

ROYAL COURT

17A

11th February, 1992

Before: P.R. Le Cras, Esq., Commissioner, and
Jurats Blampied and Rumfitt.

Between: **R.H. Edwards Builders and**
 Decorators Limited Plaintiff

And: **The Public Services Committee** First Defendant

And: **The Housing Committee** Second Defendant

Application by H.M. Attorney General re "public
interest immunity".

H.M. Attorney General.
Advocate G.R. Boxall for the plaintiff.

JUDGMENT

COMMISSIONER LE CRAS: This is an application by the learned
Attorney General who claims public interest immunity for a large
number of documents in respect of which the Chief of Police has
received a summons requiring him to produce them in Court.

These papers include witness statements and the report and conclusions of the Chief Superintendent who conducted an enquiry in 1989, into possible corruption in the Public Services. Following the submission of the report the Attorney General decided that no prosecution should ensue.

Counsel for the plaintiff accepted that the issue had been properly raised and that the onus of demonstrating that the immunity should be lifted lay upon his client. It was also accepted by both parties that ultimately the decision as to whether the immunity applies falls upon the Court.

The plaintiff claimed that the documents were relevant as they would show dishonesty on the part of public servants in the employment of the States. It was desired to show an abuse of power and an exercise of bad faith by those who may have acted improperly in withholding work from the Plaintiff by favouring others for improper reasons. These losses arose mostly in small contracts where the plaintiff never knew what was available. He conceded of course that the statements were not given for the purposes of the present proceedings, but he would wish, so far as the statements were concerned, to check the evidence of the witnesses against the statements which they made to the police. The Court should, in parenthesis, remark at this point that the allegations of dishonesty are strenuously resisted by the defendants.

Counsel put the case in this way: that the public interest as to disclosure should be weighed against the interests of justice.

He relied primarily on Conway -v- Rimmer (1968) 1 All ER 874, a case in which it is evident from the headnote that the

report required was of vital importance to the action, and the question was whether the withholding of the document was really necessary for the functioning of the public service. The facts were not on all fours with the present case.

He also relied on Evans -v- Chief Constable of Surrey Constabulary (1989) 2 All ER 594, where again the facts were not on all fours as support for a general submission that justice should be conducted in the open.

In his reply the Attorney General relied first on Neilson -v- Laugharne (1981) 1 QB 736, in which Conway was cited, and second on Makanjuola -v- Commissioner of Police for the Metropolis & Anor (1989) NLJ 468; both cases where disclosure of documents under a s.49 police investigation were sought for production.

Although these again were not on all fours, it is worth citing part of the report in Makanjuola in which the Court stated:

"The claim raised an issue on which this Court might have taken either one or other of two views. One view urged by the plaintiff in that action was that any statement made for the purpose of a s.49 investigation might be used either in disciplinary proceedings or on a criminal prosecution against a police officer and so its contents might become known to the police officer, other witnesses, and members of the public at large in the ordinary course of events. Since these consequences would be foreseeable from the outset, such statements could not be regarded as confidential and would not be appropriate subjects for public interest immunity".

Breaking off for a second, this was a view strongly put by counsel for the plaintiff. The report goes on to say:

"The competing view was that in the public interest statements made for the purposes of an s.49 investigation

should be available for use to further those purposes, whether disciplinary and private or criminal and public, but no other. The underlying public interest asserted was, one infers, in the maintenance of an honourable disciplined law abiding and uncorrupt police force. The protection of that public interest required that allegations of improper or criminal conduct by police and officers should be investigated and appropriate action taken. To that end it was necessary that members of the public or other police officers should be encouraged to give any relevant information they had to the appropriate authority without fear of harassment, intimidation or use of any statement in any other proceedings. It was therefore desirable in the public interest that statements made to the appropriate authority investigating a complaint against a police officer should not be liable to be produced or disclosed or referred to in any proceedings save disciplinary or criminal proceedings officially brought against the police officer in question to hold otherwise would frustrate the statutory purpose of an investigation under the Act".

Counsel for the plaintiff sought to distinguish this on the ground that the police are subject to special considerations which do not apply to the employees of the defendants.

In coming to my decision I have been much helped by the reasoning of Oliver LJ in the Neilson case, first at p.752 A where he states:

"Now, although it cannot, as Mr. Somerset Jones points out, be contended here that statements made to the investigating officer in pursuance of his inquiries under section 49 of the Police Act 1964 are made under any assurance of confidentiality, it does seem to me that nevertheless the same principle applies. The statements are volunteered for a particular purpose, namely, the statutory inquiry. No doubt the consequence is accepted, as it must be, that the inquiry may lead to a prosecution or to a disciplinary inquiry in which the maker of the statement may be called to give evidence of some or all of the matters contained in his statement and that the statement may, therefore, to this extent fall to be used if such proceedings ensue. But I do not think that it follows from that that disclosure of the statements for the quite alien purpose of use in civil litigation would not inhibit those whose co-operation is required if the inquiry is to be sensibly and usefully

conducted. And it is this which, as it seems to me, is the critical test".

Now he goes on at p.752 G:

"The purpose of the legislature in enacting the section was to ensure that all complaints against police officers are fully and properly investigated and that, if the inquiries raise the possibility that a criminal offence has been committed, the matter shall be referred to the Director of Public Prosecutions. The question therefore, as it seems to me, must be this - will liability to disclosure in civil proceedings of statements taken in the course of such inquiry adversely affect the attainment of the legislature's purpose? It seems to me that it will in a number of ways. Take first the position of police officers who are asked to co-operate on the inquiry. They may themselves be potential defendants and, if they are, would clearly be disinclined to provide statements which might subsequently be used to found civil claims against them. They may be called upon to provide information about the activities of superior officers under whose command they are going to have to continue to serve in future. They may well be willing, in the performance of their duty, to do this and to accept that they may be called upon to give evidence if a prosecution or disciplinary proceedings follow. But the complaints which have to be investigated under the Act are not restricted to those which may lead to prosecution or disciplinary proceedings. They cover things as trivial as minor incivility and as serious as assault. Will officers freely co-operate in assisting in inquiries into the conduct of their superiors if they know that, quite regardless of whether a prosecution or disciplinary proceedings ensue, not only the fact that they have participated in the inquiry but the very statements which they have made are liable to come to the knowledge of the officer whose conduct is under investigation and under whom they may have to continue to serve by disclosure as a result of discovery in civil proceedings.

Statements may have to be taken from relatives or associates or neighbours of the complainant - statements which may well, in the event, be adverse to the claim which he seeks to assert and which may result in a decision that disciplinary proceedings or prosecution shall not be instituted. Are such persons likely to be willing to offer free and truthful co-operation in investigations under the section if they know that any statements which they make are liable to be disclosed to the complainant in any civil proceedings which he may be minded to commence?"

This was a police enquiry into possible criminal acts, and is quite different, for example, to a motor traffic accident report. Although it is not on all fours with an s.49 police complaint in England, it does appear to the Court that much the same reasoning must apply in an investigation of this kind, and that those who are so questioned must feel able to speak freely in circumstances not so dissimilar to those described by Oliver LJ.

In every case the public interest in disclosure must be weighed against the interest of justice and in this case I find in favour of the submission of the Attorney General that public interest immunity does apply to the documents which he wishes to withhold.

On the summons I have to make an Order, that in part the summons is upheld and in part it is struck out. Mr. Parkinson is requested to bring the following documents:

- (a) information sheets giving details of contracts awarded by the first and second defendant including the dates and values of the contracts and the personal companies to whom they were allotted. Insofar as that falls under MSC1, the summons is upheld.
- (b) printouts of data recorded on computer used in the collation of evidence during the investigation insofar as that falls under MSC3, there is again no objection. So the summons is granted for that.
- (c) statements of all witnesses who provided information in the course of the investigation. That is withheld and is subject to public interest immunity. Therefore that part of the summons is struck out.

- (d) without prejudice to the generality; there is an objection because these refer to nos. 73 and 709 on the list; so section (d) is again struck out.
- (e) the report and conclusions of the Chief Superintendent who acted in the capacity of a consultant during the investigation. There is public immunity in respect of that which is again struck out of the summons.
- (f) Any documentation generally relating to the investigation. There is no objection to that if it relates to nos. 1 - 67 on the first page of the list, but that anything else is subject to public interest immunity.

There will be an Order for taxed costs against the plaintiff.

In this case, Mr. Boxall, if you want to have leave to appeal, I think you must go to the Court of Appeal.

Authorities

Evans -v- Chief Constable of Surrey Constabulary (1989) 2 All ER 594.

Marcel -v- Metropolitan Police Commissioner: (5th December, 1990) "The Times".

R. -v- Governor of Pentonville Prison, ex p. Osman (No. 4) (28th November, 1990) "The Times".

4 Halsbury 13: pp 68-74.

Conway -v- Rimmer (1968) 1 All ER 874.

Gain -v- Gain (1962) 1 All ER 63.

Neilson -v- Laugharne (1981) 1 QB 736.

Makanjuola -v- Commissioner of Police for the Metropolis & Anor. (1989) NLJ 468.