

**PAUL WHITE AND HENRY KAPU -V- ATTORNEY-GENERAL AND
TREVOR OLAVAE**

HIGH COURT OF SOLOMON ISLANDS
[KABUI, J.]

Civil Case No. 252 of 2002

Date of Hearing: 14th April and 22nd May 2003

Date of Judgment: 30th May 2003

Mr A Radclyffe for the Plaintiffs

Mr G. Deve for the 1st and 2nd Defendants

JUDGMENT

Kabui, J. Mr. White is the first Plaintiff in this action. He claims for the loss of a monthly honorarium allowance of \$600.00 or \$400.00 for the period 20th September 2002 to 21st September 2004 or to 11th February 2005. He also claims for food allowance of \$200.00 per day for the same period of time as specified above plus \$10.00 per hour sitting allowance for actual meetings of Commodities Export Marketing Authority ('the Authority') for the same period of time and damages to his reputation. Mr. Kapu is the second Plaintiff. He too claims for the loss of a monthly allowance of \$300.00 for the period 20th September 2002 to 11th February 2005. He also claims for loss of food allowance of \$200.00 per day from 20th September 2002 to 11th February 2005 plus \$10.00 per hour sitting allowance for actual sittings of Authority for that same period of time and damages to his reputation. In addition, the Plaintiffs collectively claim the following relief from the First Defendant-

- (a) a declaration that the revocation of the Plaintiffs' appointments as members of the Authority and the first Plaintiff's demotion from Chairman to Deputy Chairman were ultra vires and void;
- (b) damages for breach of statutory duty;
- (c) exemplary damages on the ground that a Minister of the Crown acting for and on behalf of the Government of Solomon Islands in the manner in paragraph 10 of the Statement of Claim. They further claim the following relief from the Second Defendant-
- (d) a declaration that the revocation of the Plaintiffs' appointment as members of the Authority was ultra vires and void;
- (e) damages for breach of statutory duty;
- (f) exemplary damages as in paragraph 14(c) in the Statement of Claim;
- (g) a declaration that the Second Defendant was in breach of section 94 (1) of the Constitution;
- (h) damages for the breach of section 94(1) of the Constitution
- (i) Interest and costs.

The Plaintiffs, apart from claiming relief under section 94 (1) of the Constitution, based their claim upon two grounds, namely, breach of statutory duty and invalidity arising from the alleged wrongful demotion

of Mr. White as Chairman to Deputy Chairman and revocation of the appointments of the Plaintiffs as members of the Authority.

The Facts.

The appointment of the members of the Authority was by instrument dated 20th September 2001. The appointment was made by the Minister of Commerce, Employment and Trade, Mr. David Holosivi. The appointment instrument revoked the previous members of Authority. The Chairman of Authority was Mr. Paul White. Mr. Henry Kapu was the member representing the Temotu Province on the Authority. The appointment of the new members was published in the Gazette on 21st September 2001. The appointment of each member was for a term of 3 years as from the date of appointment. By letter dated 1st October 2001, the acting General Manager, Mr. Pelomo, informed Mr. White of his appointment as Chairman of Authority and that he was entitled to receive \$600.00 per month honorarium plus \$200.00 a day food allowance and \$10.00 per hour sitting allowance for each meeting he attended during the course of his appointment. A similar letter of the same date was sent to Mr. Kapu informing him of his appointment and telling him that he was entitled to receive \$300.00 per month honorarium plus \$200.00 per day food allowance and \$10.00 per hour sitting allowance for the meetings he actually attended. The succeeding Minister of Commerce, Employment and Trade, Mr. Hunuehu by instrument signed on 11th February 2002 demoted, without reason, Mr. White from being Chairman to Deputy Chairman of the Authority. That appointment was to be for a term of 3 years from the date of appointment. The next succeeding Minister of Commerce, Employment and Trade, Mr. Trevor Olovae, then revoked the appointment of Messrs White and Kapu by an instrument he signed on 20th September 2002 and gazetted on 23rd September 2002. The Minister gave no reason for the revocation.

The issues to be determined.

The first issue is whether or not the demotion of Mr White as Chairman dated 11th February 2002 was lawful in that it was not ultra vires and void. The second issue is whether or not the revocation of Mr. White and Mr. Kapu as members of Authority on 20th September 2002 was lawful in that it was not ultra vires and void. The third issue is whether or not there was breach of statutory duty by virtue of the alleged wrongful demotion and revocation thus giving the right Plaintiffs to claim damages. The fourth issue is whether or not the Second Defendant's action was unconstitutional in that it was contrary to section 94(1) of the Constitution. The first and second issues can be combined into one being the validity of the demotion of Mr. White as Chairman and subsequently the revocation of both Plaintiffs as members of the Authority.

The law as to the power to demote and the power to remove by revocation of appointment.

The law on the issue of removal by revocation is to be found in section 32(3) of the Interpretation and General Provisions Act (Cap. 85). Subsection (3) states-

"...Subject to subsection (4), where an Act confers a power to make an appointment, the power includes power to remove or suspend a person so appointed, and to appoint another person temporarily in the place of a person so removed or suspended, or where the appointee is for any reason unable or unavailable to perform his duties, to appoint another person temporarily in his place. "

Subsection (4) however states-

"...The power provided for in subsection (3) is exercisable only subject to any conditions to which the exercise of the original power was subject..."

These are general provisions that apply where the particular Act under consideration does not provide specific provision governing the manner of removal of an appointed member. In this case, Schedule 2 to the Commodities Export Marketing Authority Act (Cap. 36), "the Act" does provide specific provisions on the manner of appointment and removal of the appointed members of the Authority. As regards the matter of appointment, paragraph 1 (2) of Schedule 2 to the Act above states-

"...The Chairman, the Deputy Chairman and other members who are not ex officio members shall be appointed by the Minister by notice published in the Gazette, on such other terms and conditions of service as may be specified in their respective letters of appointment for a term of not more than 3 years and may be re-appointed at the end of their terms.

As regards the matter of removal from office, paragraph (4) states-

"...A member who is not an exofficio member-

(a) may be removed from office by the Minister under section 9, or for any other misconduct in the discharge of his functions as a member of the Authority under this Act, or in the public interest:

Provided that no member shall be removed from office on the ground of misconduct unless the allegation of his misconduct is enquired into by an independent and impartial person appointed by the Minister in that behalf, and the member concerned is given an opportunity to defend himself in such enquiry, and the person holding the enquiry advises the Minister for the removal of the member as a result of his enquiry; or

(b) may resign, at any time, from membership of the Authority by notice in writing addressed to the Minister..."

So, an appointed member can be removed under section 9 of the Act or for misconduct or in the public interest. There also appears to be no legal basis for a person already being appointed the Chairman to be demoted by the Minister to Deputy Chairman during the currency of the same appointment.

The appointment made on 20th September 2001.

This appointment made Mr. White a member and Chairman of Authority. The appointment was for 3 years from the date of appointment. The then supervising Permanent Secretary, Mr Maneniaru, by letter dated 26th September 2001, congratulated Mr. White on his appointment and promised that the terms and conditions of appointment would be communicated to him later. He also acknowledged Mr. White's acceptance of the appointment. By letter dated 1st October 2001, the acting General Manager of Authority Mr. Pelomo wrote to Mr. White informing him that he would be receiving \$600.00 honorarium allowance on a monthly basis, food allowance of \$200.00.00 per day and \$10.00.00 sitting allowance per sitting in actual meetings. He remained Chairman until 11th February 2002 when by virtue another appointment, he was demoted to being Deputy Chairman. The monthly honorarium allowance of \$600.00 had been reduced to \$400.00. The food allowance and sitting allowance remained unchanged. He eventually ceased to be member of Authority when his appointment was revoked on 20th September 2002. Like Mr. White, Mr. Kapu was also appointed by the Minister for a term of 3 years. The terms and conditions of his appointment were also set out in a letter addressed to him and signed and dated 1st October 2001 by Mr. Pelomo, the acting Manager of the Authority. His monthly honorarium was \$300.00. His other allowances were the same as to which Mr. White was entitled. His appointment was also revoked by the Minister on 20th September 2002.

The events leading to the revocation of appointment.

By letter dated 14th January 2002, the Prime Minister had informed Mr. White as Chairman of his government's position on the matter of refinancing RIPEL from government funds. The Prime Minister would not want any funding through government to be used by foreign investors (NEWCO) to re-float RIPEL. Minister. Hunuehu also wrote to Mr. White on 25th January 2002 as Chairman telling him of his Ministry's position regarding the RIPEL issue. Again, by letter dated 4th February 2002, the Prime Minister wrote to Mr. White reiterating his position that he would not encourage the use of aid donor's money to be used by a foreign investor to assist RIPEL. Minister, Hunuehu by letter dated 5th June 2002 responded to the Prime Minister's letter of 4th February 2002 in which he said he took the Prime Minister's letter as directing him to ask Authority to put the matter on its agenda at its next meeting on 6th June 2002. At that meeting, ICSL received 8 votes whilst Elan Trading received 5 votes. By letter dated 13th June 2002, addressed to Mr. White, Minister Hunuehu expressed his extreme disappointment over the choice of ICSL as a partner in the scheme of arrangement for RIPEL. He requested the Authority to meet again before 17th June 2002 to reassess its decision. He also threatened disciplinary action against the members of the Authority if they did not do what he asked them to do. Again, by letter dated 17th June 2002, Minister Hunuehu told Mr. White that the Authority's choice of ICSL was void and not in the national interest. He again called for the Authority to reconvene to reconsider the previous bidders and to brief him accordingly of the pros and cons in respect of each bid. In a letter dated 24th June 2002, addressed to Mr. White, Minister Hunuehu accused the members of the Authority of ignoring his directives and so acting under section 9 of the Act, informed the Plaintiffs of his intention to terminate them. However, he gave them time to show cause under section 9 (5) of the Act by 28th June 2002. Mr. Kapu did show cause by letter dated 28th June 2002. Mr. White did not respond to the Minister's call to show cause.

Are appointments to the Authority revocable in law?

I must again, begin with section 32 (3) of the Interpretation and General Provisions Act cited above. I think the answer is clearly in the affirmative. However, subsection 4 also cited above must be the answer to this case. That is that the power to remove an appointed person may be exercised subject to conditions to which the power to remove depends. The conditions in this case for removal from office are 'persistent disregard of the directions' given by the Minister under section 9 of the Act, or misconduct or public interest Whilst appointments may be revoked generally, where revocation is subject to conditions, those conditions must first be complied with before the power of revocation can be exercised. That is the position under section 32(3) and (4) of the Interpretation and General Provisions Act cited above.

Were the demotion of Mr. White as Chairman and the revocation of the appointment of Messrs White and Kapu valid?

I do not think section 9 of the Act could be applied to the situation in this case. This section states-

"...(1) The Authority shall prepare and submit to the Minister such interim reports as he may require on the operations of the Authority.

(2) Upon considering the report submitted to him under subsection 1, or otherwise, the Minister may give to the Authority such directions of general character as to any matter of policy with respect to the implementation of any provision of this Act as appear to him to be requisite in public interest:

Provided that the Authority shall be consulted before giving any such direction otherwise than on considering the report of the Authority.

(3) If a question arises as to whether any matter of policy, the decision of the Minister shall be final.

(4) The Authority shall comply with the directions given under subsection (2).

(5) Where, in the opinion of the Minister, the Authority or any member is guilty of persistent disregard of any direction given under subsection (2), he may, by order, take such action, including removal from office, of any member who is guilty of disregard of such direction, as he considers necessary to secure compliance of his directions:

Provided that no action under this subsection shall be taken without giving the Authority or member so guilty, an opportunity to show cause why the action proposed by him should not be taken, and without considering the cause if any, shown by the Authority or the member, as the case may be, against the proposed action..."

Paragraph 1 (4) of Schedule 2 to the Act prescribes the grounds upon which any member of Authority may be removed by the Minister. The grounds are 'misconduct', 'public interest' and 'persistent disregard of directions of the Minister' under section 9 of the Act. In this case, Minister Hunuehu obviously misunderstood the meaning of subsections (1), (2), (3) and (4) of section 9 of the Act. There is no evidence to show that the Minister was concerned about the operation of the Authority, which would have necessitated a call for an interim report under subsection (1) of section 9 of the Act. What the Minister was concerned about in this case was his obvious dislike for the decision made by Authority on 6th June 2002 in selecting ICSL as the winning bidder. He was trying to force the members of the Authority to change their previous decision to accord with his wish. He repeatedly asked them to review their decision in this regard but they did not budge resulting in his threat to revoke the appointment of the Plaintiffs for that reason. His successor did so on 20th September 2002. Minister Olovae who revoked the appointment of the Plaintiffs was not called to give evidence during the trial. The opportunity for him to say why he did what he did had been missed. It is however obvious that he had completed what Minister Hunuehu had been wishing to do to the Plaintiffs. The last letter written by Minister Hunuehu date 24th June 2002 addressed to the Plaintiffs separately enables me to draw this conclusion on the balance of probability. The fact that Minister Huhuehu had earlier complied with section 9 (5) of the Act does not in any way rescue Minister Olovae's position because he had repeated the same mistake that had been committed by Minister Hunuehu in that he also misapplied section 9 of the Act. Section 9 of the Act is designed to enable the Minister to adjust the general policy of the Authority after considering any report by the Authority upon his request on the operations of the Authority. It is not the basis upon which the Minister may alter any decision by the Authority, which he may dislike for his own reasons. The revocation of the Plaintiffs on the basis of section 9 of the Act is therefore not valid. It is void. The demotion of Mr. White from Chairman to Deputy Chairman is also not valid because it lacks any legal basis. Whilst it is not disputed that paragraph 1 (2) of Schedule 2 to the Act does allow for the appointment of a Deputy Chairman, it does not provide for the demotion of the Chairman. If there was a need for a Deputy Chairman, the Minister should have appointed one in the first place. That is, a Deputy Chairman should have been one of the members duly appointed by the Minister in the first place. The power to appoint members of the Authority including the Chairman and Deputy Chairman is a power of first instance rather than a consequential or residuary power such as power to suspend or remove the members of the Authority under section 32 (3) of the Interpretation and General Provisions Act cited above. The Minister should not have demoted Mr. White to Deputy Chairman in the first place. That was a mistake on the part of the Minister so that his position as Chairman would continue to remain valid for a term of 3 years. His appointment as Deputy Chairman was not therefore valid. It is of no effect. I do not now need to consider the other grounds for removal from office prescribed by paragraph 1(4) in Schedule 2 to the Act cited above, as they do not apply to this case. The declarations sought by the Plaintiffs against the First and Second Defendants are therefore granted.

Breach of statutory duty as the basis of claim for damages.

This is best described by Lord Wright in *London Passenger Transport Board v. Upson and Another*, [1949] 1 All E. R. 60. At pages 67-68 of His Lordship's judgment, His Lordship said-

"...I think that the authorities such as *Caswell's case* (6), *Lewis v. Denye* (7) and *Sparks' case* (4) show clearly that a claim for damages for breach of a statutory duty intended to protect a person in the position of the particular plaintiff is a specified common law right which is not to be confused in essence with a claim for negligence. The statutory right has its origin in the statute, but the particular remedy of an action for damages is given by the common law in order to make effective for the benefit of the injured plaintiff his right to the performance by the defendant of the defendant's statutory duty. It is an effective sanction. It is not a claim in negligence in the strict or ordinary sense. As I said ([1939] 3 All E. R. 739) in *Caswell's case*:

" I do not think that an action for breach of a statutory duty such as that in question is completely or accurately described as an action in negligence. It is a common law action based on the purpose of the statute to protect the workman, and belongs to the category often described as that of cases of strict or absolute liability. At the same time it resembles actions in negligence in that the claim is based on a breach of a duty to take care for the safety of the workman."

But, whatever the resemblances, it is essential to keep in mind the fundamental differences of the two classes of claim. Here I shall, perhaps, be guilty of hypercriticism if I were to quarrel with the expression of ASQUITH, L. J., in the Court of Appeal ([1947] 2 All E. R. 516) that the common law is enhanced by the duty contained in the regulations. One duty does not, in truth, enhance the other though the same damage may be caused by action which might equally be characterised as ordinary negligence at common law or as breach of the statutory duty. On the other hand, the damage may be due to either to negligence or to breach of the statutory duty. In the present case, ASQUITH, L. J., decided, as I understand, in favour of the respondent, not on the ground of negligence, which he did not find, but specifically on the ground of breach of statutory duty. There is, I think, a logical distinction, which accords with what I regard as the correct view that the causes of action are different..."

Clearly, negligence and breach of a statutory duty are separate causes of action though similar in terms of consequence. Breach of a statutory duty is a common law action and attracts strict or absolute liability. In fact, Lord Diplock in *Boyle v. Kodak Ltd.* [1969] 1 W.L.R. 661, at page 672 said-

"...The plaintiff establishes a prima facie cause of action against his employer by proving the fact of non-compliance with a requirement of the regulation and that he suffered injury. He need prove no more..."

The case law.

One of the grounds of the Plaintiffs' claim is breach of statutory duty against the Defendants. This is therefore a different kettle of fish from a claim in negligence, contract or an action in administrative law. This is an area of law, which, to me, is rather complex. I received no assistance from Counsel from both sides in terms of citing useful authorities to assist me in deciding the issues in this case. For my purpose, I would start my discussion with the case of *Cutler v. Wandsworth Stadium Ltd.* [1949] 1 All E. R. 544. In that case, the plaintiff alleged a breach of statutory duty arising from the provisions of the Betting and Lotteries Act, 1934. The issue that required the attention of the House of Lords was whether or not on the construction of the Act, the alleged breach of duty did attract a right of civil action against the defendants. At page 548 of His Lordship's judgment, Lord Simonds said, -

“...The only rule which in all circumstances is valid is that the answer must depend on a consideration of the whole Act and the circumstances, including the pre-existing law, in which it was enacted...”

His Lordship then referred to the case law, which served to provide the guide to finding the relevant answer in any one particular case. His Lordship pointed out that one line of authority stood for the proposition that where the Act did not provide a penalty for breach of statutory duty, the right to a cause of action could be claimed. The second proposition was that where the Act did provide for a penalty for the breach of a statutory duty, no further right to any cause of action could be claimed. However, His Lordship said, there were exceptions to this general rule in the second proposition. His Lordship said that one such exception would be a category of cases where the Act was intended to protect a particular class of persons so that any breach of a statutory duty would usually attract a cause of action from a person in that class who might have been injured by that breach of statutory duty. Lord Du Parcq at page 550 stated that the process of discovering whether the general rule should apply or an exception should apply would depend largely upon the scope and language of the Act. All the other Law Lords were agreed on the principles enunciated by Lords Simonds and Du Parcq. After confirming the class exception identified in the Cutler's case above, Lord Diplock did identify the second category of exception in **Lonrho Ltd. and others v. Shell Petroleum Co. and others** [1981] 2 All E. R. 456. At page 461, Lord Diplock said-

“..The second exception is where the statute creates a public right (i.e. a right to be enjoyed by all those of Her Majesty's subjects who wish to avail themselves of it) and a particular member of the public suffers... 'particular, direct and substantial' damage 'other and different from that which was common to all the rest of the public'... Most of the authorities about this second exception deal not with public rights created by statute but with public rights existing at common law, particularly in respect of use of highways...”

The scope and language of the Act.

The demotion of the Chairman and the revocation of the appointment of the Plaintiffs by Minister Olovae without reasons is the alleged breach of statutory duty by the Defendants. That is, demotion plus revocation done without lawful reasons prescribed under section 9 of the Act. The general rule as stated above is that where no penalty is prescribed by the Act for breach of a statutory duty, there can be expectation of a right to a cause of action if an injury has been sustained as a result of that breach of statutory duty. Of course, to arrive at that conclusion would depend very much upon the language of the Act bearing out that intention. Applying that principle to this case, I must read the Act as a whole in order to work out the intention of the Act as to whether or not the general rule applies or there is an exception to be considered. The first observation is that paragraph 1(4) of Schedule 2 to the Act simply prescribes the circumstances in which the Minister may decide to revoke the appointment of any member of the Authority. No penalty is prescribed for any unlawful revocation of any appointment of membership of the Authority. This case would therefore seem to fall within the first proposition in the Cutler's case cited above. The assumption is that there is a right to a cause of action by the Plaintiffs who were affected by the Minister's unlawful act of demotion plus revocation of their appointment as members of the Authority.

I do not for one moment dispute the correctness of the above quote by Lord Wright in **London Passenger's** case cited above. However, upon reading the judgments of the Law Lords in **Caswell v. Powell Duffy Associated Collieries Ltd.** [1939] 3 All E. R. 722, I noted that section 55 of the of the Coal Mines Act, 1911 did stipulate that every flywheel and all exposed dangerous parts of the machinery used in or about the mine shall be kept securely fenced. A workman was killed as a result of non-compliance of this section of the Act. The Act imposed penalties of fines and imprisonment for non-compliance of its provisions but did not confer any right for civil action for breach of its provisions. In **Lewis v. Denye** [1940] 3 All E. R. 299, the workman met with an accident as a result of non-compliance

with the requirements of section 10 of the Factory and Workshop Act, 1901. In **Sparks v. Edward** [1943] 1 All E. R. 1, the driver employed by the defendant was in breach of the Pedestrian Crossing Places (Traffic) Regulations, 1935 resulting in injury to the workman.

I note that those cases cited by Lord Wright above were to do with cases where an action for negligence and breach of statutory duty were at play in the alternative. The argument for breach of statutory duty prevailed in those cases clearly on the basis that in each case, the Act giving the right to the action was clearly designed to protect a class of persons covered by the relevant legislation. In Caswell's case cited above, Lord Wright at page 739 said-

"I do not think that an action for breach of a statutory duty such as that in question is completely or accurately described as an action in negligence. It is a common law action based on the purpose of the statute to protect the workman, and belongs to the category often described as that of cases of strict or absolute liability. At the same time it resembles actions in negligence in that the claim is based on a breach of a duty to take care for the safety of the workman. The cause of action is sometimes described as statutory negligence and it is said that negligence is conclusively presumed..."

This dichotomy spoken of is easy to establish in the category of cases where even in the absence of breach of statutory duty, there is already though in abeyance a potential action for negligence at common law. Although it can be said that this case is similar to that same category of cases, on the basis that the Act provides no penalty for any breach of statutory duty, it is not easy to fit it neatly into the same category in terms of the purpose of the Act. The purpose of the Act is the creation of the Authority to deal with the export of copra and other commodities with a view to providing for the development of the production of certain commodities for the purpose of their export and for promoting and regulating their marketing etc. Section 5 (1) of the Act creates the Authority whilst subsection (3) as read with Schedule 2 to the Act provide for the appointment, remuneration, procedure and other matters connected therewith. The Authority functions through its members appointed by the Minister of the Government in pursuant to paragraph 1 (2) of Schedule 2 to the Act. The removal of members is also done by the Minister pursuant to paragraph 1 (4) (a) of Schedule 2 cited above. In this case, the Second Defendant is said to have acted contrary to paragraph 1 (4) (a) of Schedule 2 cited above. That is, the Minister gave no reasons for so acting in the way he did by revoking the appointment of the Plaintiffs. As I have said above, whilst that is not disputed, the Second Defendant had acted according to the wish of his predecessor, Minister Hunuehu. That conclusion is obvious although the Second Defendant was not called to give evidence at the trial. What remained to be done was the act of revocation. That was done by the Second Defendant in the same spirit. That can be inferred by the conduct of the Second Defendant in his act of revocation. That being the case, it cannot be said that the Defendants had breached any statutory duty by non-compliance with paragraph 1 (4) (a) of Schedule 2 cited above. In fact, both Plaintiffs had been told by Minister Hunuehu that he was extremely unhappy about the decision of the Authority and despite his call for the Authority to revisit their decision, nothing happened. He then called upon them to say why he should not remove them from office. Mr. Kapu showed cause but not Mr. White. There was indeed compliance but one that was based on a misunderstanding of the correct application of section 9 of the Act. The act of revocation by the Second Defendant cannot really be divorced from the process initiated by Minister Hunuehu for he had started the process and later completed by the Second Defendant. The remedy for wrong compliance with section 9 of the Act by the Second Defendant therefore would lie elsewhere than in breach of a statutory right. The other point is that the Second Defendant did have the power to revoke the appointment at any time provided he complied with the conditions for removal under paragraph 1 (4) (a) of Schedule 2 to the Act. Forgetting to cite the relevant condition upon which he acted would have been a breach of natural justice more than a breach of a statutory duty. Revocation of an appointment on the ground of public interest does not seem to require a need for natural justice to be observed. The penalty for breach of natural justice is not automatically damages though can be claimed in certain circumstances. (See **Chief Constable of North Wales Police v. Evans** [1982] 3 All E. R. 141). In my view, the facts of this case do not seem to fit this case into any of the propositions of law recognized by the Courts in England.

In fact, the point in this case is a narrow one indeed in that it only concerns the validity of the demotion of the Chairman and the revocation of the appointment done by a Minister under a statutory power conferred by an Act of Parliament. It does not even require looking at the scope, language and the object of the Act to find the existence of a common law right of action for damages. If the act of the Minister is found to be wanting for omission of reasons thus making it a non-compliance with the provision of the relevant Act like in this case, then that act must have been ultra vires like I have already found to be case here. In saying this, I would adopt the words of Lord Bridge of Harwich in **Pickering v. Liverpool Daily Post and Echo Newspapers plc and others** [1991] 1 All E. R. 622 at 632 and say,-

“...I know of no authority where a statute has been held, in the application of Lord Diplock’s principle, to give a cause of action for breach of statutory duty when the nature of the statutory obligation or prohibition was not such that a breach of it would be likely to cause to a member of the class for whose benefit or protection it was imposed either personal injury, injury to property or economic loss. But publication of unauthorised information about proceedings on a patient’s application for discharge to a mental health review tribunal, though it may in one sense be adverse to the patient’s interest, is incapable of causing him loss or injury of a kind for which the law awards damages...”

To treat these same facts of this case as also a situation of breach of statutory duty is to open the floodgates to unnecessary litigation. I say this because the civil cause of action created by statute spoken of by Lord Wright in *London Passenger’s* case cited above whilst limited in application to relevant categories of cases may be widened by litigants to include other causes of action. I am not prepared to do that in this case. Paragraph 1 (4) of Schedule 2 to the Act does not permit me to even consider such a situation. The claim for damage to reputation of the Plaintiffs on this ground is I think far-fetched for this reason. It does not arise here nor does the claim for exemplary damages arise here for the same reason.

The loss of remuneration by the Plaintiffs.

The loss of remuneration as a direct result of the invalid revocation of appointment appears to be the result of breach of contract. This is based upon the relationship between the Plaintiffs and the Authority as the payer of remuneration following appointment to hold office by the Second Defendant.

The relationship between the Authority and its members.

The question to be asked is what is the standing of the Plaintiffs in terms of their relationship with the Authority although they had been both appointed by the Minister under the Act. I think the nearest blood relatives of members of Authority are Company directors. The Board of directors of a Company is the governing body for the management of the affairs of the Company. The Board of directors is made up of directors appointed by a resolution passed by the Board of directors in the Board-room for specific terms or as the case may be. The directors are often in receipt of remuneration of whatever description for their services to the Company. Company directors may be removed by resolution as the case may be depending on what the articles of association say or do not say. If a director is deprived of the right to sit at a Board meeting and to know what is going on in the Company, that director may resort to legal means to enforce his or her right. In **Pulbrook v. Richmond Consolidated Mining Company** (1878) 9 Ch. D. 610, the other directors refused to allow the applicant who was a shareholder director to attend a board meeting whereupon the applicant sought an injunction against them and succeeded. (Also see **Hayes v. Bristol Plant Hire Ltd. and Others**, [1957] 1 All E.R.685). Company directors may also be remunerated for service depending upon what the articles of association say and is approved by the Board of directors (1883) 23 Ch. D. 1). Company directors of course are appointed by the Board of directors who are in most cases, shareholders in the Company. The appointment of directors to the Board of directors, like I have said, is by resolution passed by the shareholders. Whereas in this case, the Plaintiffs were appointed by a Minister of the Government in the exercise of a statutory

power conferred upon him by an Act of Parliament. Is there a difference in analogy? I do not think so. The Authority is a government statutory body so that the Minister who made the appointment of the Plaintiffs is answerable for it in Parliament as a member of the executive government of the day. The Authority being part of the Minister's political portfolio is a government agency for which the government is responsible. The government does have a financial as well as political stake in it. There is some government control in terms of general policy and having some say in its finances. The government is a kind of shareholder though not in the strict sense like any shareholder in a private company. So, like shareholders in a private company, the Minister appoints the members of Authority being the Board of directors as if it were a private entity except for this. In this case, the Minister appointed the Plaintiffs for a term of 3 years. But the terms and conditions of the appointment in respect of each of them for 3 years were accorded to them by the Authority. The appointment was an executive act done by the Minister but the terms and conditions of the appointment were given by the Authority under paragraph 1 (3) of Schedule 2 to the Act. If the appointment is valid, then the terms and conditions thereof must also be valid. In fact, paragraph 1 (2) of Schedule 2 cited above does speak in terms of 'terms and conditions of service' attaching to the appointment of members of the Authority thus, pointing to a contract situation. This claim has not been pleaded and so I need not consider it further.

Is that the end of the road for the Plaintiffs seeking a remedy?

Having granted the declarations sought by the Plaintiffs to declare the revocation of the appointment of the Plaintiffs and the demotion of Mr. White ultra vires and void, what then is the remedy for the Plaintiffs? Again, Counsel for both sides did not address this issue at the hearing. I had assumed that the financial loss to the Plaintiffs following the revocation of their appointment was the result of the breach of statutory duty committed by the Defendants. That is how it appeared to me on the basis of the pleading. That position therefore no longer arises because I have already ruled that there is no case for breach of statutory duty in this case. I have also said that the case for contract has not been pleaded and any damages on that basis cannot be considered. There is however the natural consequence of the revocation that is declared ultra vires and void. It means that the demotion and revocation being attacked successfully are of no effect. It further means the revival of the original appointment made on 20th September 2001 is obvious and inevitable. There is however a practical problem. The Plaintiffs have not asked for reinstatement of their positions. They are only interested in the payment of what is due to them up to the end of the 3 years period for which they had been appointed. A similar situation arose in **Chief Constable of the North Wales Police v. Evans** [1982] 3 All E. R. 141, where a constable resigned following the advice of the chief constable that if he did not resign he would be discharged from the police force. In fact, inquiries had been carried out under the relevant Police Regulations into his private life. Having resigned, the constable began proceedings against the chief constable alleging that the chief constable did not inform him of the rumours against him nor gave him the opportunity to explain himself in respect of those rumours. The constable moved for orders of certiorari, mandamus and for a declaration that the decision by the chief constable to ask him to resign or be discharged was illegal, ultra vires and void. The trial judge found in favour of the constable but granted no relief other than cost. The constable appealed to obtain substantive relief. The chief constable also appealed. On the question of obtaining substantive relief, the House of Lords ruled that the constable would be entitled to the same rights and remedies that would have been available to him if the chief constable had unlawfully discharged him in the absence of reinstatement. In this case, the Plaintiffs have clearly pleaded their financial losses subject to further calculation of exact amounts due in view of the fact that the Plaintiffs had not attended Authority meetings to earn food allowances and sitting allowances. No problem arises as to Mr. White's balance of entitlement as Chairman for the period he was made Deputy Chairman. No problem also arises as to the entitlement to the monthly honorarium for both the Plaintiffs. I am prepared to award the Plaintiffs' their losses but for the effect of paragraph 1 (3) of Schedule 2 to the Act which states-

“Any remuneration or allowances which are payable to a member in consequence of his office shall be paid out of the funds of the Authority in accordance with this Act...”

This paragraph effectively bars the Authority from paying out the Plaintiffs' losses due to the conduct of a Government Minister unless the Authority is made a party to this case. This is not the case here. A cause of action in contract would have been better because the Authority is the agent of the Minister in rewarding the Plaintiffs for their service.

Claim under section 94(1) of the Constitution.

The remedy for revocation of appointment, which is alleged to be contrary to the power conferred by a provision of an Act of Parliament for some reason, lies in judicial review, to use the modern parlance for prerogative writs. However, the Plaintiffs have under section 83 of the Constitution invoked section 94 (1) of the Constitution, alleging that the Second Defendant had breached this section and claimed damages for breach of the Constitution. Section 94 of the Constitution states-

“(1) A person to whom this Chapter applies has a duty to conduct himself in such a way, both in his public life or official life and his private life and in his association with other persons, as not-

- (a) to place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;**
- (b) to demean his office or position;**
- (c) to allow his integrity to be called into question; or**
- (d) to endanger or diminish respect for and confidence in the integrity of the government of Solomon Islands...”**

The focus then is on the Second Defendant's conduct in revoking the appointment of the Plaintiffs. As I have said in this judgment, the Second Defendant has got the power to revoke but upon the conditions set out in paragraph 1(4) of Schedule 2 to the Act. In this case, the Second Defendant omitted to cite any of the conditions specified in paragraph 1 (4) of Schedule 2 to the Act to justify his act of revocation. This was the omission on his part. There is no direct evidence to explain his motive for so acting in the way he did act except to connect his action with Minister Hunuehu previous conduct towards the Plaintiffs before he succeeded Minister Hunuehu. There is evidence however to show his subsequent association with a representative with ICSL in one of the restaurants in the city. It may be that he removed the Plaintiffs because they had voted against ICSL on 6th June 2002. That I think is but a speculative conclusion. Apart from that, there is nothing else against which I can judge the Second Defendant's conduct as a Minister of the Government violating section 94 (1) of the Constitution. There may well be complaint against Minister Hunuehu's conduct but unfortunately he is not a party in this case. The Second Defendant might have been the instrument of Minister Hunuehu but I think he should not be held to be responsible for his predecessor's conduct in the absence of clear and direct evidence of conduct contrary to the spirit of section 94 (1) of the Constitution. The least the Second Defendant can be accused of is omitting to tell the Plaintiffs the reasons for removing them from office. The real culprit, if I may say so, was Minister Hunuehu who having demoted Mr. White as Chairman as far back as 11th February 2002, continued to harass the Plaintiffs in particular by a series of letters though the Chairman after that date was Father Edmund Rukale. One wonders why that Minister singled out the Plaintiffs for his attack. Minister Olovae had never communicated with them about anything like Minister Hunuehu did so that his evil motive towards them can be revealed to them. There is no evidence of that in this case. That being the case, I refuse to grant the declaration sought by the Plaintiffs in respect of the alleged breach of section 94 (1) of the Constitution. Although the Plaintiffs

have not been successful in their claim for damages for breach of statutory duty and for a declaration for breach of section 94 (1) of the Constitution, this case does demonstrate the importance of the need for Government Ministers to heed the need to act lawfully in carrying out their duties in the affairs of the Government. Political games, personal interests, and threats cannot be tolerated by the law. The First and Second Defendants will pay the cost of this litigation. The orders of this Court are therefore that-

1. the declaration sought by the Plaintiffs against the First Defendant that the revocation of the Plaintiffs' appointment as members of the Authority and the First Plaintiff's demotion from Chairman to Deputy Chairman were ultra vires and void is granted.
2. the declaration sought by the Plaintiffs against the Second Defendant that the revocation of the Plaintiffs' appointment as members of the Authority was ultra vires and void is granted.
3. the claim by the Plaintiffs for loss of monthly honorarium and other allowances is refused;
4. the claim by the Plaintiffs for damages for breach of statutory duty is refused.
5. the claim by the Plaintiffs for damages for loss of reputation is refused.
6. the claim by the Plaintiffs for exemplary damages is refused.
7. the declaration sought by the Plaintiffs against the Second Defendant that the Second Defendant is in breach of section 94 (1) of the Constitution is refused.
8. Costs will be the Plaintiffs cost to be taxed, if not agreed.

F.O. Kabui
Judge