



[2015] JMSC Civ 90

IN THE SUPREME COURT OF JUDICATURE

THE CIVIL DIVISION

CLAIM NO. 2015 HCV 01418

BETWEEN	LENNOX HINES	CLAIMANT
AND	ELECTORAL COMMISSION OF JAMAICA	1st DEFENDANT
AND	MINISTER OF LOCAL GOVERNMENT & COMMUNITY DEVELOPMENT	2nd DEFENDANT
AND	ATTORNEY GENERAL OF JAMAICA	3rd DEFENDANT

IN CHAMBERS

Mr. Alando Terrelonge and Mr. Shane Dalling instructed by Bailey Terrelonge Allen for the Claimant/Applicant.

Miss Marlene Chisholm instructed by the Director of State Proceedings for the Defendants.

Heard: 24th March 2015 & 13th May 2015.

Application for Interlocutory Injunction – Interim Declarations in lieu of Injunction – Section 16 of Crown Proceedings Act – Judicial Review – Locus Standi for Declaratory relief for public law issues – Legal Interest – Special injury above general public – Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd. – Part 56 of CPR – Sufficient interest – Whether the Defendants have the power under section 3 of the Municipalities Act to extend and/or adjust the boundaries of Portmore Municipality – No injunction against the Crown and/or its servants or agents – Injunction/Interim declarations refused.

CAMPBELL J.

[1] The Claimant, Lennox Hines, is a Businessman, and elector who resides in the Portmore Municipality.

- [2] The 1st Defendant, the Electoral Commission of Jamaica was established pursuant to the **Electoral Commission (Interim) Act**, 2006. The Commission comprises four (4) selected members, four (4) nominated members which include two (2) persons nominated by the Prime Minister and two (2) nominated by the Leader of the Opposition and the Director of Elections. Its responsibility is to insulate the electoral process from political control, conducting general elections, by-elections or referenda. It is responsible for compiling and maintaining the register of eligible electors; verifying their identity; approving political parties eligible to receive state funding; and administering electoral funding and financial disclosure requirements.
- [3] The 2nd Defendant, the Minister of Local Government and Community Development, is responsible for local government development planning, minor water supplies, municipal parks & beautification, markets, street lighting, solid waste management, fire services and disaster preparedness among other national matters.
- [4] The 3rd Defendant, the Attorney General is the principal legal adviser to the Government of Jamaica. Pursuant to the **Crown Proceedings Act**, all civil proceedings by or against the Government are instituted in the name of the Attorney General.
- [5] The matter now before the court concerns steps taken by the 1st and 2nd Defendants to extend and/or adjust the boundaries of the Municipality of Portmore. The Municipality boundaries of Portmore were established pursuant to section 3 of the **Municipalities Act** (the “Act”) by Order of the Minister with responsibility for Local Government on the 22nd May 2003 and gazetted in Volume CXXVI of the Jamaican Gazette.
- [6] The Claimant is now contending that the actions of the 1st and 2nd Defendants purportedly done pursuant to Section 3 of the Act are unlawful (*See; Affidavit of Orrette Fisher filed 19th March 2015*). That Section 3 of the Act does not confer such powers, on the Minister. Consequently, the Claimant is seeking an injunction to restrain the 1st and 2nd Defendants from continuing such actions.

The Application

- [7] By way of a Notice of Application for Court Orders filed 3rd March 2015, the Claimant, Lennox Hines is seeking the following Orders;
1. *An injunction restraining the Defendants whether by their servants or agents or otherwise from collecting signatures of electors of the Municipality of Portmore and the surrounding*

areas of Lakes Pen, Quarrie Hill, Grange Lane, Clifton and those adjoining them as part of a Petition to adjust and/or extend the boundaries of the Municipality of Portmore as contained in Part 1 of the Schedule to the Municipalities (Portmore) Order, 2003, until the final determination of this matter.

- 2. An injunction restraining the 2nd Defendant whether by his servants or agents or otherwise from issuing an Order pursuant to Section 3 of the Municipalities Act causing the boundaries of the Municipality of Portmore to be adjusted or extended.*
- 3. Such further and other Orders as this Honourable Court deems just in the circumstances.*

The Claimant's Case

- [8] The Municipality of Portmore has already been declared a Municipality by Order dated May 22, 2003 and was duly gazetted. It was submitted that no signatures for the same purpose can be collected again from the electors of Portmore under Section 3 of the **Municipalities Act**. The Minister's power to make an Order has been extinguished.
- [9] That Section 3 of the Act requires 50,000 inhabitants for an area to have Municipal status. Based on the documentations provided by the Defendants there are approximately 4,000 inhabitants in that area. The action of the Defendants is unlawful since there is no provision in law which allows for the exercise of this power.
- [10] The 1st and 2nd Defendants have made every effort to defeat the claim of the Claimant by expediting the process of collecting signatures. The procedure by which the electors were asked to sign the petition is unlawful. Advertisement by the 1st Defendant speaks to registered electors of Portmore, to the regularization of the boundaries and not the extension or adjustment, and is in effect misleading.
- [11] The Claimant has satisfied all the requirements for the grant of an interim injunction, enunciated in **National Commercial Bank v Olint** [2009] UKPC 16. There is a serious issue to be tried. That is, whether the correct use of section 3 of the **Municipalities Act** will permit the Defendants to extend and/or adjust the boundaries of a Municipality. The claim at hand is not frivolous or vexatious since the Claimant is an elector, a prospective candidate for election in the Municipality and is also the Deputy Chairman of the opposition political caucus which will be

unfairly prejudiced by the unlawful actions of the 1st and 2nd Defendants. Damages is inadequate, as a boundary change, will adversely affect the nature and purpose of the Municipality of Portmore. It will cause to be included several underdeveloped and informal settlement, that will cause property value to depreciate. Property taxes paid in Portmore will be used to subsidize these areas and they will ultimately affect the balance of power in the Municipal Council.

- [12] The Defendants would be adequately compensated if the injunction was to be granted since the costs to the Defendants at this stage would only involve that of verification of the signatures already collected and the gazetting of the proposed Order and the Claimant has adequate means to compensate for any loss which the Defendants may incur.
- [13] The court should consider the relative strength of the parties' case. Additionally, the court should consider the course which will least likely cause irremediable prejudice if the injunction is granted or not. If an election should be held on these adjusted boundaries and thereby affect the Claimant's constitutional right to vote in a free and fair election, this effect would be irremediable. (See; **Brantley v Constituency Boundaries Commission** JCPC 2015/0003). The balance of convenience in this case favours the status quo being maintained, as granting the injunction would create less disruption and all else being equal, less justice.
- [14] The Defendants are not immune from Orders of the court under Rule 17.1(1)(a) or (b) of the **Civil Procedure Rules**, as stated by Justice Mangatal at paragraph 53 of **Ralph Williams & others v The Commissioner of Lands & Others** [2012] JMSC Civ 118, where she said;

“by virtue of an Amendment to the Crown Proceedings Act in 2002, the CPR are incorporated into the Crown Proceedings Act. The CPR being incorporated into this Act constitutes statutory authority empowering the Court to grant interim declarations against the Crown.”

- [15] The court can “grant an interim declaration against the Crown in the circumstances in which it could have granted an interim injunction against a subject in proceedings between subjects.” Further the court should take the view that, “an interim declaration along the lines sought by the Claimants would assist in preserving the status quo which is one of the more common uses which an interim declaration may be justly put”. (See, Paragraph 58 of **Ralph Williams's case**).

The Defendants' Case

[16] The Claimant is only seeking injunctions to retrain the collection of signatures and issuing of an Order pursuant to Section 3 of the Act. There is no mention in the Application that the Claimant is seeking interim declarations. At this point, in terms of the collection of signatures there is nothing to injunct, based on the evidence the task of collecting the signatures was completed. In relation to the substantive claim, the Applicant has filed a Fixed Date Claim Form where he seeks a number of declarations. What is now before the court is an application for injunction and the crux of this matter concerns the statutory interpretation of section 3 of the Act. This however, is a question of law.

[17] The issue is whether an injunction can be granted against the Crown and/or its servants or agents. The Supreme Court has the statutory power to grant an injunction pursuant to section 49 of the **Judicature (Supreme Court) Act**, which provides in part;

“with respect to the law to be administered by the Supreme Court, the following provisions shall apply, that is to say:

(h) mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the court, in all cases in which it appears to the court to be just or convenient that such order should be made and any such order may be made either unconditionally or upon such terms and conditions as the court thinks just...”

[18] Counsel submitted that the case is commenced by way of civil proceedings and not judicial review or constitutional proceedings. The language of section 16 (1) proviso (a) and (2) of the **Crown Proceedings Act** is clear. The court has no power or jurisdiction to issue an injunction against the Crown in civil proceedings, but may make an order declaratory of the subjects' right. The 3rd Defendant has been joined in these proceedings by virtue of the provisions of the **Crown Proceedings Act**. As the 1st and 2nd Defendants are servants and/or agent of the Crown, the Claimant's application for the interim injunction ought properly to be refused.

[19] In the case of **Ralph Williams & Other v The Commissioner of Land & Others (supra)**, it is important to note that no injunction was granted against the 1st Defendant. The injunction was only granted against the 2nd Defendant who was not an agent or servant of the Crown. Also, the case of **Viralee Bailey-Latibeaudere v The Minister of Finance & Planning and Public Service et al**

[2014] JMCA Civ 22, concerned leave to apply for judicial review and involved questions of breaches of the Constitution. The Claimant in this case has proceeded by way of civil proceedings and as such has not invoked the supervisory jurisdiction of the court.

[20] Section 29 (a) of the **Interpretation Act** provides;

“Where an Act confers power on any authority to make or issue regulations, the following provisions shall, unless the contrary intention appears, have effect with reference to the making, issue and operation of such regulations-

(a)- a regulation may be at any time amended, varied, suspended, rescinded or revoked by the same authority and in the same manner by and in which it was made;”

Therefore, any change to the boundaries or area to be called municipality can be changed in a similar way it was created or established. As such, the Minister has the power under the Act to vary the municipality. Therefore, the Municipality of Portmore it is not fixed.

Analysis and Findings

[21] The Applicant, Mr. Lennox Hines, has filed a Notice of Application for Court Orders, seeking injunctions: (a) restraining the Defendants whether by their servants or agents or otherwise from collecting signatures of electors of certain named communities; and (b) restraining the 2nd Defendant whether by his servants or agents or otherwise from issuing an Order pursuant to Section 3 of the Act.

[22] The substantive matters for determination are contained in the Fixed Date Claim Form, filed on the 3rd March 2015, which states that the Claimant, Lennox Hines of Mahoe Drive, Bridgeview, Portmore, in the parish of St. Catherine, claims against the Defendants, for the following Declarations;

i. “A Declaration that Section 3 of the Municipalities Act does not provide for the regularization and/or extending of the boundaries of the Municipality.

ii. A Declaration that a Municipality of Portmore having already been established in 2003 by the giving of more than 7% signature on a Petition and the Minister with responsibility for Local Government having declared the community of Portmore a Municipality there is no legal requirement in the Municipalities Act for the obtaining of any further signatures.

iii. *A Declaration that the process of obtaining signatures from persons living outside the boundaries of the established Municipality of Portmore is unlawful and not sanctioned by the Municipalities Act signing this Petition.*

iv. *A Declaration that the process of obtaining signatures from persons living within the boundaries of the Municipality of Portmore to cause the boundaries of the said Municipality to be adjusted and/or extended is unlawful.*

v. *A Declaration that the process of obtaining signatures from person within and outside the boundaries of the Municipality of Portmore to cause the boundaries of the said Municipality to be adjusted and/or extended is unlawful and null and void.”*

[23] The Claimant’s affidavit in support of the Fixed Date Claim Form, describes him as a businessman and an elector in the Municipality of Portmore. The affidavit, states inter alia; at paragraph 2; *“that sometimes in the last week of February 2015, I heard announcements on Towncriers that electors of the Municipality were being invited by the 1st Defendant to sign a Petition to regularize the boundaries of the Municipality.”*

Paragraph 3 states; *“that I was under the impression that there was some irregularity in the boundaries of the Municipality of Portmore and that it was part of my civic duty to assist in the correction of such defect.”*

Paragraph 4 states; *“that I went to East Central St. Catherine office of the 1st Defendant to enquire about the process and was thereafter shown a document and asked to sign same, I objected to signing my signature to the said document because it only stated that I am verifying that my name appears on the official list of electors in the Municipality of Portmore.”*

Paragraph 11 states; *“that as a citizen and elector of Portmore I made further inquires of the Electoral Office and was informed that at least seven (7%) percent of the signatures of the registered electors of Portmore are required to sign a Petition in order to adjust the boundaries of the Municipality of Portmore to incorporate counties that are part of the Constituencies of East St. Catherine and South St. Catherine which are not now within the boundaries of the Municipality of Portmore.”*

Paragraph 20 states; *“that I am informed and do verily believe that the process being used to adjust the boundaries of the Municipality is unlawful and has serious implications for the viability and sustainable management and development of the Municipality of Portmore.”*

Paragraph 24 states; “*that I as an elector therein, I believe it is my civic duty and personal responsibility to cause the process to be halted until the proper procedures are determined and effected.*”

Locus Standi – Judicial review

- [24] The question of Mr. Hines’ standing to seek these declarations in which the other parties are the State and public bodies was not addressed by either side. The Applicant has joined the Attorney General of Jamaica pursuant to the **Crown Proceedings Act**. The claim was not filed pursuant to Part 56 of the **Civil Procedure Rules (CPR)**, as an application for administrative orders. Part 56(1) (c) of the CPR, allows for applications for declarations or interim declaration in which a party is the State, a court, a tribunal or any other public body and the court has power by virtue of any enactment to quash, any order, scheme, certificate or plan, any amendment of approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department. Such an application would have had to satisfy the requirements of Part 56.2(1) of the CPR as to “*who may apply for judicial review.*” The question of standing is a threshold consideration.
- [25] Part 56.2 of the CPR lays down the criteria for entitlement that allows the Applicant to proceed with an application for judicial review. Part 56.2 (1) of the CPR provides that; “*an application for judicial review may be made by any person group or body which has **sufficient interest** in the subject-matter of the application.*” According to Part 56.2 (2) of the CPR this includes, inter alia -
- (a) Any person who has *been adversely affected* by the decision which is the subject of the application
 - (f) Any other person or body who has a right to be heard under the terms of any relevant enactment of the Constitution.
- [26] Part 56.2 (2) (b) and (c) of the CPR allows an application by any body or group, who are acting at the request of a person who is, *adversely affected* by the decision which is the subject of the application, or represents the views of its members, who are similarly *adversely affected*. Part 56.2(2)(e) of the CPR allows an application by anybody or group, that can show that the matter is of *public interest* and that the group possesses expertise in the subject-matter of the application. In summary it must be shown that the Applicant has “sufficient interest” in the subject matter.
- [27] Any body or group who can demonstrate that the issue concerns a matter of public interest and the group or body has expertise in the particular area has sufficient interest. Additionally, Part 56.2(2)(d) of the CPR states that any

statutory body where the subject matter of the application falls within its statutory remit also has sufficient interest. On an application for leave the Applicant must show '*whether the applicant is personally or directly affected by the decision about which complaint is made or where the applicant is not personally or directly affected, and what public or other interest the applicant has in the matter.*' (See; Part 56.3(3)(h) of the CPR).

- [28] In judicial review proceedings in **R v Her Majesty Inspectorate of Pollution, Ex. P. Greenpeace Ltd. [No. 2]** [1994] 4 All 329, it was contended that the Applicant Greenpeace, had failed to establish "*a sufficient interest in the matter*" to which the application related, and accordingly had no locus standi to make the application. Otton J, said, "*I consider it appropriate to take into account the nature of Greenpeace and the extent of its interest in the issues raised, the remedy Greenpeace seeks to achieve and the nature of the relief sought.*" The judgment acknowledged the national and international standing of Greenpeace, and that the organization had some 2, 500 members in the region around which the complaint centered, who would have a genuine perception of a danger to their health and safety from a discharge from radioactive waste even from testing. The court recognized that Greenpeace had a particular experience in environmental matters, had access to experts in science technology and law and rejected the argument that Greenpeace is a mere busybody.

Standing for declaratory relief for public wrongs

- [29] The case law indicates that the requirement of locus standi for the applicant for declaratory relief in public law issues is more demanding than on an application for the prerogative remedies in judicial review. The Authors of **De Smiths, Review of Administrative Law**, Fourth Edition, by J.M Evans, states at page 520, "*it would seem that the courts are unwilling to extend the generous locus standi requirements of certiorari to individuals who seek relief by means of a declaration.*" This higher standard was illustrated in **Whitfield v Attorney General** (1989) 44 WIR 1, where the judgment quoted with approval Luckhoo P's adoption of Lord Diplock's dictum in **Securities and Exchange Commission of the USA v Guaranty Trust Co. Ltd.** (unreported) Civil Appeal 19 of 1985, Bahamas CA. where he said, "*Accordingly a private person was not entitled to bring an action in his own name for the purpose of preventing public wrongs and therefore the court had no jurisdiction to grant relief, whether interlocutory or final, whether by way of an injunction or declaration, in such an action*", and quoted with approval, at page 10, where Luckhoo P stated that; "*whereas a 'sufficient interest' may be enough for an applicant for a prerogative order to*

show, an applicant for a declaration had to show a '**legal interest**'." [Emphasis added].

- [30] In this matter, the applicant seeks a review of the statutory regime of the **Municipalities Act** and questions the executive acts done pursuant to the legislation. The application concerns public law rights, the change of municipal boundaries and collection of the electors' signature. Applications for declarations that seek review of public law issues are dealt with in Part 56 of the CPR, particularly Part 56.1(d) provides this Part deals with applications;

"where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister, or government department or any action on the part of a minister or government department."

- [31] Although this application is for injunctive relief, the question of the standing of the applicant to apply for a declaration, is important for two reasons. Firstly, the applicant has admitted that his application seeks an injunction, and such a grant is impermissible against the Crown in civil proceedings as defined by the **Crown Proceedings Act**. Counsel for the applicant has submitted that Section 16 of the **Crown Proceedings Act**, allows for a declaration to be granted, in lieu of the injunction sought against the Crown. Secondly, the orders sought on the substantive claim are for declarations. There is therefore, the threshold consideration of whether the applicant, Lennox Hines can be granted a declaration or in other terms, has he the requisite standing for the grant of declaratory relief in these matters? The determination of that issue is a condition precedent to the hearing of the matter.

- [32] The authorities indicate that the circumstances in which a declaratory judgment may be given are so diffuse that, it poses some difficulty in formulating distinct guidelines as to a Claimant's locus standi. In general the rules adopted for injunctions apply to declarations. The learned authors of De Smith, **Judicial Review of Administrative Law**, Fourth Edition says at page 509;

"The plaintiff in an action for a declaration must establish that he has immediate personal interest in the subject-matter of the proceedings. In a matter affecting the public at large, a plaintiff must normally show that his own interest are in some way "peculiarly affected" by the defendant's conduct, but in determining whether the plaintiff's interests are sufficiently affected to give him title to sue, the courts have exercised a wide and not always consistent discretion."

- [33] In **Gouriet v Union of Post Office Workers** [1977] 3 All ER 70, the plaintiff having heard a news bulletin that the executive of the Post Office Workers Union had resolved not to process mail transmitted from England to South Africa, made an application to the Attorney General for his consent to file an action in a realtor suit for an injunction against the union. The Attorney General refused, and the plaintiff issued the writ in his own name. On an ex parte application in Chambers, the judge refused to grant the injunction on the basis that he had no jurisdiction to do so after the Attorney General refused to give his consent.
- [34] The plaintiff appealed. The Court of Appeal held that the court had no power to review the decision of the Attorney General on an application for his consent to bring realtor action and that the plaintiff was not entitled to sue in his own name for a permanent injunction. The Court of Appeal held unanimously that the plaintiff was entitled to seek declaratory relief against the union, and that they would grant an interim injunction until the final determination. The Court of Appeal stated that the plaintiff is entitled to apply for a declaratory relief against the union.
- [35] The Attorney General appealed, citing the essential issue to be that the plaintiff had not claimed to have any interest in preventing the postal boycott other than his interest as a member of the public and as such he was not entitled to bring the action in his own name after the Attorney General had refused to give his consent.
- [36] The House of Lords in overturning the Court of Appeal decision held;
- i. *that it was a fundamental principle of English Law that public rights could only be asserted in a civil action by the Attorney General, as an officer of the Crown representing the public. **Except where statute provided, a private person could only bring an action to restrain a threatened breach of the law if his claim was based on an allegation that the threatened breach of law would constitute an infringement of his private rights or would inflict special damage on him. [Emphasis added].***
 - ii. *It can be said to be a fundamental principle of English law that private rights can be asserted by individuals, but that public rights can only be asserted by the Attorney General as representing the public. In terms of constitutional law, the rights of the public are vested in the Crown, and the Attorney General*

enforces them as an officer of the Crown. And just as the Attorney General has in general no power to interfere with the assertion of private rights, so in general no private person has the right of representing the public in the assertion of public rights. If he tries to do so his action can be struck out.

[37] At page 85 of the judgment of **Gouriet v Union of Post Office Workers**, Lord Wilberforce states;

*“I shall content myself with saying that, in my opinion, there is no support in authority for the proposition that declaratory relief can be granted unless the plaintiff, in proper proceedings, in which there is a dispute between the plaintiff and the defendant concerning their legal respective rights or liabilities, either asserts a legal right which is denied or threatened, or claims immunity from some claim of the defendant against him, or claims that the defendant is infringing or threatens to infringe some public right so as to inflict special damage on the plaintiff. The present proceedings do not possess the required characteristics. The case on which so much reliance was placed by the plaintiff, **Dyson v Attorney General**, was one where a person was affected in his private rights”*

Further Lord Diplock at page 100 of the judgment said;

“There is no authority that the court has jurisdiction at the suit of a private individual as plaintiff to make declarations of public rights as distinct from rights in private law to which the plaintiff claims to be entitled. The court has jurisdiction to declare public rights but only at the suit of the Attorney General ex officio or ex relatione...”

[38] **Gouriet** was recently applied, in the Court of Appeal in Belize, in **Attorney General v Marin & Anor.** [2011] 2 LRC 484. At paragraph 25, it was stated,

*“that not being in a position to claim loss, no individual member of the public possesses the locus standi to institute proceedings against the respondents.” This was made clear by the observation by Lord Hobhouse in **Three Rivers DC v Bank of England** [2000] 3 All ER 1 at 44, where he said;*

“The plaintiff must have suffered special damage in the sense of loss or injury which is specific to him and which is not being suffered in common with the public in general... The plaintiff has to be complaining of some loss or damage to him which completes the special connection between him and the official's act.”

The special connection in this case is that it is been alleged that the Ministers abused their power and thereby cause loss or injury to the Government of Belize as the owner of the national land.”

[39] The evidence adduced on behalf of the Claimant, speaks to him objecting to signing a document, on the basis that it only said he was verifying that his name is on the voters' list. At paragraph 7, of his affidavit he speaks of being suspicious of the process and at paragraph 10, he complains that he finds advertisements placed in a newspaper as being misleading. At paragraph 24 of his affidavit, he states what his real motivation is; *“that I am an elector therein, and believe it is my civic and personal responsibility to cause the process to be halted until the proper procedures are determined and effected.”*

[40] The Claimant's written submissions, states at paragraph 24, that the claim is neither frivolous or vexatious since the Claimant is an elector, a prospective candidate for election in the Municipality and also the Deputy Chairman of the opposition political caucus which will be unfairly prejudice by the unlawful actions of the Defendants.

At paragraph 25, it was stated; *“That damages are not an adequate remedy for the Claimant in this case, because once the boundaries have been changed, it will adversely affect the nature and purpose of the Municipality of Portmore insofar as it will include several underdeveloped and informal settlement, that property value will depreciate, property tax paid in Portmore will be used to subsidize these non-paying areas and will ultimately affect the balance of power in the Municipal Council.”*

[41] The submission continues at paragraph 29 inter alia, *“That if the injunction was not granted, an election would be held on the proposed new boundaries, thus affecting the balance of power in the Municipal Council.”* The Claimant has not demonstrated any peculiar effect, the change in the municipal boundary would cause him either as an elector, or as Deputy Chairman of the opposition caucus. There is no evidence adduced to support his assertions in his written

submissions, that the several underdeveloped and informal communities will depreciate property values in the Portmore Municipality, and have effect on the balance of power. There is nothing to demonstrate injury peculiar to him.

[42] Even if it is accepted that property values will depreciate and the taxpayers will have to subsidize these new communities into the Portmore Municipal community, the Claimant has not show that he has suffered any prejudice above the other members of the Portmore community. In the case of **Whitfield v Attorney General** (1989) 44 WIR 1, the Chief Justice who had attained the retirement age of sixty five, was granted permission to continue to age sixty-seven which was permissible under the Constitution if recommended by the Prime Minister, after consultation with the Leader of the Opposition. The Prime Minister had not consulted the Leader of the Opposition after the Chief Justice had attained the age of sixty-five.

[43] The leader of the Opposition sought a declaration that the Chief Justice had not been validly permitted in office after attaining the age of sixty-five. The Attorney General who defended the claim raised two preliminary points, firstly that the proceedings were statute-barred by the six month rule under the **Public Authorities Protection Act**. Secondly, it was claimed that the plaintiff had no locus standi. The first instance judge found that the **Public Authorities Act** was inapplicable, but as he found that the plaintiff had no **locus standi** to institute the proceedings, and he refused to make the declarations. The plaintiff appealed to the Court of Appeal.

[44] The appellant having a case before the election court, where he was contending, the Chief Justice who along with another judge constituted, the Election Court was not validly appointed, did not confer 'special rights' on the appellant to entitle him to sue for a declaration. The response to Melville JA, at page 30, states;

"True it may be that the appellant had an interest in the due constitution of the Election Court, but so would every other citizen in the Commonwealth of Bahamas, each would be equally interested in whether or not the Chief Justice was lawfully continuing in office. It seems to me that the appellant's interest would be more concerned with righting a wrong or upholding a principle, which would not be within the "special interest" adumbrated by Gibbs J."

[45] The Judge at first instance relied on the case of **Glinton v Cash** (unreported) civil appeal 18 of 1985, Bahamas CA., where the appellant was an Attorney at the Bahamas Bar who sought a declaration invalidating the appointment of a Justice of the Supreme Court. The Court of Appeal rejected that the appellant's

professional identity gave him any special interest in the subject-matter of the application over and above that enjoyed by the general public. This court asks itself, what special interest has the plaintiff to enable him to bring this action? It cannot be his being an elector or even homeowner in Portmore, that would not by itself, give him any special interest up and above that of any other elector, or homeowner in Portmore. He has not alleged any breach of any private rights. There has been adduced no evidence of special injury peculiar to him. I find that the Claimant has failed to adduce any evidence of any special interest peculiar to him, above any other elector or homeowner in Portmore.

Serious triable issues

- [46] Having found that the applicant lacks the requisite standing, the effect would be that the applicant claim fails and his application refused. However, there were forceful arguments concerning issues identified, to test whether the guidelines settled in the authorities were satisfied, to allow the grant of interim relief to the applicant. The main issue before the court is a matter of construction of Section 3 of the **Municipalities Act**. There is unlikely to be any substantial divergence of relevant facts. There is no need for a mini-trial. The relative strengths of the cases can be tested as can their respective prospects of success. The crux of the Claimant's argument is that Section 3 of the **Municipalities Act** does not give the Defendants the power to extend or regulate the boundaries of the Municipality. That Portmore is already an established Municipality and persons in that area already signed the petition to establish the Municipality. The overarching basis for this contention is that Section 3 of the **Municipalities Act** does not allow for the extension or regularization of the boundaries.
- [47] On examination of the **Municipalities Act**, **Municipalities (Portmore) Order, 2003**, **The Municipalities (Exercise of Powers by St. Catherine Parish Council in respect of the Municipality of Portmore) Order, 2003**, **The Municipalities (Validation and Amendment) Act, 2014** and the **Charter of the Municipality of Portmore**, there is no expressed or implied provision which precludes the Minister from extending and/or adjusting the boundaries pursuant to Section 3 of the **Municipalities Act**. A "proposed municipality", can include an already established Municipality, such as Portmore. Additionally, the construction urged by Counsel for the applicant means that it was the intention of the framers to confer the Minister with the power to establish Municipalities, but not to extend or adjust them. The submission of the Defendant's Attorney-at-Law is that by virtue of Section 29 of the **Interpretation Act**, 1968, a regulation may be changed in the similar way it was established. Section 2 of the **Interpretation Act**, defines "regulations" to include rules, by-laws, proclamations, orders, schemes, notifications, directions, notices and forms. Therefore, although there is

the **Municipalities (Portmore) Order, 2003**, the Minister has the power to amend, vary, suspend, rescind or revoke this Order. The Defendants/Respondents have the stronger case and to my mind has the greater prospects of success on the determination of the substantial matter.

- [48] The second issue raised was whether an interim injunction can be granted against the crown, in the circumstances of this case. The thrust of the Defendants' Attorney-at-Law submission is that the Claimant cannot pursuant to the **Crown Proceedings Act** obtain an injunction against the Crown and/or its servants or agents. Counsel relied on Section 16 of the **Crown Proceedings Act**, which provides;

*“(1) In any civil proceedings by or against the Crown the Court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise **to give such appropriate relief as the case may require:***

Provided that –

*(a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, **the Court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and***

*(2) **The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.*** [Emphasis added].

- [49] In **Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd.** [1991] 4 All E.R. 65, a Privy Council decision of an appeal from the Court of Appeal, Jamaica, The Minister of Foreign Affairs and Trade, pursuant to Section 8 of the **Trade Act**, was allowed to prohibit the importation of goods and to regulate the distribution, purchase or sale of any class of goods. The Minister made an Order pursuant to those powers, making allocations of motor vehicles to a specified importer, a government owned company. The Respondents who were motor vehicle dealers, were notified that their allotment of motor vehicles were less than those in previous years. The Respondents issued summons to

quash the order. On an ex parte application, a judge granted a stay of the Minister's order. The Appellant's application to set aside the stay of execution, was granted by another judge. The Respondents appealed the latter judge's decision to set aside the stay of the Minister's order. The Court of Appeal reversed the setting aside.

- [50] The Privy Council rejected the Appellant's submission which had been advanced before the Court of Appeal, that an application to apply for leave to apply for certiorari or prohibition was proceedings against the government, and the only proper party was the Attorney General. This argument rested upon the provisions of the **Crown Proceedings Act**. Section 13, expressly provides that civil proceedings against the Crown should be instituted against the Attorney General. The Act however contains in Section 18, a restrictive definition of "civil proceedings" and the Court of Appeal was unanimous in holding that the proceedings were not civil proceedings within the Act.
- [51] The proceedings, in **Vehicles and Supplies**, for the prerogative writs fell within the area exempted by Section 18. There was thus no statutory requirement rendering the Attorney General either a necessary or a proper party, to those proceedings. The learned author of De Smith, **Judicial Review of Administrative Law**, notes at page 431, that "*there emerged a general principle that in matters of equitable jurisdiction in which the King's interests were involved the Attorney General was competent to act at the relation of a private plaintiff, the relator bearing the costs and receiving the benefit of the court's award.*" However, despite these historical developments, relator actions are not common today, as Otton J, observed, in the **Greenpeace case**, at page 350 where he said;

"Alternatively, the individual (or Greenpeace) might seek to persuade Her Majesty's Attorney General to commence a relator action which (as a matter of policy or practice) he may be reluctant to undertake against a government department. (See the learned commentary by Schiemann J, on Locus Standi [1990] Pub L 342. Relator actions are even less common in this jurisdiction, where by practice a representative from the Attorney General's Chambers routinely appears on behalf of the named department or agency in Crown side proceedings."

- [52] The Privy Council, in **Vehicles and Supplies**, held that the Court of Appeal was correct in concluding that the proceedings were not "civil proceedings" as defined by the **Crown Proceedings Act** and that the Appellant and not the Attorney

General was the proper party. There was no statutory requirement rendering the Attorney General either a necessary or a proper party. Their Lordship's judgment noted that the Appellant's primary argument, was that, the stay granted was in fact in the nature of an injunction and that no injunction could be granted against the Crown. Carey JA and Forte JA agreed and concluded that an injunction could not be granted against the Crown but a stay, pursuant to 564B of the **CPC** was permissible. Rowe JA felt it was unnecessary to consider the issue, since this remedy was irrelevant on the Crown side of proceedings.

Declaratory orders in private law

- [53] Since the decision in the **Vehicles and Supplies**, in 1989, the Civil Procedure Rules were promulgated in 2002. The **Crown Proceedings Act** was amended in 2004 to incorporate the CPR. Justice Mangatal, opined that Rule 17.1(1)(b) of the CPR, which allowed the grant of interim injunctions was incorporated, to allow the;

'grant of an interim declaration against the Crown in circumstances in which it could have granted an interim injunction against a subject in proceedings between subjects.' [Emphasis added].

Section 16 (2), of the **Crown Proceedings Act** has been altered and amended, insofar as "*orders which could not have been obtained in proceedings against the Crown*", are now available. Section 16(1)(a) had always provided for the granting, in lieu of an injunction and specific performance against the Crown, "*an order declaratory of the rights of the parties.*" Rule 17.1(1)(b) of the CPR in effect has removed the restriction of obtaining an interim declaration in civil proceedings against the Crown.

Interim Declaratory order in public law

- [54] Rule 56.1(1) (c) of the CPR, provides for an application generally referred to as an administrative order, for a declaration or an interim declaration in which a party is a state, a court, a tribunal or any other public body. Additionally, Rule 56.1(1) (d) also makes provision for an application where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.
- [55] These applications for declarations are in the area of public law. They arise from the courts power in an enactment to quash "*any order, scheme, certificate or plan, any amendment or approval of any plan*". By Rule 56.15 (1), "*any person*

who or anybody which appears to have a sufficient interest in the subject matter” maybe allowed to make submissions. The Court may therefore make interim declarations against the Crown in private law proceedings, as between subjects and subjects pursuant to the **Crown Proceedings Act**. The Court may also make interim declaratory orders, on an administrative order application, where the subject matter of the application arises in public law, pursuant to Rule 56.1.(1)(c) of the CPR. There is also the power to grant interim relief on an application for leave to apply for judicial review, pursuant to Rule 56.4(1) of the CPR. As such the application for interim declaratory order is refused.

[56] The Claimant relied on the Supreme Court decision in **Ralph Williams & Others v Commissioner of Lands & Others** [2012] JMSC Civ 118, where Mangatal J, held that injunction cannot be granted against the Crown and or its agent, but granted an interim declaration (*a remedy made available by the CPR*) in lieu of the said injunction. In that case, the Claimant, sought orders to restrain the Commission of Lands, from enforcing the terms of a Notice to Quit Illegally Occupied Government Lands. The Claimants alleged that, they have been in adverse possession, extinguishing the title of the then paper owner. The Claimant in Ralph Williams alleged that he had legal rights grounded in private law. Mr. Lennox Hines, has asserted no legal right, and the subject matter of his application is in public law.

[57] The Claimant also relied on **Viralee Bailery-Latibeaudiere v The Minister of Finance and Planning and the Public Service** [2014] JMCA Civ 22, in which the application for judicial review sought several declarations, and administrative orders, namely against the Minister and the Financial Secretary, orders of certiorari, prohibition and mandamus against the Minister, Financial Secretary and the Commission. The Applicant sought interim injunctions against the Commission, restraining it from making any recommendation to the Governor-General concerning the filling of the post of Commissioner General, Tax Administration. On an ex parte application, the Court granted an injunction restraining the termination of her employment until the hearing of the matter. The Applicant was granted leave to apply for judicial review. The Court of Appeal upheld the decision of the Sykes J, to grant leave and stated that in respect to injunctive relief the law was correctly stated by Smith JA, in **Brady & Chen Ltd. V Devon House Development Ltd.** [2010] JMCA Civ 33, where he said;

“section 16 (2) does not prohibit the court from granting injunctive relief against the Crown in judicial review proceedings . This is because by virtue of section 2(2), the phrase ‘civil proceedings’ does not include proceedings which in England would be taken on the Crown side of the

Queen's Bench Division." The instant proceedings were not applications for judicial review, injunctive relief..."

- [58]** Therefore, the applicant has failed to demonstrate that he has the greater prospect for success. As such, the application for injunction/ interim declaration is refused.