COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp. No. 88 of 2023

B E T W E E N

COMMISSIONER OF POLICE

AND

MINISTER OF NATIONAL SECURITY

Intended Appellants

AND

SGT. 2375 THEODORE M. NEILLY

Intended Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Madame Justice Charles, JA
The Honourable Mr. Justice Turner, JA

APPEARANCES: **Mr. Wayne Munroe KC with Ms. Kenria Smith, Counsel for the Appellants**
Mr. K. Melvin Munroe, Counsel for the Respondent

DATES: **22 February 2024; 20 March 2024**

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Civil appeal – Supreme Court Appeal – Application for conditional leave to appeal to the Judicial Committee of the Privy Council – Leave to appeal – Whether leave as of right - Section 23 of the Court of Appeal Act – Exercise of discretion – Whether Appellants have an arguable case – Whether the proposed appeal involves a point of general public importance – Section 23(1) of the Court of Appeal Act – Order 18, rule 13 of the Rules of the Supreme Court, 1978 – Pleadings

On 20 October 2023, this Court dismissed the Appellants' appeal against a decision of a Supreme Court Judge in which she found the Appellants liable for unlawful detention and awarded damages to be assessed. We ordered that nominal damages be assessed forthwith.

The Appellants now seek conditional leave to appeal to the Privy Council. The Appellants concede that this appeal is not "as of right" but rather is at the court's discretion under section 23(1) of the Court of Appeal Act. They say that they have an arguable case which involves a point of general public importance.

Held: Leave to appeal to the Privy Council is refused. The Appellants shall pay the Respondent's costs of the application to be taxed, if not agreed.

Per Charles, JA:

In the exercise of our discretion, leave should not be granted to appeal to the Privy Council unless it can be demonstrated that there is an arguable case to succeed on appeal and that the appeal involves a point of general public importance.
The issues sought to be argued as a basis for granting leave to appeal were never canvassed before the trial judge or before this Court. Further, none of the issues raised are issues of general public importance. More importantly, the issues were not pleaded and never argued before the trial judge or this Court. Put differently, these issues are being raised for the first time.

Bahamas Ferries Limited v Charlene Rahming SCCivApp & CAIS No. 122 of 2018; mentioned
Fund Haven Ltd and anor v Executive Director of the Securities Commission of The Bahamas [2021] UKPC 11; mentioned
Lucretia Rolle v Airport Authority SCCivApp No. 119 of 2021; mentioned
Paul F. Major v First Caribbean International Bank SCCivApp 77 of 2021; mentioned
Rubis Bahamas Limited v Lillian Antoinette Russell SCCivApp & CAIS No. 86 of 2022; considered
Responsible Development for Abaco (Rda) Ltd Ex Parte The Queen v The Rt. Hon. Perry Christie et al SCCivApp. No. 248 of 2017; considered
Wilfred P Elrington v Progresso Heights Limited [2024] CCJ 4 (AJ) BZ; considered

Per Barnett, P:

The obligation of a subordinate officer to obey the order of his superior and the scope of that obligation was never the issue before the court below or this Court. If that was the point of law the applicants wish to have determined by the Privy Council, this is not the case for the determination of that issue. The proposed appeal does not raise a matter of general public importance which warrants consideration by the apex court.

J U D G M E N T

Judgment delivered by the Honourable Madam Justice Charles, JA:

Introduction

1. In an oral Judgment delivered on 20 September 2023, which was reduced to writing on 20 October 2023 ("the Judgment"), this Court dismissed an appeal from a Judgment of Darville-Gomez J ("the trial judge") in which she found the Appellants liable for unlawful

detention and awarded damages to be assessed. The trial judge adjourned the assessment of damages, which was rather surprising because of its nominal nature. As a result, this Court ordered that nominal damages to the respondent be assessed forthwith.

2. Following our dismissal of the appeal, the Appellants filed a Notice of Motion on 30 October 2023 ("the application") seeking conditional leave to appeal the Judgment to the Judicial Committee of Her Majesty's Privy Council ("the Privy Council"). The application, supported by the affidavit of Perry McHardy filed on 31 October 2023, seeks leave to appeal to the Privy Council on the ground that the proposed appeal raises important issues involving a point of general public importance.

3. The Appellants conceded that the proposed appeal is not one "as of right". Therefore, the singular issue to be determined by this Court is whether the proposed appeal raises important issues involving a point of general public importance for this Court to exercise its discretion under Section 23(1) of the Court of Appeal Act.

4. For reasons which are set out below, I dismiss the application. The Appellants shall pay the Respondent's costs of the application to be taxed, if not agreed.

Background

5. The factual background to this dispute is set out at paragraphs 3 to 5 of the written Judgment of this Court, delivered on 20 October 2023. For present purposes, I shall set out some salient facts.

6. On 1 September 2016, the Respondent, a Sergeant of Police, was at the Central Detective Unit ("CDU). He was overheard making some statements about the freeing of an individual. He then left the office for the day. Later that day, he received a telephone call to return to the office to see (then) Chief Superintendent Clayton Fernander ("Chief Superintendent") who questioned him about the earlier statements that he made.

7. The Respondent was informed that he was going to see the then Commissioner of Police ("COP") at Police Headquarters. He alleged that he requested to drive his vehicle and his request was denied. He was transported in a police vehicle accompanied by the Chief Superintendent and the first and second Defendants (conveniently "the two Inspectors") to Police Headquarters.

8. Regarding the claim for unlawful detention, the sole dispute was whether the Respondent was prevented from going to the meeting to see the COP in his own vehicle or whether he was "ordered" or "instructed" to go in the police vehicle with the officers. This is an issue of fact for the trial judge.

9. After hearing the evidence as well as the oral and written submissions of the parties, the trial judge accepted the evidence of the Respondent over that of the Appellants. At paragraphs 25 to 27 of her written Judgment, she stated:

> **"25. In my opinion, the words 'take him' and 'so he can be taken' seems (sic) to been (sic) words that lead to restriction. The Plaintiff testified that he was not given any choice and the "instructions and order" given clearly indicates** (sic) **that the Plaintiff was perhaps prohibited from driving his vehicle to the Police Headquarters.**
>
> **26. The Third Defendant testified that had the Plaintiff made a request to drive, he would not have been denied the right to do so, however, the evidence of the Second Defendant appears contrary.**
>
> **27. I accept the evidence of the Plaintiff."** [Emphasis added]

The legislative framework

10. Section 23(1) of the Court of Appeal Act provides:

> **"23. (1) An appeal shall lie to Her Majesty in Council from any judgment or order of the court upon appeal from the Supreme Court in a civil action in which the amount sought to be recovered by any party or the value of the property in dispute is of the amount of four thousand dollars or upwards, and *with the leave of the court* but subject nevertheless to such restrictions, limitations and conditions as may be prescribed in relation thereto by Her Majesty in Council, in any other proceedings on the Common Law, Equity, Admiralty or Divorce and Matrimonial sides of the jurisdiction of the Supreme Court."** [Emphasis Added]

11. In **Rubis Bahamas Limited v Lillian Antoinette Russell** SCCivApp & CAIS No. 86 of 2022, a Judgment delivered on 27 February 2024, Sir Michael Barnett P addressed the routes in Section 23 (1) that an appellant may utilize in seeking to appeal to the Privy Council. He said:

> **"10. That section provides three routes to an appeal to the Privy Council from a judgment of the Court of Appeal. Firstly, an appeal as of right exists where the appeal is from a civil action in the Supreme Court in which the amount sought to be recovered by any party is of the amount of $4000 or upwards. Secondly, an appeal as of right also exists where the appeal is from a civil action in the Supreme Court where the value of the property in dispute is of the amount of $4000 or upwards. Thirdly, an appeal, not as of right but as a matter of discretion, exists where the appeal is from an action in the Supreme Court in any other proceedings on the Common Law, Equity,**

Admiralty or Divorce and Matrimonial Sides of the Supreme Court."
[Emphasis added]

12. As this is not an appeal "as of right", the Appellants are seeking leave at the Court's discretion pursuant to Section 23(1) because they say that the proposed appeal raises important issues involving a point of general public importance. The question then is whether this Court should exercise its discretion under the third route to grant leave to the Appellants to appeal to the Privy Council.

13. It is settled law that, in the exercise of our discretion, leave should not be granted to appeal to the Privy Council unless it can be demonstrated that there is an arguable case to succeed on appeal and that the appeal involves a point of general or public legal importance.

14. In **Responsible Development for Abaco (Rda) Ltd Ex Parte The Queen v The Rt. Hon. Perry Christie et al** SCCivApp. No. 248 of 2017, Sir Michael Barnett P referred to a plethora of authorities which elucidate the principle of general public importance with respect to leave to appeal to the Privy Council. Quoting selectively, he said:

> **"7. In *Callenders & Co (a firm) v The Comptroller of H.M. Customs* SCCivApp. No. 63 of 2012, Conteh JA at paragraph 20 succinctly put the test:**
>
> > **"20. The question therefore is: Does the applicant have an arguable case on the intended appeal, and does it raise an important issue of general and public importance on which the Privy Council ought to pronounce?"**
>
> **8. This has been the test for more than 100 years.**
>
> **9. ….**
>
> **10. As to the test of "general and public importance" Saunders JA (as he then was) in *Martinus Francois v Attorney General* St Lucia Civil Appeal No. 37 of 2003 said:**
>
> > **"[13] …In construing the phrase "great general or public importance" the Court usually looks for matters that involve a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences for the public…"**

11. More recently the Court of Appeal of *Bermuda in Siddiqui and others v Athene Holding Limited* (2019) 95 WIR 342 Civil Appeal No. 1 of 2019 said:

> **"51. ….**
>
> **52. It will be apparent that leave should not be given where there is, on proper analysis, no genuine dispute as to the applicable principles of law. This is especially important to emphasize in the present case in light of the Appellants' argument to be examined below, where, as will be discussed, there appears to be a confusion between a dispute as to the applicable principles of law and a dispute as to the applicability of settled principles of law to the facts of the case in dispute." [Emphasis added]**

12. The Bermuda Court of Appeal cited with approval the views of the Court of Appeal of the British Virgin Islands in *Renaissance Ventures Ltd v Comodo Holdings* [2018] ECSC J1008-3 (decided on 8 October 2018) which said:

> **"Where there is no dispute on the applicable principles of law underlying the question which the appellant wishes to pursue on his or her proposed appeal, a question of great general or public importance does not ordinarily arise, especially where the principle of law is settled either by the highest appellate court or by longevity of application. Where the principle is one established by this Court but is either unsettled, in the sense that there are differing views or conflicting dicta, or there is some genuine uncertainty surrounding the principle itself, or it is considered to be far reaching in its effect, or given to harsh consequences, of for some other good reason would benefit from consideration at the final appellate level, this Court would be minded to seek guidance of their Lordships' Board. Where, however, the real question on the proposed appeal is the way this Court has applied settled and clear law to the particular facts of the case, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted on this ground. In such a case, the question on the proposed appeal may be of great**

> **importance to the aggrieved applicant, but it would not for that reason alone be a question of great general or public importance.**" [Emphasis added]

15. These very principles have been reaffirmed by this Court on many occasions: see for example, **Lucretia Rolle v Airport Authority** SCCivApp No. 119 of 2021; **Paul F. Major v First Caribbean International Bank** SCCivApp 77 of 2021; **Fund Haven Ltd and anor v Executive Director of the Securities Commission of The Bahamas** [2021] UKPC 11 and, more recently, **Rubis Bahamas Limited v Lillian Antoinette Russell** SCCivApp Case No. 86 of 2022.

16. Against these settled principles, I consider this application for leave to appeal to the Privy Council.

Grounds of appeal

17. The grounds upon which the Appellants seek leave to appeal are contained in their Notice of Motion filed on 30 October 2023. They are as follows:

> **"[**Unnumbered] **The Court of Appeal erred and misdirected themselves in fact, law in adjudging that the Respondent had been unlawfully detained when he was given and obeyed a direct order of the Assistant Commissioner of Police to accompany him to Police Headquarters for a meeting with the Commissioner of Police.**
>
> **1) The Court of Appeal and the learned judge erred in law in not finding that the Respondent as a member of a disciplined force had a duty at all times to comply with all lawful orders. Having not found as a matter of law that the order to travel to see the Commissioner of Police was unlawful there was no legal basis to find that the Respondent's compliance with the lawful order amounted to an arrest and unlawful detention of the Respondent.**
>
> **2) The Court of Appeal and the learned judge ought not, as a matter of law, to have found that there was a breach of Article 19 of the Constitution when there was an alternative remedy."**

18. During the hearing before us, the ground numbered "2)" was abandoned.

Discussion

19. In summary, Mr. Munroe KC, appearing as Counsel for the Appellants, argues that the proposed appeal involves a point of general public importance namely:

a. The issue of the Commissioner of Police or any superior officer giving a direct Order to an officer in the Police Force.

b. The interpretation and scope of Regulation 3(1), (2), and (7) and Regulation 5 of the Police Disciplinary Regulations and Sections 61 and 64 of the Police Service Act and;

c. The interpretation and scope of The Bahamas' 1973 Constitution where the meaning of "disciplinary law" means a law regulating the discipline of any disciplined force; "disciplined force" means – (a) a naval, military or air force; (b) the Police Force of The Bahamas.

20. Mr. Munroe KC submits that the Respondent's evidence was that he was "ordered" or "instructed" by his superior officer to go into the police vehicle to meet with the COP who summoned his attendance. The Respondent made a request as to how he desired to travel to meet with the COP. That request was denied. Then he travelled with them.

21. According to Mr. Munroe KC, that was a lawful order with which the Respondent complied and it could not amount to unlawful detention of a member of a disciplined force. He argues that if that were the law, then it would create great difficulties for all disciplined forces and consequently, this is a proper case to grant conditional leave to appeal to the apex court.

22. Mr. Munroe KC also argues that what was the "order" to the Chief Superintendent [by the COP] is of no moment and ought not to be conflated with the "order" which was given to the Respondent. Mr. Munroe argues that the Respondent himself acknowledged that the Chief Superintendent "instructed" the two Inspectors to "take" him to Police Headquarters and the Judge found that the words 'take him' and 'so he can be taken' appear to connote "restriction". According to Mr. Munroe KC, the Judge also found, at paragraph 25, that:

> **"...The Plaintiff testified that he was not given any choice and the <u>instructions and order</u> given clearly indicates that the Plaintiff was perhaps prohibited from driving his vehicle to the Police Headquarters."** [Emphasis added]

23. Mr. Munroe KC insists that a "lawful order" by a superior officer to a subordinate officer cannot ground a claim for unlawful detention.

24. The difficulty I have with Mr. Munroe KC's submission is that whether or not it was an "order" to travel in the police vehicle was never canvassed before the trial judge or before us. In addition, Mr. Munroe KC's submission does not align with the evidence of the Appellants' two witnesses, namely the Chief Superintendent and Inspector Michael

Johnson. Their evidence, which is found at paragraphs 14 to 16 of the trial judge's Judgment, is set out at paragraph 5 of our Judgment. Quoting selectively, it was as follows:

> **"Third Defendant -The Chief Superintendent**
> **14. The Third Defendant alleged that on the day in question, after being informed of the Plaintiff's "erratic, disorderly behavior" he called for a meeting to inquire about what took place earlier in the general area…. The Third Defendant's evidence is that he *advised* that they all ride together to headquarters and *it was agreed by everyone including the Plaintiff*. The Third Defendant also testified that he would not have objected to the Plaintiff driving his own vehicle if that was his wish….**
>
> **Second Defendant - Inspector Michael Johnson**
> **15. The Second Defendant testified that he heard some shouting from his office on the eastern end of the building which prompted him to walk out front in the general area….**
>
> **16. The Second Defendant recalled that when the Plaintiff was informed that he was summoned to headquarters, he did not request to drive his own vehicle and that the Plaintiff, First, Second, and Third Defendant all drove together…."** [Emphasis added]

25. Given the factual predicate of the evidence (above), it is reasonable to infer that the Chief Superintendent did not 'order' the Respondent to go in the police vehicle since his evidence is that had the Respondent made the request to travel in his own vehicle, he (Chief Superintendent) would not have objected. In addition, Inspector Johnson said that "*when the Plaintiff* [the Respondent] *was informed that he was summoned to headquarters, he did not request to drive his own vehicle*."

26. More importantly, whether or not it was an "order" for the Respondent to go in the police vehicle, was not canvassed before the trial judge, nor before us. This is an entirely new submission.

27. In addition, the Respondent, in his Statement of Claim filed on 11 July 2017, pleaded:

> **"13. PARTICULARS OF UNLAWFUL ARREST**
>
> **(b) That on Thursday 1st September 2016, at about 4.20 p.m., the Plaintiff received a telephone call via his personal cell phone from the First Defendant. The First Defendant informed the Plaintiff that he was to return to CDU office to see the Third Defendant.**

(c) That on Thursday, 1st September 2016, the Plaintiff arrived at CDU and was 'escorted' by the First and Second Defendant to the office of the Third Defendant.

(d) ….The First, Second and Third Defendant then 'escorted' the Plaintiff to the office of the Fifth Defendant at the Police Headquarters.

20. (a) On Thursday 1st day of September 2016, the Plaintiff …was detained and questioned for a statement he made which is in breach of his constitutional right."

28. In their Defence filed on 24 July 2018, the Appellants pleaded the following:

"13. PARTICULARS OF UNLAWFUL ARREST

(b) Paragraph 13 b) of the Statement of Claim is not admitted. The Plaintiff is put to strict proof therein.

(c) Paragraph 13 c) of the Statement of Claim is not admitted. The Plaintiff is put to strict proof therein.

(d) Paragraph 13 d) of the Statement of Claim is not admitted. The Plaintiff is put to strict proof therein.

20. a) Paragraph 20 a) of the Statement of Claim is not admitted. The Plaintiff is put to strict proof therein.

29. A common thread running through the Appellants' Defence is: *"Paragraph xx is not admitted. The Plaintiff is put to strict proof."*

30. This action, filed in 2018, is governed by the old Rules of the Supreme Court, 1978 ("RSC"). RSC O. 18, r.13 provides that:

"(1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him

> **in his defence or defence to counterclaim, as the case may be, <u>and a general denial of such allegations, or a general statement of non-admission of them is not a sufficient traverse of them</u>".** [Emphasis added]

31. O. 18, r. 13(3) appears to be geared towards minimising the mischief created by vague and evasive pleadings. The Appellant's Defence fits this description.

32. Further, acknowledging that a defendant does not have to plead law, it is however well-established that a defendant simply cannot "not admit" an allegation and ask the plaintiff to prove it. Those bad days are long over. A defendant cannot take refuge in merely '*not admitting*' an allegation. If he says that he does "not admit" an allegation, he is effectively saying that he is 'unable' to admit or deny it and he requires the plaintiff to prove it. The statement, express or implied, that he is *unable (*as opposed to 'unwilling') to admit or deny the particular allegation will, like all other statements of fact in the defence, have to be verified by an affidavit. (Notably, in the newly promulgated Supreme Court Civil Procedure Rules 2022, Part 10, rule 10.5 has amplified the requirement for thorough pleadings by making a statement of truth necessary). Bare denials should not be used by a defendant for tactical reasons to avoid committing himself to a positive case.

33. The importance of proper pleadings have been emphasized by this Court on numerous occasions. In **Bahamas Ferries Limited v Charlene Rahming** SCCivApp & CAIS No. 122 of 2018, this Court, differently constituted, held that the starting point must always be the pleadings. Sir Michael Barnett, JA (as he then was) in delivering the Judgment of the Court said:

> **"40. <u>It is on the basis of pleadings that the party's decide what evidence they will need to place before the court and what preparations are necessary for trial.</u> Where one party advances a case that is inconsistent with his pleadings, it often happens that the other party takes no point on this. Where the departure from the pleadings cause no prejudice, or where for some reason it is obvious that the court, if asked, will give permission to amend the pleading, the other party should be entitled to insist that this is not permitted unless the pleading is appropriately amended. That then introduces, in its proper context, the issue of whether or not the party in question should be permitted to advance a case which has not hitherto been pleaded."**

34. Recently, the Caribbean Court of Justice in the case of **Wilfred P Elrington v Progresso Heights Limited** [2024] CCJ 4 (AJ) BZ reaffirmed the importance of proper pleadings:

see paragraphs 28 and 47 to 51. At paragraph 47, Anderson J, in a concurring judgment, had this to say:

> **"47. As I have had cause to say on another occasion (Nicholson v Nicholson [2024] CCJ 1 (AJ) BZ) pleadings are the alpha and omega of litigation in our legal system. They are the guardrails which guide the commencement, progression, and disposition of the case. The rules governing pleadings are therefore not optional. They are pivotal. They are mandatory. They are to be complied with by the parties lest chaos overtakes the process of adjudication and lest the unruly horse of litigation be allowed to roam free."** [Emphasis added]

35. Besides the Appellants' vague and bare pleadings, the issues which they assert involve a point of law of general public importance were never referred to in their Statement of Facts and Issues (both parties identified the same issues) or in their Closing Submissions before the trial Judge. In fact, in the court below, the Appellants submitted:

> **"EVIDENCE AS TO "ARREST"**
>
> **14. The evidence shows that the Plaintiff was not forced to ride in the same vehicle as the Officers – and as such, was not restrained or under arrest.**
>
> **15. According to the evidence the Plaintiff was not restrained and was not forced to be transported to Headquarters. The Deputy Commissioner Clayton Fernander stated that the Plaintiff was not denied the use of his private vehicle. Kindly see transcript dated 29 March 2022 at page 23-24.**
>
> **16. Deputy Commissioner Clayton Fernander also stated at lines 1-6 at page 24 of the Transcript that "If he would have asked if he could drive his vehicle or if he was not in that general area and I had communicated to him by phone and say meet me at the Police Headquarters, the Commissioner wanted to see him, I had no problem with that, Sir. There was no issue."**
>
> **LAW**
>
> **1. The terms of the Plaintiff's employment is covered under the Police Act Ch. 205.**
>
> **2. It is submitted that the Plaintiff was not arrested by the Defendants. In fact, he was not detained. This is a troubling case, where a Police Officer takes the opportunity to sue the Commissioner of Police, his Superior, alleging that he was arrested, when in fact, he was not arrested and the incidents did not occur as he alleges they did.**

3. **The Plaintiff claims that he was arrested when he rode in the Police car with his Superiors to Headquarters to discuss his unbecoming behaviour.**

4. **The Plaintiff was never arrested."** [Emphasis added]

36. I set out fully the Appellants' submission in the Court below to show that at no time did the Appellants assert that the Respondent was given a lawful "order" by his superiors to go into the police vehicle. The issue was also not canvassed before us.

37. In my view, none of the Appellants' proposed grounds raise arguable points of law of general public importance.

38. As I see it, this is not a proper case to grant conditional leave to appeal to the Privy Council and the application should be refused.

Disposition and Order

39. For all the above reasons, the application for conditional leave is dismissed. The Appellants shall pay the Respondent's costs of the application to be taxed if not agreed.

Postscript

40. I wish to make it abundantly clear that the obligation of a subordinate officer to obey the "lawful orders" of his superior is incontrovertible. That was not the issue in this appeal.

The Honourable Madame Justice Charles, JA

CONCURRING

Judgment delivered by the Honourable Sir Michael Barnett, President:

41. I have read in draft the judgment in this matter prepared by Charles JA. I agree with that judgment completely and would refuse leave to appeal the decision of this Court to the Privy Council.

42. At the hearing of the application for leave, the Minister of National Security, who is one of the Appellants, appeared in person along with lawyers from the Office of The Attorney General. At that hearing, which was conducted remotely, the Minister was surrounded by the hierarchy of the disciplined forces, which included the Royal Bahamas Police Force,

the Royal Bahamas Defence Force and the Department of Correctional Services. This, I apprehend, was to dramatically emphasize that they regarded the issue raised by the proposed appeal, that is the obligation of a subordinate officer to comply with orders given by a superior officer, as one of general public importance.

43. But as Charles JA pointed out in her judgment, and as we pointed out during the hearing of this application for leave, that issue was never one before the court below or this Court. It was not pleaded, it was not found in their statement of issues to be considered by the court, it was not found in their submissions. The position of the defendants/Appellants was that Sergeant Neilly never asked to go in his own vehicle and that he agreed willingly to go with the senior officers in the police car. Indeed it was their position that had he asked to go in his car they would have allowed him to do so. The trial judge recorded the evidence as follows:

> **"The Third Defendant's evidence is that he advised that they all ride together to headquarters and it was agreed by everyone including the Plaintiff. The Third Defendant also testified that he would not have objected to the Plaintiff driving his own vehicle if that was his wish."**

44. The judge rejected that evidence and, as the Minister said, this Court was bound to accept the judge's finding preferring the evidence of Sergeant Neilly over that of Inspector Johnson as well as that of Chief Superintendent Fernander (as he then was). The Defendant's position simply was that they never detained him as he went willingly in the police car. At the hearing of the application for leave the Minister said "if he was manhandled to be taken to the Commissioner of Police there might be a different issue" and later "his compulsion wasn't by touching, wasn't by confinement". The suggestion appears to be that unlawful detention in the disciplined forces is restricted to "manhandling'', "touching'' or "confinement''.

45. If that was the point of law the applicants wish to have determined by the Privy Council, this is not the case for the determination of that issue. That is not what the applicants argued in this case, nor was it the issue that this Court considered.

46. The obligation of a subordinate officer to obey the order of his superior and the scope of that obligation was never the issue in this case. In the circumstances, the proposed appeal in this case does not in my view raise a matter of general public importance which warrants consideration by the apex court.

47. No doubt, if the applicants still wish to pursue the matter they are always at liberty to apply directly to the Privy Council for leave to appeal and the Board will itself consider whether the proposed appeal raises a point of general public importance that warrants its consideration on the facts of this case.

The Honourable Sir Michael Barnett, P

48. I have read the judgments of my learned sister and brother and I agree with their reasons for the disposition of this appeal.

The Honourable Mr. Justice Turner, JA