CA Certiorari – Order of prohibition – Industrial Action – Crown proceedings – withholding of salary during time legal officers on strike – certiorari to quash decision to withhold and prohibition to prevent future similar action – whether withholding contrary to law – whether Crown Proceedings Act private procedure – whether Applicant should be barred to apply for prerogative order – whether jurisdiction to withhold salary – written submissions. Appeal against order refusing to issue certiorari and prohibition dismissed

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 67/92

COR: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE DOWNER J.A.
THE HON. MR. JUSTICE PATTERSON J.A. (AG.)

BETWEEN BRYAN SYKES (on his own behalf and on behalf of Legal Officers Staff Association) DEFENDANT/APPELLANT

A N D THE MINISTER OF NATIONAL SECURITY AND JUSTICE
THE ATTORNEY GENERAL PLAINTIFFS/RESPONDENTS

SUPREME COURT CIVIL APPEAL NO. 71/92

BETWEEN LEGAL OFFICERS STAFF ASSOCIATION DEFENDANT/APPELLANT

A N D THE MINISTER OF NATIONAL SECURITY AND JUSTICE
THE ATTORNEY GENERAL PLAINTIFFS/RESPONDENTS

Berthan Macaulay Q.C. & Portia Nicholson instructed by Margarette Macaulay for the Appellant

Emil George Q.C., W.K. Chin See Q.C. & Ingrid Mangatal instructed by Dunn Cox & Orrett and Director of State Proceedings for the Respondents

January 11, 12, 13, 14, 15 & February 25 1993

DOWNER J.A.

In this appeal, Mr. Bryan Sykes (Sykes), a Crown Counsel in the Office of the Director of Public Prosecutions on his own behalf and on behalf of an unincorporated body, the Legal Officers Staff Association (L.O.S.A.), is appealing an order of the Supreme Court (Zacca C.J., Orr & Bingham JJ.). In that order, the court refused to issue certiorari to quash the decision of the Ministry of National Security & Justice (the Ministry), which decided to withhold salaries during the period when legal officers in the civil service were involved in industrial action. The court also refused to issue an order of prohibition to compel any other paymaster of the executive from taking a similar decision.

As presented, this appeal has raised issues of importance in constitutional and procedural law. It should be noted at the

outset that the respondents, by way of notice have sought to justify the order on additional and alternative grounds to those given by Zacca C.J., who delivered the judgment of the court. The respondents have challenged the court's ruling that "the proceedings were therefore appropriate and were properly before the court." So one aspect of the respondents' notice was in reality, a cross-appeal.

The substance of the appellant's claim

The claim for the prerogative orders is best understood against the background of the letter from the Permanent Secretary of the Ministry to Sykes. It reads thus:

"No. 157/1 17th June, 1992

Mr. Bryan Sykes
President
Legal Officers Staff Association
Office of the Director of Public Prosecutions
Public Buildings West
King Street
Kingston

Dear Mr. Sykes,

Please refer to your letter dated 9th June, 1992, concerning your enquiry as to whether or not this Ministry proposes to make deductions from the salaries of members of your association.

You will recall that when you indicated that your membership proposed to take industrial action you were repeatedly informed that deductions would be made from the salaries of officers who were engaged in such action in accordance with Staff Order 3.25.

Staff Order 3.25 provides as follows:

'Salaries and wages of officers who participate in industrial action may not be paid for any day or portion of the day during which they are engaged in industrial action.'

> " I also wish to advise you that on 22nd May, 1992, Cabinet decided that once a determination was made as to the officers involved in industrial action then Staff Order 3.25 was to be enforced. The determination having now been made, this Ministry is proceeding to make the necessary deductions from the salaries of the officers concerned for the month of June.
>
> Yours sincerely,
>
> (sgd.) Clair Kean
> Permanent Secretary."

The compelling and fair inference to be drawn from this letter was that, the issue which concerned the legal officers was the decision of the executive to withhold their salaries. Furthermore, the final paragraph of the letter to them, emphasises that there would be an enquiry as to which officers were involved in industrial action. Prior to the decision of the Cabinet on 22nd May, the Ministry as paymaster, had by circular letter dated 12th May, informed the relevant departments that:

> "It has been decided that steps should be taken to ensure that deductions are reflected in the forthcoming pay day on May 21, 1992."

The Ministry's action was in accordance with the common law and the approval by the Cabinet was superfluous. If the Ministry made unauthorised payments, then the Permanent Secretary or other accounting officer would be held liable under the Financial Administration and Audit Act. So the irresistible inference from these facts was that, when on June 25 1992, Panton J gave leave to apply to the Full Court for the prerogative orders, the Ministry had deducted the appropriate amounts from the salaries of the appellants. Therefore, the substance of the claim was for a payment of salary during the period of industrial action when the appropriate services were not being rendered.

It is against that background that the question must be posed as to whether the legal system provided an effective remedy to vindicate this claim. Such an enquiry must be made because the

prerogative orders are appropriate to challenge specific matters such as the "illegality, irrationality, procedural impropriety," of public authorities: see per Lord Diplock Council of Civil Service Unions [1985] A.C. 374 at 410. The remedies in this case would be to quash the decision of the Ministry to withhold salaries and preclude any paymaster of the executive from making such deductions, if such deductions were contrary to law. On the other hand, to determine whether salaries were payable, the appellant would have to aver and prove that he was willing to work, in proceedings instituted by writ pursuant to the Crown Proceedings Act.

Was resort to the Crown Proceedings Act the appropriate procedure in this case?

It is settled law that, the remedies by way of prerogative orders are discretionary. Leave has to be sought to institute proceedings. By such provisions, the common law provides effective means of challenging public authorities while at the same time recognizing that, for the executive to function properly, the law must provide some protection. No such protection need be accorded to the executive when there is a claim for salaries for services rendered pursuant to a contract of employment. Such a claim is governed by the ordinary common law and the provisions of the Crown Proceedings Act. Since that Act proceedings by way of petition of right to enforce claims for breach of contract by the executive have been abolished: see section 10 and section 2 (1) of the First Schedule to that Act. It is therefore not surprising that there are authorities which illustrate this aspect of constitutional law.

In **Kodeeswaran v. Attorney-General of Ceylon** [1970] A.C. 1111 at p. 1122 - 1123 Lord Diplock had this to say of actions against the Crown for arrears of salary:

> " As has already been pointed out, the current of authority for a hundred years before 1926, though sparse, was to the effect that arrears of salary of a civil servant

> of the Crown, as distinguished from a member of the armed services constituted a debt recoverable by petition of right. These authorities, including the decision of the House of Lords in Sutton v. Attorney-General [1923] 39 T.L.R. 294, are conveniently summarised in a penetrating article by Sir Douglas Logan on 'The Civil Servant and his Pay' [1945] 61 L.Q.R. 260 in which he commented on the decision in Lucas v. Lucas [1943] p. 68, where Pilcher J., adopting the reasoning of Lord Blackburn in the Scots case of Mulvenna v. The Admiralty [1926] S.C. 842, reached a contrary conclusion."

As the First Schedule to the Crown Proceedings Act states petitions of right were part of our law, this statement of principle applies to Jamaica. Roy v. Kensington & Chelsea & Westminster Family Practitioner Committee [1992] 2 W.L.R. 239 illustrates the principle that, where there is a claim for salary withheld by a public authority, then such a claim seeks to enforce a private right and the appropriate proceeding is by an ordinary action. By parity of reasoning therefore, to seek a remedy by way of the prerogative order would be inappropriate and to use stronger language, it would be a misuse and abuse of process. It would therefore have been proper to take this point in limine in the court below: see R. v. Lord Chancellor's Department, ex parte Nangle [1992] 1 All E.R. 897.

On appeal, the respondents have raised the issue in the respondents' notice thus:

> "(1) That the proceedings for prerogative remedies amounted to an abuse (misuse) of the process of the Court as any rights of Legal Officers of the Crown to salary were contractual in nature and are therefore private rights to be pursued in an ordinary action for debt."

That an ordinary action is the appropriate form of proceedings for servants of the executive where the claim is for salary wrongly deducted, was illustrated in the following passage from the judgment of Woolf L.J. cited by Lord Lowry in Roy's case cited

previously. It reads at p. 259:

> " 'In relation to his personal claims against an employer, an employee of a public body is normally in exactly the same situation as other employees. If he has a cause of action and he wishes to assert or establish his rights in relation to his employment he can bring proceedings for damages, a declaration or an injunction (except in relation to the Crown) in the High Court or the county court in the ordinary way. The fact that a person is employed by the Crown may limit his rights against the Crown but otherwise his position is very much the same as any other employee. However, he may, instead of having ordinary master and servant relationship with the Crown, hold office under the Crown and may have been appointed to that office as a result of the Crown exercising a prerogative power or, as in this case, a statutory power. If he holds such an appointment then it will almost invariably be terminable at will and may be subject to other limitations, but whatever rights the employee has will be enforceable normally by an ordinary action. Not only will it not be necessary for him to seek relief by way of judicial review, it will normally be inappropriate for him to do so: see Kodeeswaran v. Attorney-General of Ceylon [1970] A.C. 1111; Reg. v. East Berkshire Health Authority, Ex parte Walsh [1984] I.C.R. 743 and Reg. v. Derbyshire County Council, Ex parte Noble.' "

Similarly, Miles v. Wakefield Metropolitan District Council [1987] 1 A.C. 539 emphasises that an officer employed by a public authority has a right to remuneration when he performs the duties assigned to him. That right may be derived from a contract of employment or statutory provisions and in either case he has to prove his entitlement in an action commenced by writ. The following statement by Lord Brightman at p. 553 summarises the stance of their Lordship's House:

> "... the employer is only bound to pay the employee that which the employee can recover by action. The employee cannot recover his contractual wages because he cannot prove that he has performed

> or ever intended to perform his contractual obligations. If wages and work are interdependent, it is difficult to suppose that an employee who has voluntarily declined to perform his contractual work can claim his contractual wages."

Since legal officers belong to the same profession as judges, it is pertinent to cite the following passage from Lord Templeman's speech. at. p. 550 he said:

> "... it is unusual for the holder of an office to take industrial action and the consequences will depend on the rights and obligations conferred and imposed on the office-holder by the terms of his appointment. But if an ambassador and the embassy porter were both on strike then I would expect both to be liable to lose or both to be entitled to claim their apportioned remuneration attributable to the period of the strike. A judge and an usher on strike should arguably be treated in the same manner. The ambassador might be required to decode a declaration of war on Sunday, and a judge might devote his Christmas holidays to the elucidation of legal problems arising from industrial action, so that it would be necessary to divide their annual salaries by 365 to define a daily rate applicable to the period of strike, whereas the weekly, daily or hourly wages of the porter and the usher provides a different basis for apportionment, but in principle it is difficult to see why there should be any difference in treatment."

Further at p. 561 Lord Templemen emphasises the pleading necessary to claim salary or wages. He said:

> "...in an action by a worker to recover his pay he must allege and be ready to prove that he worked or was willing to work. Different considerations apply to a failure to work by sickness or other circumstances which may be governed by express or implied terms or by custom."

The conditions of service which were applicable to Sykes and other legal officers are set out in the letter from the Chief Personnel Officer to Sykes and the paragraph refers to the

instruments relevant to this case. It reads:

> " Your attention is invited to the Public Service Regulations, 1961, and the Staff Orders in force from time to time governing the discipline and conditions of service of public officers. In particular, your attention is invited to Public Service Regulation No. 23 (3) which provides that during the probationary period the appointment of an officer may be terminated without any reason being given and to Staff Order No. 3.6 which requires public officers on first appointment to declare to the Public Service Commission particulars of any investment or shareholding in any company, occupation or undertaking."

Paragraph 3.24 and 3.25 of the Staff Orders are relevant and read as follows:

> "3.24(1) Disputes in the Civil Service which may involve or give industrial rise to industrial action shall be determined in accordance with any action, law or enactment which makes provision for the determination of such disputes.
>
> (2) For the purpose of Chapter III industrial action includes the following:
>
> (a) any lock out, or
>
> (b) any strike, or
>
> (c) any course of conduct (other than lock-out or strike which in contemplation or furtherance of an industrial dispute is carried on by one or more employees with the intention of preventing or reducing the provision of services."

Then 3.25 in conformity with common law as enunciated in Roy and **Miles** cited previously states:

> "3.25 Salaries and wages of officers who participate in industrial action may not be paid for any day or portion of the day during which they are engaged in industrial action."

These provisions must govern the outcome of this case.

It must therefore be noted that Cabinet's decision as stated in the Ministry's letter was in accordance with law. The Permanent Secretary, an officer recognised by section 126 of the Constitution and usually the "accounting officer" of the Ministry would have been liable to a surcharge for an improper payment of public moneys if a payment was made contrary to law: see sections 20 & 21 of the Financial Administration and Audit Act. The information that the Cabinet took a decision on the matter was a courtesy and as accounting officer and paymaster, the Permanent Secretary was directly responsible to see that salaries were paid in accordance with law.

On this analysis, the respondents, as Mr. Chin See submitted, must succeed on the cross-appeal as the legal officers ought to have brought an action by writ and named the Ministry of National Security & Justice as paymaster and the Attorney General as respondents: see section 13 of the Crown Proceedings Act. To seek the public law remedies of certiorari and prohibition was an abuse or to use polite language, a misuse of the process of the court.

There is yet another reason why the respondents' notice was sound. The Permanent Secretary of the Ministry, Clair Kean in her affidavit states:

> "4. That I am aware that industrial action was taken by many Legal Officers in several Departments of Government and one of the effects was that many cases in the several Courts of the Island could not be proceeded with."

Paragraph 5 of her affidavit is also instructive. It reads:

> "5. That I have seen Press Releases issued by the Second Applicant with regard to the dispute over salary claims and exhibit herewith marked CK2, photocopy of Press Release dated the 15th day of May, 1992, and marked CK3, photocopy of Press Release dated the 20th day of May, 1992."

Against that background the press releases over the signature of Sykes have two important paragraphs which are pertinent. They read:

> "L.O.S.A. members expressed a desire for an early settlement of their claim and/ also expressed regret at the hardship being experienced by members of the public as a result of the present situation.
>
> In the meantime members voted to continue their protest."

The further press release is equally noteworthy. It reads:

> "As a result of talks held at the Ministry of Labour yesterday involving the Legal Officers Staff Association (L.O.S.A.), and representatives of the Ministry of the Public Service, Ministry of National Security and Justice and the Ministry of Labour, the general membership of L.O.S.A. voted today to resume normal duties tomorrow, May 21, 1992.
>
> This resumption is based on L.O.S.A.'s satisfaction that a clear basis for the continuation of salary negotiations has been arrived at.
>
> sgd/ Bryan Sykes
> President
> Legal Officers
> Staff Association"

The principle stated in the headnote of **Rex v. Kensington Income Tax Commisioner Ex parte Princess Edmond De Polignac** [1917] 1 K.B. 487 has never been doubted. It reads at p. 487:

> "... there having been a suppression of material facts by the applicant in her affidavit, the Court would refuse a writ of prohibition without going into the merits of the case."

It was the duty of the appellants to disclose at the ex parte application that Sykes and others had resorted to industrial action. They did not and it was open to the Supreme Court to refuse leave for a hearing on the merits. That a preliminary point ought to have succeeded in the court below and was bound to succeed on appeal may be seen from the judgment below. At p. 8 Zacca C.J. said:

> "Certain concessions were made by Mr. Macaulay:
>
> (1) it was conceded that for the purposes of the case, the Legal Officers were on industrial action;
>
> (2) the present case related to one of contract of employment;

(3) There were no statutory limitations which prevented the operation of the common law rule that an employee was only entitled to wages where they have been earned;

(4) There are no statutory limitations to take the case out of the normal master and servant situation."

In light of the foregoing, the failure to disclose that industrial action was effected by the appellant was another reason why the court below could rightly have exercised its discretion not to proceed with the hearing on the merits. The Supreme Court however, seemed to have assumed this point in favour of the appellant. They also assumed that ordinary proceedings were inappropriate so as to decide the important constitutional issues posed by the appellant. It should however, be noted that, despite the generosity of these assumptions, since the prerogative orders were inappropriate the foregoing analysis was sufficient to dispose of the appeal.

Was L.O.S.A. an appropriate party to apply for the prerogative orders?

In the Supreme Court, Zacca C.J. decided that L.O.S.A. was not a proper party to those proceedings. At p. 1 of the judgment he said:

> " A preliminary point was taken by the respondents as to the Legal Officers Association being a proper party. The Court ruled that LOSA was not competent to bring the application and the Court invited Counsel for the applicants to apply for an amendemnt to enable the application to be brought by Bryan Sykes on his own behalf and on behalf of the members of LOSA. This application was granted by the Court and the hearing proceeded."

Be it noted that this ruling was made during the course of the hearing and could not give rise to a separate final order as the appellant assumed. There can be no doubt that individual members of L.O.S.A. had a "surficient interest" or were "aggrieved persons" by the decision of the Permanent Secretary of the Ministry to make

salary deductions from L.O.S.A. members. What however, was in issue is, whether L.O.S.A. being an unincorporated society, has the capacity to institute proceedings. Halsbury's Laws Vol. 6 4th edition states the position with accuracy. Of an unincorporated society, the learned authors say at paragraph 205:

> "It is not recognised as having any legal existence apart from the members of which it is composed."

Bloom v. National Federation [1918] W.N. 337 and **Campbell v. Thompson** [1953] 1 Q.B. 445 illustrate this principle that a body such as L.O.S.A. is not a legal entity with a capacity to institute legal proceedings. The ruling in the Supreme Court was therefore correct. A representative action by Bryan Sykes was appropriate and this was in conformity with the order of the court below and in compliance with section 97 of the Civil Procedure Code.

Mr. Macaulay's submission therefore that, since the definition of "person" in the Interpretation Act includes "and any club, society, association or other body of one or more persons," coupled with the definition of "plaintiff" in the Civil Procedure Code which includes "person," gives L.O.S.A. the legal capacity to institute proceedings, was untenable. His submissions rely on generalities and ignores the specific provisions for representative actions and the law on the incapacity of unincorporated bodies to institute proceedings.

There is another error which has been introduced by the appellant in the case. The ruling that L.O.S.A. had no capacity to institute proceedings was made in **Regina v. Minister of National Security & Justice and the Attorney General ex parte Bryan Sykes - President of the Association on behalf of himself & members of the Legal Officers Staff Association Suit No. M 53 of 1992** at p. 1 as previously stated. Despite the origin of the ruling, the appellant, instead of preparing and filing one order, filed two orders. The first one reads as follows:

"1. The Preliminary Objection is hereby upheld;

2. Application for amendment is hereby granted;

3. Costs of 6th July 1992 to the Respondents in any event to be agreed or taxed."

It is to be noted that no such order for costs appears in the judgment as is reflected in the purported separate order.

The second order also numbered M 53 of 1992 reads as follows:

"IT IS ORDERED

'The application is refused with costs to the Respondents to be agreed or taxed.' "

and this is the only valid order. Since the appellants did not have carriage of the order, they must have relied on section 579 (2) of the Civil Procedure Code and that section sanctioned only one order.

In the light of the foregoing, there was only one appeal and there was no basis for consolidation as an order for costs could not be made against an unincorporated body. It was the appellant's failure to grasp the nature of a representative action which might have led to confusion in this court.

(a) **Did the Ministry or any other paymaster of the executive lack jurisdiction to withhold salaries of L.O.S.A. members?**

(b) **Was there error on the face of the record?**

It was contended by Mr. Macaulay that as servants of the Crown, L.O.S.A. members could have been disciplined by the Public Service Commission if, after a proper enquiry, they were found to be absent from work without just excuse. He founded his submission on rule 3.3 of Chapter III of Staff Orders which reads thus:

"3.3 An officer who absents himself from duty without permission, except in the case of illness or other unavoidable circumstances shall render himself liable to disciplinary action."

The role of the Public Service Commission as regards disciplinary proceedings are governed by the Public Service Regulations 1961 and reference was made to Regulation 37 which reads:

> "37.—(1) **The penalties** which may be imposed on an officer against whom a disciplinary charge has been established are—
>
> (a) dismissal;
>
> (b) reduction in rank;
>
> (c) deferment or withholding of increment;
>
> (d) a fine;
>
> (e) reprimand.
>
> (2) Where a fine is imposed the amount of such fine shall be deducted from the salary of the officer by such instalments as may be specified at the time the penalty is imposed."

It is obvious that this provision does not deal with officers who have resorted to industrial action and therefore does not apply to this case. The further contention was that, what the Permanent Secretary and the Cabinet did was to usurp the powers of the Public Service Commission and so the letter to Sykes, as President of L.U.S.A. which is central to this case, should be quashed.

In a straightforward submission, Mr. George for the respondents pointed out that the evidence and concessions established that there was industrial action on the part of the legal officers and that since the Crown must act through its officers, the Permanent Secretary of the Ministry of National Security & Justice as shown earlier, was the appropriate officer to withhold salaries when the legal officers refused to perform their duties while they were engaged in industrial action. The submission on behalf of the appellant that, the decision to enforce the law by withholding salaries was unconstitutional as well as being political interference in the civil service, was untenable. The Permanent Secretary was acting within her jurisdiciton, in accordance with the common law and any other paymaster of the

executive could, and ought to have so acted in the circumstances of this case. Consequently, even if certiorari and prohibition were appropriate remedies, they ought not to have been issued.

I would therefore dismiss the appeal.

Patterson, J.A. (Ag.):

The Legal Officers Staff Association (LOSA) is an organization representing legal officers in the public service islandwide. It conducts "collective bargaining" (within the definition in s. 2 of the Labour Relations and Industrial Disputes Act) on behalf of its officers with the Ministry of the Public Service and the Ministry of National Security and Justice in relation to:

> "(i) the terms and conditions of employment including the physical conditions in which such officers are required to work; and
>
> (ii) in all other matters affecting the privileges, rights and duties of such officers."

Bryan Sykes is the President of LOSA and of its executive body. He is an Attorney-at-law and a Crown Counsel in the Office of the Director of Public Prosecutions. He was appointed to the public service as a Clerk of the Courts with effect from the 1st July, 1987 and as a Crown Counsel with effect from the 1st November, 1989.

In September, 1991, LOSA commenced negotiations with the Government of Jamaica through the Ministry of the Public Service in respect of salaries and fringe benefits. The negotiations dragged on into 1992, without an agreement being reached. Hilary term went by and the Easter term began and the negotiations continued. Many of LOSA members islandwide became "sick" about the 22nd April, 1992, and for three days in that week as well as three days in each succeeding week they continued to be "sick" up to the third week in May, 1992. Some officers applied for and obtained sick leave, others applied for sick leave but it was not granted, but the fact is that many of LOSA members were absent from duty for a number of days between the 22nd April and the third week in May, 1992. The negotiations between LOSA and the Ministry of the Public Service were finally resolved in the third week of May, 1992.

The absence of the legal officers from duty greatly inconvenienced the public at large since various government departments could not function properly without the services of the legal officers. On the 12th May, 1992, the Permanent Secretary in the Ministry of National Security and Justice wrote to "All Heads of Departments" where legal officers were employed asking for a list of the names of the officers who participated "in industrial action for the period involved in accordance with Staff Order 3.25." The circular letter stated that "It has been decided that steps should be taken to ensure that deductions are reflected in the forthcoming pay day on May 21, 1992."

It would appear that Mr. Sykes became aware of the circular letter referred to above, because on the 9th June, 1992, he, as President of LOSA, wrote to the Permanent Secretary enquiring as to whether or not the Ministry proposed to make deductions from the salaries of members of LOSA. The Permanent Secretary answered his query by letter dated 17th June, 1992, in the following terms:

> "Dear Mr. Sykes,
>
> Please refer to your letter dated 9th June, 1992, concerning your enquiry as to whether or not this Ministry proposes to make deductions from the salaries of members of your Association.
>
> You will recall that when you indicated that your membership proposed to take industrial action you were repeatedly informed that deductions would be made from the salaries of officers who were engaged in such action in accordance with Staff Order 3.25.
>
> Staff Order 3.25 provides as follows:
>
> > 'Salaries and wages of officers who participate in industrial action may not be paid for any day or portion of the day during which they are engaged in industrial action.'
>
> I also wish to advise you that on 22nd May, 1992, Cabinet decided that once a determination was made as to the officers involved in industrial action then Staff Order 3.25 was to be enforced.

"The determination having now been made, this Ministry is proceeding to make the necessary deductions from the salaries of the officers concerned for the month of June.

Yours sincerely,

Clair Kean
Permanent Secretary."

It is against this factual background that both LOSA and Bryan Sykes, President of LOSA, invoked the jurisdiction of the Supreme Court, and sought leave and moved the Full Court for the following relief:

"(1) an Order of Certiorari to remove into this Honourable Court decisions by the Cabinet and the Minister of National Security & Justice, dated respectively 22nd May 1992 and 17th June, 1992 contained in a letter addressed to the 2nd Applicant by the Permanent Secretary of the Ministry of National Security and Justice dated the 17th June 1992; and

(2) an Order of Prohibition prohibiting and preventing the said Minister, and such other Ministers in the Cabinet, having responsibility for such departments in which legal officers, members of the Legal Officers Staff Association, are employed; their servants or agents or any persons directly or indirectly under their control or authority, from implementing or giving effect to the said decisions."

The names of the applicants are stated as follows:

"THE LEGAL OFFICERS STAFF ASSOCIATION an organisation representing legal officers in the Public Service Islandwide of Jamaica in 'collective bargaining' (within the definition in Section 2 of the Labour Relations and Disputes Act), that is in negotiations between it and the Minister of National Security and Justice, and in general the Government of Jamaica, in relation to the terms and conditions of employment of such officers in the Public Service;

2. BRIAN SYKES, President of the said Legal Officers Staff Association, and of its Executive, Attorney-at-Law, and a Crown Counsel in the Office of the Director of Public Prosecutions, and whose place of Residence is Sunnyside, Spanish Town, in the parish of Saint Catherine."

The respondents are:

"Minister of National Security and Justice

and

The Attorney General."

The motion came on for hearing before the Full Court of the Supreme Court on the 6th July, 1992, and at the outset Counsel for the respondents took a preliminary objection, challenging the competency of LOSA to apply for the relief sought. The court ruled in favour of the respondents and accordingly struck out the application of LOSA. However, on the invitation of the court, counsel amended his motion to reflect the applicant as "Bryan Sykes on his own behalf and on behalf of the members of LOSA", and the proceedings continued accordingly.

The court refused the application with costs to the respondents, and there is now an appeal to this court.

The appellant contends that the Full Court of the Supreme Court was in error when it adjudged that:

> "The Legal Officers Staff Association (LOSA) was not a proper party to the Proceedings entitled 'Regina versus Ministry (sic) of National Security and Justice and The Attorney General exparte Legal Officer (sic) Staff Association and Bryan Sykes (Miscellaneous Application No. 53 of 1992) in the Supreme Court, and that its application be stricken out with costs to the Respondents."

It is further contended that the final order refusing the application for Orders of Certiorari and Prohibition and the order for costs was wrong.

Before us, Mr. Macaulay advanced his arguments on behalf of the appellant with commendable zest and forthright fortitude, well realising the uphill task ahead. He postulated that the questions to be decided were these:

> "(1) Who has the right to decide to withhold or deduct money from the salaries of Public Officers? and
>
> (2) Can LOSA apply on its own for the orders sought?"

His arguments were presented in the order of the questions posed. At the very outset, he readily conceded that if the Minister was the employer of the members of LOSA, then certainly he had a right to withhold or deduct money from their salaries for as many days as they absented themselves from duty without permission. He submitted that either at common law or under statutory provisions, an employer has a right, which it may or may not exercise, to deduct from the employee's salary an amount that is sufficient to cover all the days that he absents himself from duty without permission, and in addition, to treat such absence as a breach of contract to which a penalty may be attached. He recognised the common law right of an employer to dismiss a worker who engages in industrial action on the ground that he has repudiated his contract. So far, I agree with his general statements and concessions. But he argued further that the common law power of the employer (in the case where the Crown is the employer of public officers) has been superseded by statutory provisions. He then embarked on a laborious exercise to substantiate his argument. The main thrust of his argument was that public officers are servants of the Crown, and the power to appoint them to public offices and to exercise disciplinary control over them is vested in the Governor-General acting on the advice of the Public Service Commission. He submitted that neither the Cabinet nor the first respondent was the employer of the appellant. Whether or not the public officers were to be paid, assuming that they had taken industrial action, was for their employer, the Crown, to decide and not for the Minister, nor the Cabinet nor any other authority or officer or person under the Constitution or any other law. It follows, in his view, that neither the Minister of National Security and Justice nor the Permanent Secretary of that Ministry, nor the Cabinet is competent to take the decision which is the basis of these proceedings.

Mr. Macaulay cited a great number of cases in his arguments and referred to many others and also to various sections of the Constitution, the Public Service Regulations and other instruments. I do not intend to deal with them in extenso because of the view that I have taken as to what is the real issue on this aspect of the case. Suffice it to say that much of his arguments are, in my view, good law and I agree with them. However, I respectfully say that, in my opinion, those legal propositions are not applicable to the circumstances of this case and the issues that fall to be decided by the Full Court. I think it is fair to say that the quintessence and marrow of his argument is that neither the Minister of National Security and Justice nor the Cabinet has the power to decide to deduct from the salaries of LOSA members for the days they were absent from duty since they are not the employers of such officers. LOSA members are public officers and the Crown is their employer, and accordingly, it is only the Governor-General, acting on the advice of the Public Service Commission, who has the power to take such a decision.

Mr. George submitted that in the instant case, no deductions were contemplated or sought to be made either by the Cabinet or the Minister. It was a straight matter of not paying officers for days they were not at work due to the fact that they were participating in industrial action. "The decision of the Cabinet complained of was a purely administrative decision, stating as a matter of policy that those legal officers who had taken industrial action would not be paid during the days of their participation in such industrial action." There was nothing judicial or quasi-judicial about Cabinet's decision.

Mr. George argued that industrial action does not attract disciplinary action since the Public Service Regulations do not apply to industrial action, and in Jamaica industrial action does not constitute a breach or misconduct - employees have the freedom to strike, but not a right to strike (Hotel Four Seasons Ltd.

V. The National Workers Union - C.A. 2/84 - unreported - delivered 29.3.85).

Mr. George further submitted that the Cabinet decision is merely declaratory of the common law and does not contravene any statute or the Public Service Regulations. The letter of the Permanent Secretary expressed the intention of the Accounting Officer to abide by the common law, and Staff Order 3.25, and the decision of the Cabinet which is confirmatory of both. It is the Permanent Secretary who is the person charged with the supervision of the Ministry and its work (section 93(1) of the Constitution). The Accounting Officer has a duty to ensure that only money due to an employee is paid to him, "no more or no less".

Mr. Chin See thought it wise to bolster the arguments put forward on behalf of the respondents. He too opined that the common law principle, "no work, no pay" was apposite, having regard to the circumstances of this case, and that the principle has not been abrogated by any enactment.

He examined the grounds on which the discretionary reliefs were sought in the Full Court, and concluded that the only ground put up to base the exparte application for leave was ground 4, which reads as follows:

> "Having regard to the fact that sick leave was approved by the appropriate authority in every case to which the said decisions are applicable, then the public officers involved were 'not required to be at work' (Section 4(4)(b) of the Labour Relations & Industrial Disputes Act) on the relevant days, and whatever they may or may not have done in connection with the activities of the first applicant, were permissible in law. No unauthorised or impermissible act was alleged to have been done by the members of the first applicant within or without their working hours. (Section 4(1)(b) and 4(4) of the Labour Relations and Industrial Disputes Act)."

Since that ground was abandoned, he argued, the entire case, therefore, has no factual basis. No mention was made in

the grounds or affidavit in support to base the exparte application that industrial action had been taken. Since full disclosure was not made on the exparte application for leave to apply, the application needed to be made afresh.

He held another view. The officers brought these proceedings to secure for themselves "the advantage of pay not earned." Since wages arise from a contract, the claimant must prove his entitlement. Remuneration is always a matter of private law. He submitted that the issue must depend exclusively on the existence of a purely public law right for that issue to be determined in judicial review proceedings, and so, in the instant case, the application was misconceived. He relied heavily on the authority of the speeches of Lord Bridge of Harwich and Lord Lowry in Roy v. Kensington and Chelsea and Westminster Family Practitioner Committee [1992] 2 W.L.R. 240.

I think it appropriate for me to examine the relevance of this submission at this time. The facts of the case are stated in the headnote as follows:

> "The plaintiff, a general practitioner, commenced an action in the Queen's Bench Division against his family practitioner committee seeking, inter alia, payment of part of his basic practice allowance withheld by the committee following their decision that he had failed to devote a substantial amount of time to general practice as required by the Statement of Fees and Allowances published under regulation 24 of the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974. The committee applied by summons for an order that the plaintiff's claim be struck out as an abuse of the process of the court on the ground that their finding had been a public law decision which could only be challenged by way of judicial review under R.S.C. Ord. 53. The judge struck out the claim but on the plaintiff's appeal the Court of Appeal held that the plaintiff had a contract for services with the committee and that accordingly his proper remedy was by ordinary action and not by judicial review."

The committee obtained leave to appeal to the House of

Lords. Lord Bridge of Harwich, in his speech, had this to say (at page 241):

> "It is appropriate that an issue which depends exclusively on the existence of a purely public law right should be determined in judicial review proceedings and not otherwise."

Lord Lowry, in his speech referred to the judgment of the Court of Appeal in Reg. v. East Berkshire Health Authority Exparte Walsh [1985] Q.B. 152 where it was held that:

> "Mr. Walsh, although his terms of service were determined by Statute, was seeking to enforce a private contractual right under his contract of employment, so that judicial review was inappropriate."

Mr. Chin See submitted that the fact that good government would pay is a further reason why a court should not exercise its discretion as sought for, as the appellant has neither a legal or moral right to receive pay - public funds ought not to be paid on moral grounds.

There is merit in Mr. Chin See's argument. As I said before, it must have been that Mr. Sykes became aware of the circular letter of the Permanent Secretary of the 12th May, 1992, wherein it was stated that:

> "It has been decided that steps should be taken to ensure that deductions are reflected in the forthcoming pay day on May 21, 1992."

If the reliefs sought were granted, then the result would be two-fold; (i) the decision taken would be quashed and (ii) the officers concerned would have to be paid their salaries for the days during which they were engaged in industrial action. The true nature of these proceedings is really a claim for salaries by LOSA members for the days they took industrial action.

The ultimate responsibility for payment of salaries to the appellant rests with the Minister of National Security and Justice, and implicit in the enquiry of Mr. Sykes, as President of LOSA, addressed to the Permanent Secretary of the Ministry of National Security and Justice, is an acknowledgement of this

fact. Such salaries are payable from sums withdrawn from the Consolidated Fund by virtue of the authority of a warrant under the hand of the Minister. It is the duty of the accounting officer in the Ministry to ensure that no improper payment of public moneys is made. The Financial Administration and Audit Act defines an "accounting officer" to mean [s. 2(1)]:

> "any person designated as such by the Minister pursuant to section 16 and charged with the duty of accounting for expenditure on any service in respect of which moneys have been appropriated under this Act or any other enactment."

Any person responsible for an improper payment of public moneys is liable to be surcharged therefor under the provisions of section 20 of the said Financial Administration and Audit Act. The Permanent Secretary is the person charged with the supervision of payments within the Ministry, including the payment of salaries, and therefore must ensure that no improper payments are disbursed.

At common law the general principle has always been "no work, no pay". An employee is not entitled to be paid for work he has not done, he is paid a salary for the work he does. The headnote in the case of Miles v. Wakefield Metropolitan District Council [1987] 1 A.C. 539 at 540 aptly states the principle thus:

> "Held: ... that an employee's right to remuneration depended on his doing or being willing to do the work that he was employed to do and if he declined to do that work the employer need not pay him."

This was a case where the plaintiff took industrial action by refusing to carry out the full range of his duties on Saturdays, though he was willing to do some work. The defendants deducted certain sums from the plaintiff's salary for the Saturdays that he refused to carry out his duties, and the plaintiff brought an action to recover the amounts so deducted. His claim failed. Lord Templeman, in his speech, expressed the following views (pp. 558-559):

> "My Lords, industrial action involves a worker, in conjunction with all or some of his fellow workers, declining to work or declining to work efficiently in each case with the object of harming the employer so that the employer will feel obliged to increase wages or improve conditions of work or meet the other requirements put forward by the workers' representatives. The form of industrial action which consists of declining to work is a strike."

and further:

> "Industrial action is an effective method of enhancing the bargaining power of the workers' representatives. The courts are not competent to determine and are not concerned to determine whether a strike or other form of industrial action is justified or malicious, wise or foolish, provoked or exploited, beneficial or damaging; history has proved that any such determination is speculative and liable to be unsound. Any form of industrial action by a worker is a breach of contract which entitled the employer at common law to dismiss the worker because no employer is contractually bound to retain a worker who is intentionally causing harm to the employer's business."

and still further:

> "Mr. Sedley concedes that a worker is not entitled to his wages if the employer serves formal notice of dismissal. Mr. Sedley, in effect, denies the right of the employer to say, expressly or by implication, to the worker engaged in industrial action: 'I have no present intention of dismissing you but I will only pay you wages if you work.' A worker who is on strike (as opposed to a worker who is locked out) does not usually line up for his pay packet on pay day during a strike. The worker thus recognises and accepts that whether or not he is dismissed for industrial action, he is not entitled to be paid if he declines to work. The worker hopes that the damage inflicted on or feared by the employer by industrial action will drive the employer to the bargaining table before the loss of wages suffered by the worker drives him back to work."

I think Mr. Macaulay is in full agreement with the general principle, but I do not agree with his submission that in the case of employees of the Crown, the common law principle is

superseded by statute. In my view, neither the provisions of the Constitution nor of the Public Service Regulations nor any other enactment has abrogated the common law principle in so far as employees of the Crown are concerned. Furthermore, the common law principle has been recognised in the Staff Orders. The relevant orders are:

> "3.24 (1) Disputes in the Civil Service which may involve or give rise to industrial action shall be determined in accordance with any law or enactment which makes provision for the determination of such disputes.
>
> (2) For the purpose of Chapter III industrial action includes the following--
>
> (a) any lock-out, or
>
> (b) any strike, or
>
> (c) any course of conduct (other than lock-out or strike) which in contemplation or furtherance of an industrial dispute, is carried on by one or more employees with the intention of preventing or reducing the provision of services.
>
> 3.25 Salaries and wages of officers who participate in industrial action may not be paid for any day or portion of the day during which they are engaged in industrial action.
>
> 3.26 It is expected that there will be some workers who report for duty and are willing to work but are precluded from doing so because of circumstances beyond their control. A distinction should be made between this class of workers and the bona fide class which has resorted to industrial action and the former class may be paid if after reference to the Permanent Secretary in their Ministry it is considered that the circumstances justify such action. In any case where there is doubt whether a worker was in the bona fide class resorting to industrial action an enquiry shall be instituted in order to determine the category in which his conduct places him."

I agree with the submission that the provisions of the Staff Orders for the Public Service do not constitute a contract between the Crown and its servants, but it is true to say that public officers consider them banding. The Staff Orders embody

the conditions of service of public officers, policy provisions and operational procedures and practices. The Orders apply to all public officers and they are enjoined to familiarise themselves with them.

The power to withhold from the salaries of the LOSA members those days' pay that they were engaged in industrial action is to be found in the common law and its embodiment in the Staff Orders. The decision to exercise such a power must be in the person whose responsibility it is to pay the officers, in this case, the Minister of National Security and Justice through his Permanent Secretary. The officers were reminded on several occasions that Staff Order 3.25 would be enforced if they resorted to industrial action. We are reminded of the principles to be borne in mind in a case such as this, by Woolf, L.J. in his judgment in McClaren v. Home Office [1990] 1 C.R. 824 at 836 when he said:

> "In resolving this issue the following principles have to be borne in mind.
>
> (1) In relation to his personal claims against an employer, an employee of a public body is normally in exactly the same situation as other employees. If he has a cause of action and he wishes to assert or establish his rights in relation to his employment he can bring proceedings for damages, a declaration or an injunction (except in relation to the Crown) in the High Court or the county court in the ordinary way. The fact that a person is employed by the Crown may limit his rights against the Crown but otherwise his position is very much the same as any other employee. However, he may, instead of having an ordinary master and servant relationship with the Crown, hold office under the Crown and may have been appointed to that office as a result of the Crown exercising a prerogative power or, as in this case, a statutory power. If he holds such an appointment then it will almost invariably be terminable at will and may be subject to other limitations, but whatever rights the employee has will be enforceable normally by an ordinary action. Not only will it not be necessary for him to seek relief by way of judicial review, it will normally be inappropriate for him to do so: see Kodeeswaran v. Attorney-General of Ceylon [1970] A.C. 1111; Reg. v.

"East Berkshire Health Authority, Ex parte Walsh [1984] 1 C.R. 743 and Reg. v. Derbyshire County Council, Ex parte Noble.

(2) There can however be situations where an employee of a public body can seek judicial review and obtain a remedy which would not be available to an employee in the private sector. This will arise where there exists some disciplinary or other body established under the prerogative or by statute to which the employer or the employee is entitled or required to refer disputes affecting their relationship. The procedure of judicial review can then be appropriate because it has always been part of the role of the court in public law proceedings to supervise inferior tribunals and the court in reviewing disciplinary proceedings is performing a similar role. As long as the 'tribunal' or other body has a sufficient public law element, which it almost invariably will have if the employer is the Crown, and it is not domestic or wholly informal, its proceedings and determination can be an appropriate subject for judicial review."

It is clear that on the facts of this, that the substance of the officers' claim was an assertion of their rights in private law, and accordingly, I agree with Mr. Chin See that these proceedings for prerogative remedies amount to an abuse of the process of the court. For these reasons above, the appellant is not entitled to the relief sought.

The next issue revolves around the non-disclosure of material evidence at the time when leave was sought on the exparte application. It is clear from the affidavit of Clair Kean, the Permanent Secretary in the Ministry of National Security and Justice, and the documents exhibited thereto, that a number of LOSA members had taken industrial action. Mr. Sykes, who swore the affidavit, certainly knew that to be a fact, but the affidavit disclosed that sick leave was "approved by the appropriate authority in every case" to which the Minister's decision was applicable, and that was repeated in ground 4 quoted above. When that ground is viewed in the light of the other evidence, it is obvious that it had to be abandoned. But nevertheless, the affidavit and ground were before the single judge at the

time the exparte application for leave was considered, and it is reasonable to assume that he had them in mind in granting leave, not knowing that they did not represent the true facts. When that ground was withdrawn and the other facts became known to the Full Court, it was within the power of the court, without dealing with the merits of the case, to dismiss the motion at that stage on the ground that the applicant had suppressed or misrepresented the facts material to his application. "The rule of the Court requiring uberrima fides on the part of an applicant for an exparte injunction applied equally to the case of an application for a rule nisi for a writ of prohibition" (The King v. The General Commissioners for the purposes of the Income Tax Acts for the District of Kensington ex parte Princess Edmond de Polignac [1917] 1 K.B. 486. See also Dubai Bank Ltd. v. Galadari and others [1990] 1 Lloyd's Rep. 120).

For the purposes of my decision, it is not necessary to advert to the powers of the Governor-General and the Public Service Commission but since copious arguments were advanced intending to show that it was only the Governor-General who had the power to decide that the officers should not be paid, I shall express my views on that issue.

I agree that power to exercise disciplinary control over public officers is vested in the Governor-General acting on the advice of the Public Service Commission. The Public Service Regulations, 1961, which were specifically preserved by section 2 of the Jamaica (Constitution) Order in Council, 1962, provide the machinery and regulate the functions of the Public Service Commission. Regulation 28(1) provides as follows:

> "28-(1) The Commission shall deal with disciplinary proceedings against officers in the light of reports from Permanent Secretaries and Heads of Departments, or otherwise.
>
> (2) Subject to paragraph (3), where the Commission is of opinion that disciplinary proceedings ought to be instituted against an officer, the Commission may recommend to the Governor-General that such proceedings be instituted."

Regulation 37(1) specifies disciplinary penalties. It provides:

> "37-(1) The penalties which may be imposed on an officer against whom a disciplinary charge has been established are:
>
> (a) dismissal;
>
> (b) reduction in rank;
>
> (c) deferment or withholding of increment;
>
> (d) a fine;
>
> (e) reprimand.
>
> (2) Where a fine is imposed the amount of such fine shall be deducted from the salary of the officer by such instalments as may be specified at the time the penalty is imposed."

It is clear that these regulations are directed at public officers against whom disciplinary proceedings are instituted. If the charge is established, then a fine, as punishment, may be imposed, and in that event, the amount "shall be deducted from the salary of the officer."

An officer who absents himself from duty without permission may, in certain circumstances, be charged with misconduct, and if the charge is established, he may be fined and have the fine deducted from his salary. But that was never the case in the instant proceedings. Before the Full Court, it was conceded, for the purposes of argument, that the LOSA officers had taken industrial action. But Mr. Macaulay's argument by which he seeks to establish that the appellants should be charged before any amount can be deducted from their salary and then only on the decision of the Governor-General, seems to have overlooked the fact that LOSA members did not misconduct themselves by taking industrial action. It is not the law that a public officer who takes industrial action is thereby guilty of misconduct. Further, when salary is withheld in accordance with the common law principles and the Staff Orders as I have already pointed out, such sums are not deducted as fines, but in the

exercise of a right not to pay for work not performed. Accordingly, I do not think that Mr. Macaulay's arguments in that regard were relevant to the particular facts of this case.

I turn now to the question of whether or not the Full Court was in error in holding that LOSA was not competent to bring the application.

Mr. Macaulay submitted that having regard to the Interpretation Act and the definition of "plaintiff", "petitioner", "cause" and "matter" in the Judicature (Civil Procedure Code) Law, LOSA is a "person" with a right to apply for the prerogative orders. He referred to the Order against the appellant and opined that it shows that LOSA is a "person", since the court ordered costs against it.

He referred to Davey v. Shawcroft [1948] 1 All E.R. 827 in support of his arguments. In that case, a committee of workmen and employees at a steel works registered as coal merchants, by virtue of the Interpretation Act, 1889 s. 19, (U.K.) was held to be a "person" within the meaning of The Coal Distribution Order, 1943. Section 19 of the Interpretation Act (U.K.) provides:

> "In this Act and in every Act passed after the commencement of this Act the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate."

Mr. Chin See, for the respondents, argued that generally speaking, only natural persons or legal entities can be parties to proceedings. He said LOSA is an unincorporated body and its only scope and authority is derived from section 2 of The Labour Relations and Industrial Disputes Act.

Trade Unions are required to be registered in accordance with the Trade Unions Act, and section 9 of that Act empowers the trustees and authorised officers to bring and defend actions, but he argued, LOSA is not registered under that Act or any statute whatsoever. The Labour Relations and Industrial Disputes Act does not give LOSA a right to sue or be sued; LOSA is not

a legal entity and it has no right to bring proceedings in a court of law.

He relied on the authority of Bloom v. National Federation of Discharged and Demobilized Sailors and Soldiers 1918 L.T.R. Vol. XXXV 50. The defendants were a war charity, registered under the War Charities Act, 1916, and the plaintiff brought an action against them claiming for work done and goods sold. The Court held that the defendants, being an unincorporated body, could not be sued.

Turning to the meaning of "person" assigned to it by the Interpretation Act, Mr. Chin See argued that an association is a group of persons having a common purpose, "it is of general character and numerous in number." But he said there must be some provision in a statute to make them a legal entity. In order to sue, each must conform with the statutory provision of registration and even where registered, the statute will define the extent to which it can act. An unregistered association may only bring an action by a person suing in a representative capacity. He submitted that under the Interpretation Act, the definition of "person" which includes an association must relate to the particular Act in which it is used.

In my opinion, a good starting point from which this complex issue may be examined is to look at the nature of the proceedings as filed. They are applications for an order of prohibition and an order of certiorari, and section 564A(1) of the Judicature (Civil Procedure Code) Law, (the CPC) directs that such proceedings shall be heard by a Full Court. The application is made by Notice of Motion. Looking at the Interpretation section of the CPC (s. 2) it seems to me that these proceedings were intended to be termed a "cause" which includes an "original proceeding between a plaintiff and a defendant." A "plaintiff" includes "every person asking any relief (otherwise than by way of counter-claim as a defendant), against any

other person, by any form of proceeding, whether the same be taken, by way of action, suit, petition, motion, summons or otherwise."

The C.P.C. does not define "person", but section 3 of the Interpretation Act provides:

> "In this Act and in all Acts, regulations and other instruments of a public character relating to the Island, now in force or hereafter to be made, the following words and expressions shall have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided --
>
> > 'person' includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons."

So, "unless there is something in the subject or context inconsistent with such construction", an association may be a plaintiff in a cause.

In the application the names of the applicants are described thus:

> "(1) THE LEGAL OFFICERS STAFF ASSOCIATION An organisation representing legal officers in the Public Service Islandwide of Jamaica in 'collective bargaining' (within the definition in section 2 of the Labour Relations and Disputes Act), that is in negotiations between it and the Minister of National Security and Justice, and in general the Government of Jamaica, in relation to the terms and conditions of employment of such officers in the Public Service;
>
> (2) BRIAN SYKES, President of the said Legal Officers Staff Association and of its Executive, Attorney-at-Law, and a Crown Counsel in the Office of the Director of Public Prosecutions, and whose place of Residence is Sunnyside, Spanish Town, in the parish of Saint Catherine."

and therefore may be considered a person within the context of the Interpretation Act, but one must look at the C.P.C. and see whether or not such an association may be a plaintiff. I agree with Mr. Chin See that LOSA is not recognised as having any legal

existence apart from the members of which it is composed. Its object is akin to that of a Trade Union, but it is not registered as a Trade Union. A registered Trade Union may seek redress through its trustees and officers in the Courts, but that is by virtue of The Trade Unions Act. The same applies to a registered company. But it seems to me that the underlying principle is that the applicant, in proceedings such as these, must be legally cognizable. It cannot be the law that any group of persons may assume a name and then seek redress against a legal entity, unless some statute gives them that right. In the context of these proceedings, the relief sought affects individuals, not LOSA. The decision complained about is that individual legal officers who participated in industrial action would not be paid for the days they were engaged in such action. It is true that LOSA may have some legal recognition under the terms of the Labour Relations and Industrial Disputes Act, but these proceedings have nothing to do with the object of the Association or with bargaining rights. Therefore, I hold that LOSA is not a competent applicant in these proceedings. Accordingly, the Full Court is right in holding that LOSA is not competent to bring the application.

On the question of costs, it is Mr. Macaulay's contention that costs was ordered against LOSA at the time that LOSA's application was struck out. I have perused the minute of the oral judgment and the reasons for judgment of the Full Court and I am quite unable to find mention of such an order. Good sense dictates that there could not be such an order. Only one motion was filed in the Court below on the joint application of (i) LOSA and (ii) Bryan Sykes, President of the said LOSA. The Full Court ruled that LOSA was not competent to bring the application, and accordingly, LOSA was struck out, and with the amendment granted, the same motion was heard with the applicants being "Bryan Sykes, on his own behalf and on behalf of the members of LOSA", with the result that the application was refused with costs to the

respondents to be agreed or taxed. I conclude, therefore, that Mr. Macaulay's contention is without foundation.

After full consideration, I have reached the conclusion that there is no merit in the appeal, and accordingly, it must be dismissed.

ROWE P.

I have read the judgments of Downer J.A. and Patterson J.A. (Ag.) in draft and I agree that the appeal should be dismissed for the reasons adumbrated by Downer J.A.

In the event, the appeal is dismissed with costs to the respondents to be agreed or taxed.

Cases referred to

1. Council of Civil Service Unions (1985) A.C. 374
2. Kodeeswaran v Attorney-General of Ceylon (1970) A.C. 1111
3. Roy v Kensington and Chelsea & Westminster F.P. Ctee (1992) 2 W.L.R. 239
4. R v Lord Chancellor's Department, ex parte Nangle (1992) 1 All E.R. 897
5. Mills v Wakefield Metropolitan District Council (1987) 1 A.C. 539
6. Rex v Kensington Income Tax Commissioners ex parte Princess Edmond de Polignac (1917) 1 K.B. 486
7. Bloom v National Federation (1918) W.N. 337
8. Cantwell v Thomson (1953) 1 Q.B. 445
9. Regina v Minister of National Security etal ex parte Sykes Suit M 53/92
10. Hotel Four Seasons Ltd v National Workers Union CA 2/84 - 29/3/85
11. Reg v East Berkshire Health Authority Ex parte Walsh (1985) Q.B. 152
12. McClaren v Home Office (1990) I.C.R. 824
13. Dubai Bank Ltd v Galadari and others (1990) 1 Lloyd's Rep 120
14. Davey v Shawright (1948) 1 All E.R. 82
15. Bloom v National Federation of Discharged and Demobilized Sailors and Soldiers (1918) L.T.R. Vol XIX 50