

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

In the matter of an application by **NEW BUILDING SOCIETY LIMITED** for Writs of Certiorari and Prohibition

CORAM: **HARNANAN, J.**

APPEARANCES: *MR. ASHTON CHASE SC WITH MS PAULINE CHASE FOR THE APPLICANT;*
MS. JUDY STUART-ADONIS FOR THE MINISTER OF COMMUNITIES;
MR. ROGER YEARWOOD FOR THE TOWN CLERK;
MR. STEPHEN FRASER FOR THE INTERESTED PARTY, SMART CITY SOLUTIONS

DECISION

Facts

1. On the 23rd day of January, 2017, the Minister of Communities (hereafter the 1st respondent) approved by-laws relating to parking meters in the City of Georgetown, under the ***Municipal and District Councils Act***, Cap. 28:01 of the Laws of Guyana.
2. The applicant is a building society and principally offers secured loans and other banking services to its membership. It is incorporated under the ***New Building Society Act***, Cap. 36:01, and has its headquarters at the junction of the Avenue of the Republic and North Road, Georgetown, which is within the zones identified for parking meters.
3. The Town Clerk (hereafter the 2nd respondent) is the Chief Executive Officer of the Municipal Council in and for the City of Georgetown (hereafter the City).

4. Smart City Solutions Incorporated, (SCS) is an interested party in the proceedings and has been allowed the opportunity to make submissions pursuant to an application made.
5. SCS and the 2nd respondent have entered into a contract for the provision of metered parking operations and associated services within the City, for which the by-laws provides the legislative context.

The applicant's case:

6. The applicant contends that the 1st respondent's decision to approve the by-laws is unlawful, unreasonable and made without or in excess of his jurisdiction, pursuant to the provisions of the **Municipal and District Councils Act**, particularly **section 305**. The by-laws are therefore claimed to be null, void and of no legal effect. They seek an order *absolute of certiorari*, quashing the decision of the 1st respondent to confirm and/or approve of the parking meter by-laws made under the said Act.

The respondents' case:

7. The respondents contend that all the requirements of the **Municipal and District Councils Act** were fulfilled with respect to making the parking meter by-laws and therefore the motion is vexatious and without any merit in law or fact. They, and more specifically, the 1st respondent contends that the order *nisi of certiorari* issued herein by the *Honourable Justice Brassington Reynolds* on the 8th February, 2017, ought to be discharged.

Issue:

8. Whether the 1st respondent has shown cause why the writ of *certiorari* should not be issued to quash his approval and/or decision to approve the parking meter by-laws made under the **Municipal and District Councils Act** on the 23rd January, 2017.

The law, and analysis:

9. **Section 305** of the ***Municipal and District Councils Act*** provides that:
- (1) By-laws made by a Council shall be under the common seal of the council and **shall** be submitted to the Minister for approval.
 - (2) At least fourteen days before the application for approval of the by-laws is made, notice of the intention to apply for confirmation **shall** be **published**.
 - (3) For at least fourteen days before application for approval is made, a copy of the by-laws shall be deposited at the offices of the council, and **shall** at all reasonable hours be open to public inspection without payment.
 - (4) The Council **shall**, on application, furnish to any person a copy of the by-laws, or of any part thereof, on payment of such reasonable sum, as the council may determine.
 - (5) All by-laws submitted to the Minister for approval **shall** be accompanied by –
 - (a) a copy of the minutes or other record of the meeting of the council at which they were adopted;
 - (b) a certificate by the clerk that subsections (2), (3) and (4) have been complied with;
 - (c) copies of any ***objection to the adoption of the by-laws*** which has been lodged in writing with the clerk or if no such objection has been lodged, a certificate by the clerk to that effect.
 - (6) The Minister **may** approve, with or without amendment, or reject any by-law submitted to him. (emphasis supplied)
10. **Section 311** of the aforesaid Act sets out what it means to publish under it:
- Except as otherwise provided, where any *notice* is required to be *published* under this Act or any by-laws made thereunder, the *notice shall* be *published by affixing it to the offices of the council, and* it may also be published in *such other manner*, if any, in the opinion of the council, expedient to give publicity thereto. (emphasis supplied)
11. Therefore, it is mandatory that by-laws made by the Council be submitted to the Minister for approval. It is also mandatory that 14 days before the

Council submits the by-laws to the Minister for approval, a notice of that intention to submit the by-laws for ministerial approval is published. The publication is done by affixing that notice to the offices of the council itself. This publication is also a mandatory requirement. Thereafter, the council can then determine whether to publish the notice in some other manner for effective publicity thereof.

12. Further, it is also a mandatory requirement of the legislation that during the 14-day period, a copy of the by-laws must be placed at the offices of the council and made freely available for the public's inspection. This is consistent with the requirement for affixing the notice at the same offices of the council, which has the effect of calling the public's attention to the existence, and presence of the proposed by-laws at the council's offices.
13. This court is of the view that one of the principal intentions of these mandatory statutory requirements of physically affixing the notice to the offices of the council, together with the requirement to have copies of the proposed by-laws in the same location, along with the obligation to facilitate the public's inspection of them, is to enable the public's opportunity to offer objections, if any. It is of significance that the legislation sets out that if any objections are received after going through the process, those objections must be sent to the Minister along with the application for approval of the proposed by-laws.
14. **Bennion on Statutory Interpretation**, Section 163-171, at page 25 states:

Legislative intention is a 'very slippery phrase'¹. That is far from meaning that the concept is unimportant or illusory. ***It is axiomatic that Parliament is to be taken to have an intention in everything it enacts***; and that the function of the court is to find out and declare that intention. This is the paramount, indeed only ultimate, criterion.

"There are many so-called rules of construction that courts of law have resorted to in their interpretation of statutes but ***the paramount rule***

¹ *Salomon v A Salomon & Co Ltd* [1897] AC 22, per Lord Watson at 38

remains that every statute is to be expounded according to its manifest and expressed intention.¹²

What the legislator intends by the words used ideally passes directly to the reader's brain by intuition, defined as 'by immediate perception or direct mental apprehension; without the aid of intermediate ideas'.³ Thus *Evans-Lombe J* rejected a construction suggested by counsel on the ground that it was 'counter-intuitive'.⁴ *Sedley LJ* relied on a different part of the anatomy when he confessed to a 'visceral unease' as to the suggested meaning of an enactment.⁵ *Lord Nicholls of Birkenhead* said:

'Statutory interpretation is an exercise which requires the court to **identify the meaning borne by the words in question in the particular context.** The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful so long as it is remembered that the "intention of Parliament" is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and of the words used may be impressively complete or woefully inadequate. Thus, when the courts say that such-and-such a meaning "cannot be what Parliament intended", they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning.'⁶ (emphasis supplied)

15. ***Bennion*** (cited above) goes on at page 27:

² *A-G for Canada v Hallett & Carey Ltd* [1952] AC 427, per Lord Radcliffe at 449

³ *Oxford English Dictionary* (2nd edn, 1992)

⁴ *Todd v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWHC 1450 (Admin), [2004] 4 All ER 497 at [51]

⁵ *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382, [2004] 4 All ER 628 at [38]

⁶ *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] 2 AC 349 at 396

Blackstone remarked that the courts both profess and are bound '**to interpret statutes according to the true intent of the legislature**'.⁷

Lord Halsbury LC summed up the position thus:

"Turner LJ in *Hawkins v Gathercole*(1855) 6 De GM & G 1 at 21, and adding his own high authority to that of the judges in *Stradling v Morgan*(1584) 1 Plowd 204, after enforcing the proposition that **the intention of the Legislature must be regarded**, quotes at length the judgment in that case: that the judges have collected the intention "sometimes by considering the cause and necessity of making the Act ... sometimes by foreign circumstances" (thereby meaning extraneous circumstances), "so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion". He adds: "**We have therefore to consider not merely the words of this Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts**, and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject".⁸

In all cases the object is to see what is the intention expressed by the words used.⁹ (emphasis supplied)

16. The expressed purpose behind publication in the manner set out in the ***Municipal and District Councils Act***, is to '**give publicity thereto**'¹⁰. It may be argued that the expressed intent of essentially advertising or making the notice visible for all to see, may be achieved by publishing it in a newspaper of general circulation. But the question is whether it is sufficient notice, or notice in compliance with the statutory procedure set out in the Act.

17. The 1st respondent asserts factually that he received the application for approval from the 2nd respondent on the 19th January, 2017. He further

⁷ William Blackstone, *Commentaries on the Laws of England* (Oxford: The Clarendon Press, 1st edn, 1765-1769) iii 430

⁸ *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents, Designs and Trade-Marks, Solio Case* [1898] AC 571 at 575

⁹ *River Wear Comrs v Adamson* (1877) 2 App Cas 743, per Lord Blackburn at 763

¹⁰ Section 311

states that the 2nd respondent certified that all the procedures were followed as set out in **Section 305** of the said Act. He attaches a letter of the same date, along with copies of the press reports of the Council's intention to apply for the Minister's approval of the by-laws, and the minutes of the Council passing the motion to implement the proposed by-laws.

18. The 2nd respondent asserts that all the requirements under the Act have been complied with and specifically, all that the Council is merely required to do pursuant to **Section 305(2)** is to publish notice of its intention to apply to the Minister for confirmation and/or approval of the by-laws. Further, there is no requirement that the notice be published in the Official Gazette, as is being contended by the applicant.
19. At the outset, this Court agrees that there is no requirement to publish the notice of intention to apply for confirmation, as set out in **Section 305(2)** of the Act, in the Official Gazette. However, there are other mandatory statutory requirements which must be complied with before the process of confirmation/approval is undertaken, as set out above [paragraphs 9 -13].
20. The record which was brought up before the court for review, pursuant to the order *nisi* issued includes the letter seeking the required approval, from the 2nd respondent to the 1st respondent. In that letter, reference is made of the steps taken to comply with the provisions of the **Municipal and District Councils Act**. Importantly, it is gleaned from that letter that the 2nd respondent purported to comply with the statutory obligation to publish, by publishing in two newspapers of notice of its intention to seek approval for the by-laws.
21. The record also included two poor copies of what purports to be newspaper articles. Neither of the newspaper articles were properly attributed in the evidence or could its source be garnered from a close and careful perusal thereof.
22. Notwithstanding, the articles did for the most part suggest that a statement was issued by the Council and reported that it will soon apply to the Minister of Communities for '*confirmation of the Georgetown parking meters by-laws*'. The record of the newspaper reports also informs that the

by-laws are open for public inspection without payment at the offices of the Mayor, Town Clerk and City Constabulary, but if a copy is required, it can be purchased for \$3,000.00.

23. There is no other record produced to this Court regarding the process of publication. Specifically, there is no reference, directly or tangentially, to the notice of the intention to apply for confirmation/approval of the proposed by-laws being affixed to the offices of the council. The 2nd respondent's evidence is bare of stated facts or documentary records, regarding any proof of compliance with the statutory requirements under the Act, in this regard.
24. Therefore, would the newspaper reports be considered sufficient regarding the publication requirement under **Section 305(2)**, and manner of publication under **Section 311** of the Act?
25. As recounted above, it is arguable that publication in the newspapers could be sufficient notice to the public. However, was there publication of the notice in the newspapers? The copies of **articles** which forms part of the record suggests strongly that the by-laws were a foregone conclusion. Whilst the format of the 'notice' is not provided for under the Act, this Court is of the view that its principal form cannot be by way of a commentary. One of the articles even declares that *'Drivers will be required to purchase "parking cards" from the Smart City Office or other vendors, in order to park at a designated area and will be required to pay \$50 for every 15 minutes or \$200 for every hour. The prices were approved by the Mayor and City Council (M&CC).'*
26. Again, whilst the format of the notice is not settled by the Act, this Court is of the view that any notice published, must inform the public of their opportunity to make objections to the proposed by-laws during the period of time defined by the Act. This is reasonably inferred from the application of **Section 305(5)(c)** of the Act, which obliges all objections lodged be sent to the Minister.
27. Clearly, the public will be unaware of their entitlement to contribute towards the approval process of the by-laws, if they are not invited by the notice to so do. It can hardly be argued that two obscure articles in the newspapers with headlines *'City Hall applies for parking meter by-laws'* and

'City says to seek approval of parking meter bylaws' will give effect to the intention of the legislation governing the procedure for enactment.

28. The requirement of **Section 305(2)**, via the application of **Section 311** of the Act, facilitates the process of enacting the parking meter by-laws. The authorities mandate that the intention can be gleaned from an examination and comparison of the several parts of the Act, and for the purposes of **Section 305**, the sum of its subsections.

29. This Court is of the view that publication of the notice of intention by the Council to seek approval for the by-laws by affixing it to the offices of the Council, must be viewed in context of copies of the proposed by-laws being made available for free inspection at those very offices, and the entitlement of any person to lodge objections thereto, if at all.

30. The affixing of the notice at the offices of the Council draws the attention of the public to the copies available for their perusal at the very office, and their opportunity to make objections.

31. The procedure set out under **Section 305** is in mandatory language, save and except subsection (6), which gives the Minister a discretion to approve, amend or reject any by-laws submitted to him.

32. *Craies on Statute Law*, 5th edition, at page 60 of the text provides that:

When a statute is passed for the purpose of enabling something to be done, and **prescribes the formalities which are to attend its performance**, those **prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute**; but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory. (emphasis supplied).

33. And *Sutherland, Statutory Construction*, 3rd edition, Vol. III, pages 79-80, opines:

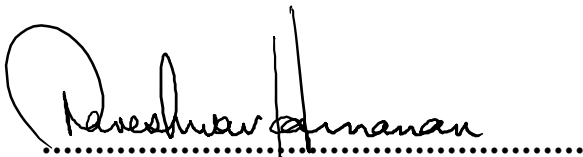
It can be stated as a general proposition that, as regards the question of mandatory and directory operation, the courts will apply that construction which best carries into effect the purpose of the statute under consideration. To this end the **court may inquire into the purpose behind the enactment of the legislation, requiring construction as one of the first steps in treating the problem. The ordinary meaning**

of language may be overruled to effectuate the purpose of the statute. (emphasis supplied)

34. The record which has been brought up before this Court is clear regarding the non-compliance by the 2nd respondent with the obligation to affix the notice of the intention to apply for confirmation of the by-laws at the offices of the Council.
35. This Court is of the view that the purpose behind the enactment of the provisions regarding publication, is to draw the attention of the public to the copies available for their perusal at the very office, and their opportunity to make objections. This Court is further of the view that the notice itself must contain information specific to that process.

Conclusion:

36. This Court is of the view that the process of approval of the by-laws has been justifiably impugned, having regard to the obvious breach of **Sections 305(2) and 311** of the **Municipal and District Councils Act**. Therefore, the decision made by the 1st respondent to approve the parking meters by-laws is vitiated. Accordingly, the order *nisi* issued on the 8th February 2017, is made **absolute**. There will be costs to the applicant in the sum of **\$150,000.00**.



Nareshwar Harnanan
Puisne Judge
15 December 2017