Applicants seek the following declarations:

1. That upon a true construction of the Commissions of Enquiry Act, a Commissioner appointed under that Act has no power or authority to prevent members of the public who attend public sessions of the Enquiry from taking notes of the proceedings.

2. That the ruling made by Mr. Justice Lloyd Ellis, the sole Commissioner appointed to enquire into recent incidents at the St. Catherine District Prison prohibiting the taking of notes by members of the public of the proceedings, is null and void and of no legal effect.

The applicants are members of the public attending sittings of an enquiry

being held at Spanish Town before sole Commissioner Honourable Justice Lloyd Ellis which commenced on the 2nd day of July 2000. Miss Hylton averred that on Monday the 12th of June 2000, she attended the Commission of Enquiry and took notes. She returned on Tuesday the 13th of June and continued taking notes. On that date, prior to the luncheon adjournment, the Commissioner informed persons who were in attendance that they would not be permitted to take verbatim notes. On resumption, she continued to take notes in point form. Her notes were confiscated by a policeman but were returned to her the following day.

Mrs. Gomes and Mrs. Goffe stated they attended the enquiry on the 14th of June, 2000 and began taking notes when their notebooks were also confiscated. The Commissioner repeated his ruling subsequent to a request being made on behalf of Mrs. Goffe for him to reverse the ruling that no notes should be taken by anyone except attorneys at law and members of the media. The Commissioner stated that on the 14th June, 2000 he ruled that no verbatim notes should be taken except by the press and attorneys at law and that on the 15th of June 2000, he declined a request to reverse his ruling made on the 14th day of June 2000.

The question which arises, is, whether on a true construction of the Commissions of Enquiry Act the Commissioner had the power or authority to prevent members of the public from taking notes at the Enquiry. In my opinion, assistance in construing the Act is to be derived from the provisions of sections 2 and 9 thereof.

Section 2 of the Act provides as follows:

"2. It shall be lawful for the Governor-General, whenever he shall deem it advisable, to issue a Commission, appointing one or more Commissioners or any quorum of them therein mentioned, to enquire into the conduct or management of any department of the public service, or of any public or local institution, or the conduct of any public or local officers of this Island, or of any parish, or district thereof, or into any matter in which an enquiry would in the opinion of the Governor-General, be for the public welfare.

"Each such Commission shall specify the subject of enquiry, and may, in the discretion of the Governor-General, if there is more than one Commissioner, direct which Commissioner shall be Chairman, and direct where and when such enquiry shall be made, and the report thereof rendered, and prescribe how such Commission shall be executed, and may direct whether the enquiry shall or shall not be held in public. In the absence of a direction to the contrary, the enquiry shall be held in public, but the Commissioners shall nevertheless be entitled to exclude any particular person or persons for the preservation of order, for the due conduct of the enquiry, or for any other reason."

Section 2 authorises the appointment of Commissioners to inquire into matters in which the public as a whole has an interest. A Commissioner is empowered by this section to inquire into the conduct or management of any department of the public service, or any public or local institution, or the conduct of any public or local officer which would be for the welfare of the public. The object of the present Enquiry is to inquire into incidents at the Saint Catherine Adult Correction Centre. It is clear that the purpose of issuing a Commission to hold this enquiry is for the public welfare. Although there are provisions for the Governor General to issue directions for such an enquiry to be held in private, such a direction was not given in this case and in the absence of such directions, the hearing must be conducted publicly. This demonstrates a recognition that the interest of the public is of paramount importance.

Any person who is appointed Commissioner becomes a creature of the Statute under review. His powers are therefore restricted to those as set out in the Act. Under Section 2 he is clothed with express power to exclude persons from the Enquiry. He may exclude them for the purpose of the preservation of order, or for the due conduct of the Enquiry, or for any other reason. There is a presumption that the legislative authority intended that members of the public should enjoy free access to the Enquiry, save and except that they may be excluded for any of the reasons stated in the section of the Statute. This power does not expressly or impliedly extend to the Commissioner a right to prevent any member of the public from taking notes.

The provisions of section 9 are set out hereunder:

> "9. The Commissioners acting under this Act may make such rules for their own guidance, and the conduct and management of proceedings before them , and the hours and times and places for their sittings, not inconsistent with their Commission, as they may from time to time think fit, and may from time to time adjourn for such time and to such place as they may think fit, subject only to the terms of their Commission."

Under section 9 Commissioners are empowered to make rules with respect to an Enquiry before them. They are given wide discretion with respect to the making of these rules, as the Section dictates that they may make such rules as they deem fit. There are three distinct circumstances under which they may formulate rules. They may make rules for their own guidance, for the conduct of the proceedings and for the times and places of sitting. The first of these provisions which dictates that they may make rules for their guidance clearly limits the scope of their power to the making of rules to which they may resort, for their own use and benefit. This would include their instituting and settling the format as to the method or procedure they propose to follow in conducting The Enquiry in a manner most convenient to them and this would be exclusively for their own welfare and advantage.

The second circumstance under which rules may be made would be for the conduct and management of the proceedings. What is the true meaning of the word 'proceedings'? The ordinary meaning ascribed to 'proceedings' as defined in any standard dictionary is stated as, 'acts or course of action, transactions, or procedure.' There is no general legal definition for 'proceedings'. The authorities suggest however that, " proceedings " embraces all steps and procedural processes in any matter from its commencement to its conclusion.

The third circumstance under which rules may be made is with respect to the hours, times and places of the sittings.

It is the intention of the legislature that the Commissioners have the authority to formulate rules which govern the supervision and control of all steps and procedural processes in matters over which they preside. It was intended that

such rules would effectively direct, in an orderly manner, the matter before the Commission. In the management and control of the proceedings, the Commissioner has the power to impose conditions with respect to all members of the public in attendance, if he deems fit. However, such discretion must be exercised within the constraints of law.

The Commissioner stated in his affidavit that he had ruled that no verbatim notes should be taken except by the press and Attorneys at law. The Applicants assert that he had prohibited the taking of notes. The Act permits members of the public to be present at the Enquiry. Media personnel are members of the public. The right of the press to be present at the Enquiry extends to part of that right of any member of the public to be also present. There are no provisions in the Act which give the Commissioner the right to preclude some members of the public from participating in note taking while others were allowed so to do. It is discriminatory for some members of the public to be permitted to take notes while others were not.

There is a presumption of the constitutionality of all Statutes. This proposition is recognised by the learned Author of Bennion's Statutory Interpretation First Edition at page 721 in the following context:

> "Unless the contrary intention appears, an enactment by implication imports any principle or rule of constitutional law (whether statutory or non statutory) which prevails in the territory to which the enactment extends and is relevant to the operation of the enactment".

Statutes are required to operate within the constraints of the Constitution as Constitutional law forms the forms the framework of the State. It follows that the Commissions of Enquiry Act must operate within the parameters of Constitutional Law.

The Commissioner in the exercise of his powers under the Act is obliged to observe the qualities of 'openness, fairness and impartiality' and must act within the tenets of the Constitution. The Commissioner should exercise his authority under the Act within the confines of the Constitution, in particular, in accordance with section 20 (2) thereof which provides inter alia:-

> "Any Court or other authority prescribed by law for the determination

of the existence or extent of civil rights or obligations shall be independent and impartial ; ....."

Although the Commissioner is empowered to impose restrictions on persons attending the Enquiry, and in particular, restrictions with respect to section 9, he must do so with openness, fairness and impartiality. Once the public is permitted to attend, he must show good reason for imposing any restriction on any member of the public in attendance. He declared that his ruling was that the Applicants should not take verbatim notes. It is irrelevant that the restriction was limited to verbatim notes. There was no evidence that he proffered any reason for his ruling. His duty to give a reason is an integral part of the model of proper administration and his failure to pronounce a reason is inconsistent with openness.

The Commissioner must also demonstrate fairness and impartiality in the conduct and management of the proceedings. The public has a right to attend the Enquiry, which includes a right to take notes. The Commissioner permitted the attorneys at law and the journalists to take notes, yet, he prohibited the Applicants from so doing. The procedure by which he conducts his Enquiry must be done with fairness and impartiality. It must be acknowledged that when he had excluded them from the note taking exercise, that this procedure was one of unfairness and partiality .

Certain other fundamental rights, including the right of freedom of expression, are enjoyed by members of the public. The right to freedom of expression enures to the benefit of those members of the public attending the Enquiry. Such a right is enshrined in S .22 of the Constitution which reads:-

"22. - (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

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) which is reasonably required-

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

(ii) for the purpose of protecting the reputations, rights and freedom of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting , television or other means of communication, public exhibitions or public entertainment; or

(b) which imposes restrictions upon public officers, police officers or upon members of a defence force."

The applicants had attended the Enquiry with a view to hold opinions, receive and impart information. Parliament had not intended that there should have been any interference with their freedom to correspond and communicate. It surely would not have been in the contemplation of the legislature that there would be interference with that right, in the absence of express provisions to this effect.

In Mixnam Properties Limited v Chertsey U. D. C.1963 2 All E. R.787 cited by Mr. Small, the plaintiffs, owners and occupiers of certain lands , which were used as a caravan site sought a declaration against the Chertsey U. D. C. which were the appropriate licensing authority, that certain conditions under a licence granted to them under subsidiary legislation were **ultra vires** and of no effect. It was held that the conditions were void for the reason that some were **ultra vires** and unreasonable, some were void for uncertainty and others were outside the purview of the principal Act.

Although this case relates to the i nterpretation of subsidiary legislation it underscores the general rule of construc ion that parliament is presumed not to have intended to make any substantial alterations in law beyond the immediate scope and

object of a statute.

The Commissioner purports to have made his ruling under section 9 of the Act. He has stated in his affidavit that he repeated his ruling and informed all persons that in accordance with the Commission of Enquiry Act he could regulate the proceedings as he deemed fit. The rule imposed by the Commissioner clearly makes a distinction between the right of attorneys at law and members of the press to take notes as opposed to that of other members of the public. Here he is indicating that Attorneys at law and members of the media have preferred rights to take notes. His adoption of this posture is clearly unreasonable. It must have been the intention of the legislature that any rules made by the Commissioner would accord with reason and justice.

It was asserted by the Commissioner that his ruling was with respect to the exclusion of verbatim notes. Parliament could not have intended to have given him power which would have entitled him to rule that verbatim notes should not be taken by the applicants. This points to uncertainty. Any such rule must be rendered void for uncertainty

The Statute does not authorise the Commissioner to discriminate. The exercise of his power is repugnant to the general law. It could never have been in the contemplation of Parliament to empower the Commissioner to make rules which are unjust, partial, unfair, unreasonable or uncertain. On a true construction of the Commission of Enquiry Act, and in particular, on a proper construction of section 9, the Commissioner appointed under the Act has no power or authority to prevent members of the public from taking notes. As a consequence, it is declared that the ruling of the Commissioner is null and void.