

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2005 HCV 3142

In the matter of the
Education Act 1965

AND

In the matter of the
Education Regulations 1980

AND

In the matter of the College
of Agriculture, Science &
Education Scheme Order 1995

AND

In the matter of part 56 of
the Civil Procedure Rules
2002

AND

In the matter of the Student
Council of the College of
Agriculture, Science &
Education

BETWEEN	KEVIN WILLIAMS AND ELVIS GOODE	CLAIMANTS
	for and behalf of the Student Council of the College of Agriculture, Science and Education	
AND	The Board of Management of the College of Agriculture, Science & Education	DEFENDANT

Mrs. Marvalyn Taylor-Wright instructed by Taylor-Wright
& Company for Claimants

Mr. Curtis Cochrane instructed by Director of State Proceedings for Defendant

Heard: January 11, 19 and February 9, 2006

Sinclair-Haynes J (Ag.)

The claimants, Kevin Williams and Elvis Goode are representatives of the Student Council of the College of Agriculture, Science and Education (CASE). They have invoked the court's supervisory jurisdiction by applying for Judicial Review of the Board of Management of CASE decision/action to conduct the elections of the Student Council for the year 2005-2006.

They are also alleging inter alia that the Board has acted ultra vires its authority when it withheld the Student Council's funds from the Student Council of 2004-2005. The claimants consequently seek an injunction restraining the Board from withholding the said funds. Exemplary Damages are also sought.

The facts which have led the Claimants to engage the Court's Review Process

Elections for the academic year 2005 – 2006 should have been held in May 2005. However, the following events interfered with the elections being held:

1. On the 5th day of April 2005 to the 28th day of April 2005 there was a student protest at CASE which was orchestrated by the Student Council.
2. On the 29th April 2005, the college was closed by the Board.
3. It was reopened on the 5th May 2005. This coincided with the college's final examination. This examination lasted the entire month of May.
4. The students were ordered to leave the campus on the 4th June 2005. The Board proceeded to change the locks on the Student Council's Office and forbade its members entry. Further, it took possession of all records which pertained to the Student Council.

The records were later handed over to the Student Council of 2005-2006.

Upon the reopening of the school in September, the Board dispossessed the incumbent Student Council members of their rights to participate in the election process. Instead it convene a group of persons who were designated to conduct the Student Council's elections. This body was the Electoral Committee. They were responsible for conducting elections. Documents pertaining to the conduct of elections originated from the Electoral Committee and bore the seal of the student affairs. New rules with regard to persons eligible to contest the elections were implemented by this committee.

Claimants' contention

The claimants contend that the Board's intervention in the Student Council's election is unlawful and so is the sequestering of the funds which belong to the Student Council.

Mrs. Taylor-Wright on their behalf contends that S. 32 (1) of the Education Regulations 1980 makes it clear that the Student Council is a permanent feature of student life and therefore the Council must be functional at all times. The fact that the Student Council must conduct its elections underscores the point that a Student Council must be in place to carry out its process. At the end of the tenure there is a qualified vacancy. The duly elected office holders on the Council continue in office until another duly constituted election is held. This, she submits is the principle of holding over.

It is trite law she argues that nature abhors a vacuum and so does the law also in respect of vacancy in public office.

Whenever a vacancy in an office is created by the end of a tenure in office there is a qualified vacancy which is filled by a lawful election and the incumbent holds over.

However, whenever an office becomes vacant by death or resignation of the holder, the vacancy is an absolute or actual vacancy and is filled by appointment or an interim election.

The Student Council, she argues held over and a qualified vacancy existed. This qualified vacancy ensured the continuance of a Student Government until the holding of a lawful election. She relies on the case of **Rex v Mayor of Truro** (1816) Chitty Report volume 2 page 257 and **Gregorio Remata v Juan Javier**, a 1917 case from the Philippines.

In the circumstances, she submits the interference of the Administration was unjustifiable. Further she submits, the Administration had no authority to intervene. In so doing they took unto themselves an authority they did not possess. The Administration cannot with candour deny its role in conducting the elections as the documentary evidence reveals that the election was initiated and conducted by it. She refers to the notification of nomination and election by the Directorate of Student Affairs.

It is her submission that the Directorate of Student Affairs is misconceived about its supervisory role in the Student Council. This is evident, she submits, from the documentation which emanated from it.

The Directorate of the Student Affairs clearly believed it had a right:

- a. To hold Student Council's elections. She refers to Administrative Council's Minutes dated June 02, 2003;

- b. Set up an Electoral Committee, a body which is unknown to the Constitution of the Student Council and a creation of its own invention;
- c. Effect electoral duties for and on behalf of the said Electoral Committee. She refers to the undated Electoral Committee notice from the Director of Student Affairs for and on behalf of the Electoral Committee;
- d. Deliberately blur the distinction between the Student Council and the Directorate.

Its assumed role flies in the face of the independence of the Student Council and its mandate to protect the rights of the students.

The Board had no right in law to set into motion the election process or carry out the election of the Student Council. The Education Regulations 1980 do not authorize them so to do. As such its action was illegal and of no effect. She submits that elections that are not conducted substantially in accordance with the law as to election are void.

She cites and relies on the following cases:

Woodward v Sarson 1874 -80 All ER Rep 262

Basil Buck v Aston King et al Suit No. CL B016 of 1997
delivered January 3, 1980

Morgan v Simpson 1974 2 WLR's 17

With regards the Student Council's funds she submits that:

1. Rule 13 of the Student Council's Constitution obliges the treasurer of the Student Council to manage the financial affairs of the Students Association and to keep records and present reports of meetings.

2. Rule 6 of the said Constitution states that it is the Student Council that must manage and administer the affairs of the Students Association.
3. Rule 7 of the Constitution obliges the Student Council to finance members of the Student Council who represent the Council off the college campus.
4. Rule 10 confers upon the president of the Student Council the responsibility to oversee the income and expenditure of the Council's treasurer.
5. It is the president and treasurer of a lawfully elected Student Council who have the authority to collect, administer, keep records of and oversee the expenditure of the Council's funds on behalf of the Student Council which is an independent body.

She trenchantly argues that the Administration, in sequestering the Council's funds and refusing to hand over same to be managed by the Council is illegal, arbitrary and unconstitutional.

Defendant's Contentions

It is the Board's contention that at the end of May the Student Council ceased to exist. There is no provision in the Constitution that addresses that situation hence it intervened to facilitate the new Student Council. In the circumstances the Board was properly authorized to act as it did.

Mr. Curtis Cochrane on behalf of the Board contends forcefully that the Student Council elected in 2004 ceased to exist. According to him the Board is empowered by virtue of S 4 (1) of the Education Act, The CASE Scheme Act, to facilitate a new Student Council.

Section 4 (1) states:

"the Board shall be the governing authority of the college and shall without prejudice to any other power conferred by this scheme have the power."

Section 4 (1) (d) states:

"generally to manage subject to the provision of this scheme, the financial affairs of the college including its accounts, investments property and other business."

Other business, he argues includes facilitating Student Council's elections in the absence of a Student Council. He demurs to the use of the 'term holding over' as he contends that such a term, with regards to elections, is alien to the English jurisdiction. He cites and relies on the **Osborn's Concise Law Dictionary** and the **Dictionary of English Law** in which holding over is defined in terms of a relationship between landlord and tenant at the expiration of a tenancy.

In support of his contention that the term holding over is unknown to our jurisdiction as it relates to elections, he relies on Section 16 of the Parish Councils Act and Section 20 of the Representation of the People Act. Both Acts contain specific provisions as to what ought to happen in the event of a delay in holding elections.

First Issue

The first issue is whether the Student Council became extinct as submitted by Mr. Cochrane or whether the executive held over as is submitted by Mrs. Taylor Wright.

The Student's Handbook contains the Constitution of the Student Council.

Rule 2 states:

"...membership in the Student Council shall be for a period of one year but all persons are eligible for re election."

Rule 4 (d) states that election for each member of the Council shall be held in

April to May of the academic year.

The fact that certain electoral processes are regulated by statute which contain specific provisions as to what ought to occur in the event of any delay in holding elections, does not lead ineluctably to the conclusion that in the absence of any such provision with regards to other entities there is an absolute vacancy.

Contrary to Mr. Cochrane's submission the term 'holding over,' in the context of an election is familiar to the English jurisdiction. As early as 1816 in the case of **Rex v Mayor of Truro** the term was recognized.

In that case a mandamus was moved to proceed to elections for a mayor where no election had been held for two years. The question was whether there was a clear distinction made between an actual vacancy and a mayor holding over.

In the case of **Gregorio Ramata v Juan Javier** GR No L-12354 March 17, 1917 relied on by Mrs. Taylor-Wright, the major issue was whether the failure to elect a municipal president created a vacancy which the Vice President had a right to fill.

In that case, the relevant statute provided that if a successor was not inducted at the time appointed by law, the incumbent should hold over until a successor should be duly qualified. That case is not helpful in light of the specific provision as to the President holding over.

In the instant case all members of the executive returned to the college in September and were available to serve.

Did the Board possess the authority to facilitate the elections?

Rule 2 of the Constitution states:

"A member of CASE Student Council will be anyone who is accepted by the Administrative body of the college to pursue a prescribed course of study offered and who is elected by the student body."

The Electoral Committee, however, took it upon itself ultra vires the constitution to implement new requirements for membership.

By an undated Electoral Committee notice it stated as follows:

"Students contesting the election must meet the following criteria –

Have good discipline record

Be in good financial standing

Be in good academic standing

Be a good communicator."

Section 32 of the Education Act, Education Regulations 1980 states:

1. *"Every public educational institution shall have a Student Council which shall consist of elected representatives of students with at least one staff advisor being elected by the students."*
2. *Through the Student Council at the secondary or tertiary levels the students shall have the right to:*
 - a. *"democratically elect their own representative;*
 - e. *hold regular meetings to conduct business on their behalf but with due regard to the smooth functioning of their institution."*

Rule 6 of the Constitution states:

“That it is the Student Council that is to direct and appoint students in and for such activities as are consistent with the aims or well being of the college.”

Section 32 (1) (2) states categorically that it is through the Student Council that the students shall have the right to elect their representatives. The operative word is through.

‘Through’ is defined by the **Webster’s New World Dictionary and Thesaurus** as from ‘one side to the other’ ‘straight through’ by means of ‘from beginning to the end.’

Section 32 of the Education Regulations confers the authority to conduct the elections on the Student Council. It has the complete responsibility for the election process. There is no such power vested in the Board.

At the time the Board facilitated the election process the incumbent Student Council’s executive was in existence. The process by which the election was conducted was contrary to the regulation and was therefore unlawful.

Section 17 (1) of the Education Act states:

“Every public educational institution shall comply with the following requirements, that is to say – it shall be conducted in accordance with all regulations relating thereto.”

The Board is bound to comply with the regulations and it failed to comply with Section 32 (1).

Section 4(1) (d) of the Education Act is irrelevant .

Have the Claimants ground for review?

The grounds on which administrative action is subject to Judicial Review can be conveniently classified under three heads. This was stated by Lord Diplock in **Council of Civil Servants Unions v Minister for Civil Service** [1985] 3 All ER 950

"The first ground, I would call 'illegality,' the second, 'irrationality' and the third 'procedural impropriety.'"

He defined illegality as follows:

"The decision maker must understand correctly the law that regulates his decision making power and must give effect to it."

The pertinent question is whether the Board understands correctly the law regulating it and whether it gave it effect to it.

In light of the forgoing it has not. The Board clearly misunderstands its role and function in relation to the Student Council.

It is evident by the Board's unrepentant decision to declare null and void the election of certain individuals to the Student Council in 2003 that it does not understand correctly the law governing its decision making power. Dr. Paul Ivey, President of the college and agent of the Board of Management avers that the decision arose from uncertainties as to how the Clause pertaining to eligibility for membership on the Student Council was to be interpreted.

Rule 18 of the Constitution states:

- a. *"the Student Council shall have powers to make rules and by-laws in collaboration with the Hall Committee, thereby satisfying the objectives of council administration;*
- b. *the Council shall enact said rules and regulations in collaboration with the Hall Committee as it may deem necessary for the proper function of the Counsel and College of Agriculture, Science and Education (CASE)."*

If in 2003 there was some uncertainty, as to the members democratically elected in accordance with Rule 32 (1) it was the prerogative of the Council and Hall Committee to deal with the matter, not the Board in the absence of any invitation from the Council and Hall Committee.

Further Dr. Ivey is erroneously of the view that he extends a mere courtesy to the Student Council to have a member sit on the Board. This is evident from paragraph 15 of his affidavit dated 9th December 2005. In fact Section 32 (2) (b) of the Education Regulations 1980 states that the Student Council shall have the right to have representation on the Board of the institution.

Quite apart from not giving effect to the law governing the Student Council's elections, the Board, in closing the school, reopening for examinations and thereafter ordering the students off campus hindered the elections being held in accordance with Rule 4 (d) of the Constitution. Thereafter, to use the fact that elections would have been conducted outside of the specified period would be unfair

Lord Hailsham L C in **Chief Constable of North Wales Police v Evans** (1982) 1 WLR 1155 encapsulates the essence of Judicial Review when he said:

"It is important to remember in every case that the purpose ... is to ensure that the individual is given a fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or the individual judges for that authority constituted by law to decide the matter in question."

Re the Complaint that the Board has usurped the Student Council's rights to have control of its funds.

Student Council's fees are paid in as part of the school's fees. The fees are collected by the Administration.

Rule 13 of the Student Council Constitution states that the treasurer:

- a. *"Shall manage all the financial affairs of the Council and Student Association;*
- b. *Shall keep up to date accurate financial records of the Council and Association;*
- c. *Shall present financial report at Council and Association's meetings."*

Rule 6 states:

"The Student Council shall finance any member of the Student Council representing the Council off the college."

By virtue of Rule 10 (h) it is the President's duty to oversee the income and expenditure of the Council's treasurer. To confiscate the Student Council's funds was unlawful in light of the foregoing. By virtue of Rule 6, the Student Council is entitled to the funds to satisfy legal fees and other expenses incurred by their representatives.

Much ado has been made by Mr. Cochran as to whether Mr. Kevin Williams was properly a student. A student is defined by the Education Act as a person for whom education is provided under the Act.

The Constitution of the Student Council states that a member of CASE's Student Council will be anyone who is accepted by the administrative body of the college to pursue a prescribed course of study offered and who is elected by the student body.

Even if Mr. Kevin Williams is or is not an accepted student does not defeat the matter because Mr. Elvis Goode was so accepted.

Further, he was an executive member of the Student Council. According to the CASE Handbook, the Student Council is the voice of the general student population. His

position as a Student Council member satisfies Rule 56 (1) (1) CPR 2002 which states that the application for Judicial Review must be made by a person, group or body with sufficient interest in the matter.

In any event they were ordered by the court to represent the Student Council

Whether Exemplary Damages ought to be granted

The students are seeking Exemplary Damages on the ground that the Administration's action has been high-handed, unconstitutional and oppressive.

It is Mrs. Taylor-Wright's submission that the Administration's behaviour of withholding the Student Council's funds was not only illegal but a misfeasance. She relies on **Three Rivers District Council and Others v Governor & Company Board of England** (2000) 3 All ER 1.

Rooks v Bernard (1964) AC 1129

Douglas v Bowen 12 JLR 1544

Kuddus v. Chief Court of Leicestershire (2002) 2 AC 122

It is her submission that the Board through its servant and or agents conduct was arbitrary, oppressive, high-handed, unconstitutional and as such deserving of punishment.

She submits that the Administration has been arrogant in its response to the rights of the Student Council to hold its election and manage its funds as the administration wrongly caused elections to be held and prevented the Student Council access to the funds.

The Student Council has been unable to defray expenses it incurred and has suffered financial embarrassment.

She submits that the actions are obviously malicious, spiteful and designed to punish the Council for the militant stance it took in defence of the students' right.

She submits that the defendant's conduct is clear evidence of this.

Submissions by Mr. Cochrane

Mr. Cochrane submits that this is not a suitable case for the award of Exemplary Damages. There is no evidence of the Administration acting arbitrarily, oppressively or unconstitutionally towards the Student Council. Further he submits that Exemplary Damages must be specifically pleaded with the facts relied on. He relies on the Court of Appeal case of **The Attorney General and Another v. Gravesandy** (1982) 19 JLR 501 at page 503 in which White JA enunciated as follows:

".....exemplary damages must be specifically pleaded together with the facts relied on. The object of the rule is to give the defendant's fair warning of what is going to be claimed with the relevant facts and thus prevent surprise at the trial, to avoid the need of my adjournment of the trial on this ground, and at the same time, extend the ambit of the discovery before trial."

He further submits that an injunction ought not to be granted. The principle on which mandatory injunctions should be granted is that there should be a strong case. He relies on the case of **David Rhudd v. Crowne Fire Extinguisher Services Ltd., and Edward Taylor and Jamaica Public Service Ltd.** 26 JLR page 565.

Ruling

By changing the locks and preventing the members access to their office and by ignoring correspondence sent to them by both the Student Council and their attorney, the Administration has acted arrogantly and contemptuously towards the Student Council.

The Student Council has been prevented from accounting to the students in accordance with the Constitution. As a result, accusations of misappropriation of funds have been levelled at them. They have also suffered financial embarrassment as a result of the actions of the Administration.

Undoubtedly, the Student Council has been harmed by the conduct of the defendant.

The question, however, is whether an award of Exemplary Damages is appropriate in the circumstances of this case.

Mrs. Marvalyn Taylor-Wright submits that the defendant's conduct was arbitrary, oppressive and unconstitutional, but was the conduct of the nature to fall within the first category of cases as adumbrated by the House of Lords in **Rooks v Bernard**? i.e. oppressive, arbitrary and unconstitutional.

The defendant's actions amounted to bullying, arrogance and contempt. Indeed the conclusion that the defendant's behaviour was unconstitutional, repugnant and oppressive cannot be escaped.

The critical question is whether the defendant wronged the claimants as a result of spite and malevolence. Was it a deliberate attempt to hurt the claimants? Can it be said that it amounts to a misfeasance in public office? Were the features of the defendant's behaviour such as to warrant the award of Exemplary Damages?

Mr. Kevin Williams in his affidavit in support of the Fixed Date Claim Form has cited what he alleges to be instances of ill-will and spite.

However, the act of declaring the 2003 Student Council's elections null and void appears to have been done primarily as a result of the Administration's ignorance of its

role. This is evident by the averments made by Dr. Ivey in his affidavit of 9th December 2005.

Similarly, the act of refusing the Student Council custody of its funds was also done primarily out of ignorance of its role and function.

The issue as to whether Mr. Williams was falsely maligned as an unregistered student, the withholding of his degree and refusal to dialogue with the members of the Student Council was not solely as a result of spite but apparently the defendant's interpretation of the governing rules. In any event those matters were not ventilated before me. They are to be decided upon by another tribunal. I will therefore forebear from making any definitive pronouncement in its regard.

The defendant's conduct was illegal, but in my view escapes the first category for which Exemplary Damages can be awarded.

I am of the view that a sum of \$250,000.00 is adequate to compensate the claimants.

Accordingly the following reliefs are granted.

It is hereby declared that:

- (a) The election of the Student Council for year 2005 - 2006 was not conducted in accordance with the appropriate rules as are required by the Constitution of the Student Council and the Education Regulations 1980.
- (b) The acts of the defendant by its servant and/or agents in embarking upon and conducting the said election to the Student Council are ultra vires, null and void and of no effect.
- (c) The proper entity to conduct the said election is the Student Council 2005-2006.

- (d) The members of the Student Council 2004-2005 be allowed free passage on the college campus and in particular access to the Student Council's offices for the purpose of conducting the election for the year 2005-2006 with immediate effect.
- (e) An account of all funds owed to the Student Council and the immediate release and delivery up to the Student Council of 2004-2005, the said funds are to be forthwith lodged to an account to be set up with First Caribbean International Bank at the Port Antonio Branch or any other reputable Commercial Bank and the first signatories are to be the President, Vice President, Treasurer and Assistant Treasurer of the Student Council for the year 2004-2005 and thereafter the holders of the said offices for any particular academic year.

Damages in the sum of \$250,000.00.

Costs in the sum of \$100,000.00.