

**IN THE SUPREME COURT OF BELIZE, A.D. 2006**

**CLAIM NO. 496 OF 2006**

**NARDA GARCIA**

**Applicant**

**BETWEEN            AND**

**SENATOR GODWIN HULSE  
SENATOR DICKIE BRADLEY  
SENATOR REVEREND MOISES CHAN  
SENATOR RENE GOMEZ  
SENATOR ARTHUR ROACHES**

**Defendants**

**(MEMBERS OF THE SENATE SELECT COMMITTEE  
INVESTIGATING THE SOCIAL SECURITY BOARD)**

—

**BEFORE** the Honourable Abdulai Conteh, Chief Justice.

Dr. Elson Kaseke, along with Mr. Oswald Twist, for the applicant.  
Mr. Edwin Flowers S.C., Solicitor General, for the defendants.

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**DECISION**

The applicant Mrs. Narda Garcia was formerly the CEO/General Manager of the Social Security Board.

2. All the defendants were members of the Senate Select Committee set up by a resolution of the Senate passed on 16<sup>th</sup> September 2004. The Senate of course is one of the two Houses, the other

being the House of Representatives. Together the two form and constitute the National Assembly or Legislature of Belize. That is to say the Senate is a part of the Parliament of Belize, which is formally established by section 55 of the Belize Constitution.

3. Section 68 of the Constitution grants to Parliament (the National Assembly or Legislature) but subject to the Constitution, the power to make laws for the peace, order and good government of Belize.
4. By her application, Mrs. Garcia seeks permission, as she is required to do, of this Court to apply for judicial review by way of several declarations, eleven in total, relating to the Report of the Senate Select Committee Investigating the Social Security Board (the Report for short hereafter).
5. Mrs. Garcia seeks permission as well for judicial review for an order of certiorari to quash the Report of the Senate Select Committee. She also seeks an order of the Court on judicial review directing the chairperson of the Senate Select Committee to produce all documents and papers used by the Committee to conduct its investigations and a copy of the verbatim transcript of the proceedings of the Committee and that of the Special Auditor's Report.
6. I have anxiously considered Mrs. Garcia's application for permission and read with great care her affidavit in support. I have as well listened with especial care the arguments so ably deployed on her behalf by her learned attorney Dr. Elson Kaseke. Her application and her affidavit on their face cannot but strike a chord with me. However, the pith and substance of her application is that

she should be given permission to impugn and have struck down, by the Court, the Report of the Senate Select Committee.

7. I am troubled by this application. It raises in stark form the relationship between the courts and Parliament.
8. Judicial review is available as an antidote to maladministration, that is, the abuse or misuse of power by public bodies and officers.
9. Belize did not have or experience the Glorious Revolution of 1688 in England which established the supremacy of Parliament in that country but it is a beneficiary of that arrangement in terms of the position of the Legislature of in Belize.
10. And, when Belize became independent in 1981 with an independent Constitution it established the National Assembly comprising the House of Representatives and Senate as the Legislature or Parliament of Belize.
11. But what the Constitution did in section 2 is to declare the supremacy of the Constitution and not Parliament. What we have in Belize and nearly every country in Commonwealth Caribbean therefore is constitutional supremacy. This means that every other law or institution, including Parliament and the Courts, is subordinate to the Constitution.
12. The purpose and function of judicial review has been encapsulated in the following formulation as:

*the basic procedural mechanism by which the court scrutinizes public bodies and the exercise of public law functions by intervening as a*

*matter of discretion to quash, prevent, require or clarify (and occasionally compensate and not because they disagree with the merits of a particular decision but rather to right a recognizable public law wrong because it is unlawful, unreasonable, unfair or disproportionate*  
– see Michael Fordham, **Judicial Review Handbook**, 3rd ed. pxxv.

13. Should permission therefore be given to Mrs. Garcia to proceed with her claim for judicial review? She, no doubt, in both her application, and supporting affidavit, raises serious and troubling issues about fairness. But the object, nay the subject, of her application is the Report of a Select Committee of the Senate.
14. I am compelled to say that the weight of authorities is all against her application. The rationale for this is premised on the overriding principle of public policy of no mean constitutional import. And that is that Parliament and the Courts are both astute to recognize their respective constitutional roles. It is for Parliament, subject to the Constitution, to make laws for Belize and it is the function and role of the courts to interpret and apply those laws.
15. This constitutional position is of quite some vintage. Article 9 of the Bill of Rights 1689 provides:

*“That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”*

Both sides accept that by virtue of the Imperial Laws (Extension) Act – Chapter 2 of the Laws of Belize, Rev. Ed. 2000, that this Act is applicable here in Belize.

16. This principle was recently affirmed by the Privy Council in **Prebble v Television New Zealand Ltd** (1995) 1 A.C. 321 when Lord Browne-Wilkinson stated:

*“In addition to article 9 itself, there is a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, viz, that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges”* at p. 332.

Indeed, in the case of **Pickin v British Railways Board** (1974) 1 A.C. 765 there are several dicta of their Lordships restating the principle of non-judicial interference in the proceedings of Parliament. Lord Reid stated the rationale for this thus:

*“For a century or more both Parliament and the Courts have been careful not to act so as to cause conflict between them”* at p. 788A.

And Lord Simon stated:

*“Among the privileges of the Houses of Parliament is the exclusive right to determine the regularity of their own internal proceedings”* at p. 799A.

17. Indeed, there is the old chestnut, if one may so call it – in the case of **Bradlaugh v Gossett (1884) 12 Q.B.D. 271**, where it was held that it was impermissible to challenge the internal proceedings of Parliament. In that case the claimant had been elected as a member for a certain constituency but he was by a resolution of the House of Commons prevented from taking the oath prescribed by law (UK Parliamentary Oaths Act 1866) for duly elected members. The claimant alleged that the resolution of the House restrained him from doing something he was entitled by the general law of the land to do. He therefore claimed both a declaration that the resolution was ultra vires and void and an injunction to restrain the Sergeant-at-Arms from excluding him by force from the House. His claim was dismissed.

18. In a recent case in England the same conclusion was arrived at in **R v Parliamentary Commissioner for Standards ex parte Al Fayed (1998) 1 WLR 699** where it was held that the Parliamentary Commissioner for Standards was not amenable to judicial review because his remit was concerned with activities of Parliament and Woolf MR (as he then was) stated:

*“It is clearly established that the courts exercise a self-denying ordinance in relation to interfering with proceedings of Parliament” – see also **Hamilton v Al Fayed (2001) 1 A.C. 395.***

19. My anxiety in this matter stems from the averment of Mrs. Garcia in particular at paragraph 94 of her affidavit where she states:

*“Even though the Senate Committee Report contained adverse findings and recommendations which directly affected me, I should*

*inform the Hon. Supreme Court that I was not informed by the Senate Committee in advance that it was minded to make adverse findings and recommendations directly affecting me so that I could make presentations to the Senate Committee. Furthermore, the Senate Committee never showed me a copy of the Senate Committee Report before it was tabled and debated in the Senate to enable me to comment on adverse findings and comments against me.”*

20. However, given the line of authorities I have referred to in this decision and the high constitutional principle at play of the Courts not interfering with proceedings of Parliament, I am, with some reluctance, unable to grant permission for judicial review for the several declarations Mrs. Garcia seeks. All is not lost however because Mrs. Garcia in another action sought compensation through arbitration for the termination of her contract with the Social Security Board, which she claims was a direct result of the Report which she seeks to have permission to challenge. But this is another story for another day. Just this morning I was informed in Claim No. 474 that Mrs. Garcia's claims for the premature determination of her employment with the Social Security Board have been satisfactorily settled.
21. I am of the view however that where the National Assembly was to act egregiously in contravention of an individual's fundamental rights as provided for in Part II of the Constitution, the Courts would, inconsonance with the supremacy of the Constitution be bound to intervene. But I am not persuaded that this is such a case here.

22. The South African case of DeLille and Another v Speaker of the National Assembly 1998 (7) BCLR 916 (C) which Dr. Kaseke urged in support of the application, I find is instructive. But it only emphasized the supremacy of the Constitution in contradistinction from the supremacy of Parliament. This I dare say, is the same position in Belize. That case was concerned with the breach of a member of the South African Parliament's right to be present and heard before being suspended from Parliament for statements she made about other members. She was suspended without being heard. This is decidedly not the case here in which a Senate Select Committee was considering matters pertaining to the Social Security Board and its Fund. Mrs. Garcia, the applicant, was not the subject of inquiry or investigation, but only a witness.
23. With regard to permission for judicial review by way of certiorari to quash the Report of the select Committee, it follows from what I have said that this would hardly be forthcoming. Certiorari it must be remembered, is used to bring into the Supreme Court the decision of some inferior tribunal or authority in order that it may be investigated and if necessary, quashed: see H.W.R. Wade and C.F. Forsyth Administrative Law, Ninth Edition pp 602 – 603.
24. I do not think the Senate, or Parliament as a whole for that matter, is an inferior authority or tribunal whose decision is susceptible to be quashed by the Courts.

The one clear and indisputable limitation on Parliament in Belize, in my view, is that the laws it enacts must be compliant with the Constitution. Certiorari however, cannot and does not lie against Parliament.

I am for all these reasons unable to grant permission in this case for judicial review.

No one can deny that the management and activities of the Social Security Board are of public interest and concern. The Board is established by the Social Security Act – Chapter 44 of The Laws of Belize, Rev. Ed. 2000; and it is charged with the management of the Fund established by the Act.

Rumours of and speculation about the mismanagement of the Fund are bound to give rise to intense public interest and concern. This perhaps was what motivated the Senate to pass its resolution setting up the Select Committee which is the object of Mrs. Garcia's application.

From her compendious affidavit and its annexes, it is understandable to see why she feels peeved by the Select Committee's Report. She feels she had not been given the opportunity to put her side of the story. She has therefore launched the present proceedings to challenge the Select Committee itself and to impugn its Report. But I am not persuaded for the reasons I have already stated that this is a proper case to grant permission for judicial review.

Accordingly, permission is denied.

**A. O. CONTEH**  
**Chief Justice**

**DATED: 30<sup>th</sup> October, 2006.**