CORAM: THE HON. MR. JUSTICE MALCOLM
" HON. MR. JUSTICE LANGRIN
" HON. MR. JUSTICE G. JAMES

IN THE MATTER OF AN APPLICATION BY HUGH GRAHAM FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI AND/OR MANDAMUS IN THE MATTER OF A DECISION/ORDER/ RECOMMENDATION OF THE MINISTRY OF AGRICULTURE AND THE DECISION/ORDER OF THE MINISTRY OF FINANCE.

AND

IN THE MATTER OF THE CUSTOMS ACT.

Mr. D. Muirhead Q.C. and Mrs. Prya Levers for the Applicant.

Mr. Lennox Campbell, Senior Asst. Attorney General for Respondent.

Heard: November 27, 28 & December 1, 1995

ORAL JUDGMENT

LANGRIN, J.

This is an application by Hugh Graham to this Court for the following orders:

(a) An Order of Certiorari to remove into this Honourable Court for the purpose of it being quashed a decision on the 6th March, 1995 of the Minister of Finance based on the recommendation of the Minister of Agriculture in respect of the applicant.

(b) An Order of Mandamus to repay the sum of $256,946.43 unlawfully demanded from the said applicant and paid by him.

Background:

The applicant applied to the Rural Agricultural Development Authority for a 20% duty concession with a view to importing a vehicle for use in his agricultural activities.

On the 6th December, 1993 the concession was granted by the Minister of Agriculture and on the 20th September, 1994 a letter was forwarded by the Financial Secretary to the Commissioner of Custom reconfirming that the 20% concession was granted to the applicant.

that the applicant should get in touch with him. The applicant communicated with the officer and subsequently attended an interview on the 6th October, 1994 accompanied by his Attorney-at-Law. It was then that the vehicle was seized.

As a result of representations made by the applicant's Attorney on the 25th October, 1994 the vehicle was released to the applicant.

On the 2nd November, 1994 an officer of the Revenue Protection Division requested that the vehicle be taken for inspection and that the applicant should attend for interview. The applicant did not attend but sent the vehicle as requested. It was then that a Notice of Seizure dated 2nd November, 1994 was served on the applicant's driver.

On the 28th November, 1994 the applicant was arrested and charged under Section 210 of the Customs Act in respect of the said motor vehicle. A trial date was set for February 3, 1995 and the applicant was granted bail. The matter came up finally on 31st March, 1995 when Counsel for the Revenue informed the Court that he did not have the necessary evidence and wished to withdraw all charges. Counsel also informed the Court that he had been advised that the applicant's duty concession of 20% had been revoked.

Upon a demand by the applicant's Attorneys for the return of the vehicle a copy letter dated 6th March 1995 was received by the applicant. This letter is set out as follows:

"March 6, 1995

Commissioner of Customs
Motor Vehicle Unit
Newport East
Kingston.

Attention: Mrs. Lorna Rhoden

In 1993 Mr. Hugh Graham was granted the 20% duty concession on a farm vehicle based on the recommendations of the Minister of Agriculture. His name appears at Item 5 on a list dated November 1, 1993 and that list was sent to you together with our letter advising of the approval.

Subsequently, on the recommendation of the Minister of Agriculture, the Minister of Finance revoked the duty concession.

c.c Mrs. Hugh Graham

Mrs. V. Page Gardener
Collector of Taxes

Mr. Simon Benjamin
Revenue Protection Division."

In order to secure the return of the vehicle the applicant complied with the demand of the respondent and paid the sum of $256,946.43 on the 5th April, 1995.

The vehicle was not returned to the applicant until two days later.

The grounds on which the said reliefs are sought are as follows:

(1) There was no evidence to support or justify the said decision.

(ii) The decision/order/recommendation were in breach of the principles of Natural Justice.

(iii) The decision/order/recommendation were unlawful and void.

The central issue raised by Mr. David Muirhead Q.C. was that the applicant having been granted a concession of 20% custom duty this concession was revoked without giving the applicant a hearing.

It is impossible to quarrel with the contention that the governir law which has the closest and most real connection with the instant case is the question of legitimate expectation. Having received a benefit which the authority now seeks to revoke the applicant has a legitimate expectation to be heard before the benefit was revoked.

The doctrine of legitimate expectation is in practice procedural and only confers an expectation to be provided with an opportunity to be heard. The principle is that of fairness, the denial of which lies at the heart of procedural impropriety and which has traditionally been referred to as natural justice.

It is well established that a legitimate expectation can generat a right to be heard. It may require government to act consistently in the sense of being required to honour a previous agreement, promise or undertaking.

In his submissions Mr. Muirhead was bold and in his usual lucid style cited a number of authorities underscoring the critical issue in this case. Any failure to deal with them is not due to any lack of deference to his arguments but merely to a saving of time.

Mr. Campbell, Counsel for the Respondent submitted that the order and/or decision made by the Minister of Finance has not been exhibited as is required by Section 564G of the Civil Procedure Act and consequently this Court has no jurisdiction to grant the application sought. He went on further to argue that the order made by the Minister cannot be extracted from the records before the Court.

Section 564G(1) is stated as under:

> "In the case of an application for an order of certiorari to remove any proceedings for the purpose of their being quashed, the applicant shall question the validity of any order warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has filed in the office of the Registrar a copy thereof verified by affidavit, or accounts to the satisfaction of the Court or Judge hearing the motion or summons for his failure to do so."

This submission is misconceived. We are of the unanimous view that the letter from the Financial Secretary dated March 6, 1995 conveying the decision pertaining to the revocation of the concession which is before the Court is sufficient to satisfy the requirements of the section.

The major part of Mr. Campbell's submission was directed to establishing that the applicant had refused to attend interviews appointed by officers of the Revenue Protection Division which would have given the applicant an opportunity to respond to the allegations. This was the force of his submission. Yet when the evidence is analys what emerges is that the Revenue Protection Division was investigatin a case under the Custom Act against the applicant from as early as October 6, 1994 when the vehicle was first seized. Further the request to interview the applicant was <u>after</u> the concession was revok

is derived from the withdrawal by the Revenue Protection Division of the criminal charge against the applicant on the basis of insufficient evidence.

What was necessary in this case was for the decision making process to unequivocally afford the applicant an opportunity to respond to the allegations before the duty concession was revoked. This in our view was not done.

The applicant in an affidavit in reply to the allegations advanced by the Respondents denied any knowledge of the stated irregularities. Any unresolved dispute as to the precise number of acres of land the applicant had leased cannot inform the question of whether or not the applicant was a genuine farmer.

A considerable part of the arguments advanced by Mr. Campbell on behalf of the respondents was an invitation to the Court to resolve the disputed question of fact. This we will not do.

The failure of the respondent to give the applicant a hearing before the benefit was revoked is sufficient to dispose of Mr. Campbell's submission. Although a seemingly narrow point it is fundamental to the principle of fairness which must reside in any concept of justice in this country.

In so far as the application for the Order of mandamus is concerned it follows that the order is granted to repay the sum $256,946.43 to the applicant.

Accordingly, certiorari must go to quash the decision of the Minister which was communicated to the applicant by letter dated March 6, 1995.

G. James, J.

I concur.

Malcolm, J.

I concur.

Both Orders granted. Costs to the applicant to be agreed or taxed.