IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2007 HCV 0221

CORAM: THE HONOURABLE CHIEF JUSTICE
THE HONOURABLE MARVA McINTOSH
THE HONOURABLE LLOYD HIBBERT

BETWEEN MARK THWAITES — APPLICANT

AND THE DIRECTOR OF PUBLIC PROSECUTIONS — 1ST RESPONDENT

AND THE ATTORNEY GENERAL — 2ND RESPONDENT

CONSOLIDATED WITH

CLAIM NO. 2007 HCV 00290

BETWEEN JAMES MORRISON — APPLICANT

AND THE DIRECTOR OF PUBLIC PROSECUTIONS — 1ST RESPONDENT

AND THE ATTORNEY GENERAL — 2ND RESPONDENT

CONSOLIDATED WITH

CLAIM NO. HCV 00440/07

BETWEEN CATHERINE PARKE THWAITES — APPLICANT

AND THE DIRECTOR OF PUBLIC PROSECUTIONS — 1ST RESPONDENT

AND THE ATTORNEY GENERAL — 2ND RESPONDENT

CONSOLIDATED WITH

CLAIM NO. 2007 HCV 00476

BETWEEN DEBBIE HYDE APPLICANT

AND THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

AND THE ATTORNEY GENERAL 2ND RESPONDENT

Winston Spaulding,Q.C. and Garth McBean for the Applicant Mark Thwaites Instructed by Garth McBean and Co.

Dennis Morrison, Q.C. and Charles Williams instructed by Dunn Cox for the applicant James Morrison

Mrs.Jacqueline Samuels-Brown and Mrs. Tameka Jordon instructed by Firmlaw for the applicant Catherine Parke Thwaites

Patrick Atkinson and Miss Deborah Martin for the applicant Debbie Ann Hyde

Richard Small, Phillip Sutherland and Miss Pauline McKenzie instructed by the Director of Public Prosecutions for the Director of Public Prosecutions

Patrick Foster, Q.C. and Jerome Spencer instructed by Director of State Proceedings for the Attorney General

HEARD: NOVEMBER 26 - 28, 2007 AND DECEMBER 18, 2008

Financial Services Commission Act - Authority to Regulate Insurance Industry – Criminal charges for breach of provisions of Insurance Act 2001- Authority of Financial Services Commission - Section 20 (1) of the Constitution - Retrospective legislation - Validity of charges.

McCALLA C.J.

The applicants Mark Thwaites, James Morrison, Catherine Parke Thwaites and Debbie Ann Hyde each filed Fixed Date Claims supported by affidavits, against the respondents, the Director of Public Prosecutions and the

Attorney General. They seek Declarations concerning the validity of legislative provisions relating to the Insurance Act and the Financial Services Commission Act which would result in criminal charges preferred against them being dismissed.

Their applications were consolidated and are now before this Court for Judicial Review of the decision of the Director of Public Prosecutions to charge them with criminal offences.

On divers dates in the years 2005 and 2006 the applicants were each arrested and charged under section 147 (1) (a) and147 (1) (c) (ii) of the Insurance Act for offences which were allegedly committed between December 17, 2004 and January 21, 2005. Their cases are pending before the Corporate Area Criminal Court.

Each applicant is charged on Information with failing to comply with directions of the Financial Services Commission to provide proof of the injection of capital in the Dyoll Insurance Company Limited as authorized by sections 46 and 53 of the Insurance Act. The directions were given by the Financial Services Commission on divers dates between the 17th of December 2004 and the 21st of January 2005. They are charged with offences under sections 147(1) (a) and 147(1)(c)(ii) of the Insurance Act.

The applicant Mark Thwaites seeks the following reliefs:

> 1. "A Declaration that paragraph (a) of the definition of "financial services" in section 2 of the Financial Services Commission Act and the provisions of the Fourth Schedule of the Financial Services Commission Act which were

purportedly brought in effect as law by the Financial Services Commission Act 2001 (Appointed Day) (Insurance Provisions) Notice 2005 are in breach of the Applicant's rights under Section 20 (7) of the Constitution of Jamaica and null and void on the ground that in respect of the Applicant and the offences with which he is charged those provisions rendered acts which did not constitute an offence in December 2004 and January 2005, a criminal offence as of the 4th March 2005, thereby having a retroactive effect in relation to criminal offences.

2. A Declaration that the power delegated to the Minister of Finance by section 1 of the Financial Services Commission Act passed by Parliament and assented to by the Governor General on the 3rd May 2001 was exercised and spent when the Minister brought into operation provisions of the Financial Services Commission Act by the Financial Services Commission Act 2001 (Appointed Day) Notice published in the Jamaica Gazette Supplement, Proclamation Rules and Regulations dated Monday the 30th July 2001.

3. A Declaration that the Minister had no power to bring into operation the provisions of the Financial Services Commission Act relating to the insurance industry when he purported to bring same into effect by the Financial Services Commission Act 2001. (Appointed Day) Notice 2005.

4. Further or alternatively, a Declaration that the provisions of the Financial Services Commission (Insurance Services) Validation and Indemnity Act, which was purportedly brought into operation on the 11th day of August

2006 are contrary to section 20 (7) of the Constitution and therefore unconstitutional, null and void to the extent that it purportedly renders retroactively criminal acts, allegedly done by the applicant.

5. An order that the criminal proceedings instituted against the Applicant by information number 9454/05 in the Resident Magistrate's Court, for the Corporate Area held at Half Way Tree be discontinued by the 1st Respondent."

Paragraph 4 was amended to add at the end thereof the words "to the extent that it purportedly renders retroactively criminal acts allegedly done by the applicant."

The other applicants claim similar reliefs and similar amendments were made in each case, but the applicant Catherine Parke Thwaites also claims damages for breach of her constitutional rights.

In exercise of his power under section 1 of the Financial Services Commission Act, on August 2, 2001 the Minister of Finance brought into operation the Financial Services Commission Act, but excluded certain provisions relating to the Insurance Industry.

The Notice dated July 30, 2001 reads as under:-

"The 2nd day of August 2001, is hereby appointed as the day on which the provisions of the Financial Services Commission Act 2001 other than –

(a) paragraph (a) of the definition of Financial Services in section 2 and;

(b) the provisions of the 4th schedule to the Act in respect to the Insurance Act

shall come into operation.

Therefore, the provisions which were applicable to the Insurance Industry were not brought into effect. Section 2 of the Financial Services Commission Act states inter alia:-

> "Financial Services" means services provided or offered in connection with (a) insurance..."

At the time the above Notice was issued the Insurance Act was not yet passed. It was passed on December 21, 2001 and so the provisions of the Financial Services Commission Act relating to Insurance did not come into effect as they had been excluded by the Notice.

On March 4, 2005 the Minister purportedly brought the said provisions into operation by the Financial Services Commission (Appointed Day) (Insurance Provisions) Notice which states in part as follows:

> "2. The 4th day of March is hereby appointed as the day on which the following provisions of the Financial Services Commission Act, namely –
>
> (a) paragraph (a) of the definition of "financial services" in section 2."
>
> (b) The provisions of the Fourth Schedule to the Act relating to the Insurance Act,
>
> shall come into operation."

In written submissions advanced on behalf of the applicant Mark Thwaites by Mr. Winston Spaulding Q.C., his contentions were summarized as follows:

"(a) Parliament may authorize the Minister to bring an Act into operation by an Appointed Day Notice. The power that was given to the Minister under Section 1 of the Financial Services Commission Act No. 9 of 2001 to bring the insurance provisions into effect did not have any provisions reserving any power to bring the Act into operation in stages. Therefore on bringing the Act into operation on the 2nd August 2001, except for the provisions applicable to the insurance industry, the power was spent.

(b) The Applicant further contends that when the Minister purported to bring the provisions of the Financial Services Commission Act applicable to the insurance industry into operation on the 4th March 2005 by the Financial Services Commission Act (Appointed Day) (Insurance Provisions) Notice there was no power under the provisions of the Act as it then stood to do so. Further the provisions of Section 1 of the Act under which he purported to bring those provisions into operation gave him no such power since that section as it stood in 2005 merely recited the title of the Act.

(c) The Applicant contends that even if there had been a power to bring the provisions of the Act applicable to the insurance industry into operation those provisions could not be made retroactive in relation to the insurance industry and the Applicant as this would be in breach of under the Section 20 (7) of the Constitution of Jamaica which prohibits the making of an act retroactively criminal.

(d) The Applicant therefore contends that since the Minister had no power to bring the provisions of the Financial Services Commission Act applicable to the insurance industry into operation it compounds the breach of the

> Constitution to make a Law retroactive since there is no power to the law into operation as purportedly done by the Minister ..."

Counsel Mr. Winston Spaulding, Q.C. contended that the power that the Minister had under section 1 of the Act was not divisible and was spent when he exercised his power to bring sections of the Act other than "financial services relating to Insurance services" into operation.

He argued that the fact of the power being spent was recognized by the Law Revision Commission appointed under the Law Revision Act when it authorized the insertion of a new page 1 and omitted the old page 1 with section 1 of the Financial Services Commission Act, which was the section authorizing the Minister to bring the said Act into operation.

After the new pages were authorized to be inserted into the Revised Laws of Jamaica the Financial Services Commission Act did not have any provision empowering the Minister to bring into operation the provisions of the Act relating to the Insurance Industry.

Mr. Spaulding Q.C. submitted that the Applicant is charged under the Insurance Act for failing to comply with directions of the Financial Services Commission. However the Financial Services Commission did not have any power to give such directions since the prescribed financial institution did not apply to an insurance company.

In relation to the charge under the Insurance Act for supplying information to the Financial Services Commission which was false in a material particular, he said that the Financial Services Commission had no regulatory power over the

Insurance Industry since prescribed financial institution under the Financial Services Commission Act did not include an insurance company, and therefore no offences were committed.

He launched an additional argument by making reference to the provisions of the recitals to the Financial Services Commission (Insurance Services) (Validation and Indemnity) Act which he said makes it clear that the provisions of the Financial Services Commission Act relating to insurance services were not brought into operation on the 2nd of August 2001.

The recitals state in part thus:

> "AND WHEREAS, on August 2, 2001 the **Financial Services Commission Act** other than the provisions relating to insurance services was brought into operation, by virtue of an appointed day notice:
>
> "AND WHEREAS, on December 21, 2001, the **Insurance Act 2001** came into operation:
>
> "AND WHEREAS, on that date and subsequently, the provisions of the **Financial Services Commission Act** relating to **insurance services** were not brought into operation.
>
> AND WHEREAS, acting in good faith, the **Financial Services Commission,** its officers and staff and other persons employed in the administration of the **Financial Services Commission Act** purported to exercise authority over **the insurance industry** in the absence of a notice to bring into operation the provisions of the Act relating to **insurance services**:
>
> AND WHEREAS it is desirable to validate and confirm all acts done in good faith by the **Financial Services Commission,** its officers and staff in the purported exercise of the Commission's functions under the **Financial Services Commission Act** and the **Insurance Act, 2001,** and by the other persons employed in the administration of the **Financial**

> **Services Commission Act in relation to the insurance industry** during the period December 21, 2001 to the date of commencement of this Act..." (Emphasis supplied)

He submitted further that the validating Act which was brought into operation on August 11, 2006 recognized that the provisions of the Financial Services Commission Act relating to Insurance Services were not in effect from 2001 to 2005 and the officers of the Financial Services Commission had no authority over the Insurance Industry during that period.

Counsel also contended that even if the Minister had the power to bring the provisions of the Financial Services Commission Act into operation, the provisions relating to the Insurance Industry could not have come into effect until the 4th of March 2005 by virtue of the Financial Services Commission Act (Appointed Day) (Insurance Provisions) Notice, after the offences were allegedly committed and the applicants would therefore have been charged with the offences retroactively.

He relied on the provisions of section 20 (7) of the Constitution of Jamaica which states:

> "No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed."

He also referred to section 20 (9) which provides:

> "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provision of this section other than subsection (7) thereof to the extent that the law in question authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purposes of dealing with the situation that exists during that period of public emergency."

Counsel relied on the case of **Commissioner of Police v Woods** (1990) 54 W.I.R. 1 in support of his submission that legislation which makes a criminal offence retroactive is contrary to the constitution.

Arguing that in general there is a presumption against retroactive legislation which is of a penal nature he referred to the text of Driedger on the Construction of Statutes (Butterworths Canada Limited) where the author at page 513 states:

> "Because a retroactive law applies to past events, its practical effect is to change the law that was applicable to those events to the time they occurred. To change the law governing a matter after it has already passed violates the rule of law. In fact it makes compliance with the law impossible. As Raz points out the fundamental tenet on which the rule of law is built is that in order to comply with the Law or to rely on it in a useful way, the subjects of the law have to know in advance what it is."

He placed reliance on the case of **R v Miah** [1974] 2 All E.R. 377 where the House of Lords held that the penal provisions of the Immigration Act of 1971 were not retrospective and accordingly a person cannot be convicted of an offence under the 1971 Act in respect of anything done by him before the Act came into force. In so finding, the Court considered provisions which were similar to section 20 (7) of the Jamaican Constitution.

The applicant James Morrison is charged on a single information dated July 12, 2006 for breach of section 147 (1) (a) of the Insurance Act for failing to comply with directions of the Financial Services Commission allegedly given to him by the Financial Services Commission "on divers days between 17th December 2004 and 21st January 2005", to provide proof to the Financial Services Commission of the injection of One Hundred and Fifty Million dollars capital into Dyoll as authorized by sections 46 and 53 of the Insurance Act."

The issues that arise for determination in the applicant James Morrison's case are similar to those referred to in the case of the applicant Mark Thwaites. His Counsel Mr. Dennis Morrison, Q.C., urged that the offence for which he is charged was allegedly committed on dates before the provisions of the Financial Services Commission Act relating to the Insurance Industry came into effect and the Financial Services Commission had no power to give any directions to the applicant Morrison and the applicant would have committed no offence if he did in fact fail to comply with any such directions.

He said that in order for the applicant Morrison to have committed an offence the provisions of the Financial Services Commission Act relating to Insurance would have had to be given retroactive effect. This would be in contravention of the applicant's rights under section 20 (7) of the Constitution as the provisions of the Act relating to the Insurance Industry were purportedly brought into operation on March 4, 2005, subsequent to the date on which the applicant Morrison is alleged to have committed the offence. They are unconstitutional, null and void and cannot be saved by the validating Act of 2006.

Mrs. Jacqueline Samuels-Brown, Counsel for the applicant Catherine Parke Thwaites, also charged with failing to provide information to the Financial Services Commission, relied on arguments similar to those advanced on behalf of the applicants Mark Thwaites and James Morrison and sought similar reliefs. She also made reference to the historical background of the legislation against which the charges were preferred as well as the constitutional provisions cited herein. She urged that the applicant Catherine Parke Thwaites is entitled to an award of damages for breach of her constitutional rights which is permissible under Part 56.10 of the Civil Procedure Rules, 2002.

Submissions were advanced by Counsel Mr. Patrick Atkinson on behalf of the applicant Debbie Ann Hyde similar to those of the preceding three applicants.

Mr. Richard Small on behalf of the 1st Respondent submitted that the statutory provisions governing the First Respondent's actions are to be found in the Insurance Act, 2001 which was passed by Parliament to make new provisions for regulating the carrying on of insurance business in Jamaica.

In exercise of the power conferred on the Minister by section 1 of the Insurance Act and by Notice published in the Jamaica Gazette on the 21st of December, 2001 the provisions of the Insurance Act were brought into effect on that day.

Section 4 of the Insurance Act awards to the Financial Services Commission, in an untrammeled way, responsibility for the general administration of that Act. Parliament was entitled so to assign functions to the Financial Services Commission and to create the offences set out in the Insurance Act.

He argued that when on divers days between the 17th of December, 2004 and the 21st of January 2005, officers of the Financial Services Commission issued directions to the Applicants, these directions were issued under authority of Section 4 of the Insurance Act and the Applicants were obliged to respond to these directions truthfully and within the specified time.

He said that the refusal or neglect and untruthful responses of the Applicants to these directions constitute breaches of S 147(1) (a) and 147 (1) (c) (ii) of the Insurance Act for which the Applicants were, at the instance of the Director of Public Prosecutions, prosecuted in the Resident Magistrates Court for the Corporate Area. He placed reliance on all the provisions of Section 147 of the Insurance Act.

Mr. Small also submitted that the Financial Services Commission's actions were not predicated on any purported exercise of powers delegated under the provisions of the Financial Services Commission Act 2001 (Appointed Day) (Insurance Provisions) Notice 2005.

He contended that the Financial Services Commission does not rely on the validation of or indemnity for any acts done in relation the Applicants in this matter as provided for by the Financial Services Commission (Insurance Services) (Validation and Indemnity) Act 2006.

He said that the offences for which the Applicants were prosecuted existed at the time of their commission and the Applicants were not prosecuted for breaches of retroactively created offences. The initiation of the prosecutions

is therefore not in breach of the provisions section 20(7) of the Constitution of Jamaica.

Mr. Small submitted that the Claimants' reliance on submissions that the Financial Services Commission exercised powers solely under the Financial Services Act is wrong. He submitted further that the charges laid allege breaches of the Insurance Act and are unaffected by the elaborate submissions as set out in the claimants' written cases regarding the circumstances in which the Financial Services Commission Act was brought into effect.

He urged the Court to refuse the orders sought as he contended that the actions of the respondents are unaffected by the statutory provisions referred to by the applicants.

Counsel Mr. Patrick Foster, Q.C. in his submissions, also referred to the relevant legislative provisions.

Mr. Foster, Q.C. argued that the offences with which the applicants were charged were alleged to have been committed between December 2004 and February 2005 and the Insurance Act was passed in December 2001 prior to the alleged commission of the respective offences.

The relevant sections of the Insurance Act were therefore in existence at the time the offences were alleged to have been committed.

Section 3 of the Insurance Act makes it applicable to "all insurance intermediaries and all insurers whether established in or outside Jamaica..."

Section 4 gave powers to the Financial Services Commission to administer its provisions generally and section 46 specifically empowers the

Commission to demand from any local company any information relating to any matter in connection with its insurance business.

He said that the alleged offences were clearly established under the Insurance Act. The Financial Services Commission therefore had the power to invoke the provisions of the said Act and therefore the applicants' constitutional rights were not infringed.

Mr. Foster, Q.C. further submitted that if the Court accepts that the Act did not empower the Financial Services Commission to act in relation to the Insurance Industry at the time of the alleged commission of the offences, the clear provisions of the Insurance Act empowers the Financial Services Commission to issue directions and the failure to comply with such directions constitutes an offence.

In such circumstances the Court should give effect to the provisions of the later and more specific provisions of the Insurance Act.

He cited the cases of **Richards v Richards** [1983] 2 All E.R. 807 and **Efforts Shipping Co. Ltd. v Linden Management SA** [1998] 1 All E.R. 495 as supporting the rule of construction that "generalia specialibus non derogant" – general provisions do not override specific ones.

The Financial Services Commission Act 201 (Appointed Day) Notice dated July 30, 2001 is in my opinion most specific and cannot be described as general.

It specifically excludes insurance from its supervision and regulation.

Mr. Foster also contended that the Validating Act does not create any offence and therefore does not infringe the applicants' constitutional rights under

section 20(7) of the Constitution. He maintained that its purpose was to validate the actions of the officers and staff of the Financial Services Commission and not to retroactively create any criminal offence. It was the Insurance Act that established the offences for which the applicants were charged and that Act was in existence at the time the offences were alleged to have been committed and under that Act the Financial Services Commission was empowered to act as it did. He asked the Court to refuse the reliefs being sought.

This court must make a determination as to whether or not:

(a) The law under which the applicants were charged existed at the time the offences were alleged to have been committed and;

(b) Whether the Financial Services (Insurance Services) Validation and Indemnity) Act 2006 retroactively creates the offence for which each applicant is charged.

It is not in dispute that on July 30, 2001 the Appointed Day Notice brought into operation the provisions of the Financial Services Commission Act other than -

(a) paragraph (a) of the definition of "Financial Services" in section 2;

(b) the provisions of the Fourth Schedule to the Act in respect to the Insurance Act.

The Insurance Act came into operation on December 21, 2001 and section 2(1) states, inter alia, that "Commission" means the Commission appointed under section 3 of the Financial Services Commission Act.

Section 46 of the Insurance Act authorizes the Commission to demand from any local company information in relation to any matter in connection with its insurance business.

Section 147(1) of the Insurance Act states:

> "A person commits an offence if he -
>
> (a) contravenes or fails to comply with any provision of the Act or any direction, condition, obligation or requirement given, imposed or made under any such provisions;
>
> (b)...
>
> (c) in purported compliance with a requirement imposed to supply information or provide an explanation or make a statement –
>
> (i) supplies information, provides an explanation or makes a statement which he knows to be false in a material particular; or
>
> (ii) recklessly supplies information, provides an explanation or makes a statement which is false in a material particular."

Section 3 of the Insurance Act provides that the Act applies to all insurance intermediaries and all insurers whether established in or outside of Jamaica and section 4 of the said Act states that:

> "The Commission is responsible for the general administration of this Act".

It seems to me that until the provisions of the Financial Services Commission Act were brought into operation in relation to the Insurance Industry section 4 of the Insurance Act was ineffective and inoperative.

I am driven to conclude that the cases referred to by the first respondent in relation to statutory interpretation are of no assistance in the determination of the issues in this case where the Financial Services Commission Act as it relates to insurance was not in force at the time that the offences were allegedly committed.

I hold that the power of the Financial Services Commission to act in relation to the criminal matters with which the applicants are charged must reside in that Act and on August 2, 2001 the Financial Services Commission had no authority under that Act to perform any function in relation to the Insurance Industry.

I do not agree with the submissions of Counsel for first and second respondents that section 4 of the Insurance Act confers on the Financial Services Commission powers to act in relation to the Insurance Act in circumstances where the provisions of that Act in relation to the insurance were not in force at the material time. The responsibility conferred under the Insurance Act must be subject to the Financial Services Commission having the power given to it in the Financial Services Commission Act which established it.

I am fortified in my views by the provisions of the Financial Services Commission (Insurance Services) Notice (Validation and Indemnity) Act of 2006 which specifically validates and indemnifies officers of the Financial Services

Commission for acts done in the purported exercise of the powers conferred on the Financial Services Commission in relation to the insurance industry.

Section 2 of the said Act provides as follows:

> "Notwithstanding anything to the contrary in any enactment, all acts done in good faith, between the 21st day of December, 2001 and the commencement of this Act, by –
>
> **(a) the Financial Services Commission, its officers and staff, in the purported exercise of the powers conferred upon the Financial Services Commission in relation to the insurance industry by the Financial Services Commission Act and the Insurance Act, 2001 and by all other persons acting in connection with or in support of such acts;**
>
> **(b) any other persons having an official duty or being employed in the administration of the Financial Services Commission Act in relation to the insurance industry,**
>
> are hereby declared to have been validly, properly and lawfully done and are hereby confirmed, and the Financial Services Commission, its officers and staff and the other persons specified are hereby freed, acquitted, discharged and indemnified as well against The Queen's Most Gracious Majesty, Her Heirs and Successors as against all persons whatever from all legal proceedings of any kind, whether civil or criminal." (Emphasis supplied)

The Validating Act itself therefore recognized that the Financial Services Commission had no authority to exercise any powers in relation to Insurance. If, as contended by the respondents, the Financial Services Commission derived power over the Insurance Industry by virtue of section 4 of the Insurance Act,

then there would have been no need for Parliament to pass the validating Act in 2006, in relation to the insurance industry.

If, as I have found, the Financial Services Commission was not authorized or empowered to give directions at the time that the offences were allegedly committed, in those circumstances the criminal charges which were laid against the applicants under the Insurance Act for failure to comply with a direction would be invalid.

By virtue of section 20(7) of the Constitution the Validating Act of 2006 would therefore be ineffective in relation to the criminal offences with which the applicants were charged.

Written submissions by Mr. Foster Q.C. with regard to the power delegated to the Minister of Finance by Section 1 of the Financial Services Commission Act were withdrawn. I do not find it necessary to make any pronouncement on the submissions of the applicants on this issue.

I would grant the declarations sought by the applicants Mark Thwaites and James Morrison at paragraph 1 and paragraph 4 as amended, of Fixed Date Claim Forms dated January 12, 2007 and January 16, 2007, respectively.

I would make an order in terms of paragraphs 1, 2, 4 and 8 as amended, of Fixed Date Claim Form dated January 22, 2007 filed by the applicant Catherine Parke Thwaites. I would also make an order in terms of paragraphs 1, 2 and 5 as amended, of Fixed Date Claim Form filed by the applicant Debbie Ann Hyde on January 26, 2007.

I would refuse the claim by the applicant Catherine Parke Thwaites for damages as in my view Mr. Richard Small is correct in his assertion that this is not an appropriate case for an award of damages as there is no evidential material before the Court upon which it could make a finding that damages should be awarded.

McINTOSH J.

I have read in draft the Judgment of McCalla, C.J. and I agree with the reasoning and conclusion.

HIBBERT J.

Having read the draft Judgment of the Chief Justice I am in full agreement with the reasoning and conclusion.

ORDER

Order in terms of paragraphs 1 and paragraph 4, as amended, of Fixed Date Claim Forms filed by the applicants Mark Thwaites and James Morrison on January 12, 2007 and January 16, 2007, respectively.

Order in terms of paragraphs 1, 2, 4 and 8, as amended, of Fixed Date Claim Form dated January 22, 2007 filed by the applicant Catherine Parke Thwaites.

Order in terms of paragraph 1, 2 and 5, as amended, of Fixed Date Claim Form filed by the applicant Debbie Ann Hyde on January 26, 2007.

The claim by the applicant Catherine Parke Thwaites for damages is refused.