Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M89 of 1999

BEFORE: THE HON. MR. JUSTICE ELLIS
THE HON. MR. JUSTICE SMITH
THE HON. MR. JUSTICE CLARKE

IN THE MATTER of the hours of sittings of the Supreme Court, Gun Court, Resident Magistrate's Court, Family Court, and Petty Sessions Court.

AND

IN THE MATTER of the Judicature (Rules of Court) Act, the Judicature (Miscellaneous Provisions) Act the Judicature (Supreme Court) Act, the Judicature (Family Court) Act, the Gun Court Act and the Judicature (Resident Magistrate's Court) Act.

AND

IN THE MATTER of the Order and/or Decision of the Honourable Mr. Justice Lensley Wolfe, Chief Justice of May 1999, in relation to the hours of sitting of the said Courts.

Regina vs. The Attorney General
Ex parte The Jamaica Bar Association

Hugh Small Q.C., Charles Piper, Miss Debra Martin and Rajendra Ramsaragh instructed by Patrick Bailey

D. Leys, Deputy Solicitor General (Acting) and L. Robinson for Respondent instructed by Director of State Proceedings.

HEARD: July 8, 9, 12, 13 and 30, 1999

ELLIS J.

A notice setting out the new hours of all sittings of the Supreme Court, Gun Court, Resident Magistrate's Court, Family Court and Petty Sessions Court was sent to the president of the Jamaican Bar Association (hereinafter called the Bar Association). That notice accompanied a letter dated 11th May 1999 on the authority of the Chief Justice requesting that it be published in JAMBAR the news letter of the Bar Association. That letter was followed by one dated June 1, 1999 from the president of the Bar Association to the Chief Justice.

In an attached note, certain concerns and suggestions relative to the new hours were expressed. A meeting was requested to discuss the matter with the Chief Justice. Other letters on the matter were written to the Chief Justice by the president of the Bar Association. Two of those letters which bear the date 28th June 1999 attract reference. The one sets out the following -

> (i) that at an Extraordinary General meeting of the Bar Association on the 26th June 1999 legal opinions on the law dealing with the establishment, regulation and change of the hours of sitting of the Courts were considered and reviewed;
>
> (ii) that the considered view of the Bar Association that any change in the existing hours for the Courts referred to in the Notice of May is a matter for the respective Rules of Committee of those Courts.

(iii) that the Bar Association was of the view that the notice should be withdrawn. If the Chief Justice was of a different view the Bar Association would wish to seek a formal interpretation and pronouncement on the matter from the Supreme Court.

The other letter suggested -

(a) meetings of the respective Rules Committees to be convened as quickly as possible to give due consideration to whether the hours of sitting ought to be changed;

(b) as a separate, matter, machinery be immediately set in motion to examine specific and detailed proposals aimed at improving the efficiency of the Courts for the benefit of the public and the administration of justice.

A resolution passed at the meeting of the 26th June 1999 recited the suggestions contained in the above letters.

On the 1st of July 1999, leave was granted to the Bar Association to apply for Certiorari and Declarations. The above is a brief history of the matter now before this Court.

The applicant in its motion seeks relief on the following grounds -

The Honourable Chief Justice by unilaterally ordering and/or deciding that the hours of sittings of the said Courts

and of the judges of the said Courts whether sitting in Court or in Chambers should be changed from 10 a.m. to 4 p.m., to a time period of 9.00 a.m. to 4.30 p.m., has contravened the following Acts and sections thereto:- the Judicature (Rules of Court) s.4(2) (b), the Judicature (Supreme Court) Act section 31 (3), the Gun Court Act ss 7,15, & 16, the Judicature (Resident Magistrate's) Act s. 135, the Judicature (Family Court) Act ss. 9 & 4 (4), the Judicature (Miscellaneous Provisions) Act and the Justices of the Peace Jurisdiction Act and has acted ultra vires and without proper authority.

(ii) The applicant had a legitimate expectation that in a matter in relation to the alteration of the hours of sittings of the said Courts of material concern to the members of the applicant, it would be consulted as has been the regular practice in matters of this nature for the last fifteen years in that -

(a) the applicant for the last twenty-six (26) years has been solely comprised of attorneys-at-law qualified to practice in Jamaica and elsewhere and has represented and protected the rights and interest of the public and the Legal Profession;

(b) the applicant for approximately fifteen (15) years has through its committee known as "The Joint Consultative Committee of the Bench and Bar," provided a forum for discussion of matters of mutual interest to the judiciary and the attorneys-at-law in particular matters pertaining to the legal profession and operation of the Justice System;

(c) the applicant through its said sub-committee has served a very valuable function discussion and resolving such matters;

(d) the Honourable Chief Justice is attempting to alter the hours of sittings of the Supreme Court, Gun Court, Resident Magistrate's Court, Family Court and Petty Sessions Court and the Judges of the said Courts whether sitting in Court or in Chambers by ordering and/or deciding that the said Courts begin sitting at 9.00 a.m. where it would ordinarily begin at 10.00 a.m. and close at 4.30 p.m. where it would ordinarily close at 4 p.m. as was the Court procedure for several decades, without consulting the applicant or submitting the issue for discussion within the forum that the applicant provides; and accordingly the Honourable Chief Justice has acted unfairly and in breach of the rules of Natural Justice;

(iii) that the said Order and/or decision of the Honourable Chief Justice is arbitrary, unfair and/or unreasonable.

From the above grounds I see two issues in this matter. They are :-

(i) Did the Chief Justice have the authority to change the hours of the sittings of the various Courts without a consideration by the Rules Committee of those Courts?

(ii) Did the applicant have a legitimate expectation of being consulted prior to those changes?

In these proceedings the burden of proof is on the applicant. In discharging that burden of proof of Mr. Small Q.C. referred the Court to the following statutes -

(a) The Judicature (Supreme Court) Act, the present Act and that prior to the present Act.

(b) The Resident Magistrate's Act Section 135

(c) The Family Court Act

(d) The Gun Court Act

(e) The Traffic Court Act

(f) The Judicature (Rules of Court) Act

In addition to the statutes, gazetted orders made under the Judicature (Supreme Court) Act, the Judicature (Rules of Court) Act, paragraphs from the Supreme Court Practice of England and Halsbury's Laws of England were referenced.

Those statutes and other materials were analysed by Mr. Small and Miss Martin for the applicant. The argument, as I understand it, advanced on the analysis was as follows -

The decision to change the hours of sitting in the various Courts is a matter for the Rules Committees and not the Chief Justice.

Section 31 of the Judicature (Supreme Court) Act gives the Chief Justice the authority to make orders appointing the times and places for holding Circuit Courts. A Circuit Court shall be held three times per year in each parish.

It is to be noted that the gazetted orders under s. 31 of the Judicature (Supreme Court) Act speak only to the day of the opening and closing of each sittings of a Circuit Court. They do not speak of the hour for the commencement and termination on the days of a sitting.

Section 27 of the Judicature (Supreme Court) Act fixes the Supreme Court with the jurisdiction, power and authority which was vested in the following Courts -

The Supreme Court of Judicature

The High Court of Chancery

The Encumbered Estates Court

The Court of Ordinary

The Court of Divorce and Matrimonial Causes

The Chief Court of Bankruptcy and the Circuit Courts or any of the Judges of the above Courts or the Governor as Chancellor or Ordinary acting in any judicial capacity and all ministerial powers, duties, and authorities, incident to any part of such

jurisdiction, power and authority. (I have emphasized this Clause and will return to it later in my judgment).

Section 28 of the Judicature (Supreme Court) Act sets out the manner in which the Courts jurisdiction is to be exercised thus -

> "Where no special provision is contained in this Act, or in the Civil Procedure Code or law, or in such rules or orders of Court, with reference there to, it shall be exercised as nearly as may be in the same manner as it might have been exercised by the respective Courts from which it is transferred or by such Courts or Judges, or by the Governor as Chancellor or Ordinary".

The Judicature (Rules of Court) Act by s. 4 sets out the functions of the Rules Committee and the matters for which Rules of Court may be made. Clause (I) of section 4 says that Rules of Court may be made "for regulating or making provision with respect to any other matters which were or might have been regulated or with respect to which provision was or might have been made by Rules of the Supreme Court or which under this Act or any other enactment may be regulated or provided for by Rules of Court".

In my opinion, that clause does no more than to enable the Rules Committee to make Rules for matters which have been previously regulated by Rules of the Supreme Court. Also any other matter which may be regulated under the Rules of Court Act.

In that light, I must per force look at the Judicature Law of 1879 which came into force 1st January 1880. That Law is the ***FONS ET ORIGO*** of the present Act.

I see nothing in that Law which states the hours for commencement of Court or its adjournment. There is also nothing in the Law of 1879 to say that the hour for the

commencement and adjournment of Court has ever been the subject of a Rules Committee.

The industry of Counsel has not been able to find any evidence in the Statutes or Rules to show that the hours for commencement and adjournment have ever been the subject of the Rules Committee.

There can be no doubt that such hours have been set from time to time by someone.

The absence of evidence to show that the hours of commencement and adjournment of a court was ever the subject of the Rules Committee and the fact that hours were set, lead me inexorably to conclude that those hours were set by the then Chief Justices. I am therefore constrained to say the change of hours the subject of this matter was done within the terms of the Clause which I emphasized earlier.

That emphasized clause suggests that the Chief Justice as head of the Judiciary must have the power to organise the procedures and sitting of the Courts for the due administration of justice.

On this point, Mr. Leys for the Respondent submitted that the Chief Justice is vested with power to invoke by order the hours when the Courts will sit. In doing so he is performing an administrative function. He referred the Court to a dictum of Lord Slynn in the case of ***Rees v Crane [1994] W.I.R. at page 452 (g).***

That dictum is worthy of repetition this "Their Lordships accept that outside these specific provisions of the rules the Chief Justice must have the power to organize the

procedures and sittings of the Courts in such a way as is reasonably necessary for the due administration of justice."

Mr. Piper who replied on the submission of Mr. Leys sought valiantly to limit the application of the dictum to the cited case. For my part, he failed. The dictum must be treated as being of such amplitude to include the setting of hours for the commencement and adjournment of Courts which are under the administrative jurisdiction of a Chief Justice.

However, administrative action must be on speaking terms with the limitation, if any, which the Statute decrees. I therefore adopt the dictum and consequentially, the submission of Mr. Leys as sound and applicable to this case.

Arguments were advanced by Miss Martin in relation to the Resident Magistrate's Court and the other inferior Courts. The contention in those arguments was that the Chief Justice's decision to change the hours was ultra vires as it was not done by the respective Rules Committee. Those arguments do not avail the applicant, simply because the Chief Justice has administrative jurisdiction over all those Courts.

I have considered the cases and submissions of Counsel on this aspect of the case. The fact that I have not set them out is not to be taken to be disrespectful of Counsel. I am only of opinion that they were not necessary for my decision.

That being so I am concluded that the Chief Justice in changing the hours for the holding of Court acted within his administrative competence. When he so acted, he acted to administratively secure the expedient and desirable way to reduce the back log of cases in the public interest. I hold that to argue otherwise would be less than naive. The

applicant has not convinced me that the decision of the Chief Justice ought to have been treated under the Judicature (Rules of Court) Act. But the applicant also challenges the Chief Justice's decision by invoking the concept of Legitimate Expectation.

The arguments mounted in this challenge were founded on the affidavit of Derek Jones. He is the president of the Bar Association and his affidavit is of seventeen (17) paragraphs.

For the purposes of this topic of legitimate expectation I find paragraphs 1, 4, 6, 9. 13 and 16 to be of relevance.

Paragraph 4 is as follows:-

> "Approximately 15 years ago during the presidency of Lt. Col. H.C. Whitehorne **JAMBAR** promoted and established the formation of a committee known as "the joint Consultative Committee of Bench and Bar". The objective of this Committee was to provide a forum for discussion of matters of mutual interest and I am advised by a number of my predecessors in office and do verily believe that over the years the committee has served a very valuable function in that regard and that a considerable range of matters, have been discussed and resolved through this medium."

In light of that paragraph Mr. Small Q.C. submitted that - If the Chief Justice had no authority under the Judicature (Supreme Court) Act of the Judicature (Rules of Court) Act and even if he had authority as head of the judiciary to make the order contained in the Notice then the decision was in breach of natural justice by the failure to respect procedure of over 15 years old as established in the Joint Consultative Committee of which the Chief Justice and other members of the judiciary were representatives.

By that argument Mr. Small was saying the Chief Justice's decision was contrary to the applicant's legitimate expectation of being consulted as to the change of hours.

Mr. Small then said that the consultation demanded that -

(i) the proposed change should be the subject of consultation in its formative stage;

(ii) reasons for any proposed change should be given so that they may be considered;

(iii) consultation must afford adequate time for consideration and responses;

(iv) the outcome of consultation must be conscientiously taken into consideration prior to a final decision to change;

(v) there should be a fair opportunity for criticism of the proposal and for interested parties to voice their own proposals.

The affidavit of Mr. Jones at paragraph 6 mentions that at the meeting of the Joint Consultative Committee on the 13th of April 1999, the Chief Justice indicated that the starting of Court at 9 a.m. might come soon. There was no discussion on the matter.

That indication from the Chief Justice was not a consultation. Paragraph 9 of Mr. Jones' affidavit says that on the 8th of June 1999 the matter of the change of hours was discussed but without consensus being reached.

In paragraph 13 of Mr. Jones' affidavit there is the assertion that the change in the hours of sitting of the Courts is especially one of the things which the joint Consultative Committee of Bench and Bar was established and would be ideally suited for discussion there. Moreover, for several decades and as far as the affiant can find within living

memory, the Courts have operated from 10.00 a.m. to 1.00 p.m. and from 2.00 p.m. to 4. p.m.

Paragraph 16 of Mr. Jones affidavit is to the effect that because of the experience and history of consultation over 15 years the legal profession had a legitimate expectation that the change in hours would have been the subject of consultation.

The applicant in support of its argument relied on ***R. v Devon County Council ex parte Baker. R v. Durham County Council ex parte Curtis [1995] 1 All E.R. 73 and Council of Civil Service Union Minister for Civil Service [1985] A.C. 374.***

The Chief Justice in his affidavit dated 6th July 1999 disposed paragraphs 2 - 8 as follows :-

> "2. My decision to alter the hours within which the sittings of the various courts of the island namely the Supreme Court, (Civil and Criminal Division), the Gun Court, the Resident Magistrates Court the Family Court and the Petty Sessions Court takes place was based on the following factors.
>
> (a) In my capacity as Chief Justice and as a sitting judge I am concerned at the vast backlog of cases, which has been accumulating over the years and the fact that very little has been done to alleviate this burden on litigants and the Court system. This has led to an almost daily outcry from all sectors of the society about the slow pace and quality of justice that is perceived to exist in the island.
>
> (b) The current backlog has now reached almost crisis proportions as the state of the cause list in the Supreme Court (Civil Division) is unduly burdensome with the prospect that cases are being placed on the cause list have no prospect of being heard until the year 2001. In the criminal division there is at the end of every circuit a significant backlog that has to be traversed to the succeeding circuit because the Court could not accommodate these cases. The situation is no better in the Resident Magistrate's Court, the Family Court the Gun Court and the Petty Sessions Court.

(c) All this is against a background where improvements have taken place since the decision of the Privy Council in ***Pratt and Morgan v The Attorney General for Jamaica [1994] 2 A.C. 1.*** More steno writers have been employed and the process for the reproduction of notes has been computerized with the result that a considerable amount of time has been eliminated, which hitherto had been caused by the failure to reproduce the verbatim notes in a timely manner. In the civil arena plans are well underway to set up a commercial court, which will have a specialized jurisdiction to deal with commercial matters so as to ease the caseload on the cause list. In the lower courts efforts are being made to increase the number of judges as well as provide these courts with steno writers so as to reduce the burden on the judges to take notes in long hand.

3. These reforms are however not enough. More needs to be done to reduce the backlog and bolster confidence in the justice system. I am well aware of the budgetary constraints faced by the Ministry of National Security and Justice, under which the justice system falls. There are not now available resources that could be immediately allocated to reduce the backlog some of which have been mentioned in the affidavit of Derek Jones sworn to on the 1st day of July 1999. I have also read the Jones affidavit and say that prior to the implementation of my decision I had carefully considered all the issues canvassed, in his letter of June 1, June 14, June 18 June 28 and June 28, 1999. I had also carefully deliberated on the discussions of the Consultative Committee of Bench and Bar of June 8, 1999.

4. Notwithstanding the above I am of the view that until such resources are provided there is an urgent need that steps which will not require a significant outlay of resources must be taken to minimise the hardship that is being experienced by the public. These steps must be taken urgently as there appears to be a growing perception in the eyes of the public that the justice system is inept because of the length of time it takes to achieve justice in the several courts of the land.

5. One of these steps is extending the hours during which matters before the various courts may be heard in order that more cases can be dealt with and/or disposed of

within a day. In accordance with this view and for the better administration of the courts I have decided that effective Monday July 5, that the hours during which all sittings of the Supreme Court, Gun Court, Resident Magistrates Court, Family Court and Petty Sessions Court will be conducted will be between the hours of 9.00 a.m. and to 4.30p.m. on each day Monday to Friday.

6. While this may not be panacea for all the ills caused by a backlog I am of the view that it will help in easing the said backlog and in some meaningful way commence erasing the perception in Jamaica that the quality of justice is severely compromised because of the backlog of cases on the court calendar.

7. Prior to my filing searing this affidavit I am informed and do verily believe by Resident Magistrates in the several parishes of the island that litigants in anticipation of the new opening hours turned out in large numbers for Court appointments. So too were the police personnel accused persons, and courts' staff. All were present and ready to commence Court at 9.00 a.m.

8. In the Home Circuit Court jurors who were summoned to serve were present for a 9.00 a.m. start. Accused persons in custody and on bail were also present. The entire Court Staff was in place and ready to go."

Mr. Leys for the Respondent submitted that on the evidence the Applicant's case on legitimate expectation is not well founded. Alternatively, if there were legitimate expectation that expectation was satisfied. He cited and relied on ***Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374. R v Jockey Club ex parte R.A.M. Race Courses Ltd. [1993] 2 All E.R. R255 R. v Lord Chancellor exparte the Law Society [1993] Administrative Law Reports 833.***

The cases now demand examination in light of the respective arguments.

In ***R v Devon County Council*** case the statute which governed the functions of the Council expressly required consultation with any one who would be affected by the Council's decision. Also there was a promise of consultation made by the Council. Mr. Small quite correctly did not press that decision on the court.

The respondent in the he Durham County Council case also had statutory duty to consult. It did consult but very late.

Both cases show statutory requirement for consultation. In the Durham case the question of " procedural fairness" was raised within the concept of legitimate expectation to be consulted.

At p.p. 86 - 87 Dillon L.J. dealt with the question (see letters c - j). I am taken with this dictum starting at letter (c) p.86 -

> "I now come then to the main question of consultation. Obviously it could be said to be the best practice in modern thinking, that before an administrative decision is made there should be consultation in some form, with those who will clearly be adversely affected by the decision. But judicial review is not granted for a mere failure to follow best practice. It has to be shown that the failure to consult amounts to a failure by the local authority to discharge its admitted duty to act fairly."

Dillon L.J. then continued to say that the law in the field of legitimate expectation has gone further in its development in Australia than in England. He in his judgment found help from the case of ***Haoucher v Minister of State for Immigration and Ethnic Affairs*** (1990) 93 A. L.R. 51 at 52 - 53 and he quoted the observations of Deare J where he said "The notion of legitimate expectation" which gives rise to a prima facie entitlement to procedural fairness or natural justice in the exercise of Statutory power or

authority is well established in the law of this country. The notion is not, however, without its difficulty. For one thing, the word "legitimate" is prone to carry with it a suggestion of entitlement to the substance of the expectation whereas the true entitlement is to the observation of procedural fairness before the substance of the expectation is denied ..... In that regard, there is much to be said for preferring the phrase "reasonable expectation" which has often been used in judgments in this court. For another thing, the vagueness of the phrase legitimate expectation which enables it to be used as a convenient label for a broad category of circumstances which will give to a prima facie obligation to accord procedural fairness, may convey an impression of comprehensiveness with the result that the absence of an identified legitimate expectation is wrongly seen as a legal mandate for disregarding procedural fairness in any case where no legal right in the strict sense is involved. Regardless of whether one can identify a right in the strict sense or a legitimate expectation the requirements of procedural fairness must be observed in any case where by reference to "the particular statutory framework" ..... it is proper to discern a legislative intent that the donee of governmental executive power or authority should be bound by them. There is a strong presumption of such legislative intent in any case where a statute confers on one person a power or authority adversely and directly to affect the rights, interests status or legitimate expectations of a real or artificial person or entity in an individual capacity (as distinct from merely as a member of a section of the general public.) The rationale of that strong presumption is to be found not so much in sophisticated principle as in ordinary notions of what is fair and just. In that regard, it is important to bear in mind that the recognition

of an obligation to observe procedural fairness does not call into play a body of rigid procedural rules which must be observed regardless of circumstances. Where the obligation exists, its precise content varies to reflect the common laws perception of what is necessary for procedural fairness in the circumstances of the particular case."

I too like Dillon L.J. with respect, find much help from the observations of Deane J. in the Haoucher case.

In Council of ***Civil Service Unions v Minister for the Civil Service*** Lord Diplock in his speech at p.p. 949, 950 and 951 sets out the criteria which qualify a subject for judicial review. Included in those criteria is "procedural impropriety" (see page 950).

The applicant has alleged "procedural impropriety" on the part of the Chief Justice. The applicant says because there was no consultation there was "procedural impropriety".

Was there "procedural impropriety?"

Mr. Leys in refuting such a claim referred the Court to the case of ***R v Lord Chancellor exparte The Law Society (1993) Administrative Law Reports 833***; The Times 25th June 1993. That case, if I may so, is not in some respects dissimilar to the present case. Lord Justice Neil in that case at p.865 letter B cited the explanation of Lord Diplock in C.C.S.U. [1985] 1 A.C. 374 that ..... "however, the question of "procedural propriety" has to be looked at in the light of the particular circumstances in which the decision was made". To my mind, it is therefore clear on the cases that a prime circumstance to be considered when dealing with "procedural impropriety" is the interest, right, benefit or advantage held by the applicant and which is expected to

continue until it is withdrawn after the proper procedure of consultation and opportunity to comment.

For my part, the only interest right, benefit or advantage which the members of the applicant have is attendance at Court to prosecute and defend the cases of their clients. None of those interest, right, benefit or advantage has been curtailed, impaired or withdrawn by the change of hours.

That being the case, the applicant has failed to show the withdrawal of any thing which is attractive of any consultation. The allegation of "procedural impropriety" is not well founded. In so holding I find support in the Australian case of ***Attorney General (N.S.W.) v Quinn [1989-90] 17 C.L.R. at page 58***. Moreover, there is no evidence of any past practice of any consultation or any promise of any hearing before the change in hours. See ***Haoucher v Minister of Information and Ethnic Affairs [1989] 169 C.L.R 659.***

Finally, let me go back to the Lord Chancellor's case. It is to be noted that at page 862 H there was a concession made that consultation on the part of the Lord Chancellor would be part of good administration. There was also an undertaking given as to that consultation. But in that case it was held that there was no duty to consult and the decision of the Lord Chancellor was declared valid. The reason for that decision can be found in the dictum of Lord Diplock in C.C.S.U. that "procedural propriety" must be considered in the light of the particular circumstances in which the decision was made. Also, I am of opinion that the mere failure to consult is not without more attractive of judicial review.

In the present case the affidavit of the Chief Justice sets out eloquently that the background and circumstances against which his decision was made. The decision was made to enhance the proper administration of justice to the ultimate good of the general public of which the applicant is a part.

In my view, any consultation in this case would be excessive of procedural fairness and would be an unnecessary and unwarranted intrusion into the administrative functions of the Chief Justice as head of the judiciary.

I would therefore dismiss the motion and refuse the remedies sought.

F.A. SMITH, J.

This is an application by the Jamaica Bar Association pursuant to leave granted by Orr, J. on the 1st July, 1999 for judicial review relating to an Order made by the Honourable Chief Justice.

The relief sought by the Bar Association is in the following terms:

(a) An Order of Certiorari to remove into this Honourable Court and quash the Order and/or decision made by the Honourable Chief Justice to change the hours of sittings of the Supreme Court, Gun Court, Resident Magistrate's Court and Petty Sessions Court.

(b) A Declaration that the decision taken without consultation with the Applicant was in breach of the Applicant's Legitimate Expectation of consultation.

(c) A Declaration that upon the true construction of the Judicature (Rules of Court) Act, the Judicature (Supreme Court) Act, the Gun Court Act the Judicature (Resident Magistrate's) Act and the Judicature (Family Court) Act, regulation of the hours of sittings of the said Courts and of the Judges of the said Courts whether sitting in Court or Chambers is vested in the Rules Committee appointed by virtue of the Judicature (Rules of Court) Act and/or the respective statutes.

(d) A Declaration that the undated Notice of the Honourable Chief Justice is null and void and without legal effect.

(e) Further and/or other relief.

The Chief Justice in his unquestionable concern at the backlog of cases and with a view to reducing such backlog, around the 11th May, 1999 issued a notice which states:

> "With effect from Monday, July 5, all sittings of the Supreme Court, Gun Court, Resident Magistrates' Court, Family Court and Petty Sessions Court will be conducted between the hours of 9:00 a.m. to 4:30 p.m. on each day Monday - Friday."

The hours of sitting, for many decades have been from 10:00 a.m. to 4:00 p.m. The Order of the Chief Justice seeks to alter this.

Mr. Derek Jones, Attorney-at-law and the President of the Jamaica Bar Association deponed that about 15 years ago the committee known as "the Joint Consultative Committee of Bench and Bar" was formed with a view to providing a forum for discussion of matters of mutual interest. Over the years, he said, the committee has served a valuable function in discussing and resolving a considerable range of matters.

The 'representatives' on this committee include The Honourable Chief Justice, The Honourable President of the Court of Appeal, one or more of the judges of both of those courts, the Registrars of those Courts, the Director of Public Prosecutions, representatives of the Jamaican Bar Association and the President of the Advocates Association.

According to Mr. Jones at a meeting of this committee held on the 13th April, 1999 the Honourable Chief Justice "indicated that the starting of court at 9:00 a.m. was something which might come soon, but there was no discussion on the matter."

A letter signed by the Secretary to the Chief Justice and dated May 11, 1999 with the Notice enclosed was sent to Mr. Jones. The Notice was posted on the The Website of the Supreme Court on or about the 31st May, 1999.

On June 1, 1999 Mr. Jones wrote the Honourable Chief Justice and enclosed a note in which "certain concerns and suggestions" were expressed.

At a meeting of the committee held on the 8th June the matter was discussed. No consensus was reached.

On the 10th June, 1999 the Honourable Minister of National Security and Justice called a meeting. At this meeting were the Honourable Chief Justice, the Permanent Secretary and other officials of the Ministry, the Director of Public Prosecution, Miss Marcia Hughes Senior Resident Magistrate, The Commissioner of Corrections, a representative of The Commissioner of Police and the President of the Advocates Association. This did not achieve a resolution.

On the 1st day of July, 1999, The Bar Association, the applicant, sought and obtained leave of Orr, J. to apply to the Full Court for Order of Certiorari and Declaration in terms of the Notice of Motion as set out above.

It should be noted that at the very beginning Mr. Small Q.C., leading counsel for the applicant observed that the Bar did not regard these proceedings as a contest between adversaries. Mr. Leys, counsel for the Respondent was quick to agree. Mr. Small said that it was because the Bar felt that the Honourabe Chief Justice might be in error why they came to this court. I venture to say that this court wholeheartedly endorse such sentiments.

The applicant contends that there was no legal basis for the decision made by the Chief Justice to change the hours of sittings of the Supreme Court, Gun Court, Resident Magistrate's Court, Family Court and Petty Session Court and that the Chief Justice had no inherent power as head of the judiciary so to do.

Alternatively it is the contention of the applciant that the Chief Justice failed to observe the rules of natural justice by taking a procedure that was unfair.

Mr. Small Q.C., Miss Martin and Mr. Piper for the applicant referred to several pieces of legislation, Halsbury's Laws of England, 4th Edition, Volumes 10 and 37, Proclamations, Rules and Regulations published in the Jamaica Gazette, Law dictionaries and decided cases in support of their contentions. I intend to deal with some of these in some detail.

Mr. Leys, in his written submissions, in the main contends that as head of the judiciary there is an inherent power vested in the Chief Justice to organise procedures and sittings of the courts in such a way as is reasonably necessary for the due administration of justice.

He also examined the relevant enactments, referred to decide cases and submitted that the setting of the hours for opening of the courts is an administrative function which is specifically vested in the Chief Justice.

The Chief Justice, he argued, has a statutory discretion and once this was exercised within the "Wednesbury" reasonableness he cannot be faulted.

Whether or not the Chief Justice has the power to alter the hours for opening the Courts

To attempt to answer this question we must examine the relevant enactments in so far as each of the courts affectd is concerned. However before embarking on such an exercise it might be convenient to deal with Mr. Leys' general contention that by virtue of his office the Chief Justice has the inherent power to make the order in question.

Office of Chief Justice

By virtue of the Judicature (Supreme Court) Act certain courts were "consolidated together" under the name of "The Supreme Court of Judicature of Jamaica" (The Supreme Court).

Section 97(2) of the Constitution of Jamaica states:

> "The Judges of the Supreme Court shall be the Chief Justice, a Senior Puisne Judge and such number of other Puisne Judges as may be prescribed."

Section 98(1) deals with the appointment of a Chief Justice.

Section 5(2) of The Judicature (Supreme Court) Act provides that:

> "The Chief Justice shall be the President and the Chief Judge of the Supreme Court and shall be styled "The Chief Justice of Jamaica."

Section 103(2) of The Constitution of Jamaica provides as follows:

2. The Judges of the Court of Appeal shall be -

   (a) a President

   (b) the Chief Justice <u>by virtue of his office as head of the judiciary</u> but who however shall not sit in the Court of Appeal unless

   (c) .....

   (d) .....

It is therefore beyond dispute that the Chief Justice is the head of the Judiciary.

Inherent Power of Chief Justice

It is the submission of counsel for the Respondent that the Chief Justice as The Constitutional Head of the Judiciary is responsible for the conduct of the affairs of The Judiciary and the conduct of the business of the several courts. Accordingly, it

is contended that there is an inherent power in the Chief Justice "to organise the procedures and sittings of the courts in such a way as is reasonably necessary for the due administration of justice."

Mr. Leys submitted that in the context of the legislation the word "sittings" relates to the period of time throughout the year when the court sits to adjudicate on various matters. It must be distinguished from a sitting of the court on a particular day when the court is sitting during a "sittings." He refers to Strouds Dictionary of English Law and to Osbourne's Law Dictionary for definition of the word "sittings."

He contended that the sittings, that is, the terms or sessions are to be regulated by the Rules Committee but not each daily sitting. Once the "sittings" have been dealt with by the Committee, the Chief Justice as head of the Judiciary may make orders affecting a sitting of that "sittings" and by such order may alter the opening hours of the court. He relied on a passage from the speech of Lord Slynn in Rees v. Crane **1994 W.I.R. 444 at 452 (g to j):**

> "Their Lordships accept that even outside these specific provisions of the rules, the Chief Justice must have the power to organise the procedures and sitting of the courts in such way as is reasonably necessary for the due administration of justice. This may involve allocating a Judge to do particular work, to take on administrative tasks, requiring him not to sit if it is necessary because of the backlog of reserved judgments in the particular judge's list, or because of such matters as illness, accident or family or public obligations. It is anticipated that these administrative arrangements will normally be made amicably and after discussion between the Chief Justice and the judge concerned It may also be necessary if allegations

> are made against the judge, that his work programme should be re-arranged so that (for example) he only does a particular type of work for a period or does not sit on a particular type of case or even temporarily he does not sit at all. Again this kind of arrangement can be and should be capable of being made by agreement or at least after frank and open discussion between the Chief Justice and the judge concerned."

Mr. Piper in reply, submitted that the passage in **Rees v. Crane** relied on by the Respondent does not recognise such wide powers in the Chief Justice to make a fundamental change in the nature of that which was sought to be done, namely, the effecting of a change to the hours for the sitting of the courts for the hearing of matters. This is a fundamental change, he contended, in that it seeks to alter a custom or tradition that goes back for over 100 years.

He submitted that the passage in **Rees v. Crane** "by the words used and the examples given" by Lord Slynn is not consistent with the submission of counsel for the Respondent.

It seems to me that the Chief Justice would have the inherent power to make the order in question only if the making of such order amounts to nothing more than an "administrative arrangement." If the making of the particular order involves the exercise of legislative power he can only do so if authorised by Parliament.

If Parliament has given the power to the Rules Committee to make orders changing or altering the hours of opening of the Courts then as Mr. Leys conceded, the Chief Justice would have no jursidiction to make the order in question. This issue will be considered later when dealing with the relevant enactments.

The passage quoted from Lord Slynn's speech in **Rees v. Crane** in my view, does not concern the making of an order which must necessarily

affect fundamentally everyone who is involved in the administration of justice, Lord Slynn was speaking to "administrative arrangements" relating to a member of the Judiciary which a Chief Justice was entitled to make.

In my respectful view an order which seeks to change the opening hours of the Courts where there has been a settled practice for decades cannot be labelled "administrative arrangements."

Indeed the Gazettes Supplements which publish orders made by the Rules Committee altering the opening hours of the Court's office demonstrate that over the years the Rules Committee view the making of such orders as an exercise of delegated legislative power pursuant to The Judicature (Rules of Court) Act. (I will return to this later).

This must, in my view, lend support to the submissions of the applicant that the altering of the opening hours of the court itself can only be done by the Rules Committee by virtue of the power conferred on it by the statutory provisions.

The altering of the opening hours of the court is an important procedural point which affects not only the judges and lawyers but the wider group of jurors, plaintiffs, defendants, witnesses, shorthand writers, police and prisoners. Also the Courts are public and the altering of the opening hours will affect the public and therefore has wide implications.

For these reasons I am firmly of the view that the changing or altering of the opening hours of the court involves the exercise of legislative powers and cannot be said to be an "administrative arrangement."

We must now proceed to examine the relevant legislative provisions in respect of each court.

The Supreme Court

Section 30 of The Judicature (Supreme Court) Act provides:

> "30 - The Supreme Court shall ordinarily hold its sittings in Kingston, but subject to the provisions of this Act and to rules of Court, the Court and the Judges thereof may sit and act at anytime and at any place for the transaction of any part of the business of the Court or of such Judges.

Section 31 is as follows:

31(1) - The Chief Justice may from time to time make and when made revoke, add to or alter orders appointing the times and places for the holding of Circuit Court.

(2) Every order under subsection (1) shall be so framed as to provide that there shall be held a Circuit three times a year in each parish of the Island except in the parish of St. Andrew.

(3) Every order under subsection (1) shall be published in the Gazette and shall come into operation upon the date specified insuch order.

(4) Every order under subsection (1) shall, so long as it continues in force, have the same effect as if it formed part of the provisions of this Act, and rules of court may be made for carrying any order under subsection (1) into effect as if the provisions of such order formed part of this act.

(5) Notwithstanding anything in this section or in any order made under this section, the Chief Justice or any Puisne Judge may direct any Circuit Court Clerk -

(a) to postpone the opening of the Circuit Court of which he is the Clerk, from the day appointed for such opening by any order under this section to any other day specified by the Chief Justice or any Puisne Judge, as the case may be; or

(b) to adjourn the sitting of the Circuit Court to which he is the Clerk to any day specified by the Chief Chief Justice or any Puisne Judge.

(6) Notwithstanding anything in this section or in any order made under this section the Chief Justice may direct that at any Circuit Court Judges may hold separate Courts.

Section 38 (ibid) provides that the trial of civil suits cognizable by the Supreme Court shall take place at the sittings of The Kingston Circuit Court or at the Circuit Court of the Circuit in which the cause of action arose.

Section 40 (ibid) provides that a Judge of the Supreme Court holding a Circuit shall constitute a Court of the Supreme Court.

It is not in dispute that the word "times" in S.31(1) means "dates." It is therefore clear that the Chief Justice is given the power to make orders appointing the dates and places for the holding of the Supreme Court exercising both criminal and civil jurisdictions.

This provision does not specifically give the Chief Justice the power to make orders appointing or altering the hours for opening of the Court.

Mr. Leys argued that by necessary implication the Chief Justice is given the power so to do. If he has jurisdiction over the dates he must have jurisdiction over the time, he urged.

Mr. Small on the other hand submitted that such power cannot be inferred from this statutory provision. He referred to **Baker v. R. (1975) 13 J.L.R. 169 at p.175** where Lord Diplock said:

> "To read into the Jamaican statute words that the legislature has itself apparently rejected so as to enable the court to give to the statute an effect which it would not otherwise have, would be a usurpation of

> the functions of the Jamaican legislature. This is not the function of a court of law....."

He invited the court to look at S.29(1) of Cap. 180 - the Judicature (Supreme Court) Act the predecessor of S.31 (1) to which I intend to return.

Mr. Small also submitted that the appointing or altering of the hours for opening falls within the ambit of regulating the sittings of the Court and of the Judges of the Court. This power, he contended, is specifically given to the Rules Committee of the Supreme Court.

I must at this stage examine the Judicature (Rules of Court) Act.

By Section 3 of this Act a Committee to be known as The Rules Committee of The Supreme Court was established. The committee consists of:

> (a) the Chief Justice, the President of the Court of Appeal, a Judge of the Supreme Court designated by the Chief Justice, the Attorney General and the Director of State Proceedings as ex officio members; and
>
> (b) five attorneys-at-law, in private practice, appointed by the Minister on nomination by the Bar Council.

The Chief Justice shall be the Chairman of the committee.

Section 4 sets out the functions and powers of the committee. It is necessary to reproduce S.4 subsections (1), (2) and (6).

> 4(1) It shall be the function of the Committee to make rules (in this Act referred to as "rules of court") for the purpose of the Judicature (Appellate Jurisdiction) Act, the Judicature (Supreme Court) Act, the Judicature (Supreme Court) (Additional Powers of Registrar) Act, the Justices of the Peace (Appeals)

Act, the indictments Act and any other law or enactment for the time being in force relating to or affecting the jurisdiction of the Supreme Court, or the Court of Appeal or any Judge or officer of such respective Court.

(2) Rules of court may make provision for all or any of the following matters -

(a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court of Appeal and the Supreme Court respectively in all causes and matters whatsoever in or with respect to which those Courts respectively have for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Supreme Court), and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which, and the time within which any applications, appeals or references which under any law or enactment may or are to be made to the Court of Appeal or the Supreme Court or any Judge of such respective Court, shall be made;

(b) for regulating the sittings of the Court of Appeal and the Supreme Court, and of the Judges of the Supreme Court whether sitting in Court or in Chambers;

(c) for regulating the vacations to be observed by the Supreme Court and the Court of Appeal and in the offices of the Supreme Court;

(d) for prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by judges of the Supreme Court in Chambers may be transacted or exercised by officers of the Supreme Court;

(e) for providing that any interlocutory application in relation to any matter, or to any appeal or proposed appeal, may be heard and disposed of by a single Judge;

(f) for regulating any matters relating to the costs of proceedings in the Court of Appeal or the Supreme Court;

(g) for repealing any enactment relating to matters with respect to which rules are made under this section;

(h) for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given in any proceedings or on any application in connection with or at any stage of any proceedings;

(i) for regulating or making provision with respect to any other matters which were or might have been regulated or with respect to which provision was or might have been made by rules of the Supreme Court or which under this Act or any other enactment may be regulated or provided for by rules of court:

Provided that no rule of court shall -

(a) save as far as relates to the power of the Court for special reason to allow depositions or affidavits to be read, affect the mode of giving evidence by oral examination of witnesses in trial by jury, or the rules of evidence, or the law relating to jury men or juries;

(b) take away or prejudice the right of any party to have the issues for trial by jury submitted and left by the Judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues.

(6) Rules of court shall be subject to negative resolution.

The predecessor of this enactment was S.43 of Chapter 180 of the Judicature (Supreme Court) Law which provided as follows:

"S.43 The Chief Justice, with the concurrence of a majority of the other Judges, may from time to time make, and when made revoke, add to or alter, general Rules and Orders, for all or any of the purposes hereinafter mentioned.

Such Rules shall be subject to the approval of the Minister in Council, who may allow disallow, alter or add to, such Rules or any of them.

Such Rules when approved shall be published in the Gazette, and shall come into operation at the date mentioned in the publication.

The purposes for which Rules of Court may be made are as follows:

(a) For regulating the sittings of the Court and of the Judges.

(b) For the distribution of the business of the court amongst the Judges.

(c) For regulating the practice and procedure in the Court and the execution of the process of the Court, and the practice and procedure to be observed by officers of the Court, and in relation to business within the jurisdiction of the Court.

(d) For regulating matters relating to the costs, and the taxation thereof, of proceedings in the Court, including the costs of solicitors, the expenses of witnesses, and the fees of bailiffs.

(e) For regulating matters relating to the conduct of civil and criminal business in the court.

(f) For fixing the fees chargeable in relation to business in the Court.

(g) For revoking, adding to, altering or amending all or any of the provisions of the Civil Procedure Code and for regulating the practice and procedure of the Court in respect of its several jurisdictions, anything in the Civil Procedure Code aforesaid notwithstanding.

(h) For regulating, prescribing and doing anything which may be regulated, prescribed

> or done by Rules of Court in so far as provision is not expressly made by this Law or the Civil Procedure Code or by the law regualting criminal procedure."

It is important to note that only (b) was excluded from the new enactment. The reason for this is obvious in light of the change in the composition of the committee.

Let me here return to S.29(1) of Cap. 180 the predecessor of S.31(1) of the Judicature (Supreme Court) Act. This section provides:

> S.29(1) The Minister may from time to time make and when made revoke, add to or alter orders -
>
> (a) arranging the circuits and the number thereof and directing what parishes and towns shall be upon each circuit.
>
> (b) regulating the vacations to be observed by The Supreme Court and the offices thereof.
>
> (c) The Minister may under the provisions of this section order that the whole Island shall constitute one circuit.

It will be observed that the powers given to the Chief Justice by virtue of S.31 of Judicature (Supreme Court) Act are not as wide as those the Minister had. The Chief Justice is restricted to the making, revoking or altering of orders appointing the dates and places of the holding of circuits. Whereas the Minister had the power to make orders affecting the number of circuits and the vacations to be observed by the Court.

These powers of the Minister were later vested in the Rules Committee by the Judicature (Rules of Court) Act.

As Mr. Small submitted, the "dominant position" of the Judges acting alone, in making of rules of court gave way to the "inclusive

position" set out in the new regime.

It is against this background I would venture to think that the current relevant enactments must be examined.

A number of the Jamaica Gazette Supplements containing orders made pursuant to the aforesaid enactments were brought to the attention of the court.

The orders affecting the opening of the office of the Supreme Court were made by the Rules Committee see for example Jamaica Gazette Supplement September 25, 1969 No.459 P.605 - the Supreme Court (Hours of Opening) Rules 1969 and Gazette Supplement July 12, 1973 No. 296 P.403 - The Supreme Court (Hours of Opening) (Amendment) Rules 1973. These orders were signed by members of the Rules Committee.

Orders dealing with the dates for commencement and end of each term, the dates for the commencement of the Circuit Court in each parish and the dates for special sittings were made by the Chief Justice see for example Gazette Supplement June 23, 1997 No. 74B The Judicature (Circuit Courts) (Times and Places for the Holding Thereof) (Amendment) Order 1997.

Whenever an order is made pursuant to statutory powers the particular empowering enactment is cited in the order.

The July 12, 1973 order affecting the hours for opening of the Court's office, made by the Rules Committee chaired by the Chief Justice refers to "powers conferred on us by S.4 of the Judicature (Rules of Court) Law 1961.

Now this section does not specifically make mention of the "hours of opening of the office."

The only mention of "office" of the court in S.4 is in subsection

2(a) which addresses the empowerment of the Rules Committee to make orders regulating and prescribing the procedure and the practice to be followed in the court in all causes and matters whatsoever in or with respect to which the courts have jurisdiction (including the procedure and practice to be followed in the offices of the Supreme Court) and matters incidental to or relating to any such procedure and practice.

As said before the orders made by the Rules Committee stating the hours during which the office of the Supreme Court should remain open to the public (see Gazette Supplement dated September 25, 1969 No.459 at P.605) and amending the hours of opening of the court's office (see Gazette Supplement July 12, 1973 No.296 at P.403) refer to powers conferred on the Rules Committee by S.4 of the Act.

It was not argued before us that the Rules Committee had no power to make orders affecting the "hours of opening of the office" of the Supreme Court.

The members of the committee were clearly of the view that the terms "practice and procedure" and "matters incidental to or relating to any such practice and procedure" used in S.4(2)(a) were wide enough to cover such matters as the hours of opening of the office of the Court.

In light of this it seems untenable to argue that the Rules Committee has no power to make orders affecting the hours of opening of the Courts.

I cannot accept Mr. Leys' submission that although the Committee has powers to regulate the sittings of the Court it has no power to say at what hour a sitting should start or end.

Mr. Leys contends that the Committee has jurisdiction to regulate

the sittings, but as to the daily sittings of the Court that is a matter for the Chief Justice.

However he was not able to point the court to any legislative enactment which so empowers the Chief Justice, whether expressly or implicitly.

To be fair to Mr. Leys he sought to argue that implicit in the power to appoint the dates for holding of the court (See S.31(1) of the Act) is the power to appoint the hour of opening of the Court.

For the court to give to the statute such an effect would be a usurpation of the functions of Parliament - see **Baker v. R. (supra).**

I am of the view that by virtue of S.4(2) (a), (b) and (i) of the Judicature (Rules of Court) Act the Rules Committee has the power to make orders affecting the hours of opening of the Supreme Court. Subsection 2(a) provides for regulating and prescribing the procedure and the practice to be followed in the court. Subsection (2) (b) provides for "regulating the sittings" of the court and of the Judges whether sitting in Court or in Chambers - Section (2)(i) is an umbrella provision.

In this context sittings must include the conduct of the daily business of the Court, otherwise it would be difficult to conceive of the "sitting of the Judges whether sitting in Court or Chambers."

The Gun Court

The relevant provisions are Section 7 and 15 of the Gun Court Act. Section 7 provides:

> 7(1) The Court may hold its sittings in Kingston or St. Andrew, and at such other places (if any) as the Chief Justice may, by order, from time to time appoint.
>
> (2) Any order under subsection (1) may contain such consequential, supplementary or ancillary provisions as appears to the Chief Justice to be

necessary or expedient.

(3) Subject to the provisions of this Act and rules of court (if any), the court and the Resident Magistrates and Supreme Court Judges assigned thereto may sit and act at anytime for determining proceedings under this Act.

(4) Divisions of the court may pursuant to the foregoing provisions of this section, sit at the same time, or at different times, or in different places.

Section 15-(1) Subject to subsections (2) and (3), the Rules Committee established under section 135 of the Judicature (Resident Magistrates) Act may make, revoke and alter rules of the Court -

(a) for the effectual execution of this Act and of the objects thereof;

(b) for the regulation of the practice and proceedings of the Court;

(c) for the registration of all orders and judgments and the keeping of books by the Clerk of the Court recording or relating to the proceedings of the Court;

(d) for the settling of the duties of the officers of the Court;

(e) for prescribing forms for the Court,

so however, that rules, forms and practice in force in the Court at the 1st day of October, 1987, shall remain inforce until such rules, forms and practice are amended or revoked.

Section 15-(2) Rules made under this section shall not have effect unless approved by the Minister, with or without modifications, and published in the Gazette.

Section 15 -(3) The provisions of the Judicature (Rules of Court) Act shall, except in sofar as it is incompatible with this Act, apply in relation to High Court and Circuit Courts Divisions of the court and the process practice and procedure thereof as they

> apply in relation to the Supreme Court Court and the process, practice and procedure thereof in the exercise of criminal jurisdiction of that court.

Section 7(1) empowers the Chief Justice by order to appoint "such other places" (i.e. other than Kingston and St. Andrew) for the holding of the sittings of the Gun Court. The Chief Justice is also empowered (S.7(2) to make "consequential, supplementary or ancillary provisions" necessary or expedient to give effect to any order made under S.7(1).

It is important to note here that S.7(1) only invests the Chief Justice with power to appoint "such other places" for the holding of the Courts Sittings. Therefore such "consequential, supplementary or ancillary provisions" that the Chief Justice may make under S.7(2) cannot relate to the hours of opening of the court, as Mr. Leys submitted.

It is also important to note the provisions of S.7(3) which empower the Gun Court and the Resident Magistrates and Supreme Court Judges assigned thereto to sit and act at any time for determining proceedings under the Act subject only to the provisions of the Act and rules of court.

In my opinion S.7(3) is not consistent with the contention of the Respondent that to give effect to the intention of Parliament this Act must be read so as to confer on the Chief Justice the power to organise the procedures and sittings of the Court.

Parliament has given the Chief Justice specific powers relating to the sittings of the Gun Court. This court cannot so construe section 7(1) so as to confer on the Chief Justice additional powers. As said before, to do so, this court would be usurping the functions of Parliament.

By virtue of S.15(3) of the Gun Court Act the legislative power to make rule of court regulating the sittings of the High Court and Circuit Courts Divisions of the Court and the process, practice and procedure thereof is vested in the Rules Committee of the Supreme Court.

Section 15(1) of the Gun Court Act gives the Rules Committee established under S.135 of the Judicature (Resident Magistrates) ACt the pwoer to regulate the practice and proceedings of the Resident Magistrate's Division of the Gun Court.

It is therefore my opinion that the Chief Justice may not act in isolation to alter or change the opening hours of any of the Divisions of the Gun Court or to alter the hours within which sittings of any of these courts are to take place.

The Resident Magistrates' Court

Section 66 of The Judicature (Resident Magistrates) Act provides:

> 66. On or before the 31st day of October in each year, it shall be the duty of every Magistrate to fix the dates and stations at which Petty Sessions, or Courts will be held during the ensuing year, in the parish or parishes to which for the time being he may be assigned by the Governor General, and also fix the date at which such Courts shall be held during the ensuing year, at any station or stations to which for the time being he ;may be assigned by the Governor General; and on or before such dates submit a list of such dates and stations for the approval of the Chief Justice. It shall be lawful for the Chief Justice to alter the dates and stations so fixed by the Magistrate failing to such lists as aforesaid, within the time aforesaid, to fix the dates and stations at which such Courts shall be held, without reference to the Magistrate. The dates and stations so fixed and approved as aforesiad, shall be the dates and stations at which such Courts shall be held during the ensuing year;
>
> Provided always, that when any fixture has been made and approved as aforesaid, the Chief Justice may at any time alter the same.

> Anything in the above provision to the contrary notwithstanding, it shall be lawful for every Magistrate to hold his Court for the exercise of his criminal jurisdiction, at any time and place within the parish or parishes for which he was appointed, that he may see fit; and he may give such notice as he may think desirable of the holding of such Court, but no such notice shall be necessary to give him jurisdiction to hold such Court and it shall be the duty of the Magistrate to hold such court for the exercise of such jurisdiction as aforesaid, at such tiems and places as may best conduce to the speedy and effectual administration of the criminal jurisidction of the Court.
>
> Subject to the provisions contained in this section, notice of the times and places fixed for the holding of the Courts as aforesaid, and of any alterations of the same, shall be published in the Gazette, and shall be put up in some conspicious place in each Court House in the parish, and in the office of the Cler, and no other notice thereof shall be needed.
>
> The said notice shall be put up at least one month before the time so appointed or altered. But proof of such notice shall not be necessary to the validity of any proceedings, nor shall want of such publication invalidate any proceeding.
>
> Any Court fixed as aforesaid may, by declaration in open Court, be adjourned by the Magistrate, or in his absence, by any Justice, or in the absence of any Justice by the Clerk or Assistant Clerk, to any day or place, whether or not such day or place has been fixed or approved as aforesaid.

This section clearly imposes a duty of the Resident Magistrate of each parish to fix the dates and stations at which the Resident Magistrates and Petty Sessions Courts are to he held. Any such fixture made by the Magistrate if subject to the approval of the Chief Justice who may alter the dates and stations so fixed.

If the Magistrates fail to make such fixture the Chief Justice may fix the dates and stations without reference to the Magistrate.

It certainly does not confer on the Chief Justice or the Magistrate the power to fix or alter the opening hours of these courts.

For reasons already given I cannot accept Mr. Leys' contention that by giving the Chief Justice the power to fix the dates, Parliament implicitly gave him power to fix or alter the hours of opening or the hours within which the sittings may take place.

I agree with Miss Martin's submission that the power to fix or alter the hours within which the sittings of the Resident Magistrate's Court may take place is conferred on the Rules Committee of the Resident Magistrate's Court established by Section 135 of the Judicature (Resident Magistrate) Act.

Section 11 of The Judicature (Resident Magistrate) (Amendment) Act 1987 repealed and replaced S.135 of the Principal Act.

The new section 135 provides as follows:

> "135-(1) There is hereby established a Committee to be known as the Rules Committee of the Resident Magistrates Courts (in this Act referred to as the Rules Committee).
>
> (2) The provisions of Schedule G shall have effect with respect to the constitution and operation of the Rules Committee and otherwise with respect thereto.
>
> (3) Subject to the provisions of subsection (4), it shall be the duty of the Rules Committee to make rules for the effective execution of this Act and of the objects thereof and, without prejudice to the generality of the foregoing, such rules may -
>
> (a) prescribe and regulate the practice and procedure of the Court;
>
> (b) prescribe forms for the Court;
>
> (c) prescribe, pursuant to section 139, a tariff of fees payable upon proceedings under this Act;

(d) regulate the registration of orders and judgments of the Court;

(e) regulate the keeping of all books that record, or relate to, the proceedings of the Court and are required to be kept by the Clerk of Courts; and

(f) settle the duties of the several officers of the Court.

(4) Rules made under this section shall not have effect unless approved by the Minister, with or without modifications, and published in the Gazette.

(5) The rules, forms and practice in force in the Courts at the 1st day of October, 1987, shall remain in force until such rules, forms and practice are amended or revoked pursuant to this section.

Schedule G provides for the constitution etc. of the Rules Committee it reads:

The Rules Committee

1 - (1) The Rules Committee shall consist of not more than six persons appointed by the Minister of whom -

(a) three shall be Resident Magistrates; and

(b) two shall be attorneys-at-law in private practice nominated by the Jamaican Bar Association.

(2) The most senior of the three Resident Magistrates appointed pursuant to sub-paragraph (1) (a) shall be the chairman of the Rules Committee.

2. The chairman and other members of the Rules Committee shallhold office for such period not exceeding three years as the Minister may determine and shall be eligible for reappointment.

3 - (1) If the chairman or any other member of the Rules Committee is absent or unable to act, the Minister may appoint any person to act in the place of such member.

(2) Where the power to appoint a person to act in an office is being exercised pursuant to this paragraph, such appointment shall be made in such manner and from among such persons as would be required in the case of a substantive appointment.

4 - (1) Any member of the Rules Committee other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman and from the date of receipt by the Minister of such instrument that member shall cease to be a member of the Rules Committee.

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such reisgnation shall take effect from the date of receipt by the Minister of that instrument.

5. The Minister may, if he thinks it expedient so to do, at any time revoke the appointment of the chairman or of any other member of the Rules Committee.

6. If any vacancy occurs in the membership of the Rules Committee such vacancy shall be filled by the appointment of another member who shall subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed, so, however, that the appointment shall be made in the same manner and from among the same category of persons as the appointment of the previous member.

7. The names of all members of the Rules Committee as first constituted and every change in the membership thereof shall be published in the Gazette.

8 - (1) The Rules Committee shall meet at such times as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times and on such days as the Committee may determine.

(2) The chairman shall preside at all meetings of the Rules Committee at which he is present, and in the case of the chairman's absence from any meeting the members present and constituting a quorum shall elect a chairman from among

their number to preside at that meeting and when so presiding the chairman or person elected as aforesaid to preside shall have an original and a casting vote.

(3) The quorum of the Rules Committee shall be three.

(4) The chairman may from time to time designate a member of the Rules Committee to be the secretary thereof.

(5) Minutes in proper form of each meeting of the Rules Committee shall be kept.

(6) The validity of any proceeidng of the Rules Committee shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

(7) Subject to the provisions of this Schedule, the Rules Committee may regulate its own proceedings."

Under the old S.135 the power to make, revoke and alter rules and terms regulating the practice and proceedings etc, in the Resident Magistrates Courts was conferred on any three (3) Resident Magistrates to be named from time to time by the Minister or a majority of them.

By the new S.135 the Rules Committee consists of not more than 6 persons appointed by the Minister - three shall be Resident Magistrates and two shall be attorneys-at-law in private practice nominated by the Jamaican Bar Association. The committee is chaired by the most senior of the three Magistrates.

Here too as in the Supreme Court we see a widening of the membership of the body which is given the power to make rules affecting the courts. Such power no longer rests in the hands of the Magistrates alone.

The Rules Committee of the Magistrates' Court is given the duty "to make rules for the effective execution of the Act" and its objects.

The power to prescribe and regulate the practice and procedure of the court is among those specifically conferred on the Rules Committee.

It seems to me to be beyond dispute that the power to fix or alter the hours within which the sittings of these courts may take place rests solely in the Rules Committee.

The Jamaica Gazette dated December 1, 1880 has notices of the places, times and hours for the opening of the several District Courts. Of course these District Courts are no longer in existence. The jurisdiction exercised by them has passed to the Resident Magistrates Court - See S.68 of the Judicature (Resident Magistrate's) Act.

It is interesting to note that these notices of the places, times and opening hours of the sittings of the District Courts mentioned inthe Gazette were made by order (of the court) and signed by Clerk of the Courts.

This seems to support the contention of the applicant that the power to fix or alter the hour for the opening of the Resident Magistrate's Courts is vested in the Rules Committee (which has taken over the rule making role of the magistrates) and not in the Chief Justice.

The Family Court

By virtue of Sections 4 (4) and 6B(1) of the Judicature (Family Court) Act, subject to the provisions of the Act, the like process procedure and practice and conduct of the business of a Resident Magistrate's Court shall be observed, in so far as they are applicable, in the Family Court for Kingston and St. Andrew and the Regional Family Courts.

Subject to any order of the Minister the provisions of Section 135 of the Judicature (Resident Magistrate's) Act shall apply mutatis

mutandis in relation to the Family Courts as they apply to the Resident Magistrate's Court - see Section 9 of the Judicature (Family Court) Act.

Sections 5(4) and 6(4) provide that a Judge of any of the Family Courts may, subject to the approval of the Chief Justice, sit at any time and place within his region for the trial of any matter.

As I understand the foregoing, the position is that Rules of Court made by the Rules Committee may fix the hours within which the sittings of the Family Courts may take place.

The judge of the Family Court may, with the approval of the Chief Justice, fix the date and place for the sitting of the Court to carry out its business.

As they are with the Magistrate's Court so also the practice and procedure of the Family Courts are prescribed and regulated by the Rules Committee established for that purpose.

Petty Sessions Court

Section 66 of the Judicature (Resident Magistrate's) Act (supra) places a duty on the Resident Magistrate of each parish to fix the dates and stations at which Petty Sessions will be held. Such fixture is subject to the approval of the Chief Justice who may himself fix such dates and places.

This section does not confer on anyone the power to prescribe and regulate the practice and procedure in Petty Sessions. The Justices of the Peace (Jurisdiction) Act does not address the matter of the hours within which the sittings of the Petty Sessions Court shall take place and it does not confer power on anyone so to do. The origin of the existing procedure in this regard has not been ascertained.

In light of the view I take that this involves the exercise of legislative power, in the circumstances, it would follow that only Parliament can alter the existing practice and procedure in respect of the hours within which the sittings take place.

Conclusion

For the reasons which I have endeavoured to give I would answer the question posed by saying that the Chief Justice, in my respectful opinion, does not have the power to alter the hours of opening of the Courts aforementioned.

Legitimate Expectation

If I am right in my conclusion above, then the issue of legitimate expectation would not arise. However if I am wrong the following questions would be relevant:

1. Did the applicant have a legitimate expectation to be consulted? If yes;
2. Did the Chief Justice fail to consult and as a consequence breach the rules of natural justice?

The arguments advanced by Mr. Small for the Bar Association can be summarised as follows:

1. That the practice that has existed between bench and bar for over 15 years is at least equivalent to a promise for consultation.
2. That the basic requirements of consultation are:
   (a) the consultation must be at a time when proposals are still at a formative stage.
   (b) the proposer must give sufficient reasons for any proposal to permit of

intelligent consideration and response.

(c) adequate time must be given for consideration and response and

(d) the product of consultation must must be conscientiously taken into account in finalising any statutory proposals [See **R. v. Devon County Council ex parte Baker and another (1995) 1 All E.R. 73 at 91 (j)**]

3. That the mention of the matter in meeting of joint consultative committee on the 13th April, 1999 did not constitute any element of consultation.

4. That the Chief Justice made up his mind before he had the opportunity to consider the responses and suggestions of the applicant.

5. That there was a failure on the part of the Chief Justice to observe procedural fairness in the circumstances. Counsel relied on the House of Lords decision in **Council of Civil Service Unions and Others v. Minister for Civil Service (1984) 3 All E.R. 935** and **Attorney General v. Lopinot Limestone Ltd. (1983) 34 W.I.R. 299.**

The arguments advanced by Mr. Leys for the Respondent may be summarised as follows:

1. That to succeed in legitimate expectation the applicant will have to prove the following:

(i) a clear and unambiguous representation;

(ii) if the applicant was not a person to whom any representation was directly made that it was in a class of persons who are entitled to rely on it; or at any rate it was reasonable for the applicant to rely upon it without more;

(iii) that it did rely upon it;

(iv) that it did so to its detriment;

(v) that there was no overriding public interest arising from (the respondent's) duties and responsibilities - (See R. v. Jockery Club exparte RAM Race Courses Ltd. (1993) 2 All E.R. 225 at 236 (h).

Mr. Leys indicates that it is in relation to the first category that the Respondent takes issue with the applicant on the evidence).

2. That the evidence falls short of what is required to found a case of legitimate expectation.

3. That even if there were a legitimate expectation on part of applicant this expectation has been satisfied on the evidence.

Among the cases relied on by Counsel for the Respondent are:

R. v. Lord Chancellor exparte The Law Society The Times 25th June, 1993; Council of Civil Service Unions and Others v. Minister for the Civil Service (1984) 3 All E.R. 935; Doody v. Secretary of State for Home Department et al. (1993) 3 All E.R. 92 at 106; Huntley v. Attorney General of Jamaica (1995) 2 A.C. 1 at p. 16 (d); Attorney General of Hong Kong v. Ng Yuen Shiu (1983) 2 All E.R. 346.

"Legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority or from the existence of regular practice which the claimant can reasonably expect to continue" per Lord Fraser in the CCSU case (1984) 3 All E.R. at p.944(a).

It is Mr. Small's contention that the Applicant's position "fits with tailor made comfort" into the position of the appellant in the CCSU case. In that case it was held that "The Applicant's legitimate expectation arising from the existence of a regular practice of consultation which the appellants could reasonably expect to continue gave rise to an implied limitation on the Minister's exercise of power contained in article 4 of the 1982 order, namely and obligation to act fairly by consulting GCHQ Staff before withdrawing the benefit of trade union membership."

The question for this court therefore, in this regard, is whether or not the applicant has shown that over the years there has developed between the Chief Justice and the applicant a regular practice of consultation which would reasonably lead the applicant to expect that they would have been consulted before the decision in question was made.

The evidence of Mr. Jones, the president of Bar Association at paragraph 13 of his affidavit is:

> "Matters of this nature, that is to say the hours of the sitting of the Courts, the arrangements for the implications of a change for the legal profession and the public as a whole, especially a change of a radical and far reaching nature, are the very things for which the joint Consultative Committee of Bench and Bar was established and would thus be ideally suited for discussion there. I say that the decision is radical and far reaching because for several decades and indeed so

> far as I can find within living memory the courts have operated from 10:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:00 p.m."

This evidence is that there is a history of consultation involving the bench represented by theChief Justice, the President of the Court of Appeal, at least one of the Judges of these Courts, the Registrars of both Courts, representatives of the Jamaican Bar Association and the Director of Public Prosecutions. Over the past 15 years "a considerable range of matters" have been discussed and resolved by this means. It is Mr. Jones' evidence that for several decades all the persons involved in the smooth functioning of the Judicial System, namely members of the legal profession, witnesses, accused persons, jurors, the Correctional Services and others have been accustomed to organise their time and affairs around the traditional hours.

It seems to me that the unchallenged evidence of Mr. Jones demonstrates that there has been a settled practice that before any changes "of a radical and far reaching nature" affecting the administration of justice are made they will be discussed at the meeting of the joint Consultative Committee. Indeed the Chief Justice has not sought to make this an issue.

I am therefore of the view that the applicant has shown that they had a legitimate or reasonable expectation arising from the existence of a regular practice of consultation which they would reasonably expect to continue.

Was this Expectation Satisfied?

Mr. Jones in his affidavit states that at a Joint Consultative Committee Meeting held on the 13th April, 1999 the Honourable Chief Justice indicated that "the starting of court at 9:00 a.m. was

something that might come soon." There was no discussion then on the matter.

He later received a letter dated 11th May, 1999 signed by the Chief Justice's Secretary with the notice enclosed.

By letter dated June 1, 1999 Mr. Jones on behalf of the Jamaica Bar Association addressed the Chief Justice as follows:

> "Dear Chief Justice:
>
> Court Opening Hours
>
> Further to our recent conversation I now send you herewith, as promised, a note in which certain concerns and suggestions are expressed.
>
> I look forward to the opportunity of calling on you with a small group to discuss the matter.
>
> I am suggesting that the group consists of Hilary Phillips, Q.C., Michael Hylton, Q.C., and myself.
>
> I know that you are on circuit this week and am therefore hoping that we will be able to meet early in the coming week.
>
> Yours sincerely,
>
> Derek Jones
> President.

The enclosed note contains some 14 "comments/suggestions" in respect of the concerns of The Bar Association.

At a meeting of the Committee held on the 8th June, 1999 the matter was "discussed at length" - paragraph 9 of Mr. Jones' affidavit (emphasis mine).

On the 10th of June there was a further meeting called by the Minister. At this meeting representatives of most of the interest groups involved in the administrative of justice were present.

On the 14th June, 1999, Mr. Jones wrote the Chief Justice and the Minister a long letter reiterating the concerns of the Bar Association, submitting suggestions and urging a reconsideration of the decision. Other letters from the Bar Association to the Chief Justice followed.

The Chief Justice in his affidavit states that he had "carefully deliberated" on the discussions of the Consultative Committee of Bench and Bar of June 8, 1999. He also states that he had read the Jones affidavit and had "carefully considered" all the issues canvassed in his many letters.

Here the burden of the Apllicant's complaint is that there was not the necessary procedural fairness in that the consultation of discussion came too late. It is the Applicant's contention that the first discussion took place on the 8th June at a time when the decision had already been announced and published. Mr. Small submitted that if what the Chief Justice meant was that he reflected after he made his decision then regrettably there were two flaws:

(i) none of the things upon which he reflected can be classified as consultationsicne he had not revoked his original decision;

(ii) he did not communicate to the Bar Associaion that he had revoked his decision and now has an open mind to reflect on their suggestions.

Mr. Leys for the Respondent submitted that the relevant principle applicable in this aspect of the case was reiterated in the case of **R. v. Lord Chancellor Exparte The Law Society - The Times 25th June, 1993** where Neil L.J. said:

> "As Lord Diplock explained in **CCSU v. Minister for the Civil Service** (supra) however, the question of procedural propriety has to be looked at in the light of the particular circumstances in which the relevant decision was made."

In **R. v. Chancellor** exparte the Law Society, the complaint was that the Lord Chancellor had not properly consulted with the Law Society in relation to new regulations introduced affecting the Legal Aid Scheme notwithstanding that the Law Society had a right to be consulted or a legitimate expectation that they would be consulted.

The Law Society sought to quash the decision of the Lord Chancellor on this among other grounds.

In coming to the conclusion that there was no procedural irregularity Neil L.J. said:

> "In the end, however, I have come to the conclusion that even if there was a failure to consult in October and November 1992 and even if (without deciding the point) the "consultation" which took place between November, 1992 and March, 1993 was flawed, there is no sufficient basis on which the court could hold that these regulations should be declared to be invalid. In some cases procedural irregulatities will make it appropriate for a court to quash an existing decision and to declare that a further decision should only be reached after proper consultation has taken place. In the present case, however, it would in my view be wrong for the court to make such an Order. Mr. Everett has set out in his affidavit the savings which the Lord Chancellor was committed to achieve over the three relevant years. It is clear that the counter proposals put forward by the Law Society were considered by the Lord Chancellor and his officials but that they fell a very long way short of what was required. On the present evidence this is not a case where there is only a small

> margin between two sets of proposal. The time table to which the Lord Chancellor was committed required the regulations to be made in March 1993, I have come to the conclusion that in the circumstances there is no satisfactory answer to the submission on behalf of the Lord Chancellor that additional consultation would not have led to any materially different result being achieved within the prescribed time limit."

The decision of the Chief Justice was made in May 1999 and intended to be effective from the 5thJuly, 1999. The Chief Justice in June 1999 gave careful consideration to all the issues canvassed by the Bar Association. Thus although the decision was made before there was any consultation the Chief Justice took into consideration the concerns and suggestions of the Bar Association before the order was intended to become operative.

By so doing he did, in my view, satisfy the requirement of procedural fairness. As was said by LOrd Mustil in **Doody v. Secretary of State (1993) 3 All E.R. 106 (g-h):**

> "(5) Fairness will often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification or both;
>
> (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer."

This passage was quoted with approval by the Judicial Committee of the Privy Council in **Huntely v. Attorney General for Jamaica (1995)**

2 A.C. 1 at 16 (D & E).

Having considered the concerns and suggestions of the Bar Association the Chief Justice was not persuaded to revoke or modify his decision. In his affidavit, after referring to the concerns and suggestions expressed in the various letters and affidavits of Mr. Jones, he states:

> Notwithstanding the above I am of the view that until such resources are provided there is an urgent need that steps which will not require a signigicant outlay of resources must be taken to minimise the hardship that is being experienced by the public. These steps must be taken urgently as there appears to be a growing perception in the eyes of the public that the justice system is inept because of the length of time it takes to achieve justice in the several courts of the land."

It is clear that in the circumstances additional consultation would not lead to any different result.

For the foregoing reasons I cannot accept the submissions of Mr. Small. I am firmly of the view that the legitimate or reasonable expectations of the Applicant have been satisfied in that there has been adequate consultation and the procedure was demonstrably fair.

I would therefore refuse the Declaration sought at paragraph (b) of the Notice of Motion.

Conclusion

As a consequence of my finding that the Chief Justice does not have the power to fix or alter the hours during which the sittings of the various courts are conducted, I would grant the relief sought by the Applicant at paragraphs (a), (C) and (d) of the Notice of Motion.

CLARKE, J

This is an application by The Jamaican Bar Association **(JAMBAR)** pursuant to leave granted by Courtenay Orr J. on July 1, 1999 for judicial review of an order or decision of the Honourable Chief Justice expressed in an undated notice sent to **JAMBAR** under cover of a letter of May 11, 1999 from the Secretary to the Chief Justice.

The notice is in these terms:

NOTICE

" WITH EFFECT FROM MONDAY JULY 5, ALL SITTINGS OF THE SUPREME COURT, GUN COURT, RESIDENT MAGISTRATE'S COURT, FAMILY COURT AND PETTY SESSIONS COURT WILL BE CONDUCTED BETWEEN THE HOURS OF 9:00 A.M. TO 4:30 P.M. ON EACH DAY MONDAY – FRIDAY.

LENSLEY WOLFE, O.J.
CHIEF JUSTICE."

The specific reliefs sought by **JAMBAR** are as follows:

1. Certiorari to bring up and quash the orders or decision to change the hours of sittings of the said courts;
2. A declaration that the decision made without consultation with **JAMBAR** was in breach of its legitimate expectation of consultation;

3. A declaration that upon the true construction of the Judicature (Rules of Court) Act, the Judicature (Supreme Court) Act, the Gun Court Act, the Judicature (Resident Magistrates) Act and the Judicature (Family Court) Act, regulation of the hours of sittings of the said courts, and of the Judges of the said courts whether sitting in court or in Chambers is vested in the Rules Committee appointed by virtue of the Judicature (Rules of Court) Act and/or respective statutes;

4. A declaration that the undated notice is void and without legal effect.

The arguments advanced on behalf of **JAMBAR** can be summarised as follows:

1. That the Chief Justice in making the order acted ultra vires and without lawful authority;

2. That, alternatively, the order was made without consultation with **JAMBAR** although it had a legitimate expectation that in a matter involving the alteration or change of the daily sitting of the courts it would be consulted prior to making of the order.

The following propositions constitute the gist of the Respondents' rival arguments:

1. That the power to alter the hours of the daily sitting of the courts is an administrative power vested in the Chief Justice and accordingly he is competent to make the impugned order. This is so not only because as head of the Judiciary he has an inherent power "to organise the procedures and sitting of the courts in such as way as is reasonably necessary for the due administration of justice", but also because the relevant legislation, thus purposively construed, empowers him to make the order under review.

2. That on the evidence **JAMBAR** had no legitimate expectation to be consulted by the Chief Justice and that even if **JAMBAR** had such an expectation the Chief Justice satisfied the requirements for consultation before the "implementation" of his decision.

The cardinal issues to be determined on this motion are therefore as follows:

1. Whether the Chief Justice had the power to alter or change the hours during which the daily sitting of the courts is conducted and, if so,

2. Whether JAMBAR had a legitimate expectation that in a matter in relation to the alternation of the hours of the sitting of the courts it would be consulted before the decision was made and, if so,

3. Whether in the context or circumstances of this case the duty to consult was fulfilled.

THE FIRST ISSUE:
The Chief Justice's authority to make the order

Our attention has not been brought to any enactment or order setting the hours within which the sitting of the courts is to be conducted. Yet, it is common ground that, as the President of **JAMBAR** deposed, "for several decades and, indeed, within living memory, the Courts have operated from 10:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:00 p.m." Monday to Friday. Nevertheless, the **Wednesday** ground of unreasonableness, one of the grounds upon which the motion was brought, was not argued before us and, indeed, could not have been successfully argued in light of the reasonable reasons, if I may say so with respect, given by the Chief Justice for his

decision. Here are the factors, contained in his affidavit sworn to on 6th July 1999, on which he based his decision.

"2. ...

(a) In my capacity as Chief Justice and as a sitting judge I am concerned at the vast backlog of cases, which has been accumulating over the years and the fact that very little has been done to alleviate this burden on litigants and the Court system. This has led to an almost daily outcry from all sectors of the society about the slow pace and quality of justice that is perceived to exist in the island.

(b) The current backlog has now reached almost crisis proportions as the state of the cause list in the Supreme Court (Civil Division) is unduly burdensome with the prospect that cases are being placed on the cause list have not prospect of being heard until the year 2001. In the criminal division there is at the end of every circuit a significant backlog that has to be traversed to the succeeding circuit because the Court could not accommodate these cases. The situation is no better in the Resident Magistrate's Court, the Family Court the Gun Court and the Petty Sessions Court.

(c) All this is against a background where improvements have taken place since the decision of the Privy Council in **Pratt and Morgan v. The Attorney General for Jamaica** [1994] 2 A.C. 1. More steno writers have been employed and the process for the reproduction of notes has been computerized with the result that a considerable amount of the time (wasting) has been eliminated, which hitherto had been caused by failure to reproduce the verbatim notes in a timely manner. In the civil arena plans are well underway to set up

a commercial curt, which will have a specialised jurisdiction to deal with commercial matters so as to ease the caseload on the cause list. In the lower courts efforts are being made to increase the number of judges as well as provide the courts with steno writers so as to reduce the burden on the judges to take notes in long hand.

3. These reforms are however not enough. More needs to be done to reduce the backlog and bolster confidence in the justice system. I am well aware of the budgetary constraints faced by the Ministry of National Security and Justice, under which the justice system falls. There are not now available resources that could be immediately allocated to reduce the backlog some of which have been mentioned in the affidavit of Derek Jones sworn to on the 1st day of July 1999. I have also read the Jones affidavit and say that prior to the implementation of my decision I had carefully considered all the issues canvassed, in his letter of June 1, June 14, and June 28, 1999. I had also carefully deliberated on the discussions of the Consultative Committee of Bench and Bar of June 1999.

4. Notwithstanding the above I am of the view that until such resources are provided there is an urgent need that steps will not require a significant outlay of resources must be taken to minimise the hardship that is being experienced by the public. These steps must be taken urgently as there appears to be a growing perception in the eyes of the public that the justice system is inept because of the length of time it takes to achieve justice in the several courts of the land.

5. One of these steps is extending the hours during which matters before the various courts may be heard in order that more cases can be dealt with and/or disposed of

within a day. In accordance with this view and for the better administration of the Courts I have decided that effective Monday, July 5, that the hours during which all sittings of the Supreme Court, Gun Court, Resident Magistrate's Court, Family Court and Petty Sessions Court will be conducted will be between the hours of 9:00 a.m. and to 4:30 p.m. on each day Monday to Friday.

6. While this may not be a panacea for all the ills caused by a backlog I am of the view that it will help in easing the said backlog and in some meaningful way commence erasing the perception in Jamaica that the quality of justice is severely compromised because of the backlog of cases on the court calendar."

So, although I am mindful of the context in which the decision was made and the reasons given for the decision, the issue here concerns the **vires** of the Chief Justice to make the order under review. Let me examine the relevant statutes which regulate the respective jurisdictions and business of the Courts named in the Notice.

Take first the Judicature (Supreme Court) Act:

The Act was promulgated in 1880, a major purpose of which was to consolidate into one Court, called the Supreme Court of Judicature of Jamaica, all the courts listed in section 4 and to vest in that Court the jurisdictions, powers and authority of those courts and Judges together with all their ministerial powers, duties and authorities (sections 4 and 27).

Sections 30 to 34 fall under the heading, 'Sittings and Distribution of Business'. Section 30 is concerned with the sittings or sessions and business of the Supreme Court and provides that:-

> 'The Supreme Court shall ordinarily hold its sittings in Kingston, but subject to the provisions of this Act and to rules of Court, the Court and the Judges thereof may sit and act at any time for the transaction of any part of the business of the or of such Judges'.

So, the section clearly states that the Supreme Court must ordinarily hold its sittings in Kingston but subject to the provisions of the Act and to rules of court, the Court may sit at any time and place to conduct any part of its business. In this connection, section 38, states that, subject to any order which may be made on a summons for directions; the venue of civil trials shall be regulated as follows:

> "(a) Where the cause of action arises wholly or in part within the Kingston Circuit, the trial shall ordinarily take place at the sittings of the Kingston Circuit Court.
>
> (b) Where the cause of action arises within any Other Circuit of the trial shall take place at the Sittings of the Kingston Circuit Court, or at the Circuit Court of the Circuit in which the cause of Action arose (at the option of the plaintiff)."

Section 31 (1) of the Act empowers the Chief Justice to make certain orders. The subsection provides that:

"(1) The Chief Justice may from time to time make, and when made revoke, add to or alter orders appointing the times and places for the holding of Circuit Courts."

And, as Mr. Leys points out, once the times for the Circuits have been set they hold good both for the criminal and civil divisions. (Section 38). Orders made under section 31 (1) are required to be published in the Gazette. (Section 31 (3)). Such orders, instances of which have been brought to our attention, are plainly subordinate legislative orders as distinct from administrative orders in the strict sense and are made pursuant to a special legislative function vested in the Chief Justice by virtue of section 31(1). Subsection (4) of the section provides that:

"(4) Every order under subsection (1) shall, so long as it continues in force, have the same effect as if it formed part of the provisions of this Act, and rules of court may be made for carrying any order under subsection (1) into effect as if the provisions of such order formed part of this Act."

Subsection (2) of the section circumscribes orders made under subsection (1) by providing that:

"(2) Every order under subsection (1) shall be so framed as to provide that there shall be held a Circuit Court three times a year in each parish of the Island except the parish of Saint Andrew. (Emphasis supplied)

Mr. Hugh Small Q.C. submitted that the Chief Justice's power under section 31(1) to appoint 'the times and places' for the holding of Circuit Courts is confined to delimiting or prescribing the dates and places for the commencement and ending of the sittings or sessions of Circuit Courts and does not extend to prescribing the hours within which the Courts shall sit daily. That submission is, in my opinion, plainly correct and Mr. Leys' concession in that regard was properly made.

The following order duly gazetted is an instance of the proper exercise of the power conferred upon the Chief Justice by section 31 (1) of the Act.

"THE JUDICATURE (CIRCUIT COURTS) TIMES AND PLACES FOR THE HOLDING THEREOF) (AMENDMENT) ORDER, 1997.

In exercise of the powers conferred upon the Chief Justice by subsection (1) of section 31 of the Judicature (Supreme Court) Act, the following Order is hereby made:-

1. **This Order may be cited as the Judicature (Circuit Courts) (Times and Places for the Holding thereof) (Amendment) Order, 1997 and shall be read and continued as one with the Judicature (Circuit Courts) (Times and Places for the Holding Thereof) Order 1996, hereinafter referred to as the principal Order.**

2. **The principal Order is hereby amended by deleting the words "Vacation: from 1st August to 15th September, 1997" and substituting therefor the following:-**

"MANCHESTER- Special Sitting: From 5th August 1997 until further orders."

"WESTMORELAND – Special Sitting: From 5th August, 19977 until further orders."
"ST. ANN – Special Sitting: From 5th August, 1997 until further orders."
"CLARENDON- Special Sitting: From 5th August, 1997 until further orders."
VACATION- Kingston: 25th August to 15th September, 1997.

SCHEDULE
SUPREME COURT OF JUDICATURE OF JAMAICA SITTINGS FOR 1998

Circuit Court

HILARY TERM	EASTER TERM	MICHAELMAS TERM
Begins: January 7	April 15	September 16
Ends: April 3	July 31	December 18

KINGSTON: The Circuit Court for Kingston and St. Andrew will sit in separate Divisions from day to day during each term."

It is to be observed that rules of court may be made for carrying into effect any order made by the Chief Justice appointing the times and places for the holding of Circuit Courts. Such rules when made would facilitate the operation of the order. Observe also that whereas section 31(1) of the Judicature (Supreme Court) Act does not say that the Chief Justice may make orders regulating the sittings or sessions of Circuit Courts, the Judicature (Rules of Court) Act promulgated in 1961 empowers the Rules Committee of the Supreme Court, established by section 3(1) of that Act, to make rules of court "for regulating the sittings of the Court of Appeal, and the Supreme Court, and of the Judges of the Supreme Court whether sitting in Court or in Chambers." (Section 4(2) (b) (Emphasis supplied).

Interestingly, prior to the promulgation of the Judicature (Rules of Court) Act, the power to make rules of court was vested in the Chief Justice with the concurrence of a majority of the Judges: see, for instance, section 43 of the Old Judicature (Supreme Court) Law (Cap. 180). He could not act alone then, nor can he act alone now, in making rules of court, for under the Judicature (Rules of Court) Act it is the Rules Committee of the Supreme Court, over which he presides and comprising at least three other members present, who must act by making rules of court for the purposes designated in section 4 (2) of the Act. The following gazetted Orders illustrate the point:

(1). "**JUDICATURE LAW, CHAPTER 430**

Rules of the Supreme Court (Sittings), 1945

I, HORACE HECTOR HEARNE, Chief Justice of Jamaica, under the powers vested in me by the Judicature Law, Chapter 430, and all other powers me hereunto enabling, and with the concurrence of the other judges of the Supreme Court of hereby make the following Rules of Court:-

1. **These Rules may be cited as the Rules of the Supreme Court (Sittings), 1945, and shall come in to effect on the date of their publication in the Jamaica Gazette.**

2. **The sittings of the Supreme Court shall be three in every year, viz., the Michaelmas sittings, the Hilary sittings and the Easter sittings. The Michaelmas sittings shall commence on the 16th September, and shall terminate on the 20th December; the Hilary**

sittings shall commence on the 7th January, and shall terminate on the Friday before Good Friday; and the Easter sittings shall commence on the Wednesday after Easter Day, and shall terminate on the 31st July.

3. **The days of the commencement and termination of each sitting shall be included in such sitting.**

4. **Any interval between the sittings of the Supreme Court not included in the Court vacation, shall not be deemed a vacation and the Chief Justice shall make such arrangements for the disposal of current business as he deems fit.**

5. **The office of the Supreme Court shall be open every day of the year except Sundays, Good Friday, the Saturday before Easter, Monday and Tuesday in Easter Week, Christmas Day and the next following working day, and all days appointed to be kept as Public General Holidays.**

Dated the 21st day of September, 1945

H. H. Hearne,
Chief Justice

We concur:
W. Savary, J.
G. Tracey Watts, J.
R. M. Cluer, J."

(2) **" THE JUDICATURE (SUPREME COURT)**

LAW

(Cap. 180)

THE RULES OF THE SUPREME COURT (SITTINGS) (AMENDMENT) RULES, 1957

I, COLIN MALCOLM MacGREGOR, Acting Chief Justice of Jamaica, under powers vested in me by the Judicature (Supreme Court) Law, Chapter 180, and all other powers me hereunto enabling, and with the concurrence of the other Judges of the Supreme Court, do whereby make the following Rules of Court:-

1. **These rules may be cited as the Rules of the Supreme Court (Sittings) (Amendment) Rules, 1957, and shall be read as one with the Rules of the Supreme Court (Sittings) 1945, hereinafter referred to as the Principal Rule.**

2. **Paragraph 5 of the Principal Rules is hereby amended as follows:**

   (a) by deleting the words "Monday and Tuesday in Easter week" in the second line thereof and substituting therefor the words "Easter Monday", and

   (b) by deleting the words "and the next following working day" in the third line thereof.

Dated the 19th day of September, 1957

Sgd.) C.M. MacGregor
Acting Chief Justice

We concur:-
(Sgd.) A.B. Rennie, J
(Sgd.) D.H. Semper, J
(Sgd.) Alex R. Cools-Lartigue, J."

Under the wide provisions of section 4(2) (a) of the Judicature (Rules of Court) Act relating to practice and procedure the Rules Committee is authorised to make rules for the hours of opening of the offices of the Supreme Court. In my opinion the paragraph clearly includes by necessary implication the power to make rules for the hours within which the daily sitting of the Supreme Court is to be conducted. That paragraph says that rules of court may make provision:

> "for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Supreme Court respectively in all causes and matters whatsoever in or with respect to which those Courts respectively have for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Supreme Court), and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision) the manner in which, and the time within which, any applications, appeals or references which under any law or enactment may or are to be made to the Court of Appeal or the Supreme Court or any Judge of such respective Court, shall be made."

The following gazetted Order provides an example of the exercise of the power conferred by section 4(2) (a):

"THE JUDICATURE (RULES OF COURT) LAW, 1961
(Law 21 of 1961)

The Supreme Court (Hours of Opening) Rules, 1969

We the Rules Committee of the Supreme Court in exercise of the powers conferred on us by the Judicature (Rules of Court) Law, 1961, the Judicature (Supreme Court) Law, Cap. 180 and all others powers hereunto enabling, do hereby make the following Rules:-

1. **These Rules may be cited as the Rules of the Supreme Court (Hours of Opening) Rules, 1969.**

2. **In these Rules "The Registrar" means the Registrar of the Supreme Court and any other person for the time being discharged the duties of the Registrar.**

3. **The Registrar shall keep the office of the Supreme Court open to the public daily, except on Sundays and public general holidays, from 9:00 a.m. to 3:00 p.m. and on Saturdays from 9:00 a.m. to 12:000 noon, save that on the Saturday before Easter Monday, the office shall be closed to the public.**

4. **The following rules are hereby repealed:-**

   The Supreme Court General Rules and Orders Part 1 paragraph 17(a).

   The Rules of Supreme Court (Sittings) 1945 paragraph 5 published in the Jamaica Gazette Supplement on the 2nd November 1945.

   The Rules of Supreme Court (Sittings) (Amendment) Rules, 1957, published in the Jamaica Gazette Supplement on the 17th October, 1957."

Then there is, of course, the omnibus provision of section 4(2) (i) of the Rules of Court Act which enables the Rules Committee to make rules "for regulating or making provision with respect to any other matters which were

or might have been regulated or with respect to which provision was or might have been made by rules of the Supreme Court or which under this Act or any other enactment may be regulated or provided for by rules of court."

Observe, too, that the purposes for which rules of court could be made by the Chief Justice with the concurrence of a majority of the Judges under section 43 of the Judicature (Supreme Court) Law included:

(a) For regulating the sittings of the Court and the Judges;

(b) For the distribution of the business of the Court amongst the Judges.

(c) For regulating, and doing anything which may be regulated or done by Rules of court.

Purposes (a) and (c) are now the province of the Rules Committee of the Supreme Court. (section 4 (2) (b) and (i)) Significantly, purpose (b) is appropriately not listed in section 4(2) of the Judicature (Rules of Court) Act as a matter in respect of which the Rules Committee may make rules of Court. Such a matter, the distribution of the business of the Court amongst the Judges, eminently goes to administration and clearly falls entirely within the province of the Chief Justice as head of the judiciary. It would be

wholly inappropriate in my view for the Rules Committee of the Supreme Court to perform that function for that body includes five attorneys-at-law in private practice and two in the public service. Its exact composition is as follows:

(a) the Chief Justice as Chairman, the President of the Court of Appeal, a Judge of the Supreme Court designated by the Chief Justice, the Attorney General and the Director of State Proceedings as ex officio members; and

(b) five attorneys-at-law, in private practice: See Section 3 (2) of the Judicature (Rules of Court) Act and Schedule thereto; Rees v. Crane (1994) 43 WIR 444 at 452.

But just as the power vested in the Chief Justice by section 31 (1) of the Judicature (Supreme Court) Act to set the dates and places for the holding of Circuit Courts is legislative in character so is the power to set or change the hours of the daily sitting (Monday to Friday) of the several Courts named in the Notice issued by the Chief Justice. Such an Order, if valid, regulating the hours within which the Courts are to sit daily, creates a rule of general application across the country. It

relates not only to Judges, but attorneys at law, litigants, witnesses and other persons who are required to attend court. It would be no less a rule where it was relaxed by a Judge in a particular Court on particular days. I am therefore unable to agree with Mr. Leys' categorisation of an order creating such a rule as simply administrative.

The learned authors of a distinguished work on Administrative Law correctly make the distinction:

> "A legislative act is the creation and promulgation of a general rule of conduct without particular reference to a particular case; an administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction and the application of a general rule to a particular case in accordance with the requirements of policy of expediency or administrative practice": De Smith, Woolf and Jowell-Judicial Review of Administrative Action, fifth edition, at A011.

The order under review can only be described as legislative in character and, in my opinion, there is nothing in the Judicature (Supreme Court) Act, properly and purposively construed, which confers on the Chief Justice expressly or by necessary implication the power to make the Order as far as concerns the Supreme Court.

Mr. Leys relied heavily on the following dictum:

> "Their lordships accepts that even outside these specific provisions of the rules, the Chief Justice must

> have the power to organise the procedures and and sitting of the court in such way as is reasonably n necessary for the due administration of justice. This may involve allocating a judge to do particular work, to take on administrative tasks, requiring him not to sit if it is necessary because of the backlog of reserved judgments in the particular judge's list, or because of such matters as illness, accident or family or public obligations. It is anticipated that these administrative arrangements will normally be made amicably and after discussions between the Chief Justice and the judge concerned. It may also be necessary, if allegations are made against the judge, that his work programme should be re-arranged so that (for example) he only does a particular type of work for a period, or does not sit on a particular type of case or even temporarily he does not sit at all. Again, this kind of arrangement can be and should be capable of being made by agreement or at least after frank and open discussion between the Chief Justice and the judge concerned."
> **Rees v Crane** (1994) 43 WIR 444 at 452 f to j per Lord Slyn.

Mr. Leys submitted that on that basis the Chief Justice's inherent power as head of the judiciary " to organise the procedures and sitting of the Courts in such a way as a reasonably necessary for the due administration of justice" includes the power to change the hours of the sitting of the Courts.

It is my respectful view that the passage relied upon by Mr. Leys does not recognise any such wide powers as being vested in the Chief Justice. The nature of the Chief Justice's power "to organise the procedures and sitting of the Courts in such a way as is reasonably necessary for the due administration of justice" is indicated by the succeeding sentences of Lord

Slyn's dictum which arose out of a case concerned with whether the inherent power of the Chief Justice of Trinidad and Tobago to make administrative arrangements enabled him to impose a period of indefinite suspension on a High Court Judge of Trinidad and Tobago. The Judicial Committee of the Privy Council held that he had no such power. So, even if it were permissible to treat the quoted words that fell from Lord Slyn as if they were contained in a statute, there would be, in my opinion, nothing in the passage to suggest the existence of a power in the Chief Justice, acting alone, to make such a far reaching change of the nature that was essayed in the instant case, bearing in mind that within living memory the Courts have operated from 10:00 a.m. to 1:00 p.m. and 2:00 p.m. to 4:00 p.m. And in that regard I find that the habitual, repetitive or continuous observance of the times of the daily sitting of the Courts hardened into a rule of practice. In any case, it is worthy of note that the power of the Chief Justice to make "administrative arrangements" such as those instanced by Lord Slyn in the quoted passage is consistent with the power which the present Rules of Court Act omits but which formerly was exercisable by the Chief Justice with the concurrence of a majority of the Judges to make rules of Court "[f]or the distribution of the business of the Court among the Judges": See section 43(b) of the old Judicature (Supreme Court) Law.

Accordingly, I hold that in relation to the Courts named in the Notice the Chief Justice has no inherent power to make the order under review. And having already concluded that the Judicature (Supreme Court) Act gives him no power to make the order in relation to the Supreme Court, I hold that the power to regulate the hours of the daily sitting of the Supreme Court is vested in the Rules Committee of the Supreme Court by virtue of section 4(a), (b) and (i) of the Rules of Court Act.

I will now examine whether the Chief Justice is empowered by statute to make the order in respect of the other Courts named in the Notice.

The Gun Court Act

This Act came into force in 1974 and established the Gun Court (section 3 (1)) comprising:

(a) a Resident Magistrate's Division'

(b) a High Court Division and

(c) a Circuit Court Division (section 4).

Section 7 dealing with sittings of the Court provides as follows

> "7 (1) The Court may hold its sittings in Kingston or St. Andrew, and at such other places (if any) as the Chief Justice may, by order, from time to time, appoint.
>
> (2) Any order under subsection (1) may contain such consequential, supplementary or ancillary

provisions as appear to the Chief Justice to be necessary or expedient.

(3) Subject to the provisions of this Act and rules of Court (if any, the Court and the Resident Magistrates and Supreme Court Judges assigned thereto may sit and act at any time for determining proceedings under this Act.

(4) Divisions of the Court may, pursuant to the foregoing provisions of this section, sit at the same time, or at different times, or in different places."

I read the section as conferring on the Chief Justice power to appoint from time to time by order places for the holding of sittings or sessions of the Court in its three divisions. The section also gives him power to make such consequential, supplementary or ancillary provisions as appears to him to be expedient. But the section stops short of investing him with the power that the Respondent contends he has. I find that it has been a rule of practice for decades since before the Gun Court Act came into force that the Courts named in the Notice operated daily between the hours of 10:00 a.m. and 4:00 p.m., Monday to Friday. If Parliament intended to invest him with such power it would have said so in clear language.

The Judicature (Resident Magistrates) Act

This Act was promulgated in 1928. Section 66 of the Act dealing with fixing the times (that is to say the dates) and the places for holding Courts of Petty Sessions and President Magistrates' Courts, must also be construed against the background of the aforesaid rule of practice. The section so far as is relevant provides as follows:

> " On or before the 31st day of October in each year, it shall be the duty of every Magistrate to fix the dates and stations at which Petty Sessions, or Courts will be held during the ensuing year, in the parish or parishes to which for the time being he may be assigned...., and also fix the date at which such Courts shall be held during the ensuing year, at any station or stations to which for the time being he may be assigned ...; and on or before such date submit a list of such dates and stations for the approval of the Chief Justice. It shall be lawful for the Chief Justice to alter the dates and stations so fixed by the Magistrate as he may see fit, and in the event of a Magistrate failing to submit such lists as aforesaid, within the time aforesaid, to fix the dates and stations at which such Courts shall be held, without reference to the Magistrate. The dates and stations so fixed and approved as aforesaid, shall be held during the ensuing years:
>
> Provided always, that when any fixture has been made and approved as aforesaid, the Chief Justice may at any time alter the same.
>
> Anything in the above provision to the contrary notwithstanding, it shall be lawful for every Magistrate to hold this Court for the exercise of his criminal jurisdiction, at any time and place within the parish or parishes for which he was appointed, that he may see fit;

> and he may give such notice as he may think desirable of the holding of such Court, but no such notice shall be necessary to give him jurisdiction to hold such Court for the exercise of such jurisdiction as aforesaid, at such times and places as may best conduce to the speedy and effectual administration of the criminal jurisdiction of the Court."

Mr. Leys submitted that the power given by the section to the Chief Justice to set dates must involve the setting of time, i.e. "clock" time within which the sitting of the Resident Magistrate's Court and Petty Sessions is to take place.

That submission is a **non sequitur**, for it ignores this, that at the time of the enactment the rule of practice in respect of "clock" times of the daily sitting of the Courts had long been in existence. Again, if Parliament intended him to have that power it would have expressed its intention in the statute in plain and unambiguous language.

The Act establishes a Rules Committee of the Resident Magistrate's Courts (section 135 (1)) and empowers that body to make rules to regulate among other things the practice and procedure of the Resident Magistrates' Courts. (Section 135 (3)). The function of fixing or altering the hours of the daily sitting of the Resident Magistrate Courts, therefore, comes within the purview of that Committee which is the body charged by statute to make rules of practice as well rules of procedure for those Courts. The

Committee is appointable by the Minister and shall comprise a maximum of six persons of whom – (a) three shall be Resident Magistrates; (b) two shall be attorneys-at-law in private practice nominated by **JAMBAR.** There is no legislation in place giving the Chief Justice of Jamaica the power to make rules of practice and procedure for the Resident Magistrates' Courts. Unlike the Rules Committee of the Supreme Court he is not by statute made an **ex officio** member of this Committee. Nor does the statute ordain that the rules made by this Committee are subject to his approval.

This anomalous situation whereby he is given no statutory role in the framing of rules for the Resident Magistrates' Courts requires the urgent attention of Parliament.

The Judicature (Family Court) Act

This Act established the Family Court in 1975. The Act gives a general power to the Rules Committee of the Resident Magistrates' Courts to make rules for regulating the practice and procedure of the Court (Section 9). The Act also provides that in general the practice and procedure relating to the exercise of the jurisdiction of the Resident Magistrates' Courts and otherwise to the conduct of its business shall be observed in the Family Court. This means, as Mr. Leys has pointed out, that the practices that are

observed pursuant to section 66 of the Resident Magistrates Court Act are incorporated by reference to the Family Court Act.

Again the powers of the Chief Justice to fix and alter dates on which the Courts shall be held is applicable. Nevertheless, for the same reasons given as in the case of the Resident Magistrates' Court and Petty Sessions he has no power to make the Order in relation to the Family Court.

So, in making his decision to alter the hours within which the daily sittings off the Resident Magistrate Court, The Family Court and Petty Sessions, the Family Court and the Resident Magistrate's Division of the Gun Court are to be conducted as of July 5, 1999, I would say, with respect, that the Chief Justice acted **ultra vires** his powers.

What it comes to, therefore, is that on the first issue I would order that certiorari go to quash the order of the Chief Justice and I would grant the declarations set forth at paragraphs (c) and (d) of the Notice of Motion.

If I am wrong in holding that the Chief Justice's order was invalid as being outside his powers then I think it is important that I consider the next question which concerns whether **JAMBAR** had a legitimate expectation of prior consultation.

THE SECOND ISSUE:
Legitimate expectation of prior consultation

As has been well said, "a legitimate expectation does not flow from any generalised expectation of justice, based upon the scale or context of the decision": see **Judicial Review of Administrative Action op. cit. 8 – 050.**

It is common ground that **JAMBAR** did not have a legal right to prior consultation. But did it on the evidence before this Court have a legitimate expectation of prior consultation dictated by fairness? If it had, it could not have been derived from an express promise or representation, for clearly on the evidence none had been made.

So, **JAMBAR'S** expectation would only at best flow from a generalised expectation of justice if it was not derived from a representation implied from established or regular practice of prior consultation by the decision-maker in relation to matters jointly affecting Bench and Bar which **JAMBAR** could reasonably expect to continue.

The question as to whether the evidence formed the basis upon which such a representation could properly be implied was argued before us. The following paragraphs of the affidavit of Mr. Derek Jones, President of **JAMBAR**, provide the relevant evidence:

> "4. Approximately 15 years ago during the presidency of Lt. Col. H.C. Whitehorne **JAMBAR** promoted a committee known as "the joint Consultative Committee of Bench and Bar." The objective of this committee was to provide a forum for discussion of matters of mutual interest and I am

advised by a number of my predecessors in office and do verily believe that over the years the committee has served a very valuable function in that regard and that a considerable range of matters have been discussed and resolved through this medium.

5. The representatives on this committee have typically included the Honourable Chief Justice, the Honourable President of the Court of Appeal, one or more judges of both of those Courts, the Registrars of those Courts, the Director of Public Proscecutions and representatives of the Jamaican Bar Association. In latter years the President of the Advocates Association has also been a member of that Association.

6. At the meeting of this Committee held on the 13th April, 1999 the Honourable Chief Justice indicated that the starting of Court at 9:00 a.m. was something which might come soon but there was no discussion on that matter.

13. Matters of this nature, that is to say the hours of sitting of the Courts, the arrangements for and implications of a change for the legal profession and the public as a whole, especially a change of a radical and far reaching nature, are the very things for which the joint Consultative Committee of Bench and Bar was established and would thus be ideally suited for discussion there. I say that the decision is radical and far reaching because for several decades, and indeed so far as I can find within living memory, the Courts have operated from 10:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:00 p.m.

16. Based on the experience and history of consultation over the last 15 years and based on the traditional hours of Court the legal profession had a legitimate expectation that a change of this nature would have been fully discussed and that it would have had its view taken into account before any decision was taken and announced.

On this issue Mr. Leys submitted that there is no evidence to suggest that there was the existence of a regular practice which the applicant could reasonably expect to continue. And he invited the Court to say that the

highest the applicant's case can be put is that because of the traditional hours of the sitting of the Courts and of consultation between Bench and Bar over matters of mutual concern **JAMBAR** would have been consulted.

Mr. Small on the other hand submitted that **JAMBAR'S** position fits with 'tailor-made comfort" into the existence of a regular practice. The Joint Consultative Committee of Bench and Bar was tailor-made because the Chief Justice as a member of that Committee had direct access to the Bar for the sole purpose of consultation. He further submitted that the test was whether the practice of prior consultation on a range of matters of mutual interest between Bench and Bar was so well established since the establishment of the Joint Consultative Committee in 1984 that it would be unfair and inconsistent with good administration for the Chief Justice to depart from consultation in this instance.

I accept the evidence about the formation, composition and purpose of the Joint Consultative Committee of Bench and Bar as well as the evidence that over the years a considerable range of matters of mutual interest to Bench and Bar has been discussed and resolved through that medium. I find that when the Chief Justice indicated at the meeting of the Committee on 13th April, 1999 that the starting of Court at 9:00 a.m. was something which might come soon, an established practice of prior

consultation through the medium of the Committee was already in existence and that **JAMBAR** reasonably expected it to continue. That expectation was all the more reasonable because there was then no discussion on the matter adverted to by the Chief Justice.

The test propounded by Mr. Small is in my view correct: see **CCSU v Minister for the Civil Services** [1984] 935 at 944C, per Lord Fraser. It has been clearly satisfied in the case before this Court. Furthermore, there is much force in Mr. Small's submissions on the issue under examination and in my opinion they ought to prevail.

Accordingly, I hold that on this, the second issue, **JAMBAR** had a reasonable expectation that it would be consulted before the decision or order was made.

THE THIRD ISSUE:
Whether the duty to consult was fulfilled.

I come now to the third and final issue.

Mr. Small's approach to this issue is not illogical. He submitted that **JAMBAR** had a legitimate expectation (which in the result I have held to be the case) and that accordingly the Chief Justice's duty to consult could not be fulfilled by reflecting on matters submitted to him by **JAMBAR** after he

had made his decision. None of the matters the Chief Justice reflected on, Mr. Small argued, could be classified as consultation because:

a. he had not revoked his decision, and

b. even if he had done so no such revocation was communicated to **JAMBAR.**

Now, implicit in these reasons is the recognition that the Chief Justice would have had the opportunity to review, then modify or revoke or maintain his decision in the light of particular factors brought to his attention by **JAMBAR**. His decision was made on or before May 11, 1999 when the notice containing the order was sent to **JAMBAR.** Then on May 31, 1999 the notice was published on the Web site of the Supreme Court. It must not be forgotten, however, that the decision was not due for implementation until July 5, 1999 and that JAMBAR principally through its President made strong representations to him to have him reconsider his decision. The unchallenged evidence is that for much of June 1999 he carefully considered all the representations, suggestions and comments by JAMBAR before the decision was due to be implemented, namely July 5, 1999. All this to my mind was a most important circumstance. This was not a decision to take effect immediately on publication which would have summarily and abruptly disappointed JAMBAR'S expectation and would not have given it

time to make representations. It was able to and certainly did do so in the instant case.

As was said in another context but bears repeating here:

> "It is important to bear in mind that the recognition of an obligation to observe procedural fairness does not call into play a body of rigid procedural rules which must be observed regardless of circumstances. Where the obligation exists, its precise content varies to reflect the common law's perception of what is necessary for procedural fairness in the circumstances of the particular case." **Haoucher v Minister of State for Immigration and Ethnic Affairs** (1990) 93 ALR 51 at 53 per Deane J in the High Court of Australia:

And as Lord Diplock explained in **C.C.S.U. v Minister for the Public Service** [1985] 1 AC 374 (**supra**) the question of procedural propriety has to be looked at in the light of the particular circumstances in which the relevant decision was made.

Mr. Leys is on good ground on this issue. I accept his submission that the legitimate expectation of the applicant has been satisfied on the evidence, or put another way, the duty to consult was fulfilled. His reliance on the following cases as applications of the principle iterated by Lord Diplock and Deane J is not, in my view, misplaced: **Ex parte the Law Society** The Times 26 June 1993 per Neil L.J. [Lexis Print] at page 33; **Doody v Secretary of State** [1993] 3 All E.R. 92 at 106 g per Lord Mustil

and quoted with approval by the Privy Council in **Huntley v Attorney General for Jamaica** [1993] AC1 at 16. In the Law Society case, the Lord Chancellor had not properly consulted the Law Society in relation to new rules which he had promulgated in relation to the Legal Aid Act. In concluding that there was no procedural irregularity Neil L.J. said:

> **"In the end, however I have come to the conclusion that even if there was failure to consult in October and November 1992 and even if (without deciding the point) the "Consultation" was flawed, there is no sufficient basis on which the Court could hold that these regulations should be declared to be invalid. In some cases procedural irregularities will make it appropriate for a Court to quash an existing decision and to declare that a further decision should only be reached after proper consultation has taken place. In the present case however, it would in my view be wrong for the Court to make such an order. Mr. Everett has set out in his affidavit the savings which Lord Chancellor was committed to achieve over the 3 relevant years. It is clear that the counter proposals put forward by the Law Society were considered by the Lord Chancellor and his officials but that they fell a very long way short of what was required. On the present evidence this is not a case where there is only a small margin between the two sets of proposals.**
> **The timetable to which the Lord Chancellor was committed required the regulations to be made in March 1993. I have come to the conclusion that in the circumstances there is no satisfactory answer to the submissions on behalf of the Lord Chancellor that additional consultation would not have led to a materially different result being achieved with the prescribed time limit."**

Also in the following passage in **Doody v. Secretary of State (supra)** Lord Mustil said what the dictates of fairness required on the facts of that case:

> **"Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to obtaining a favourable result, or after it is taken with a view to producing its modification or both."**

I am of the view that that passage is equally applicable to the issue under consideration. There is no question but that JAMBAR through its President availed itself of the opportunity to have the Chief Justice either revoke his decision or modify it by adopting its suggested trial period for the commencement of the sitting of the several courts at 9:30 a.m. for the month of July 1999. Mr. Jones wrote the Chief Justice a number of letters putting forward detailed proposals. The matter was discussed both at a meeting of the Joint Consultative Committee of Bench and Bar attended by the Chief Justice and at a meeting on 10th June called by the Minister of National Security and Justice involving the Chief Justice, JAMBAR and others.

Finally in paragraph 3 of his affidavit the Chief Justice deposed that:

> "There are not now available resources that could be immediately allocated to reduce the backlog some of which have been mentioned in the affidavit of Derek Jones sworn to on the 1st day of July 1999. I have also read the Jones affidavit and say that prior to the

implementation of my decision I had carefully considered all the issues canvassed, in his letter of June 1, June 14, June 18, June 28 and June 28, 1999. I had also carefully deliberated on the discussions of the Consultative Committee of the Bench and Bar of June 8 1999."

So, on the basis of the unchallenged evidence before this Court I find that all the concerns and representations of JAMBAR were considered by the Chief Justice before his decision was due to be implemented. The duty to consult was, therefore in my judgment, fulfilled on the particular facts of this case and, accordingly, there has been no breach of the requirements of procedural fairness.

I would, therefore refuse the application for the declaration sought at paragraph (b) of the Notice of Motion but grant, for the reasons already given, the reliefs sought at paragraphs (a), (c) and (d) thereof.

Ellis, J

In the light of the judgments which have been read, it is held by majority decision:-

1. Certiorari is to go to quash the decision of the Chief Justice to change the hours of sitting of the courts.

2. The declarations sought at (a), (c) and (d) are granted.

There will be no order as to costs.

Ellis, J.

Smith, J.

Clarke, J.