

1 IN CHAMBERS

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4 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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6 CAUSE NO. 91 OF 1997

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12 BETWEEN: JACQUES SCOTT & COMPANY LIMITED

PLAINTIFF

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15 AND: (1) THE IMMIGRATION BOARD

16 (2) ISLAND COMPANIES LTD.

DEFENDANTS

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22 Mr. Lamontagne Q.C. and Mr. Charles Adams
23 for the plaintiff.

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27 **Smellie J**

28

29 **RULING**

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31 It is clear that the applicant's business is likely to be affected by a grant of
32 ICL's application now that ICL is to be a majority owned affiliate of
33 Nuance.

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35 I regard that as a sufficient interest for the purposes of GCR Order 53 Rule
36 3(7).

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38 The applicant has sought an opportunity to respond to the case put to the
39 Board on behalf of ICL and to that end to be provided with information
40 submitted in support of ICL's application, which is not deemed confidential.
41 Alternatively, the applicant has urged the Board to allow it the opportunity

1 to be consulted before the grant of ICL's application, if that is to be the
2 case.

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4 The Board has failed to respond. On that basis, the applicant now asserts its
5 case for leave to apply for judicial review - in the first instance for
6 prohibition and a stay or, if it later transpires that the licence has already
7 been granted by the Board, for certiorari.

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9 The basis is what the applicant described in two alternate ways:

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11 (a) The duty owed to it by the Board to act
12 fairly which, in this case, would compel at
13 least a right to a hearing which, if to be
14 effective, must include the requested
15 disclosure of ICL's case.

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17 (b) The applicant's legitimate expectation as
18 an individual member of a class of the
19 Caymanian public who has become entitled
20 to the protection of its business interest - a
21 protection which is established in the
22 legislative scheme and, were it to be
23 avoided, would be a radical departure from
24 the status quo.

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26 The modern case law advises that the requirements of fairness will vary
27 depending on the legislative and factual context of the case, and that more
28 so, in a case such as this, where the legislation does not set the procedural
29 rules the tribunal must follow, the tribunal is required to fashion its
30 procedure to ensure that fairness is achieved in each particular case. This is
31 especially so in one carrying the far-reaching consequences of this case.

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33 Having read the cases relied upon, and having heard Mr. Lamontagne, I
34 conclude that the applicants' case is arguable.

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36 Leave and the stay are granted as prayed.

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1 I should note, in order to avoid any confusion with the earlier rulings of the
2 Court in related cases, that an important point of distinction is that there was
3 no suggestion in those cases that the objectors were uninformed about the
4 nature of the applicant's case.

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6 No order as to costs.

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12 Anthony Smellie Q.C.

13 Judge of the Grand Court

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16 Dated this 19th day of February 1997

