

**IN THE HIGH COURT OF
SOLOMON ISLANDS**

IN THE MATTER OF Sections 2, 31, 62, 72, 77, 83(2), 101, 102, 103 and 144 (1) of the Constitution

AND IN THE MATTER OF Order 7(3) of the Standing Orders of the National Parliament

AND IN THE MATTER OF Section 11 of the Public Finance and Audit Act [Cap. 120]

AND IN THE MATTER OF a Proclamation purportedly made by His Excellency The Governor General on 23 November 2007-12-12

BETWEEN **THE PRIME MINISTER** Plaintiff

AND **THE GOVERNOR GENERAL** First Defendant

AND **THE LEADER OF THE OFFICIAL OPPOSITION** Second Defendant

AND **THE LEADER OF THE INDEPENDENT MEMBERS** Third Defendant

Goldsbrough J

Date of hearing: 5 – 11 December 2007

Date of decision: 12 December 2007

OUTLINE REASONS FOR DECISION AND COURT ORDERS

By originating summons the Honourable Prime Minister (the Plaintiff) raised objection to the decision of His Excellency the Governor General (the First Defendant) expressed to have been made under the Standing Orders of Parliament, in particular under Order 7 (3)

evidenced in a Proclamation published, I believe, in the Solomon Islands Government Gazette.

The basis of the complaint of the Plaintiff is that the provisions of Standing Order 7(3) are unconstitutional, in that they are in conflict with the provisions of section 31(1) of the Constitution of Solomon Islands. In addition it is suggested by the Plaintiff that there was no "consultation" as between the First Defendant and himself over the date and time Parliament should next meet. The Leader of the Parliamentary Opposition (Second Defendant) and the Leader of the Independent Group of Member (Third Defendant) are also cited.

I have already said, in determining a summons for strike out under the Civil Procedure Rules that the ouster provision in Section 31(3) of the Constitution is not entirely effective in ousting the jurisdiction of the Court. More likely, the section restricts the enquiry of the Court into the nature and substance of advice or consultation that took place between the relevant parties. Such a provision will greatly assist those involved in advising and consulting to know that this process will not come under the glare of judicial scrutiny.

The First Defendant determined and Proclaimed that the next meeting of Parliament of Solomon Islands would begin on 13 December 2007. He had not been advised of this date by the Plaintiff. A date for the last meeting of this year was previously set by the Plaintiff as 15 November 2007 but that meeting prior to happening was postponed indefinitely. It has not yet taken place.

Some meeting of Parliament is necessary prior to the end of this financial year ending 31 December 2007 for consideration of a resolution to permit spending by Government on and after 1 January 2008 in the absence of an Appropriation Act for 2008.

This represents the factual basis upon which the First Defendant made his determination. There is correspondence which shows that the First Defendant was concerned that no new date had been advised to him and that the end of the financial year was rapidly approaching. His anxiety was no doubt increased by the demands made upon him from other sections of Solomon Islands society. Further correspondence shows that whilst the Plaintiff was aware of this and other pressure, he wanted the First Defendant to await a Cabinet decision.

There is also evidence that the First Defendant was concerned over the suggestion that legal proceedings were to be commenced seeking some sort of clarification over

something. I use these words carefully, trying to reflect the impression given to the First Defendant in correspondence.

Whatever else transpired, the First Defendant was not inclined to wait until the anticipated determination of Cabinet and issued the Proclamation complained of on 23 November 2007.

Standing Orders of Parliament make no provision for the calling of a meeting. The Constitution makes little provision and what provision exists is limited to special meetings, where, for example a Prime Minister must be elected. What one might term an ordinary meeting is neglected, and therefore, by convention, such a meeting is called by the Honourable Prime Minister. That convention, in my view, would fall to be interfered with in the event that a necessary meeting is not called in good time. Such a necessary meeting seems only required towards the end of a financial year in the absence of an Appropriation Bill ready for scrutiny by Parliament. Such a scenario touches upon that which has elsewhere been described as unthinkable, that a Government would seek to continue without supply.

Should an interested bystander wonder then quite what all of this is about, there remains a matter to which reference has not yet been made. There stands a motion, notice of which has been given, that the Honourable Prime Minister no longer commands the support of a majority of the members of the House. I have made no reference to that so far as it seems to me that the interpretation of the Constitution and Standing Orders does not call for that to be considered.

Yet it influences determination of the same matter when consideration is given to the relief sought by the Plaintiff in these proceedings. When giving my decision on the summons to dismiss these proceedings under Order 27 Rule 4, I reserved the question as to whether these proceedings could be classified as frivolous or vexatious. In particular I alerted counsel to this issue.

Whilst consideration of the constitutionality of various laws is to be decided in academic terms, the relief available consequent upon such determinations is not restricted. It must be practical. It must give relief. That which is now sought does not presently appear to do so.

Counsel have had their attention drawn to this Court's concern over mundane practical matter in order that they may include the same in their submissions. Parliament needs to consider the issue of supply for 2008. No Appropriation Bill is ready. If the effect of declaring the Proclamation void is that the meeting scheduled for tomorrow, 13

December 2007 cannot take place, a further meeting must be called soon. Today is 12 December. The normal notice period, absent emergency, is 13 days. No doubt that period is deemed necessary to permit all members to assemble.

The notice for tomorrow's meeting has been issued by the Clerk to Parliament. Members have had the opportunity to assemble. They will have to meet before the year end. Parliament may not normally meet on Public Holidays. Public servants, required recently to work additional hours, are given leave by Cabinet days immediately following the imminent Public Holidays on 25 and 26 December. The number of available days will only reduce, and the costs of members already assembled, as I can assume some have in deference to the Clerk's notice, should figure in practical considerations.

On Monday 10 December 2007, prior to this Court resuming following the weekend adjournment, a Press Release from the Office of the Prime Minister was published in a local newspaper. Counsel for the Third Defendant in these proceedings drew that to my attention, and counsel for the Plaintiff confirmed that the report accurately reflected the view of his client.

Contained within that Press Statement was this paragraph:

“I am pleased to tell the nation that our Grand Coalition for Change Government continues to command the solid support pledged by 25 out of 48 Members of Parliament. With that absolute majority of votes pledged in our favour, there will be not a quorum for the parliamentary meeting which the Governor General has unilaterally convened by issuing his Proclamation”

The question raised by the above I put to counsel. I adjourned the hearing to permit Counsel, in particular for the Plaintiff, to seek instructions and formulate submissions thereon. The next morning I heard from Counsel for the Plaintiff as to the import of the statement. In particular I had sought submission on what, if any, consideration should be given by the court in its deliberations of the position expressed. Counsel for the Plaintiff had no submission to make on that point but rather sought to explain the statement. The explanation that I heard, and I appreciate the effort made by counsel in that regard, seemed to me to be something that the House, rather than this Court, should first receive.

The position as explained to me appears to be that the Minister responsible is not yet ready with that which he wishes to present to the House in the absence of an Appropriation Bill. That he wishes to inform the House of the state of national finances and to offer explanation as to why there is as yet no Appropriation Bill for consideration and to offer a date when such will be ready. In the absence of that there is no government business for the meeting of Parliament.

I take it from context this explains why the Plaintiff does not intend to attend Parliament should there be a meeting on 13 December.

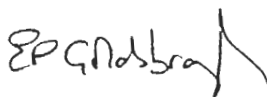
Then, it seems, regardless of the decision of this Court on the relief sought, the Plaintiff and his supporters, from what I am told, will not attend Parliament if it meets on 13 December as proclaimed as it considers there to be no government business to attend. The relief that the Plaintiff seeks in these proceedings somehow then appears to be rendered meaningless other than in the academic sense. Through that, perhaps, one could argue that consideration of an otherwise valid, and exceedingly well argued, case loses its essence.

The same, it may be argued, might apply to the validity of submissions, previously made in these proceedings, of respect for and adherence to the principles of responsible government as provided for in the Constitution, in particular the responsibility of executive authorities to elected assemblies.

These proceedings are frivolous and vexatious for the reasons set out in outline above. Constitutional questions deserve further consideration than this. I issue this decision supported in outline confident in the principles applied but reserving to myself the right to perfect my reasons in due course. I do this in deference to the urgent need for my determination.

The Proclamation in respect of the determination of the meeting of Parliament published is not declared void as sought by the Plaintiff in these proceedings. There is no reason, by virtue of these proceedings, that Parliament should not meet on 13 December 2007.

The order of this Court is that the originating summons is dismissed as appearing to be frivolous and vexatious. Costs of these proceedings, after submission today on invitation by the Court, are order to be paid by the Plaintiff to the First Second and Third defendant to be agreed or taxed.



Goldsbrough J

12 December 2007