JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 23 OF 2007

BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.

BETWEEN HOLIDAY INN JAMAICA INCORPORATION APPELLANT

AND AVA CHAMBERS RESPONDENT

Michael Hylton Q.C., Kevin Powell and Gregory Reid instructed by Ziadie Reid & Co. for Appellant.

André Earle and Miss Anna Gracie instructed by Rattray, Patterson, Rattray for the Respondent.

23rd, 24th July and 12th December, 2008

PANTON, P.:

I have read the reasons for judgment written by my learned brothers, Harrison and Morrison, JJA. I fully agree with the views that they have expressed, and the conclusion arrived at. There is nothing that I can usefully add.

HARRISON, J.A:

1. I have read the draft judgment of my brother Morrison J.A. and am in full agreement with his reasoning and conclusion. I wish however, to make some comments on the issue whether the agreement between the parties was in contravention of section 4 of the Labour Relations and Dispute Act ("LRIDA"). Grounds (c) and (d) relate to this

issue and were argued together by Mr. Hylton Q.C. for the Appellant. The grounds state as follows:

> "(c) That the contract alleged to have existed between the Claimant and the Defendant would have been illegal and unenforceable and that the learned judge erred in law when he found that the existence of such a contract was legal and enforceable.
>
> (d) That the learned judge erred and or misapplied the law when he held that because the act did not make it a criminal offence for a worker to enter into such an agreement then the contract was not illegal or unenforceable. That the matter was an issue of employment law and contract law and therefore the fact that the LRIDA did not make the offence a criminal one did not make the contract legal and enforceable".

2. The evidence has revealed that the respondent was a unionized staff member with the appellant for a number of years but upon becoming a Sales Manager the appellant and herself made an oral agreement that in consideration of this new appointment she would relinquish her union membership but retain the benefits that would be attached to her previous position in the Hotel. In June 2002 the position of the respondent was made redundant. She contended, and the Court below found that the redundancy package which was paid by the appellant constituted a breach of the oral agreement. The questions which the learned judge had to determine were whether or not there was agreement which entitled the respondent to benefits previously held by her as a unionized member and if so, was the agreement illegal and therefore unenforceable by virtue of section 4 of the Labour Relations and Industrial Disputes Act? Section 4 of the LRIDA provides that:

> "(1) Every worker shall, as between himself and his employer, have the right-

(a) to be a member of such trade union as he may choose;

(b) to take part, at any appropriate time, in the activities of any trade union of which he is a member;

(c) not to be a member of a trade union.

(2) Any person who –

(a) prevents or deters a worker from exercising any of the rights conferred on him by subsection (1); or

(b) dismisses, penalizes or otherwise discriminates against a worker by reason of his exercising any such right,

Shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars.

(3) Where an employer confers a benefit of any kind to any worker as an inducement to refrain from exercising a right conferred on them by subsection (1) and the employer –

(a) confers that benefit on one or more of those workers who agree to refrain from exercising that right; and

(b) withholds it from one or more of them who do not agree to do so,

The employer shall for the purpose of this section be regarded, in relation to any such worker as is mentioned in paragraph (b), as having thereby discriminated against him by reason of his exercising that right...".

3. Mr. Hylton Q.C. for the appellant referred to and relied on **Re: An Arbitration between Mahmoud and Ispahani** [1921] 2 KB 716 as an authority for the proposition that a party to a contract could not rely on his own illegality in order to enforce that contract. In that case an Order was passed prohibiting persons from buying, selling or otherwise dealing in certain specified articles unless they were issued with a licence to

do so. The respondent entered into an agreement with the appellant to supply the appellant with linseed oil. Linseed oil was an item which could not be bought, sold or otherwise dealt with without a licence to do so. The respondent had obtained such a licence and the appellant represented that he also had such a licence but in fact he did not. The respondent tendered delivery of the linseed oil but the appellant refused to accept it claiming that as he had no licence the agreement between them was void. The respondent succeeded both in an arbitration of the agreement on the first instance. The Court of Appeal however unanimously upheld the appellant's contention. At page 724 of the judgment Bankes L.J. said:

> "The Order is a clear and unequivocal declaration by the Legislature in the public interest that this particular kind of contract shall not be entered into. The respondent had a licence; the appellant had no licence. The respondent contends that, as he had a licence, the appellant cannot be heard to say that in the circumstances he had not a licence. I cannot assent to that proposition. I do not think there is any authority for it, and as the language of the Order clearly prohibits the making of this contract, it is open to a party, however shabby it may appear to be, to say that the Legislature has prohibited this contract, and therefore it is a case in which the Court will not lend its aid to the enforcement of the contract".

And at page 728 Scrutton L.J. said inter alia:

> "If this contract is prohibited by what is equivalent to a statute, the fact that the person who entered into the contract honestly believed that he was not breaking the statute, because he was told by the other party that he had a licence, is no defence. I think the law is laid down in **Cope v. Rowlands** 2 M. & W. 157, where Parke B., delivering the judgment of the Court, said: *"It is perfectly settled, that where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden*

> *by the common or statute law, no Court will lend its assistance to give it effect. It is equally clear that a contract is void if prohibited by a statute, though the statute inflicts a penalty only, because such a penalty implies a prohibition*: Lord Holt, **Bartlett v. Vinor. Carth**. 252. And it may be safely laid down, notwithstanding some dicta apparently to the contrary, that if the contract be rendered illegal, it can make no difference, in point of law, whether the statute which makes it so has in view the protection of the revenue, or any other object. The sole question is, whether the statute means to prohibit the contract?" If the contract is prohibited by statute, the Court is bound not to render assistance in enforcing an illegal contract".
>
> (Emphasis supplied)

4. Mr. Earle for the respondent submitted that the **Ispahani** case is distinguishable from the instant case and I do agree with him. A breach had been committed in that case and this led to the illegality and unenforceability of the agreement. The facts of the instant case do not show that a breach had occurred.

5. Sykes J., in an admirably clear and careful judgment said at paragraphs 14 and 15 of his written judgment:

> "14. According to Counsel for the defendant, this provision makes it criminal for the company to conclude any such agreement with a worker and therefore any contract concluded in breach of this section is unenforceable. The provision does not prohibit any agreement of the kind before me. Section 4(1) permits the worker to join a union. There is no law that says that he must be a member of any trade union. If a worker is willing to cease being a member of a trade union because of a contractual agreement with his employer and none of the factor that would vitiate contract formation is present, how can it be said that a criminal offence has been committed? To persuade a worker by legitimate means, not to utilise the right to become a member of a trade union or to give up trade union membership could hardly be described as preventing,

> deterring, penalizing or discriminating against the worker. Indeed section 4(3) recognizes the point I am making, by stating, that an employer discriminates if he confers benefits on those workers who agree to cease being a part of the union, and withholds them from those who do not agree. A necessary implication and inference from this is that the employer can confer the benefit on both sets of workers without committing a criminal offence. What the legislation is doing is saying to the employer that unless all the workers agree it is pointless conferring the benefit on those who do since you have to confer the same benefit on those who wish to become or remain members of a trade union. Had the legislation wished to make any such agreement unlawful then it would have simply prohibited such agreements rather than making distinctions between those workers who agree and those who don't .Section 4(3) was carefully drafted to make it clear that if the benefit is conferred on both those who agree and those who do not it cannot be said that the employer has discriminated and consequently has not committed a criminal offence.
>
> 15. What the law has done is to recognize that workers are free autonomous agents who are free to join a union if they wish, accept benefits from the employer in exchange for not joining the union. In other words, the union and the employer are free to use all legitimate means to woo the worker to their point of view. The worker, as a free autonomous human being, can make up his own mind about what is in his best interest. He is not beholden to either the trade union or the employer. If he makes a poor choice, like all other free persons, he lives with the consequences".

6. In my judgment, the learned judge has correctly summed up the legal position regarding section 4 of the LRIDA and I can find no reason to disturb his findings. In the circumstances, I conclude that grounds (c) and (d) should be rejected.

MORRISON, J.A.

1. This is an appeal from a judgment of Sykes J given on 1 February 2007 for the respondent in the sum of $1,462,681.90, with interest at 6% per annum from 18 June 2002, to the date of payment.

2. The respondent was employed to the appellant for almost 20 years, originally as a member of the unionized staff and, from 1992 to 18 June 2002 when her employment was terminated by reason of redundancy, as a manager. Upon becoming a part of the appellant's management team she relinquished her membership of the Bustamante Industrial Trade Union.

3. When the respondent's position was made redundant in 2002, she was paid $1,301,652.70 by the appellant as a redundancy payment, based on the formula prescribed pursuant to the Employment (Termination and Redundancy Payments) Act. Regulations made pursuant to that Act (The Employment (Termination and Redundancy Payments) Regulations, 1974, regulations 8 and 11), provide for a minimum redundancy payment and it is common ground between the parties that, as a result of the collective bargaining process over the years, unionized employees of the appellant were entitled to redundancy payments in accordance with a more generous formula.

4. The respondent's case was that by an oral agreement made in 1992 between herself and the appellant it was agreed that in

consideration of her being promoted to a managerial position, she would relinquish her union membership while nevertheless retaining her entitlement to the benefits that would normally attach to such membership. As a result, she contended, she duly accepted the promotion and relinquished her union membership. The appellant denied that there was any such agreement, but also contended that, even if there was, such an agreement was illegal and accordingly unenforceable.

5. The issues in the case were therefore whether there was in fact any such agreement and, if so, whether the respondent was entitled to maintain a claim to an enhanced redundancy payment in keeping with the formula applicable to unionized staff. There is no dispute that the difference is the $1,462,681.90 for which judgment was given in the court below.

6. Sykes J, in a considered judgment, found for the respondent on both issues. With regard to the alleged agreement, he found that the respondent's evidence was not contradicted in any significant respect by the evidence adduced by the appellant, particularly when, as it turned out, its single witness had not been employed to the appellant at the material time and was therefore completely unable to speak to what had transpired at the time of the respondent's promotion. The appellant's pleaded denial of the existence of the alleged agreement therefore fell

away completely, with the judge describing the defendant's case as having collapsed in "a dramatic fashion."

7. There was also some evidence that it had for some time been the appellant's policy to calculate and make redundancy payments to managerial staff at the rate applicable to unionized staff, and also that several managers whose services had previously been terminated by reason of redundancy (including one such case less than a year before the respondent's dismissal) had in fact been paid at that rate. It also appeared from the evidence that the payment of the respondent at the lower, statutory rate had been on the specific instructions of the appellant's general manager, leading the judge to conclude that "but for the specific instructions [from the general manager]...Miss Chambers would have been paid at the union rate and not the statutory rate". Sykes J therefore concluded that the appellant and the respondent had "contracted on the basis that the union rate would be used in the event of a redundancy".

8. As regards the illegality point, the learned judge considered that there was nothing in section 4 of the Labour Relations and Industrial Disputes Act ("the LRIDA"), upon which the appellant relied, prohibiting an agreement of the kind alleged in this case. He therefore concluded as follows:

> "There is no law that says that he must be a member of any trade union. If a worker is willing

> to cease being a member of a trade union because of a contractual agreement with his employer and none of the [factors] that would vitiate contract formation is present, how can it be said that a criminal offence has been committed? To persuade a worker, by legitimate means, not to utilize the right to become a member of a trade union or to give up trade union membership could hardly be described as preventing, deterring, penalizing or discriminating against the worker."

9. Dissatisfied at this result, the appellant filed four grounds of appeal as follows:

> "(a) That there was no corroborating evidence before the learned judge on which he could find the existence of a contract between the Claimant and the Defendant as alleged by the Claimant as the evidence of the Claimant was not corroborated by her witness and that the learned judge erred in law and or wrongly exercised his discretion in finding that there was.
>
> (b) That the evidence of Mr. Lionel Moore, the Claimant's witness, was that there existed at Holiday Inn a general policy of paying managers at union rates and calculating their redundancy according to union rates. According to Mr. Moore this was done as part of a general policy for all managers whereby they were allowed to retain all the benefits they had previously enjoyed as union members or which they would have enjoyed as union members if they had joined the union. This was in contradiction of Miss Chamber's assertion that there had been a specified agreement negotiated between herself and the Hotel whereby she was induced to leave the union in exchange for certain benefits. The learned judge in accepting Mr. Moore's evidence as true never reconciled the different positions put forward by Miss Chambers and Mr. Moore. If Mr. Moore was correct and it

> was general policy to pay managers at union rates then why was there any necessity to have any special agreement as alleged by Miss Chambers?
>
> (c) That the contract alleged to have existed between the Claimant and the Defendant would have been illegal and unenforceable and that the learned judge erred in law when he found that the existence of such contract was legal and enforceable.
>
> (d) That the learned judge erred and or misapplied the law when he held that because the act did not make it a **criminal** offence for a worker to enter into such an agreement then the contract was not illegal or unenforceable. That the matter was an issue of employment law and contract law and therefore the fact that the LRIDA did not make the offence a **criminal** one did not make the contract legal and enforceable."

10. In support of these grounds, the appellant filed detailed skeleton arguments and written submissions, which were, as usual, expertly and economically supplemented by Mr Hylton QC in his oral argument. At the very outset, Mr Hylton indicated candidly that the grounds of appeal were "not of equal strength", by which in due course I understood him to mean that he placed greater reliance on grounds (c) and (d) (illegality), than on grounds (a) and (b) (which were in essence challenges to the judge's findings of fact).

11. I think that Mr Hylton was correct in this assessment. The simple answer to ground (a) is the one furnished by Mr Earle (to whose able written and oral submissions I am also indebted), which is that there is no

requirement either of law or practice that the respondent's evidence should be corroborated. The learned judge accepted that evidence, as he was fully entitled to do. However, it is also correct to observe, as Mr Earle also pointed out, that there was in any event, ample corroborating evidence in the treatment of the previously dismissed managers and the fact that the respondent had herself been the recipient after her promotion of benefits at the level applicable to unionized staff, such as maternity leave pay and vacation leave.

12. The complaint in ground (b) was that Mr Lionel Moore, a witness called by the respondent, who had been the appellant's financial controller for many years, was the person who had confirmed that there had in fact been a policy of calculating redundancy payments to managers at union rates, as part of a general policy by which managers were allowed to retain all benefits previously enjoyed by them as union members, or which they would have enjoyed, had they joined the union. This evidence, Mr Hylton submitted, was "in stark contradiction to the respondent's assertion that there had been a special agreement negotiated between herself and the appellant whereby she was induced to leave the union in exchange for certain benefits". It was therefore necessary, the submission continued, for the judge to have "reconciled" the supposedly differing positions of the respondent and Mr Moore, since by having found his evidence to be credible, the judge "in effect rejected

the central part of the Respondent's evidence, upon which her entire claim was based".

13. Mr Earle submitted that ground (b) was premised on an inconsistency between the evidence of the respondent and Mr Moore, when his evidence, on the contrary, in fact supported the respondent's position.

14. Again, I agree with Mr Earle. What Mr Moore's evidence did, if anything, was to demonstrate that the respondent's assertion that there was an express agreement along the lines indicated by her was not at all far-fetched, in the light of what his evidence established without contradiction to be the appellant's settled policy on the matter of affording union benefits to a managerial staff. In short, his evidence supported hers. There could have been any number of reasons for the matter to have been made the subject of an express agreement in the respondent's case, hardly least among them might have been the possibility that the appellant's policy could change, which is precisely what in fact appears to have happened by the time of the respondent's redundancy. I do not therefore see a basis for disturbing the learned judge's decision on either ground (a) or (b).

15. Grounds (c) and (d), which Mr Hylton regarded as his stronger grounds, were argued together and raised in effect a single issue, that is, whether the agreement that the judge found to have been proved

between the appellant and the respondent was illegal and therefore unenforceable.

16. Before going to the statutory provisions and the submissions, a word about illegal contracts generally may be helpful to establish a context. In ***St. John Shipping Corporation v Joseph Rank Ltd.*** [1956] 3 All ER 683, 687, Devlin J (as he then was), in a valuable and still oft-cited analysis, said this:

> "There are two general principles. The first is that a contract which is entered into with the object of committing an illegal act is unenforceable. The application of this principle depends on proof of the intent, at the time the contract was made, to break the law; if the intent is mutual the contract is not enforceable at all, and, if unilateral, it is unenforceable at the suit of the party who is proved to have it...The second principle is that the court will not enforce a contract which is expressly or impliedly prohibited by statute. If the contract is of this class it does not matter what the intent of the parties is; if the statute prohibits the contract, it is unenforceable whether the parties meant to break the law or not. A significant distinction between the two classes is this. In the former class one has only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract; if a contract is deliberately made to do a prohibited act, that contract will be unenforceable. In the latter class, one has to consider not what acts the statute prohibits, but what contracts it prohibits; but one is not concerned at all with the intent of the parties; if the parties enter into a prohibited contract, that contract is unenforceable."

17. To these two categories of illegal contracts described by Devlin J may be added a third, which is, contracts illegal at common law by virtue

of being contrary to public policy. As Professor Beatson has observed (in **Anson's Law of Contract,** 28th edn, page 353), "the policy of the law has, on some subjects, been worked into a set of tolerably definite rules", with regard to which the rules relating to contracts in restraint of trade provide one of the best known examples. It is, however, generally accepted that the requirements of public policy are not immutable and that "the application of canons of public policy to particular instances necessarily varies with progressive development of public opinion and morality..." (Anson, page 353).

18. Section 4 of the LRIDA provides as follows:

> "4. — (1) Every worker shall, as between himself and his employer, have the right –
>
> (a) ...
>
> (b) to take part, at any appropriate time, in the activities of any trade union of which he is a member,
>
> (c) not be a member of a trade union.
>
> (2) Any person who –
>
> (a) prevents or deters a worker from exercising any of the rights conferred on him by subsection (1); or
>
> (b) dismisses, penalizes or otherwise discriminates against a worker by reason of his exercising any such right,
>
> shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

> (3) Where an employer offers a benefit of any kind to any workers as an inducement to refrain from exercising a right conferred on them by subsection (1) and the employer –
>
> (a) confers that benefit on one or more of those workers who agree to refrain from exercising that right; and
>
> (b) withholds it from one or more of them who do not agree to do so.
>
> the employer shall for the purposes of this section be regarded, in relation to any such worker as is mentioned in paragraph (b), as having thereby discriminated against him by reason of his exercising that right."

19. It is not in dispute that section 4(1)(c) (the right "not to be a member of a trade union") was added by way of amendment in 2002 (section 3(a)(ii) of Act 13 of 2002) and therefore was not a part of the Act in 1992 when the question of the respondent's promotion was under discussion.

20. Mr Hylton submitted that the effect of section 4(2) was to make it illegal for an employer to discriminate against a worker if that worker chooses to exercise her right under section 4(1) to join and participate in trade union activity. He also points out that under section 4(3) certain actions of an employer are considered discrimination against a worker. The agreement which the respondent seeks to enforce was based, it was said, on acts that were prohibited under the LRIDA and it was accordingly

submitted that the court "should not allow the enforcement of an alleged contract which is based on a contravention of the provisions of the Act."

21. In support of this submission, Mr Hylton referred us to and relied very heavily on the decision in ***In Re An Arbitration between Mahmoud and Ispahani*** [1921] 2 KB 716.

22. Mr Earle submitted that there is no provision in the LRIDA which makes the agreement between the appellant and the respondent illegal and/or unenforceable. We were referred to the decision of this court in ***R v Mark McConnell and United Estates*** (RMCA 17/99, judgment delivered 31 July 2001), for what he submitted were authoritative dicta on the meaning and scope of section 4. Mr Earle submitted further that the instant case did not fall within section 4(3) and that ***Re Mahmoud & Ispahani*** was distinguishable as a case in which there was an express prohibition against both parties entering into the contract in question.

23. Mr Hylton in reply also sought to distinguish ***Mark McConnell*** as a case necessarily involving proof of a criminal breach of the LRIDA, as against the instant case, in which the question is whether the contract is unenforceable by reason of its contravention of the provisions and policy of the statute.

24. In ***Mark McConnell*** Harrison JA (as he then was) stated that section 4(1) "is merely a restatement of the right of a worker, a right already guaranteed by section 23 of the Constitution". He goes on to point out

that the section does not "create multiple rights...but merely recites a detailed description of the 'right' originally recognized by the Constitution. It is a single indivisible right." That learned judge accordingly concluded as follows:

> "The purport and intent of the Labour Relations and industrial Disputes Act is to protect the right of the worker, and particularly in these circumstances to re-inforce his freedom to be involved with a union of his choice, despite a reluctant employer's subtle entreaty or brazen resistance to the contrary; section 4(1) restates the details of that right." (See pages 20 and 25 of the judgment).

25. Similar views were expressed by Downer and Langrin JJA (at pages 8, 30 and 35). This analysis of the effect of section 4(1), with which I am in full and respectful agreement, also makes it clear, it seems to me in passing, that the addition by the legislature in 2002 at section 4(1)(c) of the right not to be a member of a trade union, is nothing more than an amplification of "the legislative recognition of the constitutional rights enshrined in section 23 of the Constitution" (which was Downer JA's characterization of the sub-section in its original form – see page 35 of the judgment in ***Mark McConnell***).

26. Section 4(2) of the LRIDA, on the other hand, is the penal section, which creates two offences, section 4(2)(a) relating to an employer who seeks to prevent or impede the worker from exercising his rights under section 4(1) and section 4(2)(b) relating to "the discriminatory conduct of

an employer towards his worker as a consequence of his joining a union" (per Langrin JA in ***Mark McConnell*** at page 8).

27. Section 4(3), in effect, deems an employer who offers and confers on one or more workers who agree to accept a benefit as an inducement to refrain from exercising a right under section 4(1), and withholds that benefit from workers who do not so agree, to have thereby discriminated against the latter set of workers.

28. The first category of illegal contracts identified by Devlin J, that is, contracts to commit illegal acts, cannot, in my view, arise on the facts of this case, given that there is nothing in section 4 of the LRIDA to suggest that it was illegal for the appellant to allow the respondent to retain her union benefits in consideration of her accepting promotion to the managerial staff.

29. ***Re Mahmoud & Ispahani,*** which is the high point of the appellant's case, is a clear case falling within Devlin J's second category, that is, illegality arising from an express statutory prohibition of the very contract which the plaintiff sought to enforce. In that case a statutory order made under the Defence of the Realm Regulations prohibited the sale or purchase of linseed oil without a licence from the Food Controller. The plaintiff, who had such a licence, was assured by the defendant that he had one also, and the plaintiff accordingly agreed to sell to him a quantity of linseed oil. It turned out that the defendant in fact had no

licence and he subsequently refused to accept the oil on that ground. The Court of Appeal held that he was entitled to do so ("however shabby it may appear to be", as Bankes LJ commented at page 724), notwithstanding the plaintiff's ignorance at the time the contract was made of the fact (the absence of a licence) which attracted the statutory prohibition. "The Order", observed Bankes LJ, "is a clear and unequivocal declaration by the Legislature in the public interest that this particular kind of contract shall not be entered into" ([1921] 2 KB 716, 724). In short, the contract was an illegal contract.

30. In my view, ***Re Mahmoud & Ispahani*** is therefore clearly distinguishable from the instant case, in which there is no comparable express prohibition in section 4. Neither can the language of the section support, it seems to me, the implication of any such prohibition. Section 4(1) is purely declaratory of the rights of workers, section 4(2) creates offences arising out of conduct of employers of a kind which the appellant cannot be said to have been guilty of in this case, and section 4(3) equally does not arise on the facts.

31. I am therefore of the view that the contention that the contract in this case was in breach of the express or implied provisions of the LRIDA has not been made out, which therefore leaves the question of whether it was nevertheless in contravention of the policy of the Act, as Mr Hylton ultimately contended. The policy of section 4 of the LRIDA, as has already

been observed, is to preserve and protect the worker's constitutionally guaranteed right to freedom of association by prohibiting conduct by employers designed and carried out with the intention of curtailing or frustrating that right. But it is the right of the worker, to be utilized as he or she thinks fit. That worker, as Sykes J observed, "as a free and autonomous human being, can make up his own mind about what is in his best interest". In the instant case, the respondent chose to maximize her employment benefits by accepting promotion while at the same time preserving her union benefits. That was, in my view, something which she was fully entitled to do by agreement with the appellant, without any breach of the letter, spirit or policy of the LRIDA.

32. I would therefore conclude that Sykes J was entirely correct on both issues and that this appeal should be dismissed, with costs to the respondent, to be taxed if not agreed.

PANTON, P:

ORDER

The appeal is dismissed with costs to the respondent to be taxed if not agreed.