[2001–02 Gib LR 316]

GOODWIN v. TOPGEM LIMITED, HAYMILLS (GIBRALTAR) LIMITED and BALFOUR BEATTY GROUP LIMITED

SUPREME COURT (Schofield, C.J.): September 23rd, 2002

Evidence—privilege—public interest immunity—no blanket immunity for information obtained or generated by Factories Inspectorate during investigation of accident—specific pieces of information to be judged by court for relevance, confidentiality, harm to public interest, and interests of justice

The claimant brought an action against the defendants to recover damages for injuries allegedly sustained in his employment with them.

In the course of the suit, the claimant sought disclosure from the defendants of documents produced by the Factories Inspectorate in its investigation of and report on the circumstances of the accident, and its consultations with the Attorney-General's Chambers as to whether there had been a breach of the law by the defendants. The defendants were willing to disclose only photographs of the site and the names of witnesses and the claimant therefore applied directly to the Inspectorate for disclosure of the whole file.

The Attorney-General claimed public interest immunity in respect of all the information sought, submitting that the majority of the information was obtained by the Inspectorate in the course of carrying out its duties under the Factories Ordinance and its disclosure might in future make others less willing to collaborate with the Inspectorate. This information included documents obtained and issued by the Inspectorate, internal reports, transcripts of interviews and communications with the Attorney-General's Chambers.

Held, ordering substantial disclosure:

(1) No blanket public interest immunity attached to information obtained or generated by factories inspectors conducting inquiries on behalf of the Inspectorate. There was no evidence to support the Attorney-General's submission and, indeed, the argument was probably mistaken. Each piece of information of which disclosure was sought had to be assessed individually by the court and a decision taken as to its relevance to the claim, its confidentiality, the danger of causing harm to the public interest by disclosure, and the interests of justice (paras. 4–6).

(2) Reviewing the information in the light of these considerations, the court would order the disclosure of all the documents obtained from and supplied by the defendants to the Inspectorate. Certain of the notes made by the factories inspector and correspondence with the Attorney-General's Chambers were not relevant and need not be disclosed. The report of the factories inspector was not admissible in the proceedings, though he could be called to give evidence if either party wished to do so. Transcripts of interviews with other employees of the defendants might well be relevant and should be disclosed (paras. 8–10).

Cases cited:
(1) *Neilson* v. *Laugharne*, [1981] Q.B. 736; [1981] 1 All E.R. 829, not followed.
(2) *R.* v. *Chief Const. (W. Midlands Police), ex p. Wiley*, [1995] 1 A.C. 274; [1994] 3 All E.R. 420, applied.
(3) *R.* v. *Trade & Indus. Secy., ex p. Soden*, [1996] 1 W.L.R. 1512; [1996] 3 All E.R. 967, applied.

D. Hughes for the claimant;
J. Fernandez for the Attorney-General.

1 **SCHOFIELD, C.J.:** In this suit for damages in respect of an injury which the claimant alleges occurred in the course of his employment, the claimant has applied to the Factories Inspectorate for disclosure of documents in its possession. As a result of the accident in which the claimant allegedly sustained his injuries, the Factories Inspectorate of the Department of Employment conducted an investigation, made a report and consulted the Attorney-General in respect of whether there had been a breach of the law by the claimant's employers. The claimant seeks disclosure of all those documents relevant to that investigation and the Attorney-General claims public interest immunity in respect of such disclosure. Some of such documents may be in the hands of the defendants and, indeed, may already have been disclosed to the claimant by the defendants, but the claimant says that no defendant has disclosed the 342 pages of documentation in the possession of the Factories Inspectorate and two of the defendants have disclosed very little in the way of documentation.

2 The Attorney-General claims public interest immunity in respect of the whole of the file held by the Factories Inspectorate in relation to this accident. Only photographs of the site taken by factories inspectors and police officers have been disclosed. I also understand that the claimant has been supplied with a list of possible witnesses by the Factories Inspectorate. In regard to the remainder of the documents the Attorney-General puts them into two classes. Documents in the first class were obtained by the Factories Inspectorate in the course of its investigation

which was carried out in the exercise of the factories inspectors' powers under the Factories Ordinance. Among those documents are notices served and subsequently revoked by the factories inspectors. The second class of documents comprises internal reports, transcripts of interviews and communications between the factories inspectors and the Attorney-General's Chambers.

3 The Attorney-General's argument in respect of the first class of documents is that they were obtained at the request of the factories inspectors from the defendants for the purpose of carrying out their powers under the Factories Ordinance and their disclosure might be harmful to the efficient working of the Factories Ordinance in future. The argument is that if those from whom information is sought knew that such information might be disclosed to others they may be reluctant to give it. In this way the free flow of information that enables the factories inspectors to conduct their investigations may be hampered.

4 Both counsel have cited authorities in respect of the disclosure of documents obtained and generated in the course of an investigation by a chief constable into complaints against one of his officers. In *Neilson* v. *Laugharne* (1), the English Court of Appeal held that such documents should not be disclosed to a person claiming damages against the police authority. This decision was overruled by the House of Lords in *R.* v. *Chief Const. (W. Midlands Police), ex p. Wiley* (2). Lord Lloyd of Berwick had this to say ([1995] 1 A.C. at 307):

> "I agree that *Neilson v. Laugharne* [1981] Q.B. 736 was wrongly decided, and should be overruled. It was decided on the grounds that complainants would not come forward, and witnesses, whether police officers or relations of the complainant, would not give statements, if they thought they might be used in subsequent civil proceedings, and that the statutory purpose of creating the police complaints procedure would thereby be thwarted.
>
> The evidential basis for this view of the facts was always very slender. It is now agreed to have been mistaken. It follows that there is no general class immunity covering all documents created in the course of investigating a complaint about police misconduct."

5 Lord Templeman said (*ibid.*, at 282):

> "The police authorities have now abandoned the assertion that public interest requires that all documents generated in the course of an investigation of a complaint against the police shall be kept secret. No one defends the reasoning of the Court of Appeal in *Neilson v. Laugharne* [1981] Q.B. 736. The decision in that case inspired the extensions to the doctrine of public interest immunity which are to be found in *Hehir v. Commissioner of Police of the*

> *Metropolis* [1982] 1 W.L.R. 715 and *Makanjuola v. Commissioner of Police of the Metropolis* [1992] 3 All E.R. 617. The result of these three Court of Appeal authorities is that all litigants must behave as though no investigation had ever been made by the Police Complaints Authority although the investigation may have taken months and unearthed documents and statements decisive of the litigation in which discovery is sought. I would overrule these three authorities and allow the appeals."

6 It seems to me that the same principle should apply to documents obtained and generated by the factories inspectors in their investigations pursuant to their responsibilities under the Factories Ordinance and that the blanket immunity claimed by the Attorney-General should not be granted.

7 Be that as it may, I have to determine whether any particular document in the file of the Factories Inspectorate is relevant and material to the action and, if it is, whether its disclosure would breach confidentiality or cause harm to the public interest (*Wiley* (2) (*per* Lord Templeman, *ibid.* at 281)). For example the report of the factories inspector may not be relevant to this action, as indeed might be the case in regard to letters passing between the factories inspectors and the Attorney-General. Furthermore, witness statements obtained by the factories inspectors attract a qualified obligation of confidence which must be considered when deciding whether the disclosure is necessary in the interests of justice (see *R.* v. *Trade & Indus. Secy., ex p. Soden* (3)). Further still, it may be proper to allow any person who has given a witness statement to the factories inspector to be heard before any decision is made on disclosure of his statement.

8 Applying those principles, I have come to the conclusion that the documents of the first class on which the Attorney-General seeks public interest immunity, documents obtained from and supplied by the defendants to the factories inspectors (*i.e.* pages 31 to 319 of the file) must be disclosed to the claimant. I have also reviewed the second class of documents, which comprise material, reports, transcripts of interviews and communications between the Attorney-General's Chambers and the Factories Inspectorate, and have come to the following conclusion with regard to their disclosure.

9 Pages 320 to 323 are scribbled notes, presumably of the factories inspector, and cannot assist the claimant even if relevant. Pages 324 and 325 are letters passing between the Attorney-General's Chambers and the factories inspector and are not relevant to the action. Pages 326 to 329 constitute the report of Mr. Moreno, the factories inspector which is not admissible in the proceedings. Of course the claimant, or the defendants for that matter, can call Mr. Moreno to give evidence if he has relevant

evidence to give to the court. Pages 330 to 342 are the records of interview conducted by Mr. Moreno of three witnesses, all employees of the first defendant, David Sandbrooks, Craig Berini and Peter Smart. Because their evidence may be relevant and because they are employees of a defendant I order disclosure of their statements without the need for calling them to hear their views on such disclosure.

10 Accordingly, I order disclosure to the claimant of pages 1 to 319, and pages 330 to 342, all inclusive, of the file of the Factories Inspectorate.

Order accordingly.

[2001–02 Gib LR 320]

FORD v. LABRADOR

COURT OF APPEAL (Neill, P., Clough and Staughton, JJ.A.): September 16th, 2002

Tort—defamation—test—whether words would tend to lower claimant in estimation of right-thinking members of society generally—comments on claimant's different cultural background and language barrier may be neither defamatory nor insulting if reasonably expressed

The appellant brought an action against the respondent in the Supreme Court claiming damages for defamation.

The appellant, who was born in Russia, was an international-class athlete employed by a rowing club in Gibraltar (of which the respondent was the secretary) as a "caretaker-coach." As part of her duties, she was required to deal with a delicate problem involving members and their children, and one member made a written complaint about the "shameful, rude and almost aggressive manner" in which she had behaved towards his wife.

The club committee considered the complaint and the respondent prepared a minute expressing satisfaction with her work but commenting on her "different approach and language barrier" which sometimes gave the impression of disrespect. Similar sentiments were expressed in a letter of apology sent on the committee's instructions to the complaining member. At some point, the appellant obtained access to the minutes and later took exception to the suggestion that she had done so illegally or improperly. She was subsequently dismissed.