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**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 18/2007**

**BEFORE: THE HON. MR. JUSTICE PANTON, P.  
THE HON. MR. JUSTICE COOKE, J.A.  
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

**BETWEEN: REGINA ex parte  
DWAYNE A. MULLINGS et. al. CLAIMANTS/APPELLANTS**

**AND THE POLICE SERVICE COMMISSION 1<sup>ST</sup> RESPONDENT**

**AND THE ATTORNEY-GENERAL FOR  
JAMAICA 2<sup>ND</sup> RESPONDENT**

**Lord Anthony Gifford, Q.C. and Wentworth Charles, instructed by  
Wentworth Charles & Co. for the Appellants.**

**Mrs. Nicole Foster-Pusey and Mrs. Amina Maknoon, instructed by the  
Director of State Proceedings for Respondents.**

**29<sup>th</sup> 30<sup>th</sup> July; December 19, 2008 and February 23, 2009**

**PANTON, P:**

I have read in draft the judgment of Cooke, J.A., I agree with his reasoning and conclusion. There is nothing more that I wish to add.

**COOKE, J.A.**

1. The appellants Detective Sergeant Dalton Samuels, Corporals Norma Porter-Thaxter, Enos Williams, Teeshan Gordon, and Constables Elvid Vassell, Kenneth Brown, Oral Hylton and Dwayne Mullings were at the relevant time

police officers attached to the Narcotics Division in Montego Bay. In that city, there is the Donald Sangster International Airport. The Commissioner of Police, being in receipt of information from confidential sources pertaining to the involvement of the appellants in drug smuggling at the airport initiated proceedings which resulted in the retirement of the appellants in the public interest. The Commissioner invoked the use of Regulation 26 of the Police Service Regulations. The procedure employed which was entirely consistent with that prescribed in that regulation is set out in the affidavit of Jacqueline Mendez and shall appear subsequently in this judgment. For now, it is sufficient to state that on the 20<sup>th</sup> December 2005 the Police Service Commission decided to recommend to the Governor General that the appellants be retired in the public interest. Feeling aggrieved, each appellant pursued their cause by way of judicial review. Their cases were consolidated. Each appellant sought the same relief.

- (i) An order of prohibition to prohibit the Police Service Commission from causing or compelling the applicant to be retired from the Jamaica Constabulary Force in accordance with the provisions of Regulation 26 of the Police Service Regulations, 1961.
- (ii) Alternatively, an Order of Certiorari to quash the said orders or decisions as aforesaid.

On the 7<sup>th</sup> February 2007 at the hearing for the judicial review, counsel who then appeared for the appellants conceded that the court was bound to follow the Court of Appeal decision in **Kenyouth Handel Smith v The Police Service**

**Commission and The Attorney-General of Jamaica** (SCCA No. 60/2005 delivered 10th November 2006). Accordingly, the consolidated applications were dismissed without a hearing. I should note that the grounds on which the applications of the appellants were based were substantially similar to those of the unsuccessful appellant in **Smith**. The same counsel who appeared for **Smith** at his appeal appeared for the appellants at the judicial review hearing.

2. There is now an appeal from the dismissal of the appellants' application for judicial review. The grounds were drafted by the same counsel who at the hearing for judicial review felt unable in the light of **Smith**, to successfully move the court to the benefit of his clients. The grounds of appeal filed herein are substantially the same as those filed in **Smith**. I must confess that there was reticence on my part as to whether an appeal in these circumstances should be entertained. It was with some reluctance that I relented on the basis that important points of law would arise and that the concession of counsel at the judicial review hearing did not preclude a hearing in this court. (Neither Lord Gifford nor Mr. Charles appeared in the court below).

3. As a formality, I will now set out paragraphs (2) and (3) of the Notice and Grounds of Appeal.

"2. The following findings of fact and of law are challenged:

- (a) Findings of fact and/or of law:
  - (i) The Police Service Commission was entitled to deal with the Claimants in accordance with the provisions of Regulation 26 of the Police Service Regulations, 1961, as opposed to the provisions of Regulation 31. The Regulations do not require that Part V of the said Regulations be complied with before regard may be had to any other regulation.
  - (ii) There was no breach of the rules on [sic] natural justice.

3. The Grounds of Appeal are:

- (a) The Learned Senior Puisne Judge erred and/or misdirected herself in her findings of fact and/or of law as stated at paragraph 2 hereinbefore, and thereby occasioned a substantial wrong or miscarriage of justice to the Appellants.
- (b) The Learned Senior Puisne Judge ought to have found that: —
  - (i) The procedure contemplated by the Police Service Regulations, 1961, Regulation 31(5) in particular, was unlawfully circumvented by resort to the provisions of Regulation 26 by the 1<sup>st</sup> Respondent to effectively dismiss the Appellants from their employment.
  - (ii) Further and/or alternatively, the recourse by the 1<sup>st</sup> Respondent to the provisions of Regulation 26 was clearly inappropriate having

regard to all the circumstances of the Appellants' cases.

- (iii) The Appellants were entitled to the benefit or burden of the procedure prescribed by the said Regulations in respect to [sic] matters concerning discipline generally and disciplinary reports in particular, especially in view of the latter which alleged that the Appellants had committed serious criminal offences."

These criticisms of the learned trial judge are, to say the least, curious as she dismissed the applications based on the stance of counsel for the applicants. Further, the bulk of the submissions addressed to us on behalf of the appellants fell outside the ambit of the filed grounds of appeal. It is not without significance that in the skeleton arguments submitted on behalf of the appellants there was no specific reference to any particular ground of appeal.

4. There is the complaint that:

"In the present case the allegations against the appellants are simply allegations. No particulars have been given as to who (sic), if anyone, has made statements against the appellants and what they said."

The consequence of this, counsel for the appellants argued was that because of the factors listed in the complaint there was a breach of natural justice. My first task is to examine Regulation 26 (The Police Service Regulations, 1961). This is as follows:

- "26.— (1) Notwithstanding the provisions of regulation 46 or regulation 47 where it is represented to the Commission or the Commission considers it desirable in the public interest that any member ought to be required to retire from the Force on grounds which cannot suitably be dealt with by the procedure prescribed by regulation 46 or regulation 47 it shall require the Commissioner to submit a full report.
- (2) If after considering the report of the Commissioner and giving the member an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and, having regard to the conditions of the Force, the usefulness of the member thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the member be required to retire on such date as the Commission may recommend."

Regulation 26 (2) requires that each appellant should be sent "grounds on which his retirement is contemplated". There is no stipulation as to that being sought by the appellants in their complaint. Later in this judgment, I will consider whether what was sent to each appellant as grounds was sufficient to enable a fair hearing.

The fact that the regulation is silent as to the obligations which the appellants would impose on the commission is not the end of the matter. If these obligations were a necessary ingredient in determining whether or not each

appellant received a fair hearing then “although there are no positive words in a statute requiring that a party shall be heard, the justice of the Common Law will supply the omission of the legislature”: per Byles, J. in the seminal case of **Cooper v Wordsworth Board of Works** [1863] 14CB (NS) 180.

In **University of Ceylon v. Fernando** [1960] 1 All E.R. 631 their Lordships’ Board in their advice at p 637 D – 638 E said:

“... the present appeal resolves itself into the question whether this inquiry was conducted with due regard to the rights accorded by the principles of natural justice to the plaintiff as the person against whom it was directed.

These rights have been defined in varying language in a large number of cases covering a wide field. Their Lordships do not propose to review these authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point. As TUCKER, L.J., said to **Russell v. Duke of Norfolk** [1949] 1 All E.R. 109 at p. 118:

“There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.”

In the earlier case of **General Medical Council v. Spackman** [1943] 2 All E.R. 337 at p. 341; LORD ATKIN expressed a similar view in these words:

“Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies; but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of LORD LOREBURN, L.C., in **Board of Education v. Rice** [1911] A.C. 179 at p. 182 afford a complete guide to the **General Medical Council** in the exercise of their duties.”

With these reservations as to the utility of general definitions in this branch of the law, it appears to their Lordships that Lord LOREBURN’S much quoted statement in **Board of Education v. Rice** [1911] A.C. at p. 182 still affords as good a general definition as any of the nature of and limits on the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of VISCOUNT HALDANE, L.C. in **Local Government Board v. Arlidge** [1915] A.C. 120 at p. 132, where he cites it with approval in the following words:

“I agree with the view expressed in an analogous case by my noble and learned friend LORD LOREBURN. In **Board of Education v. Rice**, he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The board had no power to administer an oath, and need not examine witnesses. It could, he



thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view.”

From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in **De Verteuil v. Knaggs** [1918] A.C. 557 at p. 560:

“Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.”

The last general statement as to the requirements of natural justices to which their Lordships would refer is that of HARMAN, J., in **Byrne v. Kinematograph Renters Society, Ltd.** [1958] 2 All E.R. 579 at p. 599, of which their Lordships would express their approval. The learned judge said this:

“What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more.” ”

In **Regina v Race Relations Board, ex parte Selvarajan** [1975] 1 W.L.R.

1686, Lord Denning, MR at pps 1693 H — 1694 D, said:

“In recent years we have had to consider the procedure of many bodies who are required to make an investigation and form an opinion. Notably, the Gaming Board, who have to inquire whether an applicant is fit to run a gaming club: see **Reg. v. Gaming Board for Great Britain, Ex parte Benaim and Khaida** [1970] 2 Q.B. 417; inspectors under the Companies Act 1948 who have to investigate the affairs of a company and make a report: see **In re Pergamon Press Ltd.** [1971] Ch. 388; and Commissioners of Inland Revenue who have to determine whether there is a prima facie case: see **Wiseman v. Borneman** [1971] A.C. 297. In all these cases it has been held that the investigating body is under a duty to act fairly: but that which fairness requires depends upon the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subject to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely afflicted by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only.”

The authorities provide guidance as to the approach of the common law in providing the essential and fundamental prerequisites of a fair hearing. It was of paramount importance that each appellant be advised of the substance of the adverse complaint(s) which were directed at each of them to enable a response. Within the context of the circumstances of this inquiry, the Commission was not obliged to reveal the identity of the person or persons who made statements nor

the details which comprised those statements. So, neither within the ambit of Regulation 26 (2) nor at common law, does the contention of the appellants, find support.

5. There is another complaint that:

“The Commission has confirmed that it acted upon the loss of confidence caused by the fact of the allegations.”

If this complaint can be substantiated the appellants would have inflicted a telling blow. It would mean that the Commission would have acted unlawfully since their decision would then have been fatally flawed as being without reasonable cause. See **Thomas v Attorney-General** [1981] 32 W.I.R. P.C. 375 at p. 384. In **Thomas** their Lordships’ Board was considering the phrase “to remove and exercise disciplinary control over” police officers. It was stated that to “remove” must be understood as meaning “remove for reasonable cause” likewise there must be reasonable cause for the retirement of each appellant in the public interest. I will now proceed to an examination of this complaint.

6. The basis of the complaint is to be found in paragraph 5 of the affidavit of Jacqueline Mendez who was the secretary to the Commission. In this affidavit dated 15<sup>th</sup> of December 2006, she outlined the proceedings pertinent to the decision of the Commission. It is necessary, in order to appreciate the contents of paragraph 5 of the affidavit to reproduce paragraphs 4 – 9.

4. By letter dated the 18<sup>th</sup> October 2005 I received certain reports about the conduct of the Claimants from the Commissioner through the office of the Attorney General with recommendations from the Commissioner that steps be taken to retire the Claimants in the public interest. The reports on the conduct of the Claimants and the recommendation were submitted to the Commission for consideration at its meeting on October 28, 2005.
5. Having reviewed the recommendations at its meeting on October 28, 2005, the Commission decided to start the process to retire the Claimants in the public interest in accordance with Regulation 26 of the Police Service Regulations, 1961 ('the Regulations'). However, before making its decision, the Commission contemplated the institution of criminal or departmental proceedings. This course was not pursued as the evidence against the Claimants was obtained from confidential sources, and would have implications for national security. However, the Commission was of the view that the sources were credible and it was able to verify them. Additionally, the Commission was concerned that, in the cases of Corporal Porter-Thaxter, Corporal Williams, Detective Corporal Gordon, Constable Brown, Constable Hylton, Constable Condell, and Constable Vassell, where there was more than one allegation of impropriety against the officers, and in the cases of Detective Sergeant Samuels, Corporal Dwyer, Corporal Street and Constable Mullings where one allegation was made but it was of such a serious nature, even if the allegations were not proved, the fact that the allegations were made against the Claimants resulted in a loss of confidence in the Claimants by the Commissioner and the Claimants' superiors.

6. Accordingly, the Commission gave instructions that statements outlining the grounds on which the retirement would be contemplated should be prepared and sent to the Claimants for their responses.
7. By letters dated November 16, 2005, I informed the Claimants that, based on reports received from the Commissioner, the Commission had agreed that steps be taken to retire them from the Jamaica Constabulary Force in accordance with the provisions of Regulations 26. Enclosed with these letters were statements setting out the grounds on which each of the Claimants' retirement was contemplated. Each Claimant was requested to submit a reply to these grounds within two (2) weeks of receipt of the letter and statement.
8. Eight of the Claimants, namely Corporal Norma Porter-Thaxter, Constable Elvid Vassell, Constable Dwayne Mullings, Constable Oral Hylton, Detective Corporal Teeshan Gordon, Corporal Enos Williams, Constable Kenneth Brown and Detective Sergeant Dalton Samuels, responded to the statement and these were sent to the Office of the Services Commissions [sic] ('the Office') on the 7<sup>th</sup> day of December, 2005. Accordingly, the grounds on which the Claimants' retirement was being contemplated and the Claimants' replies were submitted to the Commission for consideration at its meeting on the 20<sup>th</sup> day of December, 2005.
9. After careful review of the submissions, the Commission at its meeting on the 20<sup>th</sup> day of December, 2005 decided to pursue the procedure to retire the eight abovementioned Claimants in the public interest. However, on the 21<sup>st</sup> day of December 2005, the Attorney-At-Law acting on their behalf served the Office with a Formal Order and Fixed Date Claim Form. Further, on the 22<sup>nd</sup> day of December

2005, the Office was served with a Notice of Application for Court Orders and Affidavits of these said eight Claimants.”

It is patently clear that paragraph 5 deals with the reasons underpinning the stance of the Commission, for proceeding in accordance with Regulation 26 of the Police Service Regulations, 1961. The essence of this paragraph is that it is entirely procedural. Paragraph 6 makes this abundantly clear. Paragraph 5 does not speak to any decision making of or by the Commission. It is paragraph 9 which speaks to the determination of the issue as to whether the appellants should be retired in the public interest. Admittedly, the impugned part of paragraph 5 is somewhat perplexing. However, as paragraph 9 demonstrates, the Commission did not confirm that it acted upon “the loss of confidence” caused by “the fact of the allegations”. This complaint is therefore without merit.

7. Retirement in the public interest is essentially that such person is unsuitable to continue to be a member of the Jamaica Constabulary Force. This unsuitability is not solely to be determined in a situation where strict proof is forthcoming but also in circumstances where there is material which rises above mere suspicion that the behaviour of a member of the force is unacceptable. This, in my view, is recognised in Regulation 47 (2) (i) of the Police Service Regulations, 1961 which states:

“If the Commission is of opinion that the member does not deserve to be dismissed by reason of the charges alleged, but that the proceedings disclose

other grounds for removing him from the Force in the public interest, it may recommend to the Governor-General that an order be made accordingly, without recourse to the procedure prescribed by regulation 26.”

This indicates to me that retirement in the public interest is quite different from dismissal based on specific charges. Whereas the latter is confined within defined parameters, the former is subject to great latitude, subject only to the pending caveat that any such retirement must be for reasonable cause. In **Kenyouth Handel Smith v The Police Service Commission and The Attorney-General for Jamaica** (S.C.C.A. No. 60/2005) unreported delivered on the 10<sup>th</sup> November 2006, the appellant **Smith** unsuccessfully contended that the employment of Regulation 26 circumvented the other regulations which dealt with disciplinary procedures. That submission was rejected. There is no necessity to “refine” the view of the court in this regard. In this particular case the Commissioner invoked the provisions of Regulation 26 principally for two reasons. Firstly, he considered that the appellants should be retired in the public interest and secondly, the material which grounded his request was from confidential sources and would have implications for national security.

8. All the appellants were sent a statement in connection with their retirement in the public interest. Each statement concisely stated what it was that gave the Commissioner concern pertaining to each officer. There were the “grounds” which were sent to each appellant so that there was an opportunity to reply (Regulation 26 (2)). There was a standard reply from each appellant.

Each claimed to be "dedicated, honest, reliable and efficient". Generally each said:

"I have not conspired with any member of the Jamaica Constabulary Force or the civilian populace to traffic or deal in drugs or do any wrong or illegal acts"

Thus, no appellant specifically responded to the damaging contents leveled at them. It was contended that the "grounds" sent to each appellant were vague and suffered from the want of precision.

9. I will now address the circumstances pertinent to each appellant. This is the statement sent to Constable Dwayne Mullings.

"It has been reported that:

1. You are involved in drug dealing and trafficking by facilitating drug couriers in by-passing the security measures in place at the Donald Sangster International Airport and to board international flights with narcotics.
2. On October 3, 2005, you as well as Constable Kenneth Brown and other unknown person(s) conspired and facilitated drug couriers Aaron Troy Bonner and Shantella Syretta Bedeau to smuggle cocaine weighing one pound (1 lb) in a glass bottle with Noni label and eight (8) ounces in a glass bottle with Jerk Sauce label respectively. Both couriers were booked to travel from the Donald Sangster International Airport on American Airline Flight # 1190 to the John F. Kennedy International Airport, in New York with connecting American Airline Flight # 122 destined for the United Kingdom via Heathrow International Airport.



3. That from information received, Constable Brown, who was on duty at the Airport at the material time, received certain information from you. At this time, Constable Brown was in the process of ferrying both couriers through the security checks at the Airport when they were held by other Narcotics police personnel.
4. A search was conducted, which revealed the drugs in the two (2) bottles, and they were also both x-rayed at the hospital where it appeared that pellets were observed in their stomachs. Thereafter, Ms. Bedeau admitted to having swallowed forty (40) pellets containing cocaine."

There is the blanket accusation that he was "facilitating drug couriers". The date 3<sup>rd</sup> of October 2005 is specified. His co-conspirator Constable Kenneth Brown is named. The drug couriers are named. The airport is designated. The details pertaining to the specific flight are stated. Constable Mullings involvement with Brown is stated in paragraph 3 of the statement. In my view, this appellant was supplied with a sufficiency of material to satisfy the requirement of the "grounds" in Regulation 26 (2) which he was entitled to receive. Further this accusation demanded a frontal response. There was none.

10. The statement in respect of Detective Corporal Teeshan Gordon is now reproduced.

- "1. You are involved in drug dealing and trafficking by facilitating drug couriers in by-passing the security measures in place at the Donald Sangster International Airport and to board international flights with narcotics. There are several reports of such activity, some of which are set out below.

**First Report:**

2. On March 30, 2005, you along with Corporal Enos Williams, Corporal Norma Porter-Thaxter and an unknown person facilitated drug courier Denise Charles of England who attempted to smuggle thirty-three pounds (33 lbs) of compressed ganja in a grayish blue suitcase, via an Air Jamaica flight destined to London, England, to depart from the Donald Sangster International Airport. However, Ms. Charles' luggage was intercepted at the airport and a search of it revealed the ganja.
3. Corporal Enos Williams was informed of the seizure, which was later relayed to Corporal Norma Porter-Thaxter, causing her to instruct unknown person(s) to take Ms. Charles away from the airport thereby eluding the police.

**Second Report:**

4. On September 11, 2005, you along with Constable Elvid Vassel conspired to facilitate drug couriers Mark Barrett and Cherie Levi to export ganja to London, England via MY TRAVEL flight No. 078 to depart from the Donald Sangster International Airport. In that, they were to transport the drugs in their suitcases, which were to be checked in.
5. From intelligence received, you were on duty at the Airport at the material time whilst Constable Elvid Vassel was off duty. Accordingly, after receiving the information pertaining to both couriers, you then placed yourself at the x-ray section of the Airport for most of the time when this flight was being boarded.
6. When Mr. Barrett checked in, his grey suitcase was searched which revealed twenty-nine and three quarter pounds ( $29\frac{3}{4}$  lbs) of ganja in seven (7) rectangular-shaped parcels wrapped

in transparent tape and carbon paper. These parcels were wrapped in items of clothing that were inside the suitcase. Mr. Barrett was later taken to the Montego Bay Resident Magistrate's Court on Monday, September 12, 2005 where he pleaded guilty and was sentenced for possession of ganja, dealing in ganja and for attempting to export ganja.

7. It is further alleged that whilst the other Police personnel were dealing with Mr. Barrett, you went ahead and ferried Ms. Levi through the checks onto the flight. However, Ms. Levi was stopped upon arrival in London and when her luggage was searched, it was seen to have contained ganja weighing a total of eighteen kilograms (18 kg). She was subsequently arrested and charged for the ganja."

In the "first report" there is a general accusation. Paragraphs 5 and 7 of the second report specifically state this appellant's involvement. There was, in this appellant's case, a sufficiency of material to properly constitute "grounds". These accusations were such that it was incumbent of him to respond. He did not.

11. The statement pertaining to Constable Elvid Vassell is as follows:

**"First Report:**

1. You behaved in an unprofessional manner when between January 9 and 20, 2005, you along with Detective Sergeant Dalton Samuels planned to steal cocaine exhibits in the case relating to breaches of the Dangerous Drugs Act, namely **Regina vs. Brizeth Laird** from the St. James Divisional Storeroom.
2. These exhibits consisted of approximately eighty-six (86) packages of cocaine, which

were placed in two (2) suitcases and were already analysed by the Government Analyst.

3. The plan was for Detective Sergeant Dalton Samuels to take the exhibit from the St. James Divisional Storeroom on the court dates, purporting to be taking it to the St. James Resident Magistrate's Court. He would then proceed with the exhibits to meet you, in which you would then go to an undisclosed location, where the exhibits would have been carefully opened to extract the cocaine to be replaced with flour. The packages would thereafter be placed in the suitcases, and then be returned to Court, where you would then sell the cocaine to a drug dealer for a price.
4. Further, it is alleged that you are involved in drug dealing and trafficking by facilitating drug couriers in by-passing the security measures in place at the Donald Sangster International Airport and to board international flights with narcotics. There are several reports of such activity, some of which are set out below.

**Second Report:**

5. On July 1, 2005, you as well as Corporal Ryan Dwyer and unknown person(s) conspired to assist two couriers to transport drugs to London via Air Jamaica flight to depart from the Donald Sangster International Airport on or before June 30, 2005 (sic). In that, the plan was that one of the couriers was to take the drugs in a false compartment of their suitcase, which was "custom-built."
6. However, due to the presence of other police personnel at the airport, it is alleged that it was decided by both yourself and Corporal Ryan Dwyer to avoid taking the risk at that time. Accordingly, a further attempt was to be made on or about July 1, 2005.

7. Based on information received, it is alleged that this plan was aborted and you gave instructions that the couriers were not to take the drugs with them. That subsequently, whilst checking onto the flight both couriers were stopped and searched but no drugs were found on them. They however behaved boisterously and were charged with the offence of Disorderly Conduct, to wit they pleaded guilty at the Montego Bay Resident Magistrate's Court.

**Third Report:**

8. On September 11, 2005, you along with Detective Corporal Teeshan Gordon conspired to facilitate drug couriers Mark Barrett and Cherie Levi to export ganja to London, England via MY TRAVEL flight No. 078 to depart from the Donald Sangster International Airport. In that, they were to transport the drugs in their suitcases, which were to be checked in.
9. From intelligence received, you were off duty, whilst Detective Corporal Teeshan Gordon was on duty at the Airport at the material time. However, despite your absence, you were a facilitator to this plan. Accordingly, after receiving the information pertaining to both couriers, Detective Corporal Teeshan Gordon then placed himself at the x-ray section of the Airport for most of the time when this flight was being boarded.
10. When Mr. Barrett checked in, his grey suitcase was searched which revealed twenty-nine and three quarter pounds (29  $\frac{3}{4}$  lbs) of ganja in seven (7) rectangular-shaped parcels wrapped in transparent tape and carbon paper. These parcels were wrapped in items of clothing that were inside the suitcase. Mr. Barrett was later taken to the Montego Bay Resident Magistrate's Court on Monday, September 12, 2005, where he pleaded guilty and was

sentenced for possession of ganja, dealing in ganja and for attempting to export ganja.

11. It is further alleged that whilst the other Police personnel were dealing with Mr. Barrett, Detective Corporal Teeshan Gordon went ahead and ferried Ms. Levi through the checks onto the flight. However, Ms. Levi was stopped on arrival in London and when her luggage was searched, it was seen to have contained ganja weighing a total of eighteen kilograms (18 kg). She was subsequently arrested and charged for the ganja.

#### **Fourth Report:**

12. On October 3, 2005, you as well as Constable Oral Hylton and Constable Kenneth Brown and other unknown person(s) conspired and facilitated drug couriers Sandra Bethune and Hopeton Atkinson to smuggle twenty-five pounds (25 lbs) of compressed ganja each to the United Kingdom. Both couriers boarded on a MY TRAVEL flight from the Donald Sangster International Airport, destined for the United Kingdom via Gatwick International Airport.
13. From information received, you and Constable Hylton relayed the information pertaining to the couriers to Constable Kenneth Brown who was on duty at the airport at the time.
14. Constable Brown then ferried the couriers through the airport and ensured that their luggage was not searched.
15. Upon arrival in the United Kingdom, HM Custom's officials stopped the couriers and a search of their luggage revealed the compressed ganja and they were arrested and charged for importing the substance along with other charges."

The first report pertains to the destruction of evidence. The second report speaks to his involvement in the drug smuggling conspiracy (giving of instructions). The third report states that he was the "facilitator of this plan". It names his co-conspirator. The fourth report, in paragraph 13 states this appellant's involvement. There was a burden on this appellant to respond to the accusation which cannot be said to be so vague as to make specific responses impossible.

12. The statement relevant to Corporal Enos Williams was:

- "1. You are involved in drug dealing and trafficking by facilitating drug couriers in by-passing the security measures in place at the Donald Sangster International Airport and to board international flights with narcotic drugs. There are several reports of such activity, some of which are set out below.

**First Report:**

2. On March 16, 2005 you along with Corporal Norma Porter-Thaxter and two unknown persons facilitated drug courier Lawrence King, a British citizen, to attempt to smuggle thirty-six pounds (36 lbs) of ganja in six (6) Cheddar cheese tins to London, England via MVT flight No. 078.
3. Other members of the Narcotics team who were on duty at the time at the x-ray machine, intercepted these six (6) tins, which were contained in Mr. King's suitcase. However, Mr. King who was scheduled to board the MVT flight was facilitated in leaving the airport.
4. It is further alleged that one of your roles as well as that of Corporal Norma Porter-Thaxter's

was to inform Mr. King of this interception via unknown person, thereby giving Mr. King an opportunity to leave the Airport and later attempt to board a British Airways flight to London, England on Monday, March 21, 2005, in order to avoid detection.

5. Mr. King was however apprehended and later taken to Montego Bay, St. James where he was charged for breaches of the Dangerous Drugs Act. He was subsequently tried, convicted and sentenced for possession of ganja, attempting to export ganja and dealing in ganja.

### **Second Report:**

6. On March 30, 2005, you along with Corporal Norma Porter-Thaxter, Detective Corporal Teeshan Gordon and an unknown person facilitated drug courier Denise Charles of England who attempted to smuggle thirty-three pounds (33 lbs) of compressed ganja in a grayish blue suitcase, via an Air Jamaica flight destined to London, England, to depart from the Donald Sangster Airport. [sic] However, Ms. Charles' luggage was intercepted at the airport and a search of it revealed the ganja.
7. It is further alleged that you were informed of this seizure which was later relayed to Corporal Norma Porter-Thaxter, causing her to instruct unknown person(s) to take Ms. Charles away from the airport, thereby eluding the Police.

### **Third Report:**

8. On April 3, 2005, you along with Corporal Norma Porter-Thaxter, Corporal Joy Streete and unknown persons facilitated drug courier Michael Nurdin, to attempt to smuggle twenty-five and three quarter pounds (25  $\frac{3}{4}$  lbs) of ganja wrapped in five (5) taped packages in his hand luggage. It is alleged that your role



at the material time was to pass information pertaining to Mr. Nurdin to Corporal Streete who was on duty.

9. However, Mr. Nurdin who was booked on a MY TRAVEL flight destined to Manchester, to depart from the Donald Sangster International Airport was intercepted on his way to the check-in counter and a search of his luggage revealed the ganja
10. On April 5, 2005, Mr. Nurdin pleaded guilty before the Montego Bay Resident Magistrate's Court, for the offences of possession of ganja, dealing in ganja and attempting to export ganja, to wit he was thereafter sentenced.

**Fourth Report:**

11. On April 16, 2005, you along with Corporal Norma Porter-Thaxter, Constable Owen Condell and unknown person, facilitated drug courier George Shaw, to attempt to smuggle ingested cocaine pellets to the United States. Mr. Shaw was booked to board American Airlines flight 0117, which was scheduled to depart from the Donald Sangster International Airport, destined for the John F. Kennedy International Airport, in New York.
12. According to intelligence received, Corporal Norma Porter-Thaxter was working at the time and ensured that the courier passed through the security checkpoints at the airport without being stopped. However, Mr. Shaw was held upon arrival in New York by the United States Drug Enforcement Administration whereby he subsequently expelled eighty-six (86) pellets containing cocaine weighing approximately one Kilogram (1 kg). He was thereafter charged for importing cocaine in the United States of America.

**Fifth Report:**

13. On July 26, 2005, you along with Corporal Norma Porter-Thaxter, Constable Owen Condell and an unknown person, facilitated drug courier Ronny Egbert Fernand, to attempt to smuggle ingested cocaine pellets to Amsterdam. Mr. Fernand was booked to board Martin Air flight 613, which was scheduled to depart from the Donald Sangster International Airport, destined for Amsterdam.
14. According to intelligence received, despite the fact that you were on vacation leave, you were still able to guide Constable Condell and Mr. Fernand through the process of boarding the flight without answering during interview or giving a urine sample if stopped.
15. Mr. Fernand was stopped by another member of the Narcotics team, but he refused to give a urine sample. He later boarded the flight but was stopped and questioned upon his arrival in Holland where he expelled one hundred and five (105) pellets containing cocaine weighing over one Kilogram (1 kg).

In the first report in paragraph 3 the appellant's role is stated. In the second report this appellant's involvement is made known. In the third report this appellant's complicity is set out. The fourth report is of a general nature. In paragraph 14 of the fifth report, this appellant's role is made known to him. Here, again there was a sufficiency of material to constitute "grounds" which called for responses. There were none.

13. In respect of Detective Sergeant Dalton Samuels the statement reads:

"It has been reported that:

1. You behaved in an unprofessional manner when between January 9 and 20, 2005, you along with Constable Elvid Vassell planned to steal cocaine exhibits in the case relating to breaches of the Dangerous Drugs Act, namely **Regina vs. Brizeth Laird** from the St. James Divisional Storeroom.
2. These exhibits consisted of approximately eight-six (86) packages of cocaine, which were placed in two (2) suitcases and were already analysed by the Government Analyst.
3. The plan was for you to take the exhibit from the St. James Divisional Storeroom on the court dates, purporting to be taking it to the St. James Resident Magistrate's Court. You would then proceed with the exhibits to meet Constable Vassell who would then go to an undisclosed location, where the exhibits would have been carefully opened to extract the cocaine to be replaced with flour. The packages would thereafter be placed back into the suitcases, and then be returned to Court, where Constable Vassell would sell the cocaine to a drug dealer for a price."

In this case, the details of the conspiracy are set out, yet this appellant said nothing in his response to challenge the specific accusations directed at him. There was a sufficiency of material sent to him to constitute "grounds". He was given an opportunity to rebut the accusations. He did not.

14. The statement relevant to Constable Oral Hylton was.

"It has been reported:

1. You are involved in drug dealing and trafficking by facilitating drug couriers in by-passing the security measures in place at the Donald Sangster International Airport and to board

international flights with narcotics. There are several reports of such activity, some of which are set out below.

**First Report:**

2. On April 2, 2005 you along with Corporal Norma Porter-Thaxter and unknown persons conspired and facilitated drug courier Norman McCalla, in attempting to export quantities of ganja to Curacao. In that, Mr. McCalla was booked and had checked onto Air Jamaica flight No. 064 destined for Curacao and scheduled to depart the Donald Sangster International Airport. However, despite the "safe passage" being offered by Corporal Norma Porter-Thaxter, other personnel at the Area 1 Narcotics' Headquarters stopped him upon entering the airport.
3. Consequently, whilst in the departure lounge, Mr. McCalla's luggage was searched whereupon ganja weighing forty-six pounds (46 lbs) wrapped in brown masking tape and contained in ten (10) rectangular packages were found in his black and grey suitcase. As such, Mr. McCalla was arrested and charged for possession of the ganja.

**Second Report:**

4. On September 18, 2005, you as well as Constable Kenneth Brown and an unknown person(s) conspired and facilitated drug courier Michael Smith who was travelling on a United Kingdom passport to export cocaine to the United Kingdom. Mr. Smith boarded MY TRAVEL flight # 78 from the Donald Sangster International Airport, destined for Gatwick International Airport. Upon his arrival, Mr. Smith was stopped and searched, where cocaine weighing approximately one kilogram (1 kg) was found concealed in his shoes. Mr. Smith has subsequently been charged for

offences such as possession of cocaine and importing cocaine.

5. From information received and observations made, you were on duty at the material time and were able to aid Mr. Smith through the check-in process and security checks at the airport, which enabled Mr. Smith to avoid detection.

**Third Report:**

6. On October 3, 2005, you as well as Constable Elvid Vassell, Constable Kenneth Brown and other unknown person(s) conspired and facilitated drug couriers Sandra Bethune and Hopeton Atkinson to smuggle twenty-five pounds (25 lbs) of compressed ganja each to the United Kingdom. Both couriers boarded a MY TRAVEL flight from the Donald Sangster International Airport, destined for the United Kingdom via Gatwick International Airport.
7. That from information received, you and Constable Elvid Vassell relayed the information pertaining to the couriers to Constable Brown, who was on duty at the Airport at the time. Whereupon, Constable Brown then ferried the couriers through the airport and ensured that their luggage was not searched.
8. However, upon arrival in the United Kingdom, HM Custom's officials stopped the couriers and a search of their luggage revealed the compressed ganja and they were arrested and charged for several offences such as importing the substance."

In the second report the appellant's role is stated in paragraph 5. In the third report his involvement is set out in paragraph 7. There was a sufficiency of

material to constitute "grounds" and the opportunity to reply to the accusations was not accepted.

15. The statement as regards Corporal Norma Porter-Thaxter comprises 7 reports. They are as follows:

"It has been reported that:

1. You are involved in drug dealing and trafficking by facilitating drug courier's in by-passing the security measures in place at the Donald Sangster International Airport and to board international flights with narcotics. There are several reports of such activity, some of which are set out below.

**First Report:**

2. On March 16, 2005 you along with Corporal Enos Williams and two (2) unknown persons facilitated drug courier Lawrence King, a British citizen, to attempt to smuggle thirty-six pounds (36 lbs) of ganja in six (6) Cheddar cheese tins to London, England via MVT flight No. 078.
3. Other members of the Narcotics team who were on duty at the time at the x-ray machine, intercepted these six (6) tins, which were contained in Mr. King's suitcase. However, Mr. King who was scheduled to board the MVT flight was facilitated in leaving the airport.
4. It is further alleged that one of your roles as well as Corporal Williams' was informing Mr. King of this interception, thereby giving Mr. King an opportunity to leave the Airport and later attempt to board on a British Airways flight to London, England on Monday, March 21, 2005, in order to avoid detection.
5. Mr. King was however apprehended and later taken to Montego Bay, St. James where he

was charged for breaches of the Dangerous Drugs Act and was later subsequently tried, convicted and sentenced for possession of ganja, attempting to export ganja and dealing in ganja.

**Second Report:**

6. On March 30, 2005, you along with Corporal Enos Williams, Detective Corporal Teeshan Gordon and an unknown person facilitated drug courier Denise Charles of England who attempted to smuggle thirty-three pounds (33 lbs) of compressed ganja in a grayish blue suitcase, via an Air Jamaica flight destined to London England, to depart from the Donald Sangster Airport (sic). However, Ms. Charles luggage was intercepted at the airport and a search of it revealed the ganja.
7. Corporal Enos Williams was informed of the seizure, which was later relayed to you, causing you to instruct person(s) unknown to take Ms. Charles away from the airport, thereby eluding the Police.

**Third Report:**

8. On April 2, 2005, you along with Constable Oral Hylton and unknown persons conspired and facilitated drug courier Norman McCalla, in attempting to export quantities of ganja to Curacao. In that, Mr. McCalla was booked and had checked onto Air Jamaica flight No. 064 destined for Curacao and scheduled to depart the Donald Sangster International Airport. However, despite the "safe passage" being offered by you, other personnel at the Area I Narcotics Headquarters stopped him upon entering the airport.
9. Consequently, whilst in the departure lounge, Mr. McCalla's luggage was searched whereupon ganja weighing forty-six pounds

(46 lbs) wrapped in brown masking tape and contained in ten (10) rectangular packages were found in his black and grey suitcase. As such, Mr. McCalla was arrested and charged for the ganja.

**Fourth Report:**

10. On April 3, 2005, you along with Corporal Enos Williams, Corporal Joy Streete and unknown persons facilitates drug courier Michael Nurdin, to attempt to smuggle twenty-five and three quarter pounds (25  $\frac{3}{4}$  lbs) of ganja wrapped in five (5) taped packages in his hand luggage. Mr. Nurdin was booked on a MY TRAVEL flight destined to Manchester, to depart from the Donald Sangster Airport. However, Mr. Nurdin was intercepted on his way to the check-in counter and a search of same revealed the ganja.
11. On April 5, 2005, Mr. Nurdin pleaded guilty before the Montego Bay Resident Magistrate's Court, for the offences of possession of ganja, dealing in ganja and attempting to export ganja, to wit he was thereafter sentenced.

**Fifth Report:**

12. On April 4, 2005, you, whilst on duty at the Donald Sangster International Airport, along with Constable Kenneth Brown, who was off-duty at the time, and unknown persons conspired to assist five (5) persons, namely Vincent Bolton, David Bolton, Catherine Bolton, Heather Bolton and Stephanie Bolton, in smuggling a total of two hundred and ninety-three pounds (293 lbs) of compressed ganja and two and one half pounds (2  $\frac{1}{2}$  lbs) of cocaine in seven (7) suitcases, on board a T.U.B. Flight No. 8104 destined for Brussels.
13. From information received, the plan was to allow these five (5) persons to board the flight



by avoiding detection at the x-ray point and checks by the Canine Police. Accordingly, your role was to ensure that security personnel did not stop them.

14. While checking in, Vincent Bolton was intercepted by the Police and was told, to accompany the police to the AJAS luggage chute where he identified three (3) black and four (4) blue suitcases as belonging to him and the other members of his party.
15. Upon searching the suitcases, several packages containing two hundred and ninety-three pounds (293 lbs) of compressed ganja and two and one half pounds (2 ½ lbs) of cocaine were discovered among some loose clothing in the said suitcases.
16. On April 6, 2005, Vincent Bolton pleaded guilty before the Montego Bay Resident Magistrate, for the offences of possession of ganja, dealing in ganja and attempting to export ganja, possession of cocaine, dealing in cocaine and attempting to export cocaine, to wit he was thereafter sentenced.

**Sixth Report:**

17. On April 16, 2005, you along with Corporal Enos Williams, Constable Owen Condell and unknown person, facilitated drug courier George Shaw to attempt to smuggle ingested cocaine pellets to the United States. Mr. Shaw was booked to board American Airlines flight 0117, which was scheduled to depart from the Donald Sangster International Airport, destined for the John F. Kennedy International Airport in New York.
18. According to intelligence received, you were working at the time and ensured that the courier passed through the security checkpoints at the airport without being

stopped. Mr. Shaw was held upon arrival in New York by the United States Drug Enforcement Administration whereby he subsequently expelled eighty-six (86) pellets containing cocaine weighting approximately one Kilogram (1 kg). He was thereafter charged for importing cocaine in the United States of America.

**Seventh Report:**

19. On July 26, 2005, you along with Corporal Enos Williams, Constable Owen Condell and unknown person, facilitated drug courier Ronny Egbert Fernand to attempt to smuggle ingested cocaine pellets to Amsterdam. In that, Mr. Fernand was booked to board Martin Air flight 613, which was scheduled to depart from the Donald Sangster International Airport, destined for Amsterdam.
20. According to intelligence received, despite the fact that you were on vacation leave, you were still able to guide Constable Condell and Mr. Fernand through the process of boarding the flight without answering during interview or giving a urine sample if stopped.
21. Mr. Fernand was stopped by another member of the Narcotics team but he refused to give a urine sample. He later boarded the flight but was stopped and questioned upon his arrival in Holland where he expelled one hundred and five (105) pellets containing cocaine weighing over one Kilogram (1 kg)."

In the first report the appellant's specific act is set out in paragraph 4. In the sixth report the specific act is stated in paragraph 18. In the seventh report paragraph 20 sets out another specific act. The tenor of the reports suggests

that this appellant has been involved in a continuing conspiracy. In her response she contented herself by saying that:

“The information as set out in the written allegations are malicious, untrue and without substance and credibility.”

This appellant received proper “grounds”. She chose to eschew the opportunity afforded to her to reply to those grounds.

16. The statement concerning Constable Kenneth Brown was:

- “1. You are involved in drug dealing and trafficking by facilitating drug couriers in by-passing the security measures in place at the Donald Sangster International Airport and to board international flights with narcotics. There are several reports of such activity, some of which are set out below.

**First Report:**

2. On April 4, 2005, you along with Corporal Norma Porter-Thaxter and unknown drug dealers conspired to assist five (5) persons, namely Vincent Bolton, David Bolton, Catherine Bolton, Heather Bolton and Stephanie Bolton, of a Brussels address in Belgium to board a T.U.B. flight No. 8104 destined for Brussels with a total of two hundred and ninety-three pounds (293 lbs) of compressed ganja and two and one half pounds (2 ½ lbs) of cocaine in seven (7) suitcases.
3. From information received, the plan was to allow the abovementioned five (5) persons to board the flight by avoiding detection at the x-ray point and checks by the Canine Police.
4. Further, at the material time Corporal Norma Porter-Thaxter was on duty at the Donald

Sangster International Airport, but you were off-duty at the time. However, despite your absence, you as well as Corporal Norma Porter-Thaxter's roles were to ensure that the security personnel did not stop them.

5. While checking in, Vincent Bolton was told to accompany the police to the AJAS luggage chute where he identified three (3) black and four (4) blue suitcases as belonging to him and the other members of his party.
6. Upon searching the suitcases, several packages containing approximately two hundred and ninety-three pounds (293 lbs) of compressed ganja and two and one half pounds (2 ½ lbs) of cocaine were discovered among some loose clothing in the said suitcases .
7. On April 6, 2005, Vincent Bolton subsequently pleaded guilty at the Montego Bay Resident Magistrate's Court, for the offences of possession of ganja, dealing in ganja and attempting to export ganja, possession of cocaine, dealing in cocaine and attempting to export cocaine, to wit he was thereafter sentenced.

**Second Report:**

8. On September 18, 2005, you as well as Constable Oral Hylton and an unknown person(s) conspired and facilitated drug courier Michael Smith who was travelling on a United Kingdom passport. Mr. Smith boarded MY TRAVEL flight #78 from the Donald Sangster International Airport, destined for Gatwick International Airport. Upon his arrival, Mr. Smith was stopped there and searched, where cocaine weighing approximately one kilogram (1 kg.) was found concealed in his shoes. Mr. Smith has subsequently been charged for offences such as possession of cocaine and importing cocaine.

9. From information received and observations made, Constable Oral Hylton was on duty at the material time and was able to aid Mr. Smith through the check-in process and security checks at the airport, which allowed Mr. Smith to avoid detection.
10. Further, it is alleged that you later made arrangements to collect money as payment for this operation.

**Third Report:**

11. On October 3, 2005, you as well as Constable Oral Hylton and Constable Elvid Vassell and other unknown person(s) conspired and facilitated drug couriers Sandra Bethune and Hopeton Atkinson to smuggle twenty-five pounds (25 lbs) of compressed ganja each to the United Kingdom. Both couriers boarded a MY TRAVEL flight from the Donald Sangster International Airport, destined for the United Kingdom via Gatwick International Airport.
12. That from information received, Constable Elvid Vassell and Constable Hylton relayed the information pertaining to the couriers to you, whilst you were on duty at the airport at the time.
13. You then ferried the couriers through the airport and ensured that their luggage was not searched.
14. However, upon arrival in the United Kingdom, the couriers were stopped by HM Custom's officials and a search of their luggage revealed the compressed ganja. They were arrested and charged for importing the substance, along with other charges.

**Fourth Report:**

15. On October 3, 2005, you as well as Constable Dwayne Mullings and other unknown person(s) conspired and facilitated drug couriers Aaron Troy Bonner and Shantella Syretta Bedeau to smuggle cocaine weighing one pound (1 lb) in a glass bottle with Noni label and eight (8) ounces in a glass bottle with Jerk Sauce label respectively. Both couriers were booked to travel from the Donald Sangster International Airport on American Airline Flight # 1190 to the John F. Kennedy International Airport in New York with connecting American Airline Flight # 122 destined for the United Kingdom via Heathrow International Airport.
16. That from information received, you were on duty at the Airport at the material time, whereupon you received certain information from Constable Dwayne Mullings. At this time, you were in the process of ferrying both couriers through the security checks at the Airport when other Narcotics police personnel held them.
17. A search was conducted, which revealed the drugs in two (2) bottles, and they were also both x-rayed at the hospital where it appeared that pellets were observed in their stomachs. Thereafter, Ms. Bedeau admitted to having swallowed forty (40) pellets containing cocaine."

In the third report paragraph 13 states the direct involvement of the appellant. The fourth report at paragraph 16 also describes direct involvement. There was sufficiency of material to constitute "grounds" and this appellant refused the invitation to reply to the accusation.

17. I am therefore of the view that each appellant received proper "grounds" within the ambit of Regulation 26 (2). I find it very significant, that none of the appellants attempted to reply directly to the accusations. This avoidance does not bode well for the appellants.

18. The appellants sought to distinguish their case from that of **Smith**. The submissions in this regard were succinctly set out in paragraphs 18 - 20 of their skeleton argument.

"18. However the present cases can be clearly distinguished from Smith's case. The concession made by counsel was ill-advised. In Smith's case the decision of the court was based on the assumption that the Commission had good grounds to accept the allegations against Smith as being proved. In the present case the Commission has acted on the basis that "the fact of the allegations" justified the loss of confidence which in turn justified the retirement of the officers in the public interest. That is the key difference which should lead to a different outcome in the present case.

19. Cooke, J.A. at paragraph 3 of his judgment gave a synopsis of "the factual circumstances which the Police Service Commission must have accepted." In summary these "factual circumstances" were that Smith had invited one Vasant Parsard to pay him a bribe to avoid being locked up and kept at the Remand Centre with criminals. Cooke JA at paragraph 6 described Smith's behaviour as "wholly reprehensible – confidence in his ability to discharge his duty as a police officer in an honest and professional manner had been lost. He reviewed the Regulations and noted in paragraph 7 that "the sooner an unworthy

member of the JCF is properly retired in the public interest, the better it is for our society”.

20. Thus the whole tenor of the judgment (with which Panton JA and Marsh JA (Ag) agreed) was that, upon facts which were sufficiently established before the commission, as to the discreditable conduct of Smith, it was entitled to invoke Regulation 26. This is confirmed by the passage on page 11 where Cooke, JA cited the affidavit of the Secretary to the Police Commission, who said that criminal or disciplinary proceedings were not pursued because the evidence was insufficient to establish misconduct to the sufficient degree of proof. Cooke JA observed: “Whether the contents of para 13 of the Hinkson affidavit (supra) were sufficient, was not the subject of debate.” This can only mean that the question whether the evidence before the commission was sufficient was not argued before the court; it was assumed therefore by the court that the allegations against Smith were sufficiently established, and the only question was whether on that assumption, recourse to Regulation 26 was justified.”

19 I cannot accept the stance of the appellants. Firstly, in **Smith** as in the instant cases the utilization of Regulation 26 was permissible both within its confines and at common law. This has previously been demonstrated. Secondly, the approach of the Commissioner is not to be strait-jacketed by that adopted in **Smith**. The essential question is, regardless of the approach which the Commissioner used to initiate retirement proceedings — did the officers, whose retirement in the public interest, receive fundamental justice? For reasons which I have already indicted the answer is in the affirmative.



20. So now there is this final question. Was the recommendation of the Commission that these appellants be retired in the public interest done with reasonable cause? I would say yes. Here is a situation where the Commission was of the opinion that the sources were credible and it was able to verify them. There was no suggestion — nor could there be — that there was mala fides in respect of the decision making of the Commission. Here is a situation where not one of the appellants made any specific reply to the “grounds”. Each refused. I would dismiss the appeals. Further, it is my view, that in the circumstances of this case the respondents should have their costs.

21. Finally, I would say that the Commission is now at liberty to continue proceedings in respect of Corporals Joy Streete and Ryan Dwyer as well as Constable Owen Condell.

**DUKHARAN, J.A.**

I too have read the draft judgment of Cooke, J.A. I agree with his reasoning and conclusion. There is nothing further that I wish to add.

**ORDER**

**PANTON, P.**

The appeal is dismissed. Costs to the respondents to be agreed or taxed.