



*No. 28 of 2000, Cap 3, of 2000 Edition; the powers of a Law Revision Commissioner. Separation of powers of the State; whether court has jurisdiction to inquire into the powers and privileges of the Senate (National Assembly). Fair procedure – whether fair procedure (natural justice) was denied to the claimant when the Select Committee carried out the investigation and compiled the report, and if so, whether that is actionable. Who are the proper parties to be cited in the claim impugning the investigation and the report of the Select Committee appointed by the Senate?*

2. According to the affidavit filed for the defendants, in the few years upto 2004, there was much public outcry about, “mismanagement, wrongdoing and misappropriation”, of the fund of the Social Security Board (the SSB), a statutory public corporation created by s: 28 of ***the Social Security Act, Cap. 44, Laws of Belize***. The public complaint was about what was perceived as dubious investments and loans, and about a certain scheme known as “securitization”. By that scheme, the SSB was said to have bought from local banks and certain other financial institutions questionable mortgage loans for resale in compounded units, mostly to international buyers, and had furnished guarantees. It was also said that the Government or certain persons in Government offered the support of the Government to the scheme, and guarantees by Government, the so called sovereign guarantees.
  
3. Mrs. Garcia, the claimant in these proceedings, was the General

General Manager of the SSB at the time. She was to function as the chief executive officer of the SSB, she was responsible for the operations of the SSB. Her Specific responsibility which is important for the purpose of this case was spelt out in s: 35 (2) (c), namely, “*accounting for all monies collected paid or invested under the Social security Act*”. She was also a director, that is, a member of the board of directors, and a member of the “investment committee” of the fund of the SSB. All her three roles were statutory.

4. On 16.9.2004, the Senate, one of the two Houses of the National Assembly of Belize, passed a resolution appointing a Special Select Committee of the House to investigate the affairs of the SSB and report to the Senate. The five persons cited as defendants in this claim were appointed on the Special Select Committee. All were members of the Senate. The first cited, Hon. Godwin Hulse, was appointed the chairman. Hon. Rene Gomez, a member of the official opposition (the UDP) at the time, subsequently declined to participate. I order his name removed from the claim. Hon. Rev Moises Chan, a member representing churches, participated, but not upto the end. No explanation has been given for his abstention.

5. The terms of reference of the Special Select Committee were the following:

“B...

- (i) to conduct an independent and impartial investigation into the investments and loan portfolios of the BSSB with particular reference to the BSSB’s securitization and guarantee programs;
- (ii) to interview any persons connected with the BSSB program and any other persons whose information may be material to (i) above including engaging expertise to facilitate the process;
- (iii) to examine all documentation pertaining to the above matters;
- (iv) to determine whether proper procedures and or regulations were followed or whether any process was circumvented;
- (v) to identify, if possible, person or persons responsible for any breaches of the law or procedures;

(vi) to recommend any corrective action necessary to the laws or procedures to prevent recurrence of such incidents;

(vii) to recommend any action that may be brought against any person or persons for any misconduct or violations of the law;

(viii) to deal with any other matter relating to the above.

...

(D) The Committee shall hold its sitting in public.

...

(F) The Committee shall hold its hearing with due urgency and expedition and, without prejudice to the requirements of Standing Order No. 75, make a report to this Honourable Senate as soon as may be practicable of the result of its inquiries, with all such comments and recommendations as the Committee may deem fit, furnishings this Honourable Senate with a full statement of its proceedings and of the reasons leading to its conclusions and recommendations; and

(G) Such report shall be tabled in this Honourable Senate and become a public document”.

6. The Special Select Committee met 67 times. Several witnesses, including Mrs. Garcia testified before it, and many documents were examined and received into evidence. A special audit report prepared by a professional auditor appointed by the Committee, and his testimony, were also received. In late June or early July, of 2006, the Special Select Committee presented its report to the Senate. The report was not dated. It was debated, and it was said that, the Senate, by a resolution, “took note of the report and concurred with [the] findings”, and decided to send a copy of the report to the Hon. Said Musa, the Prime Minister of Belize at the time, and to ask him what action he would take.
  
7. On 21.7.2006, the Prime Minister made a statement that the Government accepted the recommendations of the Special Select Committee. He highlighted in particular, the recommendation that all the members of the Board and the General Manager should no longer hold office. Following that, the contract of employment of Mrs. Garcia was terminated. She was on a contract of service for a fixed

term, she had 41 months and 7 days left on her contract. She was unhappy about it, she filed a civil claim against the SSB for the dismissal, it was Supreme Court Claim No. 474 of 2006, a different claim from this one. During the original hearing of this claim before the learned Chief Justice, he was informed that the court claim for the dismissal of Mrs. Garcia had been satisfactorily settled, she had been paid off.

8. However, Mrs. Garcia decided to file this judicial review claim in which she asked for, twelve court declarations to the effect that the resolution of the Senate that appointed the Special Select Committee, and the investigation and the report that the Committee made were unlawful. She also asked for an order quashing all the recommendations of the Committee.
  
9. In order to file the judicial review claim, Mrs. Garcia was required, as a matter of rule of court, to obtain prior permission of the court. ***Rule 56.3 (1), of the Supreme Court (Civil Procedures) Rules 2005,*** requires a claimant who wishes to file a case for judicial review of a decision or an action of a public official, authority, tribunal and a

lower court, to obtain prior permission. The rule ensures that baseless cases are not allowed to proceed in court, and so public administration or a particular process of it is not unnecessarily delayed. Eminent judges in the Commonwealth have on several occasions stated those reasons in rather strong words; that the rule requiring permission prior to filing the actual judicial review claim filters out baseless cases by, “cranks, meddlesome busybodies, and mischief-makers”; and protects the process of administration from unnecessary disruption. – see the cases of: *R v Revenue Commissioners Ex parte National Federation of Self-employed and Small Business Ltd [1982] AC 617 HL*, and *R v Secretary for Trade and Industry Ex parte Eastway [2000] 1 WLR 2222HL*.

10. On 15.9.2006, Mrs. Garcia applied to the Supreme Court for permission. On 30.10.2006, the application was dismissed by the learned Chief Justice, on the basis that the claim was within the exclusive purview of the Legislature, and not for the courts. He explained that it was one of the exclusive rights and privileges of the National Assembly, to regulate its own internal proceedings. In support, he cited among other authorities, *the Bill of Rights 1689*

*(UK), Pickin v British Railways Board (1974) 1 A.C. 765, Prebble v Television New Zealand Ltd (1995) 1 A.C. 321, Hamilton v Al Fayed [2001] 1A.C. 395, and the old case of Bradlaugh v Gossett [1884]12 QBD 271.*

11. Obviously the Chief Justice regarded the entire complaint of Mrs. Garcia as an event within the principle of separation of powers of the State. He noted in particular, article 9 of the Bill of Rights 1689 (UK), in the development of the powers and privileges of Parliament and its members; and he relied on the Constitution of Belize.
  
12. The reason given by the Chief Justice made it unnecessary for him to consider the merit of the complaint on which Mrs. Garcia applied for permission. I shall mention anyway, for what it is worth, that the rule regarding whether to grant or refuse permission to bring judicial review proceedings is that the applicant has to establish by affidavit evidence, that he has an arguable case, that is, that on the affidavit evidence provided, his or her case requires further investigation at the final hearing when there will be mature assessment of the evidence and indept consideration of the law applicable – see *R v Secretary of*

*State for the Home Department, Ex parte Rukshanda Begun and Angur Begum [1990] Co. D 107 CA.* The applicant does not need to establish a strong case at the application for permission stage. In this claim at this stage, I am no longer required to decide the question of permission; it has been decided by the Court of Appeal.

13. The decision of the Chief Justice refusing permission aggrieved Mrs. Garcia; she appealed to the Court of Appeal. The Court allowed her appeal, and set aside the order that had been made by the Chief Justice, refusing permission. The Court of Appeal further, made an order granting permission to Mrs. Garcia to file her judicial review proceedings to be proceeded with and determined by the Supreme Court, and further, the Court of Appeal made an order for costs to be paid to Mrs. Garcia.
  
14. On 23.8.2008, Mrs. Garcia's case, past the stage for granting or refusing permission, was presented to this court. The case file has on it a multitude of unnecessary papers, most are repetitive. Learned counsel Dr. Kaseke for the claimant, has assured me that the claim is that dated 2.7.2007, filed on 3.7.2007. This is my judgment regarding

the complaint by Mrs. Garcia, on which she asked for a review and upto twelve declaratory orders, an order quashing the resolution of the Senate, an order quashing all the recommendations in the report of the Committee, and costs. She has not asked for an award of damages.

15. *Preliminaries.*

The first point in my determination is a preliminary one; it is about who should have been the proper defendant or defendants in the claim. Learned Crown Counsel Mrs. A. McSweeney-McKoy for the defendants, submitted that the individual members of the Select Committee were not themselves, “the Senate itself or the Attorney General or the proper officials of the Government, to be joined as parties”. She also submitted that the Special Select Committee was not the authority that terminated the employment of Mrs. Garcia, so a claim could not lie against the Committee.

16. I accept to a limited extent, the submission by Mrs. McSweeney McKoy, that the defendants were improperly cited. I think that the President of the Senate, and Hon. Godwin Hulse, the chairman of the Select Committee, would be the proper parties to cite as defendants,

but in representative capacities. The president of the Senate would represent the Senate for its part in appointing the Special Select Committee, which appointment the claimant contended was outside the powers of the Senate. The chairman of the Special Select Committee would represent the Committee for its part in carrying out the investigation and compiling the report that the claimant contended were done outside the powers of the Senate, and done unlawfully without observing the rules of fair procedure.

17. It is unusual and most times inconvenient, but not an error, that all members of a committee, board, society, club and the like, are joined and cited as parties in a claim. It is not futile, but material in the taxation of the costs of the claim. It is usual to cite the chairman, or the secretary, or members of the executive, as representative parties. The general Rule is that one or more of several persons having the same interest in the subject matter of a claim can sue or be sued on behalf of the others. ***Rules 21.1 (1) and (2), of the Supreme Court (Civil Procedure) Rules, 2005*** authorise court to appoint representative claimants or defendants, on application by a party or someone who wishes to be a party.

18. The Attorney General was not cited; it would have been erroneous to join the Attorney General in the judicial review claim. The investigation was carried out, and the report was compiled by the Special Select Committee on the instruction of the Senate. It was a case “on the Crown’s side”, not civil proceedings– see *The Queen v The Minister of Budget Management, Investment and Public Utilities Commission, Ex parte Belize Telecommunications Limited, Supreme Court Claim No. 11 of 2007, (Belize)*, and the Jamaican case, *The Minister of Foreign Affairs Trade and Industry v Vehicle and Supplies Limited and Another [1992] LRC (Const) 720 P.C.*
19. I recognise that in Belize and in many Commonwealth countries, for practical reason a Crown Counsel in the chambers of the Attorney General represents all Ministers of the Crown and other public officials and authorities when their decisions are impugned in court. It may well be that in future that *de facto* practice will be recognised and provided for in the Crown Proceedings Act and in the Supreme Court (Civil Procedure) Rules.

20. It was required though, that the Attorney General be served with the case papers, especially when an important constitutional point was raised. *Rules 56.9 (2) and (3) of the Supreme Court (Civil Procedure) Rules, 2005*, state that:

*“(2) The claim form relating to an application for relief under the Constitution or for judicial review must be served on the Attorney General.*

*(3) Where permission has been given to make a claim for judicial review the claimant must also serve a copy of-*

*(a) the application for permission;*

*(b) the affidavit in support; and*

*(c) the order giving permission;*

*on the Attorney General and on each defendant”.*

21. In my view, it follows from rr: 56.9 (2) and (3) that the Attorney General, upon receiving service of the case papers, and as the result having been informed of the public interest in the case, if any, may apply for permission to act as *amicus curiae* in an appropriate case. Indeed the Attorney General was served with the case papers in this

claim, and he provided the learned Solicitor General, Mrs. Tanya Harwanger, and an experienced learned Crown Counsel, Mrs. Andrea McSweeney- McKoy, to represent the defendants.

22. I have to conclude about the parties that if there was an error in joining and citing the present defendants, that could not cause the claim to fail. In the previous Rules of Court, 1989, that rule was expressly stated in O.17 r: 12. In the current Rules it is implied.
  
23. I shall also mention at this stage, that it was not appropriate that learned counsel Dr. Elson Kasake, acted for the claimant. I mention it because it was raised in the affidavit of Mr. Hulse. Dr. Kaseke filed an affidavit in which he deposed that he was the Solicitor General at the time, and that in that capacity he advised the Attorney General before the Special Select Committee was appointed that, “the Senate did not have power to establish a committee to investigate the Social Security Board in the manner it did”, and that after the Special Select Committee was appointed he, “met with the members of the Senate Committee on diverse occasions”. He is now attorney for Mrs. Garcia, a person claiming against the Special Select Committee and

challenging the power of the Senate to appoint the Committee. In my respectful view, a breach of the duty of an attorney to preserve confidentiality of information imparted earlier occurred. Information was imparted when Dr. Kasese advised the Attorney General about the lack of power of the senate, “to establish the Select Committee...”, and when, “he met with members of the Select Committee on diverse occasions”. see – *Prince Jefrin Bolkhia v KPMG (A) Frim [1999] 2 AC 222 PC*, and also the ruling by my learned brother judge of this Supreme Court, Lucas J, *in the Queen v Robertino Oprescu, Indictment No. 65 of 2005*.

24. I did not direct that Dr. Kaseke remove from representing Mrs. Garcia because Crown Counsel did not make the request at the hearing before me; and the case had already progressed far in the courts system before it came to me. Dr. Kaseke had acted for the claimant all along.

25. *The Contentions.*

*The case for the claimant.*

Mrs. Garcia stated her claim as follows:

“NATURE OF CLAIM:

THE CLAIMANT seeks judicial review of the Senate resolution which established the Senate Select Committee investigating the Social Security Board, the legality of the investigation itself, and the legality of the report of the said Committee, which was made by a committee established pursuant to a Senate Resolution not authorised by the Belize Constitution or any other law, and which was produced contrary to the legitimate expectations of the Claimant, as well as the Claimant’s rights to natural justice, specifically the right to be heard before any adverse recommendations were made against her”.

26. Simply put, and in logical sequence, the contentions raised in the challenge to the appointment of the Special Select Committee, the investigation it carried out, and the recommendations and the report that it compiled, were that:

- 26.1 the resolution of the Senate appointing the Special Select Committee of the Senate to investigate the SSB, was unlawful, and so was the Special Select Committee;

26.2 the investigation carried out by the unlawful Special Select Committee was unlawful, and in any case the investigation was carried out by an unfair procedure and so, was unlawful on that score as well; and

26.3 the report and the recommendations made by the unlawful Committee was unlawful, and in any case the report was compiled by unfair procedure and also unlawful on that score.

27. The grounds set out and argued to support the contentions appeared to be extensive, but they were the result of splitting hair.
28. For the first contention the grounds were that; (1) the Senate had no power under the Constitution or any other law to appoint a committee at all to carry out investigation and compile a report on matters such as the affairs of the SSB; (2) in any case, the appointment of the Committee was made unlawfully by the use of a resolution instead of by the use of an order of the Senate as required under order 68 of the

Constitution (Senate) Standing Orders Cap. 4, Laws of Belize; and (3) the Senate unlawfully by a resolution, appointed a committee to carry out an investigation which was an inquiry, a function which had already been regulated by law, the Commissions of Enquiry Act, Cap 127, Laws of Belize, the authority of the resolution could not displace that of the law, the Act; and so the authorization of the investigation was unlawful.

29. The second and third contentions were about the investigation and the report made by the Committee. The investigation and the report were parts and parcels of the same transaction. The same grounds applied to both. A summary of the grounds is as follows: (1) the investigation and the report were unlawful because they were done by a select committee appointed by the Senate unlawfully without any power to do so; (2) the investigation and the report were unlawful because the investigation could only be carried out lawfully, and the report could only be compiled lawfully, by authority of and under the Commissions of Inquiry Act, not by authority of a resolution of the Senate; (3) the special audit carried out by a special auditor appointed by the Committee was unlawful because it was not carried out in

accordance with s:47 of the Social Security Act, Cap 44; (4) the investigation into and the report on the finance of the SSB by the Committee was unlawful because under s: 48 of the Act, the financial accounts and reports of the SSB could only be submitted by the SSB to the Minister who would lay them before the National Assembly; (5) in any case, the Special Select Committee carried out the investigation and compiled the report by unfair procedure in that: the Committee did not advise the claimant that she was entitled to be represented by an attorney, the Committee did not afford her opportunity to cross-examine witnesses who testified to it, the Committee denied her the right to testify in camera, the Committee failed to provide her with documents examined as evidence, especially the report of the special audit, the Committee generally did not afford her the same rights and privileges of a witness before a court of law as provided in order 14(1) of the Constitution (Senate) Standing Orders, the Committee failed to show her the report before it presented it to the Senate, so that she could comment on the recommendations that were adverse to her, the report was debated and adopted by the Senate before it was shown to the claimant; (6) the Committee made arbitrary and unreasonable

conclusions based on speculations, having regard to the evidence; and  
(7) the Committee “did not question the Minister of Finance”.

30. *The case for the defendants.*

The grounds of defence were also extensive, and that is because counsel for the defendants tried to answer each and every paragraph of the claim, in addition to advancing the defendants’ own grounds of defence. In summary, the grounds of defence were the following: (1) under r: 56.5 of the Supreme Court (Civil Procedures) Rules, 2005, judicial review claim must be commenced within three months; the present claim was not brought within three months, it has been barred because of the delay; (2) the defendants cited were acting on the instruction and by the authority of the Senate, and as part of the Senate, so the Senate and not the defendants, should be the proper defendants; moreover, the reliefs claimed may not be available against the Senate because of its privileged position; (3) the Senate has not been cited as a defendant so the reliefs which seemed to be claimed against or would affect the Senate could not be granted; (4) the Senate, relying on order 74 of the Belize Constitution (Senate) Standing Orders, and on s: 15 of the Legislative Assembly Ordinance

1962 (now to be referred to as the National Assembly Act), declined to make available to the defendants, the evidence gathered at the investigation and as the result, the defendants have been disadvantaged in putting forward their defence; (5) the Senate had power under s: 68 of the Constitution and under order 69 (1) of the Belize Constitution (Senate) Standing Orders, to appoint a committee to investigate and reported on SSB; (6) the Commissions of Enquiry Act and the Social Security Act were not applicable to the investigation intended by the Senate; (7) the Committee applied the rules of fairness, the claimant testified to the Committee three times, the third time was after the special auditor had testified and presented his report, the claimant refused an invitation to testify a fourth time to clarify matters when the Committee was preparing the report, she was afforded opportunities to respond to evidence adverse to her; (8) the claimant had, by reason of her office, the custody of all the documents produced as evidence, the report of the special auditor was based on documents that the claimant had custody of; (9) the claimant was regarded as a witness, not as an accused, and the procedure adopted at the investigation did not include cross-examination; (10) the claimant was not entitled to base a claim on the allegation that the Senate

debated the report without affording her opportunity to respond because she did not cite the Senate as a defendant; (11) the records of the proceedings as a whole would show that the claimant was afforded opportunities to respond and contradict the evidence gathered; and (12) the conclusions and recommendations by the Committee were not unreasonable.

31. ***Determination.***

Let me first mention that the question of delay to file this claim has been overtaken by the fact that the Court of Appeal has granted permission to the claimant to bring judicial review proceedings, and has ordered that the judicial review proceedings proceed at the Supreme Court. The issue may have not been raised at the Court of Appeal. Secondly, I do mention that I have earlier in this judgment decided that it would have been better to cite only the chairman of the Special Select Committee and the President of the Senate, as representative defendants, but that the citing of the five members of the Committee would not cause this claim to fail.

32. *Separation of powers of the State and judicial review.*

I start the rest of the determination by stating that this case brings to the fore the principle of separation of the powers of the State to the three Organs of State, the Legislature, the Executive and an Independent Judiciary, developed long ago by a Frenchman, Montesquieu in his book, *L'Esprit des Lois, Book XI 1748*. It is vital that each organ respects the limits of its power and refrains from meddling in the province of the other two. An appropriate warning was stated in the early case of, *Bradlaugh v Gossett (1884) 12 Q.B.D 271*, when the court in England was called upon to make a declaration that a particular resolution of the House of Commons, one of the Houses of Parliament, was made beyond its powers and privileges and void. The learned judge stated that courts should feel a reluctance because in normal cases it was unnecessary and disrespectful to make declarations regarding powers and privileges of Parliament, but that there may be extraordinary circumstances that may justify the court making such a declaration. A similar warning was given by the Privy Council in 1998 in a case from the Bahamas, *the Bahamas District of the Methodist Church in the Caribbean and the others, v The Hon.*

***Perrion J. Symonette MP Speaker of the House and others, Privy Council Appeal No. 70 of 1998.***

33. However, caution does not mean that when a question has arisen as to the power or privilege of the National Assembly, in a particular transaction, the mere mention that the subject of the disagreement is a transaction that falls within the purview of the National Assembly, will cause court not to examine the scope of the power of the National Assembly. In Belize the first point of reference is the Constitution. The authority for the powers of the Country of Belize and how the powers are distributed is ***the Constitution of Belize, Cap 4 in the Laws of Belize. The Constitution*** assigns the three different powers of the State to the National Assembly, or to the Governor General and the Cabinet who together are the Executive, or to an Independent Judiciary.
34. The jurisdiction of the court *to review* the decision, action, or omission of the Executive has been fully accepted in the Common Law Systems including Belize, as far as the lawfulness of the decision or action is concerned. Judgments in cases such as the ***Anisminic Ltd***

*v The Foreign Compensation Commissioner and Another [1969] 2 AC 147 (HL), and Padfield v Minister of Agriculture and Fisheries [1968] AC 997 (HL)* led the way in deciding that even the so called ouster of jurisdiction of court clause did not exclude the jurisdiction of court completely. Despite such a clause, court still retained jurisdiction *to review* the decision or action of the Executive so as to determine whether the decision or act was within the law.

35. But it has also been accepted as the law, that court will not question the merit of the exercise of the discretion of the Executive in political, social, economic and administrative decision, so long as the decision is made within the limits of the law, free of fraud and malice. When *the Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374*, was decided, the scope of the review jurisdiction of the court had greatly extended. Although the case was about procedural legitimate expectation of the Council to be consulted, Lord Diplock made the point about the jurisdiction of court to review administrative decision, in the following notable words. At page 410, he stated:

*“Judicial review has, I think, developed to a stage today when, ... one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call illegality, the second, irrationality, and the third, procedural impropriety. That is not to say that further development on a case by case basis may not in course of time add further grounds”.*

36. The jurisdiction of court has been less readily acknowledged where the limits of the power of the Legislature has been in question. In my view, there are two reasons for that. First, the question does not arise as frequently as the question of the power of the Executive. Secondly, where there is no written Constitution, the Legislature is supreme. Belize developed its political and legal systems from the systems in England where the Constitution was and remains unwritten and Parliament has been Supreme. Now Belize has a written Constitution which provides in s: 2 that:

*“ This Constitution is the supreme Law of Belize and if*

*any other law is inconsistent with this Constitution, that other law shall to the extent of the inconsistency, be void”.*

37. So, in Belize, the Constitution became supreme; and with the supremacy of the Constitution came the gradual realisation that even an action or decision of the National Assembly may be challenged, if it is inconsistent with a provision of the Constitution. Supremacy of the Constitution is now the law in many countries. Of course, even the Constitution may be altered or amended, but it must be in accordance with the provisions in the Constitution.

38. *Powers and privileges of the Senate.*

That leads me directly to two submissions made by counsel for the defendants, concerning powers and privileges of the Senate. The first submission was that because of the powers and privileges of the National Assembly, the Senate refused to give the records of the proceedings of the investigation to the Crown Counsel who represented the defendants, despite the fact that the Crown Counsel needed the records for the purpose of preparing the defence of the

members of the Special Select Committee of the Senate, and as the result the defendants were disadvantaged in the preparation of their defence. The second submission was that because of the powers and privileges of the Senate, this court would not order relief against the Senate in these proceedings which concerned the business of the Senate.

39. It is unfortunate that someone in the Senate withheld the records of the proceedings of the Committee from Crown Counsel who were attorneys for the Senate's own members of the Select Committee, and from the court. That sort of decision and attitude could encourage similar others and lead to the National Assembly and other authorities ignoring the principle of the rule of law. I invite the Senate to note the observation made by an English philosopher, J. Locke, long ago in the eighteenth century in his, *Second Treatise of Civil Government*. He observed that:

*“It may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in*

*their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making and execution, to their own private advantage”.*

The observation is apt.

40. One of the consequences of that unfortunate decision on behalf of the Senate was that it had more adverse effect on the defendants’ case, as far as proof of facts refuting the claim of denial of opportunity to the claimant to contradict evidence adverse to her is concerned. Secondly, the decision was wrong as a matter of law. It was confirmed in England long ago in 1839, that court had jurisdiction to inquire into a complaint as to whether a resolution of the House of Commons was within its powers and privileges. The case is, *Stockdale v Hansard (1839) 9Ad. & Ell 96 or 112 ER 1112*. In it, the House of Commons had authorised by a resolution and an order, the publication of a certain report defamatory of the plaintiff, made to the House. The publication authorised was to the public generally for sale. Each of the four judgments rendered declared that court had

jurisdiction to examine the scope of the resolution complained of. Littledale J. stated at page 28, the following:

*“The first question for our consideration is, whether the resolution of the House of Commons, that they have the power to do an act, precludes the court from inquiring into the existence of the power;... and whether we are not estopped by this resolution of the House of Commons who have resolved, declared, and adjudged, that the power of publishing such of its papers, votes and proceedings as it shall deem necessary or conducive to the public interests, is an essential incident to the constitutional functions of Parliament... so as to estop this court from proceeding to investigate the subject presented to the court... It is said the House of Commons is the sole judge of its own privileges: and so I admit as far as the proceedings in the House and some other things are concerned; but I do not think it follows that they have a power to declare what their privileges are, so*

*as to preclude inquiry whether what they declare are part of their privileges”.*

41. The subject matter is now covered by statute in many countries, nevertheless, the judgments serve as authority or persuasion that court had jurisdiction to inquire as to the limit of the powers and privileges of the National Assembly. From that I am able to conclude that this court may inquire as to whether the powers and privileges of the Senate of Belize extend to appointing a committee to investigate the affairs of the SSB.
  
42. Near home, in *the Bahamas District of the Methodist Church in the Caribbean* case, the Privy Council held that the written Constitution of the Bahamas and not the Parliament, was supreme, and so the court in the Bahamas may inquire as to whether an Act of the Parliament of the Bahamas was inconsistent with the Constitution, and if so, to declare the Act void to the extent of the inconsistency. However, the Privy Council warned that, “*so far as possible, the courts of the Bahamas should avoid interfering in the legislative process*”. Far afield, a more recent South Africa case confirmed the law as above;

the case was, *The Speaker of the National Assembly v DE Lille (1999) JDR 0510 (SCA)*.

43. In my view, the claimant has not asked this court to do more than it is permissible within the principle of separation of power. She has asked the court to inquire and determine whether the Senate had power or privilege under the Constitution, to appoint a Special Select Committee to investigate and report on the SSB, and if the Senate had the power, whether the investigation was carried out in a lawful manner. The main relief she asked for was a declaration that the Senate had no power. It is open to this court to grant such a relief in the event the court determines that the contentions of the claimant are correct. It is also open to the court to grant the consequential order quashing the resolution of the Senate and the recommendations by the Committee, if they are found to have been made in an unlawful manner, and it is desirable to exercise that discretion.

44. *Powers of the Senate.*

The contentions that the Senate had no power to appoint the Special

Select Committee was made on the ground that the Constitution or any other law did not give the Senate that power.

45. The Senate is one of the two Houses of the National Assembly of Belize. The other is the House of Representatives. The power of the National Assembly is given in s: 61A and 68 of the Constitution as follows:

*“68 Subject to the provisions of this Constitution, the National Assembly may make laws for the peace, order and good [governance] of Belize”.*

46. Section 61A gives additional powers to the Senate alone; the powers are specific. All of them are not relevant to this claim, except the introductory clause which states:

*“61A (1) Without prejudice to any other powers vested in the Senate by this Constitution or any other law, the Senate shall have the powers and perform the functions sets out in subsection (2)”.*

47. Complementary to the provisions in ss: 61A and 68, each House of the National Assembly is given power under s: 70 of the Constitution to, *“make, amend or revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business...”*. The Senate has made the Belize Constitution (Senate) Standing Orders which in regulations 74 and 75 imply that a select committee has power to investigate, gather evidence, and make a report to the Senate. The regulations state:

*“74. The proceedings of, and **the evidence taken before, any Select Committee and any documents presented to, and decisions of, such a Committee shall not be published by any Member thereof or by any other person, before the Committee has presented its report to the Senate.***

75. (1)...

(2) *A report of a Select Committee may contain the opinions and observations of the Committee, and may*

*be accompanied by the minutes of evidence taken before the Committee”.*

48. In regard to s: 70 of the Constitution and the Standing Orders made, the submission was that s: 70 authorised only procedural matters. My answers follow.

49. In regard to s: 68, it is my view that the power “*to make laws...*” must necessarily include the power to ascertain the facts about which the laws are to be made, and that includes the power to gather the material facts about which the law is to be made. By analogy, it is accepted that a good decision by a public authority, the Executive, must be based on relevant facts and not extraneous facts. From the terms of reference of the Committee, it must irresistibly be inferred that the Senate intended to make laws to meet the public outcry that got its attention, and decided to ascertain the facts about the outcry as a preliminary step in the making of the corrective laws, should the facts gathered by the Committee persuade the Senate to make such laws.

50. Besides the above simple answer, it was the common law in England that Parliament had the right to call witnesses to testify to it. In *the Stockdale v Hansard case*, Littledale J stated that view of the law at page 29 in these words:

*“There is no doubt about the right as exercised by the two Houses of Parliament with regard to contempts or insults offered to the House, either within or without their walls; there is no doubt either as to the freedom of their members from arrest, or of their right to summon witnesses, to require the production of papers and records, and the right of printing documents for the use of members of the constituent body; and as to any other thing which may appear to be necessary to carry on and conduct the great and important functions of their charge”.*

51. We know that by **s: 2 of the Imperial Laws (Extension) Act, Cap. 2, Laws of Belize**, *“the Common Law of England and all Acts in*

*arrogation or derogation or in any way declaratory of the Common law passed prior to 1<sup>st</sup> January 1899 [were extended] to Belize*". So, the common law recognising the right of Parliament in England to call witnesses and to require production of documents, extended to Belize. Accordingly the National Assembly of Belize has those rights enumerated by Littledale J. The right of the Houses to do any other thing which may appear to be necessary to carry on and conduct their important function supports my view that the power to make law must necessarily include the power to ascertain facts.

52. I have not been provided with any statutory law which abolished those common law rights of the House, confirmed by Littledale J. ***Orders 74 and 75 of the Belize Constitution (Senate) Standing Orders*** which regulate the proceedings, the gathering of evidence and the making and submitting of report by a select committee, were made with the knowledge of the common law that select committees of the National Assembly had power to call witnesses and gather evidence.
53. In addition to the common law, ***s: 61A of the Constitution*** recognises that when the Constitution was being adopted, there might have

already been other laws regarding the powers and functions of the Senate; the introductory clause of the section preserved those laws to be applied in addition to the powers and functions spelt out in s: 61A. One such law, in my view, was the Legislative Assembly (Powers and privileges) Ordinance 1962, promulgated before the Constitution was adopted. *Sections 9 to 14 of the Ordinance* authorise the calling of witnesses and the production of evidence such as documents and records, and give the power to compel witnesses to attend before the National Assembly or its committees.

54. It was submitted that the Legislative Assembly (Powers and Privileges) Ordinance had been repealed when the 1980-1990 Revised Laws were published because s: 2 of the Law Revision Act stated that Acts which were left out of the Revised Laws, but were still in force were to be included in the schedule to the Law Revision Act; the Legislative Assembly Ordinance was not published in the Revised Laws and was not included in the Schedule, so it was repealed by implication.

55. I reject that submission. In my view, the omission by the Law Revision Commissioner who published the Revised Laws 1980-1990 was either an oversight or an error. The omission was continued in the 2000 Revised Laws, I think, on the assumption that the list of Revised Laws 1980-1990 was correct. The first Commissioner exceeded his power which was restricted to those in ss: 8 and 9 of the Law Revision Act; he was restricted to omitting only, *“laws or provisions of laws which had been repealed expressly or by necessary implication or which had expired or had become spent or have had their effect”*. His power was, as one would expect, restricted to reconciling and editing statutory laws taking into account repealed statutes, new statutes and amendments. Indeed s: 23 expressly stated it as follows:

*“23. No enactment omitted under authority of any provision of this Act from the revised edition, any annual supplement, the revised edition of subsidiary laws or any supplement thereto, shall be deemed to be without force and validity by reason only of its having been so omitted but shall*

*remain in force until the same shall have been repealed or shall have expired or become spent or had its effect”.*

56. An alternative submission for the claimant was that if the National Assembly (Powers and Privileges) Ordinance was still in force, then its provisions authorising the National Assembly or Committees to hold investigations, call witnesses, gather evidence and make a report, could only be valid if the Constitution “expressly” authorised so. That submission was in effect impugning the Ordinance for being *ultra vires* the Constitution.

57. I reject the submission. The Constitution does not state that the Senate shall not investigate a subject matter, or hear witness, or otherwise gather evidence to inform itself; the Constitution is merely silent about those matters. There are no provisions in the Ordinance that are inconsistent with any provision of the Constitution regarding those matters. On the contrary the provisions of the Ordinance complement the provisions of the Constitution, in particular, s: 68, regarding the function and power to make laws for good governance.

58. The next point raised in the alternative, was that the Senate ought to have appointed the Committee by its order, not by its resolution. I note that the Committee was appointed by a resolution of the Senate, instead of by an order of the Senate, and that order 69 provides for appointment of a select committee by an order of the Senate. That, however, is a matter of procedure and proceedings of the Senate, and is wholly within the powers and privileges of the Senate which are not open to examination by court. Moreover, I do not consider that anything of substance depends on the difference in the terminologies. Both a resolution and an order are results of questions put to the Senate and agreed on. A resolution declares and expresses opinion and purpose of the Senate. An order directs or instructs its committee, member or officials to carry out its intention. In substance, the resolution of 16.9.2004, declared the opinion and purpose of the Senate, as well as instructed the five members of the Special Select Committee to carry out an investigation into the affairs of the SSB. The resolution doubled as an order of the Senate.

59. The next submission in the alternative, was that the authority of the resolution of the Senate could not displace the authority of an Act of

the National Assembly, which is law, and so it was unlawful to carry out the investigation outside the laws in the Commissions of Inquiry Act. The submission overlooked the fact that the investigation was directed by a part of the National Assembly, the Legislature, and overlooked the principle of separation of powers of the State. The inquiries that are carried out and regulated by the Commissions of Inquiry Act are initiated by the Prime Minister, a part of the Executive Organ of the State. The Prime Minister appoints such a commission by authority of s: 2 of the Commissions of Inquiry Act. He acts in his capacity as part of the Executive of the State. The Commissions of Inquiry Act did not and could not apply to the inquiry conducted by the Senate.

60. The same reasoning applies to the submission that the special audit report and the financial report were submitted to the Senate unlawfully because an audit report, accounts and a general report could be submitted lawfully only under ss: 47 and 48 of the Social Security Act.

61. According to the Social Security Act, the administration of the Social Security fund is the responsibility of the members of the Board. They in turn are responsible to the Minister responsible, that is, the Minister of Finance – see *s: 28 (1) of the Social Security Act*. The Minister is undoubtedly part of the Executive Organ of the State. Everything done under the Act is done within the function of the Executive. When the Minister lays accounts, audit reports, and other reports before the National Assembly, he does so as part of the Executive; and simply for the purpose of informing the Assembly generally. The Senate is not restricted to relying only on the report of the Minister. The requirements of ss: 47 and 48 did not render the preparation of the special audit report and the receipt of it by the Committee unlawful, or the final report of the Committee unlawful.

62. *Unfair procedure.*

All the grounds except one, for the complaint that the Committee conducted the investigation and prepared its report by unfair procedure were unfounded. There was no duty on the Committee to advise Mrs. Garcia or any witness, that she was entitled to representation by an attorney, although the Committee could not deny

her instructing an attorney at her own expense, if she wished, to keep watch over her interest. I have to mention however, that such an attorney has no right to tell a witness what to say in answer to a question seeking factual answers. An attorney is not a witness. I have observed such an infraction in other inquiries. Mrs. Garcia did not say that the Committee did anything to deny her representation by an attorney.

63. The right of a witness to crossexamine another witness would not arise automatically; it depends on whether in the circumstances it would be unfair not to let the person who wishes to do so, crossexamine the witness – see *Bushell v Secretary of State for the Environment [1981] A.C. 75 (HL)*. It is normally granted on request.
64. The terms of reference authorised that the hearing be a public hearing. Mrs. Garcia or her attorney could have attended all the sittings of the Committee with a view to requesting crossexamination where she thought necessary. The right is usually requested at the stage when a committee considers findings and recommendations to be made. In this claim, if the Committee was minded to make adverse findings or

recommendations against Mrs. Garcia, it was required to invite her to provide explanation or to contradict the available evidence.

65. There was also a complaint that the Committee refused the request of Mrs Garcia to testify in camera. Assuming that the complaint was true, it would be contrary to ***Order 72(9) of the (senate) Standing Orders***. In my view, that would have been cured by the resolution which I held to have doubled as an order, instructing the Committee to conduct the hearing in public. In any case, I do not consider it to have been of consequence. A public hearing is generally regarded as better in ensuring justice than a hearing in private – see ***George Meerabux v The Attorney General of Belize, Privy Council Appeal No. 9 of 2003***.
  
66. The complaint that the Senate itself debated the report and the recommendations without first affording Mrs. Garcia opportunity to contradict them, is a complaint that the court cannot now inquire into and make any order about it, given the fact that the Senate has already debated the report, but did not make any law that affected Mrs. Garcia. The senate preferred to pass the recommendations and report to the prime Minister for his consideration and action. No particular

action was recommended by the Senate. It preferred action by the Executive. I also note that no particular relief was prayed for by Mrs. Garcia, in regard to this particular complaint.

67. The one complaint that I accepted was that the Committee compiled its report and made recommendations against Mrs. Garcia without calling her back and showing her the items of evidence on which the findings and recommendations would be made, and offering her opportunity to further testify and make clarifications or otherwise contradict the items of evidence. The law requires that as part of a fair procedure. – see – *R v Army Board of Defence Council Ex Parte Anderson [1991]3 WLR 42.* and also *R v Secretary of State fro the Home Department Ex Parte Doody [1994] 1 A.C. 531.* I reached the conclusion to accept that complaint on a balance of probabilities. To the affidavit of Mrs. Garcia were attached two letters that requested the further hearing. The testimony of Mr. Hulse refuted that the Committee did not respond to the request. He deposed that he called Mrs. Garcia on telephone and offered to hear her; she refused the offer. Mr. Hulse did not communicate the offer by a letter, so I was unable to fix any specific date to the telephone call, to determine

whether the telephone call was in response to the request of Mrs. Garcia to be heard further. It goes back to the unfortunate decision not to make available the records of the proceedings. Perhaps I might have reached a different conclusion, had I perused the records of the proceedings. I had to conclude that the Committee failed to offer opportunity to Mrs. Garcia to clarify or contradict evidence adverse to her before the committee made adverse conclusion and recommendations about her in the report. To that extent the committee breached a rule of procedural fairness.

***Reliefs.***

68. I have considered whether, because of the breach of the one rule of fairness outlined in the above paragraph, I should exercise discretion and quash all the recommendations or even just the one that applied to Mrs. Garcia. The material facts in my consideration were the following. 1. The Committee made five main recommendations, some have extensive sub-recommendations; only one directly affected Mrs. Garcia, personally, namely, that the General Manager and members of the Board should no longer hold office. 2. Mrs. Garcia has been dismissed, but has been compensated for the dismissal; quashing the

recommendations and the report will not bring any more gain to her than the compensation she has already been paid. 3. Extensive parts of the other recommendations concerned improving the Social Security Act, the management of the SSB, and rules for granting loans and making investments; it is not desirable that recommendations about them be quashed. 4. Mrs. Garcia in her own affidavit admitted certain grave irregularities, but did not, of course, admit responsibility for them; quashing the recommendations and the report will mean largely quashing also those facts in the report that do not concern Mrs. Garcia. 5. The refusal of the claimant on a previous occasion to take up an invitation to testify again. 6. The investigation and the report was intended for informing the Senate for the purpose of making laws regarding the subjects of the public outcry; having debated the entire report, the Senate did not initiate any legislation or amendments to the Social Security Act; quashing the recommendations and the report will serve no purpose; no further Senate action is contemplated. I decline to exercise discretion to quash the report.

69. Of the twelve declarations asked for by Mrs. Garcia, there is only one that I can make in her favour, based on the determination I have made

of the issues. However, it is necessary to make two other declarations regarding two important points of law dealt with. So, this court makes the following declarations.

69.1 The Senate had power to pass the resolution it passed on the 16<sup>th</sup> day of September 2004, appointing the Special Select Committee of the Senate to investigate and report on the affairs of the Social Security Board.

69.2 The Committee, having formed a preliminary view that it would make recommendations adverse to Mrs. Garcia, failed to provide her with the items of evidence that implicated her and to offer her opportunity to explain or contradict the items of evidence; the Committee acted unfairly to that extent.

69.3 The dismissal of Mrs. Garcia by the Prime Minister was an act of the Executive Organ of the State for which the Senate was not responsible, whether it was lawful or unlawful.

70. The claim of Mrs. Garcia succeeds in part, only to the extent of the second declaration at paragraph 69.2; the claim is dismissed to a larger extent.

71. *Costs.*

Because Mrs. Garcia succeeded only in one out of nine grounds on which she based her claim; and succeeded in only one, out of twelve declarations she claimed, I order that each party will bear own costs. I warn that in future I may award costs against a claimant or defendant who pleads too many unnecessary grounds.

72. *Observation.*

Finally, I have to clarify that this case has been, in simple expression, just about whether the Senate had power to appoint a Select

Committee of the Senate to investigate and report on the affairs of the the SSB and if so, whether the investigation was conducted fairly. The case has not been about what was wrongfully or unlawfully done at the SSB. The remedy asked for was primarily that the recommendations in the report of the Committee be quashed. The case does not affect any right of the SSB, whether under ss: 54 and 56 of the Social Security Act, or under other principles of law such as breach of fiduciary duty, if any, to take its own action and pursue court claims as it considers appropriate, against anybody. The case also does not affect the right of other authorities to pursue any criminal or civil claim based on any law.

73. Delivered this Wednesday the 2nd day of July, 2008.  
At the Supreme Court  
Belize City

Sam Lungole Awich  
Judge