17.11.89.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN.
CAUSE #244/89

BETWEEN:	RICHARD PRENDERGAST	APPLICANT
AND:	THE COMMISSIONER OF POLICE	FIRST RESPONDENT
AND:	THE ATTORNEY GENERAL	SECOND RESPONDENT

Mr. Norman Hill Q.C. and Mr. G. Hampson for applicant.
Mr. A. Smellie for Respondents.

JUDGMENT

Richard Prendergast ("the applicant") is a police constable in the Royal Cayman Islands Police Force. He is alleged to have been approached to assist one Ladon Weideranders to escape prosecution for an offence of driving whilst intoxicated and, in connection therewith, to have made a false entry in a Traffic Department register in relation to the result of Mr. Weiderander's blood test. These are very serious allegations, so serious in fact that criminal charges were contemplated against the applicant. I am told that these charges were never pursued because Mr. Weideranders left Cayman. However the matter is the subject of police force disciplinary proceedings and the applicant is due to face three charges, under the Police Regulation, 1976, before the Commissioner of Police. I do not think it is disputed that if found guilty of the charges the applicant could well be dismissed from the police force and lose all his pension rights and other privileges.

The disciplinary proceedings papers were served on the applicant by Superintendent Sambula on the 15th June, 1989. The applicant was seen again by Superintendent Sambula, who is the presenting officer in the proceedings, and asked if he had selected a police officer to represent him, according to the police force standing orders, to which I shall return. The

applicant then tried to hand Superintendent Sambula a letter which requested that Mr. Hampson, his attorney-at-law, and any other leading counsel instructed by him, be permitted to represent him at the disciplinary proceedings. Mr. Hampson later spoke to Superintendent Sambula from which conversation he gained the impression that legal representation would not be permitted at the hearing. Mr. Hampson then wrote to the Commissioner of Police on the 4th July, 1989, the day before the hearing, informing him of his intention to appear at the hearing, together with leading counsel. The Deputy Commissioner telephoned Mr. Hampson to say the proceedings had been postponed to 21st July, 1989, due to unavailability of witnesses. A letter from the Deputy Commissioner followed that conversation the relevant portion of which reads:

> "With regard to legal representation for PC Prendergast at these proceedings, I am to advise that in accordance with Force Standing Order A17 33(g), the officer is entitled to nominate a serving Police officer of any rank to assist him in the presentation of his defence. He is not entitled under Standing Orders to have an attorney to represent him and the Commissioner of Police has requested me to advise you that such representation will not be permitted.
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> The case against PC Prendergast will be presented by a serving Police officer and not counsel or any other member of the Government Legal Department. It should also be understood that PC. Prendergast has not been charged in a court of law with a criminal offence but with offences against discipline and the case will be heard at closed disciplinary proceedings. PC. Prendergast is aware of the regulations governing such matters.
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> I would also draw your attention to Regulation 7(g) of the Police Regulations, 1976, which make provisions for the Commissioner, if he thinks fit, to allow the accused to be assisted by a gazetted officer and, when such permission is given, his defence may be conducted by such officer. It will be noted that there are no provisions in the Police Regulations 1976, for an officer charged with disciplinary offences to be represented by an attorney."

It seems clear from this letter that the Commissioner of Police construes the standing orders and Regulations as preventing him from permitting the applicant to have legal representation before him.

Leave was granted to the applicant and applications were duly filed by him seeking an order prohibiting the hearing of the disciplinary proceedings against him without legal representation, an order for mandamus directing the Commissioner of Police to allow the applicant legal representation at those proceedings, and certain related declaratory orders. At the hearing the application for mandamus was withdrawn together with a related application for a declaration. The applicant therefore seeks one or more of the following orders. I have retained the enumeration in the notice of notion.

> "(i) An order prohibiting the hearing of disciplinary proceedings against the Applicant without legal representation, scheduled to be held on Friday, 21st July at 9:00 a.m.
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> (iv) A declaration that on a true construction of the Police Law and/or the Police Regulations the Commissioner of Police hearing disciplinary proceedings against a member of the police force has a discretion whether or not to permit the accused to be represented at the hearing by an attorney and/or counsel of his choice.
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> (v) Alternatively, a declaration that if on the true construction, regulation 7(g) and/or section 33(g) of the Standing Orders prohibit the Commissioner hearing such proceedings from permitting the accused from being legally represented, such regulation is ultra vires the Police Law and/or the rules of natural justice.
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> (vi) A declaration that the Commissioner has such a discretion."

The disciplinary proceedings have been stayed pending the hearing of this application.

By section 6(1) of the Police Law the Commissioner of Police has the command, superintendence and direction of the Royal Cayman Islands Police Force. He is also given the overall responsibility for the disciplining of police officers other than, it seems, gazetted officers who are defined in section 2 of the Law as police officers of or above the rank of Assistant Superintendent. Section 51(1) of the Police Law provides:

> "51. (1) Any offence against discipline under this Law may be inquired into and dealt with, in the case of any officer other than a gazetted officer, by the Commissioner, and in the case of a junior officer, by any commanding officer, or other officer authorised by the Commissioner."

Counsel for the applicant rightly conceded that a party charged before the Commissioner is not entitled, as of right, to legal representation. As was stated by Lord Denning M.R. in Enderby Town Football Club Ltd. v. Football Association Ltd. [1977] Ch. 591, 605:-

> "The case thus raises this important point: Is a party who is charged before a domestic tribunal entitled as of right to be legally represented? Much depends on what the rules say about it. When the rules say nothing, then the party has no absolute right to be legally represented. It is a matter for the discretion of the tribunal. They are masters of their own procedure: and, if they, in the proper exercise of their discretion, decline to allow legal representation, the courts will not interfere. Such was held in the old days in a case about magistrates: see Collier v. Hicks (1831) 2 B & Ad. 663. It is the position today in the tribunals under the Tribunals and Inquiries Act, 1921. I think the same should apply to domestic tribunals, and for this reason: In many cases it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done in them better by a good layman than by a bad lawyer. This is especially so in activities like football and other sports, where no points of law are likely to arise, and it is all part of the proper regulation of the game. But I would emphasise that the discretion must be properly exercised. The tribunal must not fetter its discretion by rigid bonds. A domestic tribunal is not at liberty to lay down an absolute rule: 'We will never allow anyone to have a lawyer to appear for him.' The tribunal must be ready, in a proper case, to allow it."

The last three sentences refer to the tribunal fettering its discretion where it has a discretion to exercise, for it is open to the Legislature or the tribunal itself to make regulations precluding legal representation before it. Such was the case in Maynard v. Osmond [1977] QB 240 which is the English authority nearest to the present case. A police constable was seeking orders somewhat similar to those sought in this case, enabling him to be legally represented before police disciplinary proceedings in England. Lord Denning M.R. said at p. 252:

> "On principle, if a man is charged with a serious offence which may have grave consequences for him he should be entitled to have a qualified lawyer to defend him. Such has been agreed by the government of this country when it adhered to the European Convention on Human Rights. But also, by analogy, it should be the same in most cases when he is charged with a disciplinary offence before a disciplinary tribunal, at any rate when the offence is one which may result in his dismissal from the force or other body to which he belongs; or the loss of his livelihood; or, worse still, may ruin his character for ever.
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> I gave the reason in Pett v. Greyhound Racing Association Ltd. [1969] 1 Q.B. 125, 132:
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> "If justice is to be done, he ought to have the help of some one to speak for him. And who better than a lawyer who has been trained for the task?"
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> He should, therefore, be entitled to have a lawyer if he wants one. But even if he should not be entitled as of right, I should have thought that as a general rule the tribunal should have a discretion in the matter. Legal representation should not be forbidden altogether. The tribunal should have a discretion to permit him to have a lawyer if they think it would assist. They are the masters of their own procedure: and, unless clearly forbidden, should have a discretion to permit it. I said so in Enderby Town Football Club Ltd. v. Football Association Ltd. [1971] Ch. 591, 605. I recall myself an inquiry in which I had a discretion, and allowed a solicitor to speak for his client. He was able to correct a wrong impression that I had formed, and I was very glad of it. But I have to recognise that it is permissible for Parliament to decree otherwise, or for a minister to do so when making regulations, or even a domestic body itself."

In Maynard v. Osmond the Court of Appeal held that on a true construction of the relevant Police (Discipline) Regulations

legal representation was not permitted before the police disciplinary body.

The Regulations in England are entirely different from our own and so I must look at the Cayman law to see if legal representation is expressly or by necessary implication excluded before the Commissioner.

Subsection (4) of section 51 of the Police Law is the relevant provision which needs to be recited here. It reads:

> "51. (4) No police officer shall be convicted of an offence against discipline unless the charge has been read and inquired into in his presence and he has been given sufficient opportunity to make his defence thereto."

The Governor has made the Police Regulations, 1976, in the exercise of the powers conferred on him by section 84 of the Police Law. Regulation 7 of those Regulations prescribes the procedure in enquiries into offences against discipline. It reads:

> "7. The following procedure shall be followed in enquiries into offences against discipline under section 51 -
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> (a) the officer charged with an offence against discipline (hereinafter referred to as the accused) shall be supplied with a copy of the charge prior to the hearing;
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> (b) no documentary evidence shall be used in any such proceedings unless the accused has been given access thereto prior to the hearing;
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> (c) the evidence of any witness taken during the course of the proceedings shall be recorded in the presence of the accused;
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> (d) the evidence given at the proceedings need not be taken down in full but the substance thereof shall be recorded in writing and read over to the accused;
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> (e) the accused shall have the right to cross-examine each witness giving evidence against him and after each such witness has given evidence he shall be asked if he desires to cross-examine such witness;
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> (f) the accused shall be asked if he desires to give evidence in his own defence, and to call witnesses and, if he does so desire, shall be given a reasonable opportunity so to do;

(g) in disciplinary proceedings before him the Commissioner may, if he thinks fit, allow the accused to be assisted by a gazetted officer and, when such permission is given, his defence may be conducted by such officer."

Section 6 of the Police Law gives the Commissioner power to make standing orders, and he has done so. Standing order A17 provides for a complaints and discipline procedure and, in its introduction, it is stated that the standing order should be read in conjunction with the Police Law and the Police Regulations, 1976. The relevant portion of paragraph 33 of that standing order reads:

"33. The case papers will then be sent to the Superintendent concerned (or the Chief Superintendent if the case is to be heard by the Commissioner) with directions for the presenting officer to take the following action :-

(g) invite the accused officer to nominate a serving police officer of any rank if he wishes, to act as his "friend" and adviser and assist him in the presentation of his defence."

It is conceded by Mr. Smellie on behalf of the respondents that the standing order, by appearing to allow the accused officer to nominate a police officer of any rank to act as his "friend" and adviser in any case, is inconsistent with Regulation 7(g) (above) which provides that if the proceedings are before the Commissioner he may allow a gazetted officer to assist the accused officer. It is also conceded, I think, that the provisions of Regulation 7 prevail.

It will be readily seen that the Law, Regulations and standing orders do not expressly preclude the accused officer from being legally represented. It is contended on behalf of the respondents that by providing for assistance from an officer of the police force the Regulation and standing order impliedly exclude any other form of representation. I am not persuaded by that argument. I would look at the matter in this way. The Police Law provides, in section 51(4), that an accused officer must be given sufficient opportunity to make his defence to a charge. The Law leaves it to the Regulations and standing orders to prescribe the procedure obtaining in disciplinary proceedings

and neither of those expressly permits nor expressly prohibits legal representation. The normal run- of-the-mill disciplinary proceedings relate to very minor offences involving consequences of a minimal nature egs. showing disrespect to a senior officer or smoking on duty. In many cases there is no need for an accused officer to be assisted in any way. However for various reasons he may feel unable to properly prepare himself for the hearing or represent himself before the officer conducting the hearing. He may, for example, be diffident and tongue-tied in challenging a more senior officer. In such cases it is right and proper that he should be assisted and there is the facility within the force itself to provide him with such assistance. It is also right and proper that such facility should be formally acknowledged and that express provision be made to permit another police officer to assist him to prepare his case and for the Commissioner to hear the 'friend' or adviser. That there is such provision in the Regulations and standing orders falls a long way short of excluding a discretion on the part of the Commissioner to permit proper legal representation in an appropriate case where that facility may prove inadequate. Some reliance was placed by the respondents on the maxim "Expressio unius est exclusio alterius" ("Express enactment shuts the door to further implication"), but as was pointed out by Jenkins LJ. in Dean v. Weisengrund [1955] 2 QB 120, 130:

> "The maxim is after all, no more than an aid to construction, and has little, if any, weight where it is possible, as I think it is in the present case, to account for the inclusio unius on grounds other than an intention to effect the exclusio alterius ."

I cannot read into a Regulation which, at the discretion of the Commissioner, permits an accused officer to be assisted by a senior officer of the police force, as excluding legal representation in any and all disciplinary proceedings.

As I have said above, The Court of Appeal held in Maynard v. Osmond (supra) that the English Police (Discipline) Regulations precluded an accused officer from being legally represented. It is interesting to note that the three reasons given by Lord

Denning M.R. for so construing the Regulations do not apply to our own Regulations. Firstly the English Regulations provided that the case against the accused officer must be presented by a member of the police force. That is not the case with our Regulations. They do not expressly preclude presentation of the case by an attorney. Secondly, in the parallel set of regulations about high-ranking officers there was express reference to an accused officer being permitted to be legally represented which was not contained in the Regulations under review. There is no parallel set of regulations in the Cayman Islands dealing with senior officers, at least to which I have been referred. Thirdly, in the appeal regulations dealing with appeal from the disciplinary body there was provision for the Secretary of State to order an inquiry involving a re-hearing with representation by counsel or solicitors on both sides. In the Cayman Islands an appeal may be made to the Governor (see section 53 of the Police Law) and there is no express provision for a re-hearing or legal representation in the appeal.

In my judgment the relevant Law and Regulations do not preclude the Commissioner from permitting the applicant to be legally represented before him. There being no bar to such representation according to the judgment of Lord Denning M.R. in Maynard v. Osmond (supra) the Commissioner has a discretion to permit it. Lord Denning's decision was followed by a Divisional Court of the Queen's Bench Division in Regina v. Secretary of State for the Home Department ex parte Tarrant [1985] 1 Q.B. 251, where consideration was given to the right of prisoners to legal representation on offences against prison discipline to be heard by the board of visitors. It was decided that such prisoners were not, as of right, entitled to legal representation, and that the relevant regulations did not expressly exclude such representation. After an exhaustive review of the authorities Webster J., said, at p. 278:

> "In the light of these authorities I conclude that there is no rule or decision of common law which limits the power of the board of visitors to be master of their own proceedings so as to deprive them of a discretion, which must be inherent in that power, to permit legal representation."

Kerr LJ. agreed and, at p. 296, said:

> "I therefore turn to the second question, whether there is an absolute bar to the grant of legal representation or whether there is a discretion in boards of visitors to grant such requests. As it seems to me, under our law, including the principles of natural justice, there cannot be any answer to this question other than that boards of visitors have a discretion to grant requests for legal representation in appropriate cases. This must be so for at least two reasons. First, since there is no statutory provision to the contrary, boards of visitors are masters of their own procedures and entitled to decide for themselves whether or not to grant such requests. In the same way as any other tribunal or body inquiring into any charges against anyone, they have an unfettered right to decide whom they will hear on behalf of the persons charged.
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> Secondly, the grant of legal representation, when this is requested, must in some cases necessarily follow from section 47(2) of the Prison Act 1952 and rule 49(2) of the Prison Rules 1964. Both of these provide, in effect, that a prisoner charged with any offence under the Rules must be given a proper and full opportunity of presenting his case. Suppose then that in a particular instance a board of visitors is of the view that this requirement can only be complied with if the prisoner is legally represented, or even that the board is doubtful whether this objective can be attained without legal representation. How, then, could the board refuse such a request?"

Maynard v. Osmond, as followed by Tarrant, seems to me to represent the present state of the law in England relating to legal representation before tribunals such as a police disciplinary body. In the absence of provision in the Law or the regulations governing that body's disciplinary procedures either permitting or excluding legal representation then the body has a discretion, which of course must be properly and fairly exercised, to permit legal representation before it. I would be content to rest on those authorities but out of deference to Mr. Smellie's arguments I feel I should deal with earlier, conflicting, authorities and also go further and explain why I think it necessary that a discretion to allow legal representation be vested in the Commissioner.

First let me deal with the Privy Council decision in

University of Ceylon v. Fernando [1960] 1 All E.R. 631. In that case a university student was accused of having cheated in his examinations. No set procedure was provided for in the university statutes for the conduct of the inquiry into the allegations and it was held that the rules of natural justice had not been breached by the student not being given an opportunity to question an essential witness. Lord Jenkins said at p. 639:

> "So far as the plaintiff is concerned, it appears to their Lordships that he must be taken to have agreed, when he became a member of the university, to be bound by the statutes of the university, including cl. 8, and, in the event of cl. 8 being put in operation against him, could not insist on the adoption by the vice-chancellor of any particular procedure beyond what the clause expressly or by necessary implication requires. In the absence of any express requirement, he is thrown back on the necessary implication that the vice-chancellor's procedure will be such as to satisfy the requirements indicated in the passages from (certain authorities) to which their Lordships have just referred, and thus to comply with those elementary and essential principles of "fairness" which must, as a matter of necessary implication, be treated as applicable in the discharge of the vice-chancellor's admittedly quasi-judicial functions under cl.8, or, in other words, with the principles of natural justice."

Mr. Smellie referred to this passage and has urged that the applicant, when he joined the police force, agreed to be bound by its regulations and standing orders, but as I have pointed out those regulations and standing orders do not expressly or by necessary implication preclude legal representation before the Commissioner.

In Pett v. Greyhound Racing Association Ltd. (No. 2) [1969] 2 All E.R. 221, Lyell J., decided that the defendant association had not acted contrary to the rules of natural justice in refusing to allow the plaintiff to be legally represented in an inquiry before it. Lord Denning, M.R., in the Court of Appeal, had earlier dealt with an appeal against the grant of an interlocutory injunction in the same matter, Pett v. Greyhound Racing Association Ltd. [1969] 1 Q.B.125 ("Pett No.1").

In that appeal he expressed the view, obiter, that natural justice required that the plaintiff be legally represented. Lyell J. found that decision, which was not binding upon him, to be inconsistent with the decision in Fernando and after long and anxious consideration he preferred to view of the Privy Council. He said at p. 231:

> "I find it difficult to say that legal representation before a tribunal is an elementary feature of the fair dispensation of justice. It seems to me that it arises only in a society which has reached some degree of sophistication in its affairs."

The Privy Council in Fernando and Lyell J., in Pett were dealing with tribunals which did not have the same sophistication as the disciplinary body of a police authority. The disciplinary procedures of the Royal Cayman Islands Police Force are strictly regulated by the Regulations of 1976 and the standing orders. Proceedings are, by standing order A17 paragraph 38, to be conducted in a manner in keeping with a judicial enquiry. There is examination and cross-examination of witnesses. The proceedings are of an adversarial nature. These proceedings are, of course, a far cry from an informal inquiry by a vice-chancellor into student cheating and from disciplinary proceedings of the Greyhound Racing Association. They are, for that matter, different from an inquiry by a football association into alleged breaches of its rules as in Enderby Town Football Club (supra). As was stated by Lord Jenkins in Fernando at p. 637:

> "These rights (ie the rights accorded by the principles of natural justice) have been defined in varying language in a large number of cases covering a wide field. Their Lordships do not propose to review those authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point. As Tucker, L.J., said in Russell v. Duke of Norfolk:
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> "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the

> rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."
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> In the earlier case of General Medical Council v. Spackman Lord Atkin expressed a similar view in thse words:
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> "Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies; but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn, L.C., in Board of Education v. Rice, afford a complete guide to the General Medical Council in the exercise of their duties."

The decisions in Maynard v. Osmond (supra) and Tarrant (supra) are dealing with disciplinary bodies nearer to that with which we are dealing and I find those decisions to be entirely persuasive.

I now return to my reasons, over and above the application of authority, for considering it necessary that the Commissioner of Police of the Royal Cayman Islands Police Force has the discretion to allow legal representation in disciplinary proceedings before him. The first reason was alluded to in the passage quoted above from Kerr LJ's judgment in Tarrant. Whilst in most cases before a disciplinary body legal representation is unnecessary, and in some cases may even be considered to be irksome, there may come a time when a matter is before that body which is so complex and demanding that it would be in the interests of the body itself to have the advantage of legal representation on both sides to assist it in reaching a proper decision. To preclude legal representation for an accused officer would involve the preclusion of such representation for the presenting party. It would, in my view, be unwise to expressly preclude the possibility of such assistance being tendered to both sides. Furthermore certain proceedings, and the present case is an example of them, involve accusations and charges of a very serious nature. Although Mr. Smellie argues

that the applicant does not stand to lose his liberty, he stands to lose his employment and all ensuing benefits; but more than that he stands to lose his reputation in a small community where a dismissal from the police force on charges such as those he is facing will resound around that small community. The applicant has a great deal at stake in these disciplinary proceedings.

In England an accused officer will receive help to find a first-rate officer to assist him. It may well be an officer from another police force, far distant from the force he serves, who would have the courage and independence to defend the accused officer properly. It is not difficult to envisage a situation where an assisting officer is called upon to attack, on behalf of the accused officer, a very senior officer. Could the required degree of independence be expected from among the ranks of gazetted officers in such a small police force as we have in Cayman? I think not. It may, in certain cases, lead to the kind of embarrassment which could be avoided if legal representation were permitted. Furthermore the number of gazetted officers from which the applicant must make his choice is severely limited. I think in the course of argument we arrived at a total of three or, at most, four.

These difficulties were discussed by Waller LJ. in Maynard v. Osmond (supra) at p. 259.

> "Whatever may be the rights of an individual when private persons seek to set up tribunals controlling the rights of that individual - and there may be arguments both ways in such cases - I am of the opinion that disciplinary proceedings in disciplined forces such as the armed services and the police are in a different category. The only question which has caused doubts in my mind was the difficulty of a young police officer finding someone prepared to make a major attack on his behalf on a senior officer. The difficulties are obvious. The difficulty of asking the question and then the difficulty of feeling that he will ever after be identified with the case behind the question."

Of course in this case there is no suggestion of a major attack on a senior officer but that is no reason for me, permanently by my decision, to shut the door on an opportunity to

avoid the difficulties envisaged.

The passage quoted above also touches on one of the respondents' main arguments against allowing legal representation in disciplinary proceedings. The very nature of the disciplined forces, it is argued, requires speedy discipline, without any barrier between the disciplining officer and the accused officer. Waller LJ. appears to endorse that argument, but, with greatest respect, disciplinary proceedings in the armed forces, at least in the cases of serious breaches of discipline, permit legal representation for both sides. Of course in the usual petty case which is dealt with by the disciplinary body a speedy and informal procedure is appropriate; a" man-to-man procedure" in the words of Waller LJ. It is right and proper that minor lapses in discipline should be dealt with speedily and on a man-to-man basis. But there are the more serious and perhaps complex cases, and the present case is to my mind a serious one, where a more formal approach is warranted. The question of the introduction of unnecessary delays into the disciplinary process was discussed by Webster J. in Tarrant (supra) at p.282. He said:

> "But in my view that objection must be seen against the period which elapsed in the cases of the applicants Tarrant and Leyland. Even if, which would not necessarily follow, grant of legal representation would extend periods of that kind by about a month, it does not seem to me that that factor can possibly be sufficient to lead to the implication that the discretion does not exist, although it may be relevant to the exercise of it."

In our case the disciplinary offences allegedly committed by the applicant took place over a year ago, and some nine months before the disciplinary proceedings were scheduled for hearing.

One final matter which I ought to deal with is the fear of the respondents that the exercise of the discretion adversely to an accused officer would often lead to that decision being challenged in this Court. That factor was also raised in Tarrant (supra) and was discussed by Webster J., at p. 281. His view, which I share, was that once a recognized practice has been evolved, it does not seem likely that large numbers of accuseds

will apply for legal representation in excess of those to whom it is granted. He went on:

> "In any event, where the objection is one which goes to administrative inconvenience, I refer to the comment of Geoffrey Lane LJ., in Reg. v. Board of Visitors of Hull Prison, Exparte St. Germain (No. 2) [1979] 1 W.L.R. 1401, 1406 where, dealing with the question whether a discretion to allow a witness to be called could be validly exercised where considerable administrative inconvenience would be caused were that to be done, he said:
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> > "But administrative difficulties, simpliciter, are not in our view enough. Convenience and justice are often not on speaking terms: as per Lord Atkin in General Medical Council v. Spackman [1943] A.C. 627, 638."

I would add that in a jurisdiction such as Cayman I would expect it to be a very rare event indeed when police officers face charges sufficiently serious to warrant legal respresentation.

Further to this it would assist the decision-making process if I were to lay down some guidelines for the exercise of the discretion. I have been asked by both parties to do so, in the event of my finding, as I do, that a discretion exists.

I derive great assistance from the considerations enumerated by Webster J., in Tarrant (supra) at pp.285, 286, in relation to the exercise of a similar discretion by boards of visitors to prisons. With some modifications, to take account of matters which are dealt with in the Police Regulations and standing orders, I adopt them. I emphasize, as he did, that the list is not intended to be comprehensive; particular cases may throw up other particular matters. The considerations I suggest are:

(1) The seriousness of the charge and of the potential penalty. It seems to me that as a general rule where discharge or dismissal from the police force is a real possibility then legal representation should be granted. In other cases it would not normally be appropriate.

(2) Whether any points of law are likely to arise.

(3) The capacity of the particular officer or a chosen gazetted officer to fairly and independently present the accused officer's case. That will, of course, depend upon the nature of the defence, and, for example, whether any senior officers are to be attacked in cross-examination. In this context the availability of a gazetted officer in whom the accused officer has confidence is to be taken into account.

(4) The need for reasonable speed in making an adjudication, which is clearly an important consideration.

(5) The need for fairness as between the accused officer and his fellow and senior officers.

It follows from the above that the applicant, in my view, is entitled to be legally represented in the disciplinary proceedings pending against him. Not only does the Commissioner have a discretion to permit him to be legally represented, but he ought to exercise his discretion in favour of such legal representation. Usually I would not make the order for prohibition as prayed in prayer (i) of the notice, but would remit the matter back to the Commissioner for him to exercise his discretion. However this is such an obvious case for the exercise of that discretion that I will grant the order as prayed.

I therefore make the order prohibiting the hearing of the disciplinary proceedings against the applicant without legal representation, as prayed in paragraph (i) of the notice of motion, and I make the declarations sought in paragraphs (iv) and (vi) of that notice.

Schofield J.

17th November, 1989