28.10.81

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

BEFORE THE HONOURABLE SIR JOHN CRAMPTON SUMMERFIELD, C.B.E., Q.C.

The 24th and 25th September 1981.

Cause No. 113 of 1981

IN THE MATTER of the Caymanian Protection Law (Revised)

And

IN THE MATTER of decisions of the Caymanian Protection Board given on the 29th day of July 1980

And

IN THE MATTER of decisions of the Executive Council given on the 15th day of October 1980 and on the 8th day of April 1981

And

IN THE MATTER of an application for an Order of Mandamus, Prohibition and Certiorari

And

IN THE MATTER of an application for a declaration pursuant to section 24 of the Caymanian Protection Law (Revised)

Mr. R. Alberga Q.C. (with him Mr. McField) for applicant
Mr. J. Martin for respondent.

JUDGMENT

The relief sought in this matter falls under four heads, namely:

1. An Order of Certiorari to remove into this Honourable Court and to quash the decisions of the Caymanian Protection Board given on the 29th day of July 1980 and on the 24th day of February 1981 and the decisions of the Executive Council given on the

15th day of October 1980 and on the 8th day of April 1981.

2. An Order of Mandamus directed to the Caymanian Protection Board and/or the Executive Council requiring and directing the Caymanian Protection Board and/or the Executive Council:

(i) To give sufficient information to the Applicant to enable him to answer the case against him;

(ii) To reconsider the Application in the light of any further evidence or representation submitted on his behalf;

(iii) For all necessary and consequential directions.

3. Alternatively, an Order of Mandamus directed to the Caymanian Protection Board ordering the said Board to properly hear and determine the Application of the said Raglan Roper for a Gainful Occupation Licence which was made by him to it on the 10th day of December 1980 and by a further letter dated the 7th day of January 1981.

4. Alternatively, a declaration that the said Raglan Roper being a person who was lawfully in gainful occupation in the Cayman Islands on the 27th March 1972 does not require a licence from the Caymanian Protection Board to be gainfully occupied in the Cayman Islands.

The facts are not in dispute and can be set out as follows:

The applicant is a Jamaican by birth. He first came to the Cayman Islands on a Boy Scout visit in 1965. He was then about 14 years of age. On that visit he met Mr. Earling Myles and his wife. He then frequently visited the Myles' family in the Cayman Islands for about 2 years until 1967. In 1967 he was brought to the Cayman Islands by Mr. Myles who lived permanently on Grand Cayman. He was put under the guardianship of the Myles' family by his grandmother who was unable to look after him.

In May 1967 the Myles' family proposed to adopt the applicant,

but that proposal fell through and is immaterial to the application He has lived in these Islands since 1967 which he regards as his permanent home. He is now about 30 years old, and has therefore lived the whole of his adult life here.

In January 1978 he was issued with his first work permit under the Work Permit Law 1965, and had work permits (or gainful occupation licences as they came to be known under the Caymanian Protection Law 1971) / thereafter either renewed or granted for different purposes until October 1978 when he incorporated a company in these Islands called Roper's Window Cleaning Ltd. of which he is a shareholder and a director. Application was made for a gainful occupation licence (hereinafter called a licence) to enable the applicant to work for that company in September 1978 and the licence was granted. An application was made in Janaury 1979 for a renewal of that licence for a period of one year and this was granted. The renewed licence was due to expire on or about the 4th of April 1980.

On or about the 10th March 1980 a further application was made for the renewal of this in connection with his work with Roper's Window Cleaning Ltd. for a period of one year. A covering letter with that date on it appears to be date stamped by the Department of Immigration on May 12 1980, but I do not think that anything can turn on this as the admitted facts are that the application was made on the 10th March 1980. The applicant received no acknowledgment of that application until some time after the 29th July 1980 when the applicant received a letter of that date, the relevant part of which reads as follows:

> "I refer to your application for the renewal of the abovenamed person's Gainful Occupation Licence and would advise that at a meeting of the Caymanian Protection Board held on the 23rd July, 1980, the Board has agreed to renew the licence for a final period of six months, effective that date.".

The Licence so granted was due to expire on or about the 22nd of January 1981.

There followed an appeal to the Governor-in-council against

the decision to grant him a licence for a final period of six months only. The appeal was dismissed and the decision was communicated to the applicant's attorney by letter dated 15th October 1980 in the following terms.

> "I have been directed to reply to your letter of 7th August,1980, appealing to the Governor in Council against the decision of the Caymanian Protection Board to renew Mr. Raglan Roper's gainful occupation licence for a final period of six months.
>
> Your appeal has been considered by the Governor in Council and I have to advise you that the decision of the Caymanian Protection Board was upheld.".

A further application for the renewal of the applicant's licence for a period of one year was then made. The application is dated the 10th December 1980 and was submitted at or about that time. That application was followed by a letter from his attorney dated the 7th of January 1981 setting out a plea for the renewal to be granted. It also forwarded 15 testimonials of good character and sound business practice relating to the applicant covering many years. In response to that application was a letter from the Caymanian Protection Board dated the 24th February 1981 in the following terms:

> "I refer to your letter of the 7th Janaury, 1981 concerning the above named person and would advise you that the contents of your letter have been communicated to the Caymanian Protection Board.
>
> I have been directed by the Board to draw your attention to my letter of the 29th July 1980 in which Mr. Roper was made aware of the Board's decision. This decision subsequently formed the subject of an appeal to the Governor-in-Council which was duly dealt with and communicated to the appellant's Attorney on the 15th October, 1980. Section 11 of the Caymanian Protection Law (Revised) specifically refers to the appeal mechanism and states that any person dissatisfied with the decision of the Board may appeal to the Governor-in-Council within twenty-one days and that the decision of the appellant body shall be final and binding upon the appellant.".

The applicant appealed against that decision through the Chief Secretary on the 10th March 1981. That appeal was unsuccessful and the decision of the Governor-in-Council was communicated to his attorney by letter dated the 8th April 1981 in the following terms:

> "Please refer to your letter of the 10th March, 1981, addressed to the Chief Secretary on behalf of Mr. Raglan Roper.
>
> I have been directed to inform you that this matter has been

> referred to the Governor in Council and the decision of Council remains as conveyed to your client in my letter of 15th October, 1980, to Miss Annie H. Bodden, that is, the decision of the Caymanian Protection Board has been upheld.".

Neither before nor after making the decision communicated in the letter of 29th July 1980 did the Board inform the applicant of the basis it relied on or of any facts it had which adversly affected the application so as to lead to the decision to make the renewal of the licence a final one for a period of six months only; nor did it ~~they~~ give the applicant an opportunity to deal with any such adverse basis or facts. The same applied to the application of the 10th December 1980 and the decision communicated in the letter of the 24th February 1981. The same also applies to both appeals to Executive Council.

Among other things the Caymanian Protection Law 1971 repealed the Work Permit Law 1965.

It is convenient to deal first with the declaration sought in paragraph 5 of the notice of motion, namely, that the applicant does not require a licence from the Board to be gainfully occupied in these islands.

It is not disputed that on the 27th March 1972 the applicant was lawfully in gainful occupation in these Islands, the lawfulness thereof being derived from a work permit issued under the Work Permit Law in August 1971 for a period of one year, and that work permit having been preserved by section 30 of the Caymanian Protection Law.

Section 24 of the Caymanian Protection Law (Revised) reads:

> "Save as otherwise provided by this Law, no person of non-Caymanian status, other than persons already lawfully in gainful occupation in the Islands on the 27th of March 1972, shall be gainfully occupied in the Islands unless licensed in that behalf by the Board.".

The original section did not have a date but used the expression "at the time of coming into effect of this Law" which amounts to the same thing.

Nothing could be clearer than the provision of that section. What the section says is that no person of non-Caymanian status shall be gainfully occupied in these Islands unless licensed to do so but excludes from the operation of that provision two classes of persons:

(a) those otherwise provided in the Law e.g. the category of persons specified in section 23; and

(b) persons already lawfully in gainful occupation in the Islands on the 27th March 1972.

It seems to me that all those persons expempted from the operation of the Work Permit Law by reason of the definition of "British Subject belonging to the Cayman Islands" in section 2 of that Law had conferred on them Caymanian status by one or other provision of the Caymanian Protection Law when it came into operation. Therefore, section 24 of the latter Law would not apply to them. It would follow that the section could only apply to those exempt from the provisions of the Work Permit Law by section 7 (whose exemption was continued by section 23 of the Caymanian Protection Law) and to those actually in gainful occupation on the operative date whose work permit had been preserved by section 30 of the Caymanian Protection Law. There was no other class of non-Caymanian who could be lawfully in gainful occupation on the operative date.

There is nothing absurd or repugnant in this construction. It is commonplace for legislation to preserve existing rights. The construction I place on section 24 of the Caymanian Protection Law accords with the ordinary grammatical meaning of the words employed.

It was argued that the exemption in section 24 did not apply to holders of work permits on the operative date because, if so, section 30 would have been unnecessary.

Section 30 reads as follows:

> "Any work permit granted under the Work Permit Law, 1965, and in force immediately before the coming into effect of this Law shall be treated for the purposes of this Law, and with necessary modifications, as if it were a licence granted under this Part.".

In my view, that section did two things:

(a) In relation to those actually in gainful occupation at the relevant time, it preserved the work permits issued under the Work Permit Law which would otherwise have lapsed. Had it not preserved them then the applicant would not have been lawfully in gainful occupation on the 27th March 1972 as his work permit would have lapsed immediately before that date.

(b) In relation to those who had been issued with work permits before 27th March 1972 but had not by then entered into gainful occupation, it preserved their work permits to enter gainful occupation during the currency thereof after that date. This category of persons is not exempted from the provisions of section 24.

I can see no justification for excluding from the exceptions to the provisions of section 24 persons whose gainful occupation on the operative date was lawful by reason of a work permit preserved by section 30, whether that was the intention at the time or otherwise. The plain ordinary meaning of the words employed contradicts any such construction which would require importing into the section a qualification which is not there. It applies to all persons who meet the criteria of the exception.

It follows from the foregoing that there will be a declaration in terms of paragraph 5 of the notice of motion, namely, that the applicant does not require a licence from the Board to be gainfully occupied in these Islands. It is so ordered.

It should be pointed out that no person excepted from the operation of section 24 by reason of having been in lawful gainful employment on the operative date (whether of the class into which the applicant falls or otherwise) has an automatic right of residence in these Islands. This is apparant from section 33. The reason for this is a matter for conjecture but that is undoubtedly the position from a straightforward construction of section 33. The authority for

granting such permission would appear to be vested in an immigration officer and not the Board.

On the foregoing ruling the other issues raised on the notice of motion do not strictly call for a decision. However, I have been asked by both parties to pronounce on those issues so that, in the event of an appeal, which is likely, all matters may be disposed of without further reference back to this court; thus saving time and expense.

Two principal questions arise:

(1) Is the Board required to apply the principles of natural justice (and, in particular, in relation to this case, the principles of audi alterem partem) in deciding whether to revoke or not renew the gainful occupation licence of a person who has held such a licence for a long time and clearly, from what had gone before, had a legitimate expectation that it would be renewed?

This raises the broad question of whether the Board should import into its consideration and deliberation the principles of natural justice.

(2) If the answer to the first question is in the affirmative, do the provisions of section 13 of the Caymanian Protection Law preclude a review or inquiry (and intervention) by this court into any decision of the Board which is reached in breach of the rules of natural justice?

To dissipate any suspense here and now I can say that in my view the answer to the first question is in the affirmative and the answer to the second question is in the negative.

It has been fairly conceded by learned counsel for the respondent that the answer to the second question is in the negative

and so I need deal with it only briefly for the record.

Section 13 of the Caymanian Protection Law reads:

> "Decisions made under or by virtue of section 6, 10, and 11 shall be deemed to be administrative and not judicial decisions, and no person shall be required to give any reason for such decision, and such decision shall not be questioned in any court of law.".

Here the Legislature deems what is plainly a quasi judicial decision to be an administrative one. A court can find itself in difficulty when an enactment deems red to be blue or a dog to be a cat. Fortunately, I am spared that difficulty. Following an exhaustive review of the authorities the [redacted]

Section 13 does not oust the jurisdiction of this Court where the decision of the Board is a nullity by reason of the fact, inter alia, that the rules of natural justice have not been followed. The section does not bite on a nullity.

Two cases have been cited in support of this proposition - one a House of Lords case and the other a Privy Council case.

In [redacted] 1969 2 A.C. p 147 Lord Reid observed at p 169:

> "The next argument was that, by reason of the provisions of section 4 (4) of the 1950 Act, the courts are precluded from considering whether the respondent's determination was a nullity, and therefore it must be treated as valid whether or not inquiry would disclose that it was a nullity. Section 4(4) is in these terms:
>
> [redacted] made to them under this Act shall not be called in question in any court of law.'".
>
> The respondent maintains that these are plain words only capable of having one meaning. Here is a determination

which is apparently valid: there is nothing on the face of the document to cast any doubt on its validity. If it is a nullity, that could only be established by raising some kind of proceedings in court. But that would be calling the determination in question, and that is expressly prohibited by the statute. The appellants maintain that that is not the meaning of the words of this provision. They say that

[redacted]

or; putting it in another way, if you seek to show that a determination is a nullity you are not questioning the purported determination - you are maintaining that it does not exist as a determination. It is one thing to question a determination which does exist: it is quite another thing to say that there is nothing to be questioned.

Let me illustrate the matter by supposing a simple case. A statute provides that a certain order may be made by a person who holds a specified qualification or appointment, and it contains a provision, similar to section 4 (4), that such an order made by such a person shall not be called in question in any court of law. A person aggrieved by an order alleges that it is a forgery or that the person who made the order did not hold that qualification or appointment. Does such a provision require the court to treat that order as a valid order? It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly - meaning, I think, that, if [redacted]

Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or parliament had intended to introduce a new kind of ouster clause so as to prevent any inquiry even as to whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement [redacted]. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everything which purports to be a determination but which is in fact no determination at all. And there are no degrees of nullity. There are a number of reasons why the law will hold a purported decision to be a nullity. I do not see how it could be said that such a provision protects some kind of nullity but not others; if that were intended it would be easy to say so.".

He went on to say at p 170:

"It has sometimes been said that it is only where a tribunal acts without jurisicition that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquity in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed

> to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly. I understand that some confusion has been caused by my having said in Reg. v. Governor of Brixton Prison, Ex parte Armah [1968] A.C. 192 234 that if a tribunal has jurisdiction to go right it has jurisdiction to go wrong. So it has, if one uses "jurisdiction" in the narrow original sense. If it is entitled to enter on the inquiry and does not do any of those things which I have mentioned in the course of the proceedings, then its decision is equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct an error of law.".

Lord Pierce said at p 195:

> " Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.".

The Privy Council case of [redacted] 1980 2 WLR 143 .... was concerned, inter alia, with the provisions of [redacted] of the Bahamas Nationality Act 1973 which provides:

> "The Minister shall not be required to assign any reason for the grant or refusal of any application ... under this Act....and the decision of the Minister... shall not be subject to appeal or review in any court.".

It was held, inter alia:

> " [redacted] that ouster clauses such as section 16 of the Act

of 1973 only prohibited the court from re-examining the decision of an inferior tribunal, which included executive authorities exercising quasi-judicial powers, if the decision was one which the tribunal had jurisdiction to make; that any decision affecting the legal rights of individuals arrived at by a procedure which offended against natural justice was outside the jurisdiction of the decision-making authority, and that, accordingly, since the Ministerial decision was made without jurisdiction, section 10 did not prevent the court from inquiring into its validity and the application would be remitted to the Minister to be determined according to law.".

At p 152 Lord Diplock, who read the judgment of their Lordships, said:

> "'Appeal" in the context of an ouster clause means re-examination by a superior judicial authority of both findings of fact and conclusions of law as to the legal consequences of those facts made by an inferior tribunal in the exercise of a jurisdiction conferred upon it by statute to decide questions affecting the legal rights of others, and the substitution of the superior judicial authority's own findings of fact and conclusions of law for those of the inferior tribunal. In "review" the function of the superior judicial authority is limited to re-examining the inferior tribunal's conclusions of law as to the legal consequences of the facts as they have been found by the inferior tribunal. It is by now well established law that to come within the prohibition of appeal or review by an ouster clause of this type, the decision must be one which the decision-making authority, under this Act the Minister, had jurisdiction to make. If in purporting to make it he has gone outside his jurisdiction, it is ultra vires and is not a "decision" under the Act. The Supreme Court, in the exercise of its supervisory jurisdiction over inferior tribunals, which include executive authorities exercising quasi-judicial powers, may, in appropriate proceedings, either set it aside or declare it to be a nullity: Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 A.C. 147.
>
> It has long been settled law that a decision affecting the legal rights of an individual which is arrived at by a procedure which offends against principles of natural justice is outside the jurisdiction of the decision-making authority. As Lord Selborne said as long ago as 1885 in Spakman v. Plumstead District Board of Works (1885) 10 App. Cas. 229, 240: "There would be no decision within the meaning of the statute if there were anything... done contrary to the essence of justice." See also Ridge v. Baldwin [1964]. A.C. 40.
>
> Their Lordships, in agreement with all the judges in the courts below, would therefore conclude that the ouster clause in section 10 of the Bahamas Nationality Act 1973 does not prevent the court from inquiring into the validity of the Ministerial decision on the ground that it was made without jurisdiction and is ultra vires."

There is, therefore, ample authority for answering the

second question in the negative.

I can now turn to the first question.

The application of 10th March 1980 was an application for a renewal (or "extension" as provided by section 28 (5)) of the applicant's licence. There had been at least one renewal before that in respect of the applicant's work with Roper's Window Cleaning Ltd. The application of 10th December 1980 was also for a renewal. The decision of the Board communicated by the letter of 29th July 1980 was to the effect that there would be no renewal after the six months extension then granted. It would be "for a final period of six months." The decision of the Board communicated by the letter of 24th February 1981 (in relation to the 10th December 1980 application) was to the effect that the Board would not consider the application of 10th December 1980 because of the decision already taken earlier and communicated in the 29th July 1980 letter.

Before taking the decision communicated in the latter letter the board never informed the applicant of the nature of the case against him justifying a renewal for a final period after which no further application would be entertained. The applicant was given no opportunity to answer any such case against his interest.

S. A. de Smith in his Judicial Review of Administrative Action 3rd Ed. observes at p 197:

> " [redacted] more serious matter than refusal to grant a licence in the first place. Unless the licensee has already been given to understand when he was granted the licence that renewal is not to be expected, non-renewal may seriously upset his plans, cause him economic loss and perhaps cast a slur on his reputation. It may therefore be right to imply a duty to hear before a decision not to renew when there is a legitimate expectation of renewal, even though no such duty is implied in the making of the original decision to grant or refuse the licence.".

In [redacted] Khaida 1970 2 QBD 417 the facts are as follows:

" Two French nationals who in 1967 took up residence in the United Kingdom, contracted to buy the controlling shares in Crockfords's, an old-established London gaming club, and later became joint managing directors of the club. They applied to the Gaming Board for Great Britain for a certificate of consent to entitle them to apply for a licence for the premises, as required by the Gaming Act, 1968. At a four-hour interview with the board in December, 1969, the applicants were asked, and answered, a wide range of questions based on information already in the board's possession, though its source and detailed content were not disclosed to the applicants. They were then invited to supply further information in writing and did so; but on Janaury 9, 1970 the board refused the certificate. Further requests to the board to indicate which of five specified matters still troubled the board and to consider a new or amended application were unsuccessful, though the applicants were again invited to make further representations on any matters considered relevant. On February 24 the board confirmed their refusal and declined to state their reasons.

The applicants moved the Court of Appeal, pursuant to leave granted by that court, for orders of certiorari to quash the board's decision and of mandamus to require the board to give them sufficient information to enable then to answer any case against them, on the ground that the board had acted unfairly and contrary to natural justice in a matter which would deprive the applicants of valuable rights of property.

At the hearing the board disclosed an outline of their adopted procedure, which stated that applicants were given the best possible indication of matters troubling the board but that the board would withhold the source or content of information which was confidential where disclosure was inconsistent with their statutory duty and the public interest.".

At p 430 Lord Denning M. R. said:

" [redacted] Everything depends on the subject-matter: see what Tucker L. J. said in Russell v. Norfolk (Duke of) [1949] 1 All E.R. 109, 118 and Lord Upjohn in Durayappah v. Fernando [1967] 2 A.C. 337, [redacted] Ridge v. Baldwin [1964] A.C. 40. At another time it was said that the principles do not apply to the grant or revocation of licences. That too is wrong. Reg. v. Metropolitan Police Commissioner, Ex parte Parker [1953] 1 W.L.R. 1150 and Nakkuda Ali v. Jayaratne [1951] A.C. 66 are no longer authority for any such proposition. See what Lord Reid and Lord Hodson said about them in Ridge v. Baldwin [1964] A.C. 40, 77-79, 133.

So let us sheer away from those distinctions and consider the task of this Gaming Board and what they should do. The best guidance is [redacted]

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[redacted] The principle in that regard was well laid down by Lord Parker C. J. in In re H. K. (An infant) [1967] 2 Q.B. 617. He said, at p. 630:

> "...even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of safisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly."

Those words seem to me to apply to the Gaming Board. The statute says in terms that in determining whether to grant a certificate, the board "shall have regard only" to the matters specified. [redacted] [1964] A.C. 40; or depriving him of his property, as in Cooper v. Wandsworth Board of Works (1863) 14 C.B.N.S. 180. After all, they are not charging him with doing anything wrong. They are simply inquiring as to his capability and diligence and are having regard to his character, reputation and financial standing. [redacted] see that persons running the gaming clubs are fit to be trusted.".

In my view the same principles apply to the Board mutatis mutandis. In that case it was also held that the board, being entrusted with the duty of controlling gaming in the public interest, ought to seek and use all reliable information to enable them to perform their duty; but they were not obliged to disclose the source or details of their information to an applicant who was not being required to meet charges but only to satisfy the board as to fitness to apply for a licence. Nor were the board obliged to give their reasons for forming the opinion that a certificate should be refused to a particular applicant.

This again would appear to be appropriate to the functions of the Board.

The principles are plainly spelled out by [redacted] v. Onslow Fane and Anor 1978 3 All E.R. p 211 in these terms:

> " Second, where the court is entitled to intervene, I think it must be considered what type of decision is in question. I do not suggest that there is any clear or exhaustive classification; but I think that at least three categories may be discerned. First, there are what may be called the forfeiture cases. In these,

there is a decision which takes away some existing right or position, as where a member of an organisation is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. These are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership ofthe organisation, or a licence to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the application cases only in t[redacted] or his licence; or a person already elected or appointed to some position seeks confirmation from some confirming authority: see, for instance, Weinberger v Inglis; Breen v Amalgamated Engineering Union; and see [redacted] R v Barnsley Metropolitan Borough Council, ex parte Hook.

It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases, there is a threat to take something away for some reason; and in such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges (which, in Ridge v Baldwin, Lord Hodson said were three features of natural justice which stood out) are plainly apt. In the application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the general suitability of the applicant for membership or a licence. The distinction is well-recognised, for in general it is clear that the courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category, that of the expectation cases, may at least in some respects be regarded as being more akin to the forfeiture cases than the application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of [redacted] previously thought suitable".

The Court of Appeal case, [redacted] Commissioner of Police, was concerned with the revocation of a driving licence by the Commissioner of Police in the exercise of a discretion, and not with a renewal as in this case. However, at p 45 their Lordships observed, after a full review of the authorities:

> " It is clear that in the <u>revocation</u> cases, such as this one before us is, the rule of natural justice indicated above: the right to notice of the charges and the right to be heard in answer to these charges, would

> be accorded to the applicant in our case on the authorities in the United Kingdom as they now stand. And that her application for renewal of her licence when made will import the same considerations.
>
> It is also clear that even on those cases that deal with "mini-natural justice" there would have been a right to be heard or to make representations or to be dealt with "fairly".".

Further, at p 47 their Lordships observed:

> "We are further of the opinion that the statute being silent on the matter, the common law imports into the exercise of the Commissioner's powers in this respect the [redacted]."

I can see no reason why the same principles should not apply to the Board in the exercise of its discretion under the Caymanian Protection Law.

It was argued that from the whole tenor of that Law it could be inferred that the Board was not bound by the rules of natural justice but was strictly governed by the procedural provisions in the Law which gave an applicant no express right of audience, relieved the Board of any necessity to give reasons for its decisions (section 28 (1)) and provided no machinery for the Board to give an applicant the right to answer any case adverse to him.

[redacted]

[redacted] It was nevertheless held in [redacted] the failure to inform the respondent of the nature of the case against granting the application and to give him a reasonable opportunity of answering it was in breach of the principles of natural justice; and accordingly that the decision to refuse the application was a nullity.

The Board is given power to regulate its own procedure (Section 8 (7)). That gives the Board a wide discretion as to the procedure it will adopt. However, in my view, implicit in that power is that in any procedure adopted the duty to be fair remains and that the principles of natural justice must be observed.

I am of the opinion that on an application for a renewal of a licence which the Board is disposed to refuse the procedure adopted by the Gaming Board as disclosed in the R v Gaming Board for Great Britain would be appropriate. But I do not intend this to be binding on the Board. Any procedure which respects the duty to be fair and the principles of natural justice would be equally appropriate.

[redacted]

[redacted] I appreciate that some of the factors the Board has to take into account in its deliberations under section 27 are not factually based but are matters of opinion or judgment on general conditions e.g. paragraphs (d), (f) and (g) of that section. But it seems to me that this does not pose a real difficulty in putting an applicant on notice of the basis for non-renewal and allowing him the opportunity to meet it - if he can. At least this would dispel any misgivings that the Board is being used as an instrument of vendetta or revenge by some individual with no foundation for allegations it is making against an applicant.

It has been argued that no non Caymanian has a right to a licence or to its renewal; and that any applicant must realise that he can only be here for so long as he is needed or until a Caymanian can

suitably take his place. That is perfectly true but does not lessen the need for natural justice to be observed. Can he not be given an opportunity to answer a case for non-renewal when the Board thinks his time is up? If he is not, then assuredly he will think that he is a victim of some grudge or wrong information.

While an applicant has no right to a renewal of his licence, by the grant of the original licence he has made a commitment which affects his life as a whole. The original licence would not have been granted had it not been in the general interests of the community. Presumably, in the meantime, he has contributed to the economic or social benefit of the Islands. [redacted] is it asking too much that he should be given an opportunity - only the opportunity - of answering the case for non-renewal [redacted] justice requires.

It was also argued that because of the tenuous nature of his right to a licence, or its renewal, an application for renewal should have no justifiable "expectation" for its renewal which appears to be the guiding feature in the licensing cases quoted. That view is at variance with reality. It is a matter of general knowledge that many non Caymanians have their licences renewed regularly and the expanding economy does not diminish the number of persons working under licence but has expanded it. I do not see how it can properly be said that the principles set out earlier do not apply to the Board on those grounds - and that this is not a "licensing situation" as contemplated by those cases.

I am, therefore, of the opinion that the Board is bound by the rules of natural justice and that, in the instant case, it was in breach of those rules in that it did not give the applicant an opportunity to answer the case against him for the decision to make the renewal of [redacted] July 1980 a final one [redacted] in any event [redacted] not go into that aspect. It follows that the decision conveyed in that

letter was a nullity and so was any ensuing appeal as no decision on appeal could revive a decision which was a nullity in the first place.

In my view, the 29th July 1980 decision should be quashed.

However, there could be no point in remitting the matter to the Board to consider the application then before it according to law and the principles of natural justice. That is water under the bridge.

Had I not reached the decision I have reached in relation to section 24 of the Caymanian Protection Law I would have issued an order directed to the Board to consider the application of 10th December 1980 according to law and observing the principles of natural justice.

However, such an order would conflict with the decision I have reached in relation to section 24.

In conclusion, I wish to make it clear that nothing in this judgment is intended as criticism of the Board in any way. In taking the course the Board did it was following a procedure hallowed by time and accepted without challenge since the Caymanian Protection Law came into force. It was doing what it thought was right and no blame can attach to any person for that. Had the Caymanian Protection Law been more specific onthe matter then no doubt the Board would have acted differently.

28.10.81

SIR JOHN SUMMERFIELD.