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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN ~~COMMON LAW~~ EQUITY

SUIT NO. E040/1984

BETWEEN	WOODROW GUSCOTT	
A N D	CHARLES ATKINSON	PLAINTIFFS
A N D	OSBOURNE FRANCIS	
A N D	THE MINISTER OF EDUCATION	
A N D	THE ATTORNEY GENERAL	DEFENDANTS

R.C. Rattray Q.C. and Brenda Warren for the Plaintiffs instructed by Miss Arlene Harrison.

R. Langrin, Senior Assistant Attorney General and W. Wilkins of the Attorney Generals Department for the Defendants.

Originating Summons

Hearing in Chambers on: 14th & 15th May, 1984

Delivered on: 6th June, 1984

JUDGMENT

Bingham J:

In this matter the plaintiffs formerly Members of the Board of Management of the Ferncourt Secondary High School, a Public Educational Institution owned by Government, proceed by way of an originating summons against the defendants for the determination of the following questions:

1. "Whether on a proper interpretation of sections 3,4 and 9 of the Education Act and Regulations 71,79,80,81,84 of the Education Regulations 1980 the action of the Minister of Education in purporting to revoke the appointments of the Chairman and Board of Management of Ferncourt High School, Claremont P.O., St. Ann is ultra vires her powers in excess of her lawful authority and therefore null and void.

2. Whether on a proper interpretation of section 3,4 and 9 of the Education Act and Regulations 71,79,80,81 and 84 of the Education Regulations 1980 the action of the Minister of

"Education in purporting to revoke the appointments of the second and third named plaintiffs and other Members of the Board of Management of the Ferncourt High School, Claremont P.O., St. Ann, who are elected or nominated by organisations or groups is ultra vires her powers in excess of her lawful authority and therefore null and void.

3. Whether on a proper interpretation of section 3,4 and 9 of the Education Act and Regulations 71,79,80,81,84 of the Education Regulations 1980 the action of the Minister of Education in purporting to appoint an Interim Board of Management of the Ferncourt High School, Claremont P.O., St. Ann is ultra vires her powers in excess of her lawful authority and therefore null and void."

Dependent upon the outcome of these questions certain reliefs are sought namely:

1. "A declaration that the plaintiffs have not had their appointments nor the appointments of the other Members of the Board of Managements of the Ferncourt High School, Claremont P.O., St. Ann, lawfully revoked and that they still remain as Chairman and Members of the Board of Management of the Ferncourt High School, Claremont, St. Ann.

2. A declaration that the second and third named plaintiffs have not had their appointments as Members of the Board of Management of the Ferncourt High School, Claremont, St. Ann, nor the appointments of those members who were elected or nominated by organisations or groups lawfully revoked and still remain as Members of the Board of Management of the Ferncourt High School, Claremont, St. Ann.

3. An injunction restraining the Interim Board of Management of the Ferncourt High School, Claremont, St. Ann, purported to be appointed by the Minister of Education from performing all or any acts in relation to the functions, authority and powers, of the Board of Management of Ferncourt High School, Claremont, St. Ann."

The facts giving rise to this summons are not in dispute. The history of the events leading up to the filing of the suit are as outlined in the affidavit of Arthur Edmund Barrett sworn to on 16th March, 1984. This gentleman was appointed as Chairman of the Board of Management of the said school for a period of three years to expire on 10th March, 1984.

It appears from the facts that the Ferncourt High School had been without a Principal from 1977 since which period four persons have acted in the post.

In September, 1981 the Board was requested by the Ministry of Education to advertise the post of Principal and submit their recommendations by November 1981 in order to allow the Ministry to expedite the appointment early in 1982.

The Board acted upon the Ministry's request, advertised the post, held interviews and duly forwarded to the Ministry its recommendations by letter dated 3rd November, 1983.

The recommendations were not acted upon by the Ministry, but the school continued to show improvement under the administration of the Acting Principal who had been recommended to fill the post.

On 4th August, 1983 the Chairman, Mr. Barrett, was summoned by the Ministry to meet with the Permanent Secretary, Mr. Cecil Turner, and the Director of School Services, Mr. L.L. Goodin.

At this meeting, the Chairman was informed that the Ministry was unwilling to accept the Board's recommendation.

By a subsequent letter dated 11th August, 1983 the Chairman was informed by letter from the Ministry formally of the decision of the Teachers' Commission not to accept the Board's recommendation. The Board was requested to readvertise the post and to resubmit new recommendations.

The Board met and reconsidered the matter and took the decision unanimously to abide by its earlier recommendations, which view was conveyed to the Ministry by letter dated 15th September, 1983.

The next step in this whole senario was that a telegram was sent from the Ministry directing the Board to readvertise the post of Principal. This telegram was couched in the form of an ultimatum. The telegram was followed up by a formal letter conveying a similar request to the Board.

The Board no doubt took the contents of the telegram seriously and met to consider the Ministry's latest stand and the result was that a lengthy memorandum signed by the Chairman was forwarded to the Ministry. The memorandum was in the

nature of a strong protest at the Ministry's whole conduct in its treatment of the Board over the question of the appointment of the Principal of the school.

The Board's letter was followed by a letter from the Ministry dated 15th December, 1983, in which the Board's attention was drawn to the procedure as laid down for the appointment of a Principal of a Secondary School in Schedule B of the Code (Education Regulations 1980).

Of this procedure the Board was certainly not ignorant having followed it to the letter in submitting its recommendations in November 1981 in response to the Ministry's earlier request for the post to be advertised conveyed to it in September 1981.

Following upon the Ministry's letter of 15th December, 1983, the Minister then sought by her letter of 16th January, 1984 to revoke the appointments of the entire Board with effect from 1st February, 1984. Her reason for so doing was stated as being the failure of the Board to comply with the instructions of the Ministry.

Since the Minister's letter and the filing of the originating summons the normal life of the Board has now come to an end.

It may be convenient at this stage to make a few comments in passing upon what having regard to her reasons seemed to have been the basis for the Minister's action as stated in her letter of 16th January, 1984.

As the Board by its conduct complied with the request from the Ministry in September 1981 and acted within the guidelines as laid down in Schedule B of the Education Regulations 1980, the decision of the Minister in taking such an extreme course as to revoke the appointments of the entire Board seems on the face of it harsh and oppressive. As Mr. Rattray has quite properly observed the Minister as the

repository of the power had the right to accept or reject the recommendation of the Board, and acting upon the advice of the Teachers' Commission (see 1(d) and (e) of Schedule B of the Regulations) she could have quite properly have gone "over the head" of the Board and appointed someone of her own choosing. The Board had an unfettered discretion to make its own selection and in that regard it could not properly exercise this discretion by acting upon the direction of any other body including the Minister herself.

It is also of interest to observe that the Schedule in question makes no provision for what is to be the consequence of the Minister's decision being one which as in this case was contrary to the Board's wishes.

It was this deficiency which created the conflict between the Minister and the Board in an area in which both had the competence to act in the manner that they did.

The originating summons in this matter was taken out on 23rd February, 1984 and the life of the Board would, but for the Minister's actions, have expired on 10th March, 1984 (see affidavit of L.L. Goodin).

An Interim Board was appointed by the Minister for one year as from 1st February, 1984 to 31st January, 1985. This Board's term was brought to a premature end after a mere two months (see also paragraph 5 of affidavit of L.L. Goodin).

Mr. Rattray has in the light of the aforementioned stated that the plaintiffs are no longer pursuing (3) of the reliefs sought.

Mr. Langrin, on the other hand, contends that even if the plaintiffs were successful in their claim the declaration would be meaningless and empty and of such a nature that the court ought not to grant them.

In this regard one needs to be reminded of the views expressed by Lord Denning M.R. in Meade vs London Borough of Harringey /1979/ 2 A.E.R. 1016.

"Such a hearing serves a twofold nature:-

Firstly there is the question of costs in event of the plaintiffs succeeding in their claim.

Secondly because it is of importance to all concerned that the legal position should be ascertained. In case the same thing should happen again next year."

The need for there to be a prevention of any such recurrence in event of the plaintiffs contentions succeeding seems therefore to be of paramount importance in this area of the matter. I now turn, therefore, to a consideration of the questions posed. The main questions which arise for determination are:-

1. Does the Minister have the power to act in the manner that she did in revoking the appointments of the entire Board?

2. If she does have such a power is this a discretionary power and if so how should it be exercised?

3. Did the Minister's powers also apply to enable her to revoke the appointment of those members nominated by the special groups or organisations without consultation?

4. Was the Interim Board appointed by the Minister properly constituted?

<u>The Arguments</u>

Mr. Rattray for the plaintiffs has submitted that:-

1. The Minister in revoking the appointments of the entire Board sought to exercise her statutory powers under regulation 79(3) of the Education Regulations 1990. The particular regulation gave the Minister a discretion to revoke such appointments.

2. It is clear from the facts that in so acting the Minister did not act in accordance with the mandatory requirements of the regulations in that she did not consult any of the various organisations or groups who were responsible for nominating

the special appointees on the Board.

3. Upon a proper reading of the Education Act and Regulations, in particular sections 3 and 9 of the Act and regulation 71 it is clear that:-

(i) The Management of schools is envisaged as a part of the co-ordinated educational system (section 3(e) of Act).

(ii) From the facts in this case there is no question of there being a serious failure in the working of the educational institution at Ferncourt which would enable the Minister to seek to exercise her statutory powers under section 9(3) of the Act.

(iii) The Minister as the repository of the power to appoint a Principal could have gone over the Board and appointed a Principal.

(iv) The Board was entitled to stand by its recommendations.

4. The scope and purpose of the Act is the establishment and provision of a proper system of education in Jamaica and the creation of School Boards is central to that purpose.

5. The relevant regulations to be examined in relation to the constitution of the particular Board is regulation 71. This regulation has to be examined in the light of the provisions of section 9 of the Act.

6. Regulation 71 envisages the participation of the entire community in the educational system of the country. The idea being that the community should be involved in the educational process of an area so as to give the members some feeling of commitment in the affairs of the educational institution.

7. Regulation 79(3) is of importance in determining the first three questions posed. This regulation from the manner in which it is framed imposes a discretionary power and not an imperative direction or a mandatory one.

Having regard to the scope and purpose of the Education Act and the Regulations 1980, if his submission in this regard is right, then the blanket dismissal of the entire Board was contrary to the spirit of the Act and Regulations.

In any event the actions of the Board were not improper as it could not properly act upon the directions of any other Body. There was a discretionary power in the Board to recommend someone to fill the post of Principal. The Minister was free to accept or reject this recommendation. The revocation of the entire Board by the Minister disabled her from properly exercising her discretion in relation to each member.

8. Insofar as the Interim Board was concerned as such Boards are now regulated by the Education Regulations 1980, the Board appointed by the Minister was clearly not lawfully constituted as it consisted of only five members.

The court's attention was also directed by Mr. Rattray to several authorities but for the purpose of this Judgment I shall draw reference to the following:-

Padfield vs Ministry of Agriculture Fisheries and Foods /1968/ 1 A.E.R. 694.

Congreve vs Home Office /1976/ 1 A.E.R. 697.

Meade vs London Borough of Harringey /1979/ 2 A.E.R. 1016.

Mr. Langrin for the defendants when his turn came to reply to the submissions made on behalf of the plaintiffs sought to confine his arguments in the main to an interpretation of regulation 71 and 79(3) of the relevant regulations being considered.

The question of the Locus Standi of the plaintiffs was also raised. He contended that:-

1. Assuming that there was the basis for any of the plaintiffs proceeding to bring the action the question which will arise in relation to them is whether the provision

in regulation 79(3) as to consultation is directory or mandatory. If the former then the Minister's act would have been valid. If the latter then he conceeds that the act would be invalid.

2. In considering whether the Minister's exercise of her power to revoke was properly exercised one has to look at the wording of the particular regulation. It submitted that the words imported a wide discretion to the Minister. He also drew reference to section 77 and 93(1) of the Constitution of Jamaica with regards to the Minister's power under the two sections.

In this regard he further submitted that it was the Minister charged with responsibility for Education who was in charge and not the Board. Where there is a conflict between the Minister and the Board the Minister has the final say.

3. It is not for the court to substitute its opinion on what the court considers to be expedient but to consider and ascertain whether there was any factual basis on which the Minister could have exercised her discretion in coming to the conclusion that it was expedient for her to remove the Board.

4. When one examines the affidavit of Mr. L.L. Goodin it discloses the basis upon which the Minister acted. The Minister's letter of revocation has also given a reason for her acting as she did.

5. When the whole tenor of the letters written by the Chairman of the Board, Mr. A.E. Barrett, were considered this suggests that there was a deadlock between the Minister and the Board. The question arises therefore as to who was to be satisfied? Clearly it was the Minister who has to be satisfied.

The Board here clearly was refusing to follow the directions of the Minister then the proper remedy for the Boardwas an appeal to the Electorate, not to the court.

6. There is nothing here to indicate that the Minister acted in bad faith, whimsically or capriciously.

7. Insofar as the Interim Board was concerned the Minister exercised her powers under section 9 of Act in setting up this Board. This section is inconsistent with the provisions under regulation 71. This being so the Act prevails. The Minister therefore had authority under section 9 of Act to appoint a Board of at least three persons. The Interim Board which consisted of five persons was therefore a valid one.

The Law

The Law as to the exercise by a Minister or Statutory Body of what is here clearly a discretionary power vested in the Minister is by now well settled.

The principles to be applied as regard the review of discretionary powers have been summarised by Professor DeSmith in his Judicial Review of Administrative Actions 2nd Edition at page 271 where the learned author states:-

> "The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must not act under the dictation of another body or disable itself from exercising a discretion in each individual case.
>
> In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith. Must have regard to all relevant considerations and must disregard all irrelevant considerations, must not seek to promote purposes alien to the letter or spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."
>
> (Underlines mine)

The procedure laid down for the appointment of a Principal in Schedule B of the Regulations directed the Board of the Ferncourt High School in exercise of its

discretion to select the applicants whom they considered acceptable for appointment. The decision having been taken by the Teachers' Commission, also acting in their own discretion not to forward a recommendation to the Minister, the Minister as the Constitutional Authority had a right to request the Board to reconsider the matter (see section 32 of the Constitution of Jamaica).

It is contended by Mr. Langrin and conceeded by Mr. Rattray that the powers vested in the Governor General in similar circumstances would apply by analogy to a Minister where he acted on the recommendation of an Advisory Body.

Section 32 (2) of the Constitution provides that:-

32(2) "Where the Governor General is directed to exercise any function on recommendation of any person or authority, he shall exercise that function in accordance with such recommendation."

Provided that:-

(a) "before he acts in accordance therewith, he may in his discretion, once refer that recommendation back for reconsideration by the person or authority concerned and

(b) if that person or authority having reconsidered the original recommendation under the preceeding paragraph substitutes therefor a different recommendation, the provisions of this subsection shall apply to that different recommendation."

It can be seen from the above provision that it leaves the discretionary power in the recommending authority free and unfettered.

On an examination of the facts in this case, however, the request contained in the Ministry's letter of 11th August, 1983 addressed to the Chairman of the Board was one "asking the Board to reconsider the matter and to submit a new recommendation." (Underlines mine)

This request was clearly outside of the Minister's powers. The Board could properly have been asked to reconsider and resubmit its recommendation, but by

requesting a new recommendation what the Minister sought to do was to tell the Board that having reconsidered the matter it could not resubmit the original recommendation. It is my contention that to allow the Minister to do so would be to place a fetter on the Board's discretion to make their own selection and this is an area where the Board could not properly act upon the dictation of another body including the Minister.

When the Board having met therefore to reconsider the matter took the decision to stand by their original recommendation they were clearly acting within their powers.

The Minister as the responsible authority could have gone over the heads of the Board and made her own appointment. This she did not do but choosed instead to revoke the appointments of the entire Board.

It has been the contention of Mr. Rattray and conceeded by Mr. Langrin that there is no Ministerial power which is unfettered. Mr. Rattray has further submitted that where the discretion is a statutory one the power of review is, however, more liberally exercised.

The power under which the Minister acted gave to her what was clearly a very wide discretion. The provision reads:-

79(3) "The Minister may at any time revoke the appointment of any member of a Board if he thinks it expedient, but where he intends to revoke the appointment of a member who was elected or nominated by an organisation or group, he shall consult with the organisation or group, as the case may be before he revokes such appointment." (Underlining mine).

Although the regulation refers to the revocation of any member of the Board, it is clear from the Interpretation Act that when the Act is applied to a construction of the particular provision it would include the plural and therefore the

power given to the Minister would be one in which she was empowered to revoke the appointment of the entire Board.

The regulation, however, makes a clear distinction between a general exercise by the Minister of her powers and a particular exercise when it is applied in revoking the appointments of Board Members who were appointed on the nomination of the special organisations or groups. Upon any reading of this provision it appears to me that Parliament is here by this procedural requirement, spelling out in the clearest possible manner that consultation of those bodies is a precondition on the Minister's lawful exercise of her powers to revoke the appointment of those members.

The section does not contain the words of a permissive nature that she may consult with these groups, a situation which would leave the question as being one for the Minister to determine whether she did so or not, but states that she shall do so, a situation which is clearly in the nature of an imperative direction to the Minister. These words coming after words importing such a wide discretionary power to the Minister lends force to any contention for mandatory interpretation to be put upon the requirement for consultation.

Despite this, however, Mr. Langrin contends that the provision as to consultation is to be looked at as directory only and accordingly it had only to be substantially performed to be valid. A distinction has to be drawn between statutes creating public duties and those creating private duties. The argument being that the former are directory only whereas those of the latter are mandatory.

The authorities, however, establish that in the absence of an express provision the intention of the Legislature is to be ascertained by weighing the consequences

of holding a statute to be directory or mandatory.

When such an approach is adopted it is my contention that for the power of the Minister to be properly applied and exercised to a provision in which the meaning of the words are clear, it had to be used in such a manner as to achieve the scope and object of the regulations. This certainly could not be achieved by a summary dismissal of the Board.

When regulation 71 is examined it is to seen that it was Parliament's intention to involve a wide cross-section of the school's community in the educational process by the manner in which Boards of Management of Secondary Educational Institutions owned by Government were to be constituted. It is of some significance that of the fifteen members which formed the Board, the Minister was directly responsible for the nomination of four persons and these special interest groups for the remainder.

Having regard to my interpretation of regulation 79(3) when examined in the light of how such Boards of Management are constituted under regulation 71 then to allow for the Honourable Minister to act on the facts in this case in carrying out a blanket revocation of the entire Board would in my humble opinion be entirely against the whole spirit and purpose of the regulations which has as its main objective, not only, the interest of the school's community being maintained by the appointment of the nominees of certain interest groups on the Board, but that before such an extreme course as the revocation of the appointment of their representatives was resorted to that the opportunity be afforded them to give them a hearing in order to ascertain their wishes by means of consultation.

Having regard to regulations 71 and 79(3) when these provisions are examined together in the light of what is the intention of the legislature as set out in the

Code I agree with Mr. Rattray's contention that the manner of the Minister's exercise of her power to revoke the entire Board and in so doing, an act which precluded her from fulfilling the mandatory requirements of 79(3) as regards consultation, was clearly an improper and excessive exercise of those powers. What was the effect of the Minister's actions therefore? Quite obviously as she had a wide discretionary power to revoke the appointments of four members including the Chairman "at anytime without consultation where she thought it expedient so to do," one's power of review is here limited to looking at the manner of her exercise of these powers. In an area where she had the discretion to revoke she is the best judge as to whether or not such actions were necessary. Moreover, having regard to the actions of the Chairman and the Board generally in refusing to comply with the Minister's request to readvertise the post, this certainly made the relationship between the Chairman and the other three nominees who were appointed by the Minister and the Minister herself untenable.

The Minister no doubt may have seen the actions of the entire Board lead by its Chairman, her own nominee, as a breach of the confidence which one would expect to repose between a Minister and a Board for which she had the ultimate public responsibility.

The situation here may best be summed up by reference to a statement in 3rd Edition, Halsburys Law of England, Volume 30 Paragraph 1326 under the subheading, "non interference with the exercise of discretionary powers."

> "Where a Minister of the Crown before pursuing a particular course of action is required to "have reasonable cause to believe" certain matters, it is not the function of the courts to act as a Court of Appeal from the decision made in his discretion by the Minister provided the decision was made in good faith.

> "The courts will neither enquire into the grounds for the Minister's belief nor consider whether there were or were not grounds on which such belief could reasonably be held.
>
> Similarly where Minister's or others are enjoined to be "satisfied that it is requisite," satisfied after consultation that it is expedient in the national interest" or "satisfied that in the public interest it is necessary or expedient," before taking a particular course of action, the matter is one of opinion and the policy as to which the Minister, again assuming that he acts bona fide, is the sole judge."
> (Underlining mine).

It appears that having regard to the wording of regulation 79(3) as to the nature and extent of the powers given to the Minister the statement referred to applies with equal force to the facts before me to revoke the appointment of four members of the Board including the Chairman.

On the basis that reasonable grounds did exist, due to the refusal of the Chairman and the Board generally to readvertise the post of Principal; for the Minister to exercise her powers to revoke the appointment of those persons nominated by her I would hold that her actions in this regard operated to effect a revocation of the appointment of those persons but amounted to an erroneous and invalid exercise of her powers insofar as it sought to revoke the appointment of those members nominated by the special organisations and groups as provided for under regulation 71. These persons therefore remained as Members of the Board until the life of the Board ended on 10th March, 1984.

Was the Interim Board properly constituted? The answer to this question is dependent upon an examination of section 9 of the Act and Regulation 71 of the Code. Section 9 makes very interesting reading:-

9(1) "Every public educational institution shall be administered (a) by a Board of Managers or a Board of Governors either of which shall consists of not less than three persons appointed in the prescribed manner and shall have such

"powers and duties as may be prescribed; or (b) where the Minister so directs, in accordance with the provisions of a scheme approved by the Minister.

(2) Every scheme which provides for the management of a public educational institution shall contain provisions for the constitution, powers and dutoes of a Board of Managers or a Board of Governors for the educational institution to which the scheme relates."

The particular section allowed for a Board of at least three persons. It is therefore contended by Mr. Langrin that as the Interim Board consisted of five persons it was in keeping with the powers of the Minister under section 9 of the Act.

On a careful reading of 9(1)(b) however, it is my contention that the Education Regulations 1980 when examined is to be seen as being a comprehensive scheme for the management and conduct of secondary educational institutions approved by the Minister.

Section 43(1) of the Education Act provides:-

"The Minister may make regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular without prejudice to the generality of the foregoing may make regulations -

(a) for the management and conduct of public educational institutions."

The 1980 Regulations commonly referred to as the Education Code was prescribed as part of a new deal for education throughout the Island. Regulation 71 was the provision to which the Minister resorted in setting up the original Board and provides for a Board of some fifteen persons.

71(2) provides that "the quorum shall be seven and shall include the Chairman or Vice Chairman."

If therefore Regulation 71 was intended to govern the manner in which "every secondary educational institution owned by Government shall be administered" it would follow that having regard to the clear mandatory requirement of the section it may therefore be contended that the Board of Management of such institutions

were intended by Parliament to conform with the particular requirement of the regulations as prescribed certainly from and after 1st March, 1981 when the Code came into force.

Section 9(1)(a) therefore is when examined in the light of Regulation 71 of the Code not as Mr. Langrin contends inconsistent with the provision in the regulations. Moreover, Regulation 71 relates to the Board of Management of "Secondary Educational Institutions owned by Government" a body in name and character far removed from the Board of "Public Educational Institutions" provided for under section 9 of the Act.

It is my opinion, therefore, that in constituting the Interim Board consisting of five persons the Minister was not acting in conformity with the mandatory procedural requirements as set out in Regulation 71 and her actions in this regard was an invalid exercise of her powers under Regulation 71. This question therefore has to be answered in the affirmative.

It is of note that the life of this Interim Board has now been prematurely terminated by the Minister after being in existence for a mere two months and attempts are now being made to reconstitute a proper Board in conformity with Regulation 71. It seems therefore that in the final analysis good sense has now been allowed to prevail.

Mr. Langrin has also sought to challenge the jurisdiction of the court to granting the declarations sought.

It is without question that section 239 of the Judicature (Civil) Procedure Code makes ample provision for such relief to be granted.

The nature of the remedy was fully considered by the Court of Appeal in Civil Appeal Nos. 46 & 47/80, The Attorney General for Jamaica and others vs Donald Thompson. Kerr J.A. at page 10 of the Judgment said in quoting from DeSmith's Judicial Review of Administrative Actions 2nd Edition page 494.

> "A declaratory judgment differs from other judicial orders in that it declares the law without pronouncing any sanction directed against the defendant."

He then rightly observed that:

> "This court has not been unmindful of the usefulness of declaratory judgments in determination of questions of law of general public importance."

Nor ought the court for that matter to be concerned as to the likely consequences that such a relief if granted may have for the defendants as Mr. Langrin contends. If the Minister has erred in the manner of the exercise of her statutory powers then she is clearly not placed in any special position as distinct from any other public official or statutory authority as ought to preclude the court from granting the reliefs sought.

Summary of Answers to Question Posed

1. Yes insofar as those members who were special appointees on the Board.

2. Yes

3. Yes

Declarations granted to the 2nd and 3rd plaintiffs as prayed for in/ (1) and (2) of the Summons. Costs to the 2nd and 3rd plaintiffs to be agreed or taxed.

No order as to costs against 1st plaintiff. Certificate for Counsel.

Judge