COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT
PUBLIC LAW DIVISION
2010/PUB/JRV/00020

IN THE MATTER of certain provisions of the Roads Act, Chapter 201 ("the Act);

AND IN THE MATTER of certain planning developments affecting the area forming part of communities served by portions of Baillou Hill Road and Market Street by the construction and reconstruction and extensions to those public roads being carried out by the Minister responsible for roads in implementing the permanent changes in the directions of vehicular and pedestrian traffic flows;

AND IN THE MATTER of an application by Arnold Heastie, Leana Ingraham and Rupert Roberts Jr., for an Order authorizing them to bring and defend judicial review proceedings as a representative action pursuant to the provisions of R.S.C., (1978), Ord. 15, r. 13;

AND IN THE MATTER of an application upon such grant of Authority for leave to apply for judicial review

Between

ARNOLD HEASTIE, LEANA INGRAHAM and RUPERT ROBERTS Jr (Suing on behalf of themselves and all the other businesses and property owners organized under the name of 'The Coconut Grove Business League')

Applicants

And

THE MINISTER OF PUBLIC WORKS AND TRANSPORT
(Sued in his capacity of Minister responsible for Roads)
Respondent

BEFORE: His Lordship The Honourable Mr Justice K Neville Adderley

APPEARANCES: Mr Maurice Glinton, Mr Paul Moss with him, for the Applicants

The Honourable John Delaney, Q C, Attorney General; Mr David Higgins; Ms Melissa Wright and Ms Sophia Thompson-Williams with him, for the Respondent

13 and 29 October and 17 December 2010

JUDGEMENT

Adderley, J

1. This is an application by way of originating motion for judicial review of a decision of The Minister of Works. It arises out of works currently being performed in the Baillou Hill Road and Market Street area under the $120,000,000 New Providence Road Improvement Project (**"NPRIP"**).

2. The complaint of the applicants is set forth in paragraph 7 of their Statement filed pursuant to RSC Order 53 rule 3 (2) (a) as follows:

> "7. The Applicants' complaint in respect of which they seek a review arises out of and relates to the Respondent's exercise of authority to construct or reconstruct and extend portions of Blue Hill Road and Market Street, and to restrict and regulate traffic along such roads in the Minister's implementation of changes as part of the New Providence Road Improvement Project ("the Road Project"). The implementation of such changes has been, is being, and is likely to be destructive of their businesses' economic existence and way of life as to cause them irreparable financial injury and harm."

The motion was supported by a verifying affidavit of Arnold Heastie, the first named applicant.

3. At the trial the applicants contended that they have never had a complaint about the road reversal which turned each street which was heretofor two-way into one way streets in part. Nevertheless there is a reference in paragraph 7 of the Statement of the Minister's decision to *"regulate traffic"* and in paragraph 5 to *"the Respondent's decision to carry out road work along portions of those public roads in particular as he thought necessary for implementation of the said changes in* ***directions*** *[*my emphasis*] of vehicular and pedestrian traffic flows..."* Furthermore there is in evidence a letter dated 21 May 2001 from Ethric Bowe as communications office of the applicants to the Prime Minister headed *"Blue Hill Rd/Market St. Traffic Reversal"*. Indeed, the heading in this action refers to "*...the permanent changes in the directions of vehicular and pedestrian traffic flows...*". Although the applicants maintain that these references did not constitute a complaint against the creation of the one-way traffic flow which the Minister made by regulations in March 2010 in his capacity as Minister responsible for Road Traffic, the court finds that it was reasonable for the respondent to conclude that the applicants' complaint also included reversal of traffic flow and that it was necessary to defend it. The arguments of the respondents on the issue of the reversal of traffic flow are therefore deemed to have been conceded by the applicants and this will be reflected in costs.

4. The focus in this action is on whether or not there was the want of proper process not on the decisions actually made. According to the applicants the respondent has failed to provide as mandated by law the framework for the process of consultation to take place and in the absence of such process the decision of the Minister can be impugned.

5. An *ex parte* summons was filed on 24 June 2010 seeking leave under RSC Order 15 rule 17 for the named applicants to sue in a representative

capacity on behalf of 47 individual businesses for leave to apply for judicial review pursuant to RSC Order 53 Rule 3 and for an interlocutory injunction until trial.

6. The leave hearing took place on 15 June 2010. Unlike the standard *ex parte* hearing the respondent was represented at the hearing having been served with notice thereof. Leave to apply was granted by Order filed 6 August 2010. The named applicants represent the following entities:

	Names of Member	Business Establishment	Business Address
1	Ricardo Johnson	The Hit Spot	Robinson Road
2	Gareth McKenzie	Forty Forty	Crooked Island Street
3	Gareth McKenzie	Bring Ya Bowl	lady Slipper, Blue Hill
4	Mr. Arnold Heastie	Heastie's Gas Station	Blue Hill Road
5	Janet Fowler	Melissa Sears	East Street
6	Naomi Deveaux	A Change of Pace Uniform Center	Palm Tree Ave & Blue Hill Rd.
7	Ricardo Johnson	Audio Plus	Soldier Road
8	Cleo Bowe/Lena Ingraham	Community Hardward	283 Market Street
9	Wilner Pierre	W.P.Water Convenience Store	Market Street
10	Tony Barrows	Auto Care Products	Market St. & Palm Tree Ave
11	De'Andra Fawkes	Dream Candy	Poinciana Ave & Market St.
12	Christoper Treco	Blue Hill Road Meat Mart	Blue Hill Road
13	Phillipa Rolle	Baby's Fashion	Wulf Rd. & Market Street
14	Laura & Kira Rolle	Laura's Fruits & Vegetable	Blue Hill Road
15	Barry Kemp	Lock & Key	Market Street
16	Christina Whitely	Prince Lock and Key	Cordeaux Ave. & Watlins St.
17	Montgomery Roberts	Monty's Beauty Supplies	Palmetto Avenue
18	Godfrey Collie	Grove Holiday Restaurant & Bar	Market Street
19	Deborah Bannister	Convenient Store	Market Street
20	Mrs. Christine McKenzie	Size Appeal Clothing	Market St. & Bahama Ave
21	Reliable Jack Hammers	Reliable Jack Hammers	#18 Bahama Avenue
22	Joseph McCarthy	Joe's Jerk	232 Market Street
23	Anthony Garrison	Da'Jarvou Beauty Supply	Market Street
24	Ruby Rolle	Bertha's Go-Go Ribs	4th St. & Poinicana Ave
25	Latoya Jolly	Jolly Girl	Market Street
26	Jamaal Nabbie	Nabbie's Landscaping	Palmetto Avenue
27	James Gibson	Mor-Food Takeaway	Coconut Grove Avenue
28	Janaro Turnquest	Pazapa Convenient Store	Palmetto Avenue
29	J & A Beauty Supplies	J & A Beauty Supplies	Bahama Avenue
30	Susan Ferguson	Y Care's Fashion Center	#33 Bahama Avenue
31	Michelle Bain	Millenium Snack	Market Street

32	Stephanie Rahming	Creative Avenues	266 Market St. South
33	Anastacia Campbell	B-Envied Clothing	Market St. & Coconut Grove
34	Steffon Gibson	General Appliance Company	Market St. & White Rd.
35	Brian Wilson	Quality Jewellers	Market Street
36	Clarice Evans	Set Time Variety Merchandise	Market Street
37	Rochelle Cox-Hill	Miami Vice Clothing Store	Market Street
38	Cornelius Gardiner	Gardiner's Quality Meat	Crooked Island Street
39	Michael McKenzie	The Red Bull	Watlins Street
40	Kendrick Moss	Supervalue	Supervalue Blue Hill Road
41	Clifford Davis	Overhead Developers	Claridge Road
42	Stephen & Sabrina Heastie	The Sporting House	Coconut Grove Avenue
43	Natasha McKenzie	Delish	Coconut Grove Avenue
44	Ryhea Treco	Tierra's Collection	256 Market Street
45	Thyra Treco	Shoe Fever	Market Street
46	Arthur Holbert	Cleanway Janitorial	Robinson Road
47	Dionisio D'Aguilar	Superwash	Robinson Road

7. Following the grant of leave the hearing on the application for the interlocutory injunction was adjourned to 17 August 2010. A judgment was delivered on 18 August 2010. While recognizing that it was a proper case for the grant of an injunction I nevertheless did not grant one because all parties had represented to me that to grant an immediate injunction would have left the roads in an "unroadworthy state". Instead the matter was set down for trial at an early date.

8. Nevertheless, apparently due to doubt as to whether or not an injunction had been granted, the respondent appealed to the Court of Appeal to set the injunction aside. In its judgment delivered on 26 August 2010 in Appeal Pub/Adm/Jrv Division & CAIS No 111 of 2010 the Court of Appeal set aside the 18 Auigust 2010 judgment "*in so far as it precludes the Hon Minister of Works from carrying on with the construction and extensions of Blue Hill Road and Market Street*"" but otherwise expressly affirmed the judgment.

9. During the course of the trial several broad issues arose:

1) was the judicial review application in time and if not whether there was good reason to grant an extension?

2) If so, was the Minister in breach of his statutory duty by failing to promulgate regulations under section 17 of the Roads Act that could provide for consultation prior to embarking on that part of the **NPRIP** complained of by the applicants? If not, was there any other principal under which consultation ought as a matter of law to have taken place?

3) If so, has the implementation of the **NPRIP** in the Baillou Hill Road and Market Street corridors resulted in peculiar damage to the applicants which is justiciable including whether it has resulted in confiscation of the property of the applicants within the meaning of Articles 15 and 27 of the Constitution of The Bahamas?

4) If so, what remedy should the court provide to the applicants? To the extent that it existed the applicants have abandoned their application for an injunction.

10. Considering the questions seriatim if the answer to any one of 1) to 3) is in the negative the application should be dismissed.

DELAY

11. The court will first consider the question of delay.

12. The Rules require that judicial review applications be made promptly. RSC Order 53 Rule 4 (1) mandates:

> "4.(1) An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application should be made."

13. The respondent contends that at the very latest the grounds for the application first arose on the date the current $120,000,000 contract was entered into with Jose Cartellianes in September 2008 ("the Current Contract").

14. Prior to that since 1999 the government had widely publicized its decision to embark on the **NPRIP** to upgrade the then existing traffic system on the Island

of New Providence by providing a more reliable and efficient transportation system. The system comprised 19 corridors and 5 major intersections including corridor 11A (Baillou Hill Road from Robinson Road to Duke Street and Corridor 11B (Market Street from Robinson Road to Duke Street). The respondent claims that consultation began from that time by providing the public with information. The applicants say these consultations were for the benefit of persons using the highway not persons whose properties and way of life would be adversely impacted by the works.

15. The government signed a loan agreement with the Inter-American Development Bank for $66 million in 2000, a design /build contract with Associated Asphalt of the United Kingdom for $52.2 million in 2001 and because that company went bankrupt without completing the work they signed the Current Contract. In support of his claim of public consultations, the respondent has produced evidence of Town Meetings and other public meetings held during the process of pre-qualification and before and after the signing of the Contract. The government caused environmental impact studies to be conducted, as well. As pointed out in my judgment in this action of 18 July 2010 and conceded by the respondent no economic impact study had been done to consider the economic effect on surrounding businesses.

16. The applicants argue that leave having been granted unconditionally by the 18 July Order, it is not liable to be set aside at the substantive hearing, nor does the question whether such leave ought to have been granted fall to be re-opened at the substantive hearing. Even if the issue of leave granted was able to be re-opened in the circumstances the respondent has waived his right to raise the issue, they argue.

17. The response is that since there was no prior application concerning delay, and no oral arguments, the issue was heretofore not considered by the court, and so there can be no issue estoppel, nor is the court *functus officio* on

the issue of delay. It is perfectly proper on the authorities, they say, to raise it as an objection at the substantive hearing.

18. The principle that emerges from the authorities is that if on a hearing of an application at the leave stage to strike out an application for delay the court after hearing oral arguments refused the application with a reasoned judgment, then only in a limited number of instances should the trial judge permit the issue to be reopened. They include:

> "(i) if the judge hearing the initial application has expressly so indicated;
>
> (ii) if new and relevant material is introduced on the substantive hearing;
>
> (iii) if exceptionally, the issues as they have developed at the full hearing put a different aspect on the question of promptness;
>
> (iv) if the first judge has plainly overlooked some relevant matter or otherwise reached a decision per incuram. "[R v Lichfield DC Ex p Lichfield Securities Ltd [2001] EWCA Cir 304 applying principles set forth in RV Criminal Injuries Compensation Board Ex p A (1999) 2 AC 330 per Lord Slynn at 341 letters B – F]."

19. While I agree that the respondent is still able to raise the issue of delay I note that he did not raise it by way of a response to the applicants' letter of 28 May to the Attorney General, or at the leave hearing on 15 June, or at the injunction hearing on 16 July 2010 nor by way of application anytime after that. The issue of delay was foreshadowed for the first time before the Court of Appeal in August as part of the grounds of appeal to set aside the perceived injunction.

20. Furthermore, it is not at all clear that the applicants are guilty of delay on the facts of this case. Time begins to run from the date when grounds for the application first arose. If the rule is to be given a purposive interpretation aimed at affording an opportunity to affected members of the public to apply for relief the decision must contain elements which are irrefutably referable (to borrow a

phrase from the crime of attempt) to the rights which the complainants allege are being breached.

21. Longley, J interpreted ***R (Burkett) v Hammersmith and Fullar LBC*** [2002] 1 WLR 1593 UKHL. 23 to say that the decision must be a juristic act which immediately creates rights and obligations (see ***R v Hubert Ingraham et al Ex p. Responsible Development for Abaco (RDA) Ltd*** Supreme Court Action No. FP13 of 2009 ("the Wilson City Case"). In my judgment, this may be evidenced by a binding written or oral contract or by justiciable acts or admissions on the part of the public authority. It seems to me that at the time of the decision information must be available to the public by which the complainants would know or ought to known that the decision would peculiarly affect their rights in the manner complained of over and above those of the general public. This, in my judgment, would be the first time that the grounds for the application could arise within the meaning of RSC Order 53 rule 4(1) because it would be the first time that the complainants would know that they had grounds to give them sufficient interest to apply to have the decision impugned. When the complainants first knew or ought to have known of the grounds falls to be determined using an objective test applied to the facts of each case.

22. If that were not so, in my judgement, it would be impossible in most cases especially in capital works cases, for the applicant to establish sufficient interest to apply for judicial review. I accept the submission of Mr Glinton in this regard and find it entirely unsurprising that the House of Lords in ***Burkett*** did not endorse the comments of Laws J in ***R v Secretary of State for Trade and Industry Ex p. Greenpeace Ltd***. [1998] Env. L R 415 when he said at 424:

> "a judicial review applicant must move against the substantive act or decision which is the real basis of his complaint. If after that act has been done, he takes no steps but merely waits until something consequential and dependent upon it takes place and then challenges that , he runs the risk of being put out of court for bringing it too late."

23. Lord Steyn points out at [47] in ***Burkett*** the difficulty with this statement:

> "Unfortunately, the judgment in the *Greenpeace* case [1998] Env LR and the judgment of the Court of Appeal, although carefully reasoned, do not produce certainty. On the contrary, the proposition in the *Greenpeace* case, at p 424 "that a judicial applicant must move against the substantive act or decision which is the real basis of his complaint" leaves the moment at which time starts to run uncertain. "

He goes on to quote with approval from the case note to the ***Geenpeace*** case, *"All Litigants are Not Equal: Delay and the Public Interest Litigant"* [1998] Jr 8 where Dr Forsyth (co-author of the standard textbook) commented at p 10, para. 8 as follows:

> "This obligation resting upon applicants for judicial review as soon as the real basis of their complaint had been identified is onerous and uncertain. It may be pointed out that notwithstanding that he had the luxury of being able to view each event in its proper context as revealed by subsequent events, the judge found it difficult to decide what the precise date was. How much more difficult must it be for the applicant who lacks this perspective and to whom the significance of each event is obscure to judge when the real basis of their complaint has come to the fore? In truth, the basis of complaint is often constructed ex post facto, but the judgement ignores this reality."

24. Lord Steyn concluded:

> "Laws J saw it as a matter of the court imposing "a strict discipline in proceedings before "it" and administering justice "case by case". The difficulty with this approach is, however, that it does not provide the relative certainty in respect of the operation of the time limit under Ord 53, r 4(1), which a citizen might be entitled to expect."

25. I adopt those dicta.

26. In the Wilson City Case, as ruled by Longley J, the juristic act was the signing of the agreement on 31 December 2007 to construct the power plant in Wilson City. At that time information became available to the public that the specifications in the contract contained a configuration that would use "Bunker C"

fuel in its generation of electricity. That was the very ground on which the residents of Wilson City objected to the decision in their application for judicial review (the decision to construct a power plant which would use Bunker C fuel) on environmental grounds.

27. In commencing proceedings for judicial review on that ground in December 2009 they were far outside the period of six months allowed by RSC Order 53 (4)(1) and Longley J was not satisfied that there was evidence of a good reason upon which he should exercise his discretion to grant an extension. He accordingly dismissed the application.

28. In this case while the applicants could surmise that there would be some disruption on the roadways in the Baillou Hill Road and Market Street corridors from the time the contract was signed in 2000, it was not until the decision was made to commence and carry out the works on Baillou Hill Road and Market Street as evidenced by the start in February 2010 that the applicants had knowledge of the peculiar way in which the disruption would affect their rights over and above those of the general public so as to give them sufficient interest to sue to have the decision reviewed.

29. Within three months of the start of works the applicants wrote a letter dated 28 May 2010 to the Attorney General in his capacity as such requesting him to commence judicial review proceedings *"as protector of the public interest to challenge the Minister responsible for Roads for his failure to observe the law and to ensure the proper administration of the Act..."*. After receiving no reply to that letter and a previous one to the Honourable Prime Minister they commenced proceedings on 15 June 2010.

30. On this view the applicants were within the six month period allowed by the Rules and I so rule. I do not believe that the provisions of section 36(6) of the Supreme Courts Act 1981 of England referred to in the authorities by the

respondent which gives express power to the court to refuse relief in cases of undue delay even if in the circumstances the delay is less than six months [3 months in England] applicable in The Bahamas because there is no similar statute in The Bahamas giving the court such jurisdiction. To the extent that section 36(6) codifies the common law such refusal would be possible but I do not believe it applies on the facts of this case.

31. If the applicants were not within the six-month period, I would have exercised my discretion to extend the time. Firstly, in my judgment the delay of the respondent in raising the issue of delay for the first time constitutes a waiver. Secondly, the issues were raised by the applicants at a time when the stage of the works in the affected area was at such a rudimentary stage that there was still time for the Minister to complete the process of consultation which he had commenced so as to be able to take into consideration the views of the applicants without endangering any third party interests. Therefore the circumstances in which time was allowed to pass would have constituted good reasons for me to exercise my discretion to extend the time.

MINISTER'S BREACH OF STATUTORY DUTY?

32. Section 17 of the Roads Act Chapter 20 provides as follows:

> "17(1) The Minister may make Regulations for the better carrying out of the provisions of this Act and generally for the control construction, maintenance and use of public roads..."

Section 4 provides:

> "4. All public roads within The Bahamas shall be under the charge and control of the Minister who shall have and exercise in respect thereof the powers and duties conferred by this Act."

33. The applicants argue that by section 4 of the Act Parliament has delegated to the Minister a prerogative power to deal with matters pertaining to

roads and as such the Minister is mandated to use that power as stipulated by Parliament. The vehicle for proper use of that power, they argue, is stipulated in section 17(1) of the Act which empowers the Minister to make regulations *"for the better carrying out of the Act"* and the Minister cannot arrogate unto himself whether or not he will issue regulations to exercise his prerogative powers.

34. This is how it was stated in the written submissions of the applicants:

> "1.4. For him [the Minister] not to have made regulations **"for the better carrying out of this Act"**, constitutes a breach of duty on the Minister's part and the denial of protection to persons impacted by the exercise of such powers. It also means that the Minister arrogated to himself in exercise of some executive prerogative the power (or freedom) to discharge his responsibilities under the Act accordingly to law or not according to law as he sees fit, i.e. to be (act) outside the law."

35. The applicants also claim that as members of the public, they are likely to sustain special interference and economic injury and loss by reason of the implemented policy, that they had a legitimate expectation that the Minister would not pursue the changes in the absence of regulations mandated by Parliament under section 17(1) of the Act, *"for the better carrying out of the provisions of this Act and generally for the control, construction maintenance and use of public roads."* They claim to have a right to trust that conditions will not be changed by any means other than [regulations] prescribed by statute..."

36. The applicants argue that by failing to promulgate regulations the Minister has deprived the aggrieved persons of their right to be heard. He has also denied them, they say, the protection of the law, and resulted in a "taking" or *"...economic sterilization or dilution of the peaceful enjoyment of their property rights contrary to Articles 15 and 27 of the Constitution..."* by which citizens are protected from the compulsory acquisition of their property.

37. The appellants drew reference to the provisions of sections 25, 27, 29, 31 and primarily on sections 25(b), 25(d) and 29 of the Interpretation and General

Clauses Act. These circumscribe the power of a public authority to make subsidiary legislation, and their legal effect.

Section 25 reads as follows:

> "25 Where an Act confers power on any authority to make subsidiary legislation, the following provisions shall have effect with reference to the making thereof –
>
> (a) when any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all other powers thereunto enabling;
>
> (b) no subsidiary legislation shall be inconsistent with the provisions of the Act under which it is made;
>
> (c) subsidiary legislation may at any time be amended by the same authority and in the same manner by and in which it was made:
>
> Provided that where such authority has been replaced wholly or in part by another authority, the power conferred hereby upon the original authority may be exercised by the replacing authority concerning all matters or things within its jurisdiction as if it were the original authority;
>
> (d) where any Act confers power on any authority to make subsidiary legislation for any general purpose, and also for any special purpose incidental thereto, the enumeration of special purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose;
>
> (e) subsidiary legislation may provide that a contravention or breach thereof shall be punishable on summary conviction by such fine not exceeding five hundred dollars or by such term of imprisonment not exceeding six months as may be specified in the subsidiary legislation or by both such fine and imprisonment;
>
> (f) subsidiary legislation may amend any forms contained in the Act under which such subsidiary legislation is made and may

prescribe new forms for the purpose thereof and for the purposes of such subsidiary legislation; and

(g) subsidiary legislation may provide for the imposition of fees and charges in respect of any matter with regard to which provision is made in such subsidiary legislation or in the Act under which such subsidiary legislation is made.

38. The response is that Parliament has given the Minister a discretion whether or not to use his power to promulgate regulations under the Act and the Minister's exercise of that discretion not to issue regulations is not a breach of statutory duty but instead a valid exercise of his discretion. The respondent also maintains that the applicants could not in law have a legitimate expectation that regulations would be promulgated, and even if they were, there was guarantee that they would provide for consultation in a case such as this.

39. In ***R v Secretary of State for the Home Department*, ex parte Fire Brigades Union** [1995] 2 WLR 464 (HL) cited by the applicants the relevant Act had enacted provisions which were expressed to come into *force "on such day as the Secretary of State may ...appoint."* The Secretary of State later announced that the enacted provisions would not be brought into force, but that other provisions would be implemented. In proceeding for judicial review, the applicants sought declarations that the Secretary of State by failing or refusing to bring the enacted provisions into force, had acted unlawfully in breach of his duty under the Act and in implementing a parallel tariff system using his prerogative powers. The court found by a majority that there was no breach of statutory duty by failing to bring the provisions into effect, but that the Act did impose on him a continuing obligation to consider whether to bring the statutory scheme into force, and that he could not lawfully surrender or release that power, and in purporting to surrender the power acted unlawfully.

40. However, Lord Browne-Wilkinson said this at 422E:

> "In the absence of clear statutory words imposing a clear statutory duty, in my judgment the court should hesitate long before holding that such a provision as section 171(1) [the relevant section in that case] imposes a legally enforceable statutory duty on the Secretary of State."

41. But he further noted at 472 F:

> "It does not follow that, because the secretary of State is not under any duty to bring the section into effect, he has an absolute and unfettered discretion whether or not to do so. So to hold would lead to the conclusion that both Houses of Parliament had passed the Bill through all its stages and the Act received the Royal Assent merely to confer an enabling power on the executive to decide at will whether or not to make the parliamentary provisions a part of the law..."

42. On principle when a power is given to a Minister to exercise his discretion it is to be used to promote the policy and objectives of the Act which are to be determined by the construction of the Act. This was a matter of law for the court. The Minister's discretion is not unlimited and if it appeared that the exercise of his discretion was to frustrate the policy of the Act the court would interfere. See ***Padfield v Minister of Agriculture, Fisheries and Food*** [1968] AC 997 per Lord Reid at 1032 to 1033 A.) at p.1030 where he said:

> "Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objectives of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law by the court".
>
> and at 1030 C
>
> ",,, ... if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court."

43. What was the policy of the Act passed in 1968? In the headnote it reads *"An Act to make provision for the establishment of public roads, for the control and maintenance of public roads and for other purposes incidental thereto."*

44. On a review of the Act, it is clearly not for the benefit of the occupier, but is for the benefit of the Minister on behalf of the public who make use of the roads. The only mention of owners and occupiers of land adjoining any public road are to set out various duties to keep the roads clean so as not to cause any damage or obstruction to persons using the road and power to impose penalties on them for failure to carry out such duties (section 10), prohibition from removing sand from coastal areas (section 11), prohibition from encroaching and causing obstruction on the road (s.12), and the ability to compulsory purchase or exchange land to obtain land required for roads in the public interest and related matters. The protection of the interest of occupiers and owners, or business persons along the highway is not incidental to that policy. In my judgment, therefore, the occupiers and owners of businesses along the roads cannot avail themselves of the failure of the Minister to publish regulations under S.17 (1). The arguments advanced by the applicants based on provisions of the Interpretation and General Clauses Act do not change my opinion.

45. However, although there is no legislation requiring consultation with members of a community likely to be specially affected by an intended development, government policy has been moving in that direction, not only in respect of environmental matters but also in relation to the rerouting of roads and other matters as well. The government has been using public meetings with members of the community likely to be especially affected by major developments. This was recognized in my judgment in this action given on 18 August 2010 and appears to have been conceded by the defendant. At paragraph 12 it states:

> "12. The parties seem to agree that since ***Guana Cay Reef Association Ltd. v R and others*** [2009] UKP44 the applicants

> have a legitimate expectation for consultation in a matter such as this that will affect their property interest since such affect was not the inevitable consequence of the statutory authority acting lawfully. Mr Higgins contends that the required level of consultation has taken place.."

46. The government sought to continue this policy by holding public meetings on the **NPRIP**. I assume that is the consultation to which Mr Higgins referred.

47. As stated in my 18 August Decision:

> "In the Collie–Harris' affidavit she outlined in detail a public consultative process and door-to-door consultations that took place between 18 March 2010 and 18 April 2010 relating to the NPRIP"

48. In her affidavit sworn 13 August 2010 she chronicled the meetings before and after February 2010. A Town Meeting was held on 23 March 2010. Information meetings were held 13, 24, 26, 27 April 2010, school assembles were conducted on 11, 12, 13, 15, and 16 and 20 April at various primary schools, radio shows on 1 and 6 April and public service announcements on the radio stations Power 104.5, Love 97 and 100 Jamz. These were on the true reading of the affidavit and what took place informational not consultative. At all material times a request was outstanding for the applicants to be given an opportunity to express their views to the government.

49. Exhibited to the 13 August affidavit was a 29 July 2005 press conference by the then Minister of Works the Honourable Bradley B Roberts, MP. It said in part:

> "On July 13, 2005, after receiving a letter from a business owner on Harrold Road, I arranged a meeting and invited all business owners on Harrold Road. Even though my Ministry had numerous public meetings in the initial stages of the road improvement project, I still felt it important to hear the concerns of the business owners. Be assured that it is not the intention of the Government to undermine anyone's business and so my technical staff will review the concerns of the businesses and do what can be done without compromising the overall objective of the project".

50. This statement on behalf of the government authority in my judgment is evidence of an intention to carry out proper consultation. As a clear statement from the authority it may have created a legitimate expectation for the future that the concerns of businesses along roads on which major roadworks were being carried out would be properly considered.

51. It seems to meet the test of legitimate expectation. This test was set out by the House of Lords in ***Council of Civil Service Unions v Minister for the Civil Service*** [1985] AC 374 per Lord Diplock and conveniently summarized at pp.408-410 in the text *Application for Judicial Review, Law and Practice of the Crown Office* 2nd edition by Graham Alduis & John Alder relied on by the respondent, namely.

> "[A] legitimate expectation may arise either from an express promise given by a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue...
>
> In the context of statements or undertakings the factual ingredients of a legitimate expectation are as follows:
>
> (i) The authority's statement or undertaking must be clear and unambiguous and not merely tentative or provisional.
>
> (ii) It must be reasonable for the applicant to have relied upon the expectation raised by the authority. Subjective belief on the part of either applicant or authority will not suffice.
>
> (iii) Except where the authority gives a formal undertaking the applicant must make full disclosure to the authority of all relevant information. 'Fairness is not a one way street' and a cards on the table principle applies.
>
> (iv) The applicant must perhaps have suffered some detriment in reliance upon the statement of the authority."

52. However, the applicants did not plead reliance on the statement from the Authority. Instead they relied on an alleged breach of statutory duty under section 17 of the Act which in my judgement is unsustainable.

53. The question then arises: is there any other principle under which consultation should nevertheless have taken place? During the course of the proceedings I asked Mr Attorney whether there were any legal guidelines which applied once a consultative process was embarked upon by the authority even though there was no legal duty to consult. He said no.

54. However, in the Wilson City case Longley, J made this statement

> "It seems to me, however, that whether the parties were under a duty or not, the fact is.....that the respondents did engage in a process of consultation that is accepted. Ultimately to ones mind the question was not so much was there a duty to consult but whether the consultation that did occur was meaningful and adequate."

55. He adopted the statement of principle made by Lord Woolff in ***R v North and East Devon Health Authority, Ex parte Coughlan*** [2001] QB 13 where at [108] he referred to what is sometimes called the four Gunning criteria:

> "108. it is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper consultation must be undertaken at a time when proposals are still in a formative stage, it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response, adequate time must be given for the purpose, and the product of consultation must be conscientiously taken into account when the ultimate decision is taken: ***R v Brent London Borough Council, Ex p Gunning*** (1985) 84 LGR 168."

56. I adopt the dicta of Longley J when he states at [74] of ***Wilson City*** in relation to the four Gunning criteria:

> "74 This is undoubtedly an excellent guide for determining if consultation is adequate. But it is not a legislative code. One has to look at the particular circumstances of each case. There may be cases where certain items will be more important than others. [Sic] Whereas depending on the circumstances less weight may be attached to others."

57. In many other jurisdictions the policy of consultation with interested parties has been made statutory. See for example section 7 of the English Local Government and Public Involvement Act 2007. The test which appears to have evolved to determine that proper consultation did not take place is "*whether the consultation process was so unfair that it was unlawful*".

58. Under the Act the Minister is only legally obligated to consult with the Commission of Police. Section 6 (2) reads as follows:

> "(2) For the purpose of any work or repairs the Minister as and when he considers such action necessary and after consultation with the Commission of Police, may temporarily close, either wholly or partially, any public road or part thereof or may restrict or regulate traffic on any such road on part thereof." Under 17 (1)

59. In the affidavit of Mariano Aranibar sworn 13 August 2010 he states that the road works commenced on the Blue Hill Road and Market Street corridors sometime in February 2010. By August 2010 approximately $1.4 million out of an $8 million of works had been completed on the Baillou Hill Road corridor and less than 4% of the $9,235,734.49 works on the Market Street corridor. He refers to the planned works in these corridors as "minor works".

60. There are a number of matters that could have been aired had proper consultation taken place with the persons directly affected. Possible examples relate to the length and route of the detours, the length of time of the works in particular sections, the labour and resources allocated to a particular area to

expedite the works, the placement of barricades and other measures calculated to ease access to the businesses.

THE PROCESS OF CONSULTATION

61. Following the commencement of the works a letter dated 7 April was addressed to the Honourable Prime Minister signed by 15 persons on behalf of the applicants. In that letter they complained about the loss of business because of the reversal of traffic. They also spoke of the road works in general as follows:

> "All of us have already seen our businesses decline as a result of the recession, and now the road works is causing a further decline. Some businesses report revenue fall off up to thirty percent since the road disruption began."

The letter pointed out that no economic impact study had been done, and requested a meeting:

> "We would love the opportunity to sit down with the government's planners to determine alternative solutions to address the real problems, provide opportunities and do not inconvenience, injure and destroy the lives of so many people"

It expressed the following view:

> "...Evolutionary change can be adjusted to, but change without the necessary consultation and planning is catastrophic change and will always be disruptive and destructive..."

62. On 19 April 2010 a meeting was held between the Minister and the Permanent Secretary (see supplemental affidavit filed 20 September 2010 by Collie-Harris) and Messrs Ethric Bowe, Arnold Heastie, representatives from Super Value, Subway, CTI Cellular, Melissa Sears Fashions, Nicole's Beauty Supplies, Blue Hill Meat Mart, Jiffy Cleaners, Minnis Service Station and Town Centre Mall all of whom were interested persons.

63. According to Mrs Collie-Harris at that meeting the group expressed their concerns regarding the reversal of the traffic, and expressed the opinion that no studies had been done to support the road reversal. The Minister informed the meeting that a study had been done. The Minister was correct because both an Economic Appraisal Study had been done by Mott MacDonald in May 2008, and prior to that in October 2000 an Environmental and Social Impact Assessment (ESIA) had been done. According to Mr Joy John a Civil Engineer of the Project Execution Unit of the Ministry of Works "*One of the objectives of the ESIA was to identify potential environmental and social impacts associated with the road corridor improvements to enable the selection of appropriate measures for their mitigation.*" It is conceded by the respondent, though, that these Reports did not deal with the economic impact on businesses in the affected area.

64. On 27 April 2010 a public meeting was held at the First Baptist Church on Market Street. At that meeting the public was asked to submit comment cards. An analysis of the thirty-three (33) comment cards attached to the affidavit shows that almost half answered "Yes" to the question:

> *"4. Has the road works affected your visits to businesses in the area of construction?"*

65. On 21 May 2010 Mr Ethric Bowe on behalf of the applicants, again wrote to the Honourable Prime Minister and requested a meeting: *"please meet with us to discuss a way out of this situation."* There was no reply.

66. On 28 May 2010 Mr Glinton wrote to the Honourable Attorney General and said the following:

> "We are instructed by certain business owners and residents in the central southern local [sic] of New Providence, to advise them regarding possible steps to take, including legal action, to redress the loss and damage they are having to sustain from the impact upon the business and residential communities of which they form

part, as a direct cause of road construction and reconstruction of and along portions of Blue Hill Road and Market Street."

It should be noted that in this letter the issue of the road reversal was not mentioned and that the matters raised came within the purview of the Roads Act instead of the Road Traffic Act. He invited the Honourable Attorney General *"as protector of the public interest"* to commence judicial review proceedings against the Minister. The letter was unanswered. This action was started about one month later.

JUDICIAL REVIEW IS CONCERNED WITH PROCESS

67. It is not for the court to speculate about what may or may not have been the decision of the Minister as to the manner in which the work would be implemented if there had been proper consultation. Once the process of consultation had commenced, if the machinery allowed for their views to be lawfully taken into consideration, the applicants might not have had a basis for complaint. Indeed the avenue for consultation was reopened by my judgment on 18 August 2010 but nothing happened. Mr Glinton asserted in court without objection by Mr Delaney that during that period between 18 August and the trial date of 13 October another letter of request was written to the Minister on behalf of the applicants. That letter was also unanswered.

68. There is no evidence that the Minister exercised his discretion to consider whether or not to promulgate regulations under section 17 but, as I have ruled, the Minister was under no duty to do so. However, it was conceded that the Minister embarked on a process of consultation. As a part of that process no proper consideration was given to the potential impact on businesses in the area. Nor does it appear that the Minister gave an opportunity to the applicants to put their case, or if such opportunity was given that it was taken into consideration in planning how the works would be carried out in the Baillou Hill Road and Market Street corridors. And so, I find that although a consultative process was

embarked upon by the Minister there was no evidence of proper consultation with the applicants.

69. The rules are changing. Authorities must consider when planning to carry out major developmental works which peculiarly affect a specific community over and above members of the general public whether regard should be had to the views of the occupiers of that community. The gathering and imparting of information is part of the process and machinery of consultation but is not by itself consultation. Once the process has started interested persons should be given an opportunity to be heard. There must also be evidence that the consultation was taken into account. In the words of Lord Woolf in ***Coughlan "the product of consultation must be conscientiously taken into account when the ultimate decision is taken"***.

IS THERE A REMEDY?

70. Amoung the several declarations under paragraph 8 of the Statement the applicants seek the following:

> "(2) a declaration that promulgation of regulations made by the Minister responsible for Roads insofar as mandated by section 17(1) of the Act is an essential preliminary to the Respondent's assumption of the exercise of his statutory functions and responsibilities pursuant to sects. 4 and 5 thereof and/or a condition regulating the exercise of his powers in virtue of the Act; further or alternatively,"
>
> "(3) a declaration that the Minister responsible for Roads by not making the said regulations the Respondent breached his duty and frustrated the will of Parliament expressed in sect. 17(1) of the Act that, among other things, such regulations exist as a safeguard for proper administration of the Act in particular and the law in general; further or alternatively,"
>
> "(4) a declaration that in the absence of the said regulations as an aid that Parliament intended to give statutory guidance to the carrying out of lawful functions and responsibility in

exercising power under the Act, The Respondent acted unreasonably and unlawfully; further and alternatively,"

"(5) a declaration that insofar as regulations mandated by the Act when made are statutory in the nature of delegated legislation, and are an implicit recognition of the right of an aggrieved person to be heard, by the said Minister not making such regulations he deprives the Applicants and other similarly aggrieved persons of such right and their legitimate expectation that he as a public authority would not act to their prejudice and detriment by not complying with his duty so as to deny them protection of the ;aw; further and alternatively,"

"(6) a declaration that the Respondent's abdication of his duty to make regulations under sect. 17(1) of the Act results in denial of protection of the law and also in a "taking" or economic sterilization or dilution of peaceful enjoyment of their property rights contrary to Arts. 15 and 27 of the Constitution; further and alternatively,"

"(7) a declaration that the Applicants are entitled or otherwise have a legitimate expectation to have objections raised to the Respondent's implemented planning redevelopment of the impacted area and construction and reconstruction and extension of portions of Blue Hill Road and Market Street in order to permanently restrict and regulate flows of vehicular and pedestrian traffic along such roads and parts thereof and thereby adversely impact the economic viability of businesses and property investment interests located in the said area; further and alternatively"

"(8) an injunction to restrain the Respondent from doing any acts contrary to the declarations so claimed, particular from carrying on with construction and reconstruction and extension of portions of Blue Hill Road and Market Street until such time after the Minister responsible for Roads has made and promulgated regulations mandated by Parliament under sect. 17(1) of the Act and provision made therein for objections raised by the Applicants and similarly aggrieved members of the public to be inquired into by the Respondent and a thorough study carried out of the impact of his planning developments upon the impacted area's businesses activity and pedestrian safety; further and alternatively,"

"(9) an order for an assessment of damages on account of any loss sustained by the Applicants by reason of diminution in economic and/or utilitarian value in their businesses and property investment interests and in the peaceful enjoyment of their property rights brought about by the impact of the Respondent's said planning developments; further and alternatively,"

"(10) an order for the payment of interest on such damages at such rate and for such period pursuant to the provisions of *The Civil Procedure (Award of Interest) Act*, 1992, or otherwise as the Court shall think fit."

"(11) an order for compensatory damages for loss and injury to the Applicants sustained by reason of the contravention in relation to them, of Art. 27, caused by or resulting from the aforementioned said impact of the Respondent's said planning developments; further or alternatively,"

"(12) an order for exemplary damages; further or alternatively,"

"(13) such orders, writs, or directions pursuant to Article 28 of the Constitution as may to the Court seem appropriate for the purpose of enforcing or securing the enforcement of any right or freedom to the protection of which the Applicants are entitled."

71. By clause 8(13) of the Statement the applicants invoke the original jurisdiction of the Supreme Court under Article 28 of the Constitution as it involves allegations of actual and/or likely contravention of the rights of the applicants under Articles 15 and 27 thereof.

72. As to damages, the court is being asked to decide if the implementation of the **NPRIP** in Baillou Hill Road and Market Street without promulgating regulations has resulted in the "taking" of property within the meaning of Article 15 and 27 of the Constitution, or alternatively has there been peculiar damage to the applicants which is justiciable in the circumstances of a public project such as this.

73. In ***Grape Bay Ltd v The Attorney General of Bermuda*** [2000] WLR 577 cited by the respondents Lord Hoffman in delivering the decision of the Board (Hoffman, Goff of Chieviley, Clyde, Millett and Sir Christopher Slade LLJs) at page 583 set out the following principles:

> "It is well settled that restrictions on the use of property in the public interest by general regulatory laws do not constitute a deprivation of the property for which compensation should be paid. ... The give and take of civil society frequently requires that the exercise of private rights should be restricted in the general public interest. The principles which underline the right of the individual not to be deprived of his property without compensation are, first, that some public interest is necessary to justify the taking of private property for the benefit of the state and, secondly, that when the public interest does so require, the loss should not fall upon the individual whose property has been taken but should be borne by the public as a whole. But these principles do not require payment of compensation to anyone whose private rights are restricted by legislation of general application which is enacted for public benefit. This is so even if as will inevitably be the case, the legislation in general terms affects some people more than others..."

74. ***Grape Bay*** was applied in ***Campbell-Rodriguez v Attorney General of Jamaica*** [2007] UKPC 65. In that case also cited by the respondent, Lord Carswell who delivered the judgment of the Board set out similar principles. At page 18 he stated:

> "...It is well established that measures adopted for the regulation of activity in the public interest, such as planning, health, will not constitute the taking of property, notwithstanding the fact that they may have an adverse economic effect on the owners of certain properties... "

75. In that case the Privy Council also examined what constituted a "taking". In so doing, they examined the constitutions of numerous Overseas British Territories and former British Territories in the Commonwealth because of the similarities in their constitutions.

76. Article 15 of the constitution of The Bahamas in the relevant section provides:

> "15 Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely-
>
> ...
>
> (c) protection for the privacy of his home and other property and from deprivation of property without compensation."

77. Article 27(1) section (a) provides:

> "No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied , that is to say – [and certain conditions follow]

78. Article 28 (1) sets out the power of the court to deal with breaches. It reads as follows:

> "28(1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.
>
> (2) The Supreme Court shall have original jurisdiction.
>
> (a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and
>
> (b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Article 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

> Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

79. The Dominican constitution had identical provisions to that of The Bahamas: a general recital of fundamental rights commencing with the word "Whereas" in section 1, followed by a particularization of rights in sections 2-15. The enforcement section provided that if a person alleged any breach of sections 2-15 [note it excludes section 1] he could take certain steps similar to those contained in Article 28(2) of The Bahamas' constitution. The Board cited with approval the example of ***Blomquist v The Attorney General of the Commonwealth of Dominica*** [1988] LRC (const) 315.where it was held that on the true construction of the Dominican constitution section 1 did not contain separately enforceable rights. On that basis I rule that Article 15 of the constitution of The Bahamas is not a separately enforceable Article. See also the judgment of the Bahamas Court of Appeal (per Georges and Hall JJA) to the same effect in ***Harbour Lobster & Fish Co. v Attorney General of The Bahamas*** [1998] BHS J No. 15.

80. As a consequence the applicants cannot avail themselves of the benefit of Article 15 because there is no free standing right under that Article, nor can they rely on Article 27 because although their businesses may have lost goodwill it cannot be said that the respondent took possession of or acquired it,

81. In ***Grape Bay*** Lord Hoffman cited with approval authority that "property" includes the goodwill of a business. Speaking on behalf of the Board he said this at p 583 letters G - H to p 584 letter A:

> "Whether a law or exercise of an administrative power does amount to a deprivation of property depends of course on the substance of the matter rather than upon the form in which the law is drafted. In the leading Canadian case, *Manitoba Fisheries Ltd. v The Queen* [1979] 1 S.C.R. 101, the Canadian Freshwater Fish Marketing Act,

> monopoly of exporting fish from Manitoba. The applicants had previously been exporting fish and the effect of the Act was to destroy their business. The Supreme Court of Canada held that they had been deprived of their property, namely, the goodwill of the business, even though that goodwill had not been directly transferred to the corporation. The substantial effect was to enable the corporation to acquire their previous customers. *Societe' United Docks v Government of Mauritius* [1985] A.C. 585, in which the plaintiffs' alleged that their businesses had been destroyed by a monopoly of handling sugar for export conferred upon a statutory corporation , was treated in principle as being a similar case. but the plaintiffs failed on the facts because they were unable to show a causal connection between the establishment of the monolopy and the loss of their businesses."

82. The above authorities relate to laws of general application enacted for the public benefit which affect the property or interest in property of certain persons over and above that of other members of the community. In this case they apply to the Road Traffic Regulations published in March 2010 reversing the traffic flow. Although the regulations may have affected the applicants more that others, *prima facie* the applicants are not entitled to compensation for loss attributable solely to the traffic reversal because the Minister followed the requirements of the law when he promulgated the necessary regulations under The Road Traffic Act and the applicants did not establish a right to be consulted.

83. However, as stated earlier in this judgment, at trial the plaintiffs abandoned that ground. They now pin their case on the Minister's decision to carry out the *road works* in a certain manner without proper consultation. Those road works, they say, have adversely affected their businesses and is continuing to do so. They partly rely on what Vicount Dunedin in ***Manchester Corporation v Farnworth*** [1930] A C 171 at p 183 stated as settled law:

> " When Parliament has authorized a certain thing to be done in a certain place, there can be no action for nuisance caused by the making or doing of that thing if the nuisance is the inevitable result of the making or doing so authorized. The onus of proving that the result is inevitable is on those who wish to escape liability for nuisance, but the criterion of inevitability is not what is theoretically

possible but what is possible according to the state of scientific knowledge at the time, having also in view a certain common sense appreciation, which cannot be rigidly defined, of practical feasibility in view of situation and of expense."

There was no evidence adduced by the respondent to show that the public nuisance was inevitable, and the evidence by the applicants that the road works caused the fall-off in their businesses went unchallenged.

RULING

84. I find that once the Minister had embarked on the consultative process, by carrying out the road works in the affected area without proper consultation he thereby did not follow the requirements of the law. I also find that the road works in substance constitute a public nuisance which has directly contributed to losses, including goodwill, to the businesses of the applicants.

CLAIM FOR DAMAGES

85. Order 53 Rule 7 allows damages to be awarded on applications for a judicial review. It reads as follows:

> "7(1) On an application for judicial review the court may, subject to paragraph (2) award damages to the applicant if –
>
> (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and
>
> b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages."

86. Since in my judgment the requirements of this rule have been satisfied, in the circumstances, I award damages to the applicants to be assessed if not agreed. The damages shall relate to their businesses only and to loss caused by the road works. The works on the Baillou Hill Road and Market Street corridors

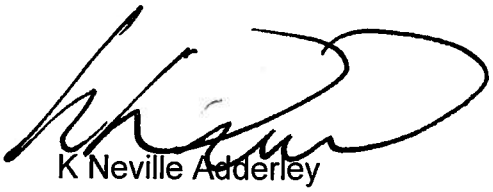
are continuing and there may be time for the Minister to mitigate his damages by engaging in proper consultation with the applicants to the extent, if any, it is still possible.

87. I grant the relief claimed in paragraphs 8(9) and 8(10) of the Statement insofar as the loss was caused by the road works not by the traffic reversal [damages and interest]. The relief sought in paragraph 8(7) [applicants' right to legitimate expectation] might have been granted but the applicants did not seek to rely on the previous statements of the Authority. I refuse the relief sought in paragraphs 8(2) to 8(6) inclusive [breach of statutory duty], 8(8) [injunction] which was abandoned, 8(11) and 8(12) [compensatory and exemplary damages] and 8(13) [orders under Article 28 of the constitution].

COSTS

88. The hearing on costs is adjourned to a date to be fixed.

Dated the 17 day of December 2010.



K Neville Adderley

Justice