

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No CV 2 of 2005
BB Civil Appeal No 29 of 2004

BETWEEN:

**THE ATTORNEY GENERAL
SUPERINTENDENT OF PRISONS
CHIEF MARSHAL**

**FIRST APPELLANT
SECOND APPELLANT
THIRD APPELLANT**

AND

**JEFFREY JOSEPH
LENNOX RICARDO BOYCE**

**FIRST RESPONDENT
SECOND RESPONDENT**

*Before The Rt Honourable
And The Honourables*

*Mr Justice de la Bastide, President
Mr Justice Nelson
Mr Justice Pollard
Mr Justice Saunders
Mme Justice Bernard
Mr Justice Wit
Mr Justice Hayton*

SUMMARY

of the Judgment of The Honourable Mme Justice Bernard which was delivered on November 8th 2006

The judgment is confined to the first of the issues which the Court had to decide. It concerns the justiciability of the exercise of the powers of the Governor General conferred under Section 78 of the Constitution of Barbados.

The issue of justiciability is linked to Section 77(4) which is an ouster clause prohibiting inquiry by the courts as to whether the Barbados Privy Council over which the Governor General presides, and on whose advice he acts, has validly performed any function vested in it by the Constitution.

Legal authorities have decided that where an administrative tribunal or entity acts without due regard to the principles of natural justice thereby acting outside of its jurisdiction or acts wrongly within its jurisdiction the courts are not prohibited from reviewing its decision regardless of an ouster clause. The judgment concluded that the Barbados Privy Council being an administrative tribunal with powers exercised by the Governor General its functions are reviewable by the courts if in the exercise of these functions it acts in breach of the principles of fundamental justice thereby acting outside its jurisdiction.

The elements and legal history of the prerogative of mercy were discussed, and the conclusion of the Court of Appeal that the Barbados Privy Council was a decision-making body and not merely an advisory one was upheld. An important requirement which is basic to all decision-makers is the desirability of acting fairly and several authorities were discussed in support of this.

One aspect of the appeal which was found to be troubling was the conduct of the Barbados Privy Council in relation to the reading of a second warrant for the execution of the Respondents. On June 24th, 2002 the Council had met to advise the Governor General as to the exercise of the prerogative of mercy, and the Respondents had been invited to make written representations. No such representations having been made the Council advised the Governor General against commutation of the sentences, and death warrants were read to them. The executions were later stayed by an order of court. Two years later in September 2004 after the appeals to the JCPC were dismissed the Council met to consider the Order in Council of the JCPC, and again advised the Governor General that a date for execution should be fixed, the reason being that the Council had already advised against commutation in 2002. The Respondents were not informed about this meeting nor requested to make written representations.

Due to the fact that two years had elapsed since the last date for execution had been fixed, the finding in the judgment was that the Privy Council had acted without procedural propriety thereby rendering its decision subject to being set aside as an infringement of

the Respondents' rights to the protection of the law. This has no impact on the final outcome of the appeal in light of the fact that the Court of Appeal had commuted the sentences of death imposed on the Respondents.

This is a brief statement of the main points discussed in the judgment and is not intended to be a substitute for the full text as delivered by The Hon Mme Justice Bernard of the Caribbean Court of Justice on Wednesday 8th November 2006.

Issued by The Court Protocol and Information Officer
Caribbean Court of Justice
On November 8th 2006