[2005–06 Gib LR 201]

SECRETARY OF STATE FOR DEFENCE v. WILLIAMSON and ATTORNEY-GENERAL FOR GIBRALTAR

COURT OF APPEAL (Staughton, P., Otton and Aldous, JJ.A.): February 20th, 2006

Civil Procedure—claims—additional claims—joinder of third party by CPR, Part 20 proceedings inappropriate if increases cost, delays proceedings and prejudices other party—defendant's claim against Government for re-housing not sufficiently "connected with" MOD's claim for possession of married quarters, within CPR, r.20.9(2)(a), and not "seeking substantially same remedy" within r.20.9(2) if attempts to raise public law rights when only private law rights raised in original claim and defence

The claimant brought an action in the Supreme Court seeking possession of living accommodation from the first defendant.

The first defendant, Mrs. Williamson, was the wife of a member of the Royal Gibraltar Regiment but their marriage had broken down and they had separated, leaving her in occupation of their married quarters. They held the premises under a standard licence agreement with the Ministry of Defence which, when Mrs. Williamson refused to vacate the premises, brought the present proceedings for possession. It adduced evidence that the accommodation was urgently required to house new families posted to Gibraltar.

The premises were Crown lands and were the subject of an agreement in 1991 between the Ministry of Defence and the Government of Gibraltar, making them available for the housing of Royal Gibraltar Regiment families. It was meant to facilitate the transfer of local families into service quarters and facilitate their eventual housing in the public housing sector by the Government when the engagement with the RGR ended. A question common to several cases was whether the 1991 agreement gave public law rights to these families, on which they could rely as against the Ministry of Defence—in particular, whether it gave rise to legitimate expectations that they would be re-housed, that proper consideration would be given to re-housing applications and "every effort" made to re-house them. The present proceedings were chosen as a test case. Mrs. Williamson not only resisted the claim for possession but also counterclaimed for a declaration that the Government had failed in its duty to her under the 1991 agreement by not making "every effort" to ensure that she was adequately re-housed.

The Supreme Court (Dudley, A.J.) gave leave to join the Attorney-General as a Part 20 defendant on behalf of the Government of Gibraltar, for the purposes of the claims contained in Mrs. Williamson's defence and counterclaim, *i.e.* to determine the liability of the Government to her. The court held that there was sufficient nexus between the original claim by the Ministry of Defence and her claim against the Government to satisfy the requirements of the CPR, r.20.9(2)(a) and expressed the opinion that even though the Ministry of Defence would be disadvantaged by having to take part in the dispute between Mrs. Williamson and the Government, it would not be significantly disadvantaged and the quick resolution of the proceedings would be encouraged by having both parties to the 1991 agreement present.

The parties subsequently requested the statement of a case for decision by the Court of Appeal, seeking a ruling whether, in all the circumstances, the Government of Gibraltar was a necessary and proper party to be added under the CPR, Part 20. For the purposes of Part 20, the Attorney-General was deemed to be the appellant and Mrs. Williamson and the Ministry of Defence to be the first and second respondents.

The Attorney-General submitted that leave to join the Government under Part 20 should not be granted, since the original action for possession could be disposed of more quickly and efficiently if Mrs. Williamson were left to pursue her claim against the Government in separate proceedings. Moreover (a) there was no "connection between [her Part 20] claim" and the original claim against her by the Ministry of Defence (as envisaged by the CPR, r.20.9(2)(a)); (b) since she was attempting to enforce public law claims against the Government, she was not seeking "substantially the same remedy" as the Ministry of Defence was seeking against her in its private law claim for possession (as envisaged by r.20.9(2)(b)); nor (c) were the questions to be decided under the Part 20 application "connected with the subject-matter of the proceedings" between the existing parties (the Ministry of Defence and Mrs. Williamson) and the person to be joined (the Government) (as envisaged by r.20.9(2)(c)(i)).

Mrs. Williamson submitted in reply, *inter alia*, that (a) the Part 20 claim against the Government was necessary to ensure the convenient and effective management of the main claim; without the joinder of the Government there would need to be separate decisions on her private law rights against the Ministry of Defence, and on her constitutional or public law rights against the Government, which would be protracted and expensive and expose her to the potential prejudice of being ousted from her home by one party before she had been re-housed by the other; (b) the presence of the Government before the court would allow full information to be provided about the 1991 agreement, which she claimed gave her a legitimate expectation that she would be re-housed by the Government, or at least that "every effort" would be made to re-house her, and estopped the Ministry of Defence from obtaining possession until she had been re-housed; and (c) her rights had to be considered against

the background of art. 8 of the European Convention on Human Rights, which protected her rights to family life and her home.

Held, ruling that no case had been made out for Part 20 proceedings:

(1) The Government should not be joined, as to allow Part 20 proceedings in these circumstances would run counter to the objectives of the Civil Procedure Rules by causing additional expense and delay, and prejudicing the Ministry of Defence, the original claimant. The original claim was a simple claim for possession, which could normally be dealt with expeditiously and fairly. If left in its uncomplicated form, it satisfied the CPR's overriding objective for civil proceedings, and there was therefore a heavy burden on Mrs. Williamson to show it was "necessary and proper" to introduce another party into the proceedings, which she had not satisfied. Not only would joining the Government increase the cost and delay in the proceedings, and prejudice the Ministry of Defence (which urgently required possession of the property) but the application failed to meet the criteria to be considered under r.20.9 (para. 28; paras. 32–33; para. 38; paras. 48–51).

(2) There was no "connection between the additional claim" and that by the Ministry of Defence for the purposes of r.20.9(2)(a). Mrs. Williamson made separate allegations against the Ministry of Defence and the Government. She defended the claim by the Ministry of Defence, and alleged that it had represented that it would not seek possession until she had been adequately re-housed; against the Government, she alleged that for a variety of reasons it had failed to make "every effort" to re-house her, as required by the 1991 agreement, and had only offered inadequate alternative accommodation (para. 9; paras. 34–36; paras. 42–46).

(3) Similarly, to satisfy r.20.9(2)(b), she was not "seeking substantially the same remedy" against the Government as the Ministry of Defence was seeking against her, since whereas the Ministry of Defence was seeking possession of the property, she was seeking a declaration that she was entitled to be adequately re-housed (paras. 45–46).

(4) The overriding objective of the CPR would therefore be better served by allowing the issues to be separated into two independent actions. If the Ministry of Defence succeeded in obtaining possession and the Government then failed to re-house Mrs. Williamson adequately, it would be open to her to seek judicial review of its failure (para. 9; paras. 45–46; paras. 48–51).

Case cited:

(1) *O'Reilly* v. *Mackman*, [1983] 2 A.C. 237; [1982] 3 All E.R. 1124, referred to.

Legislation construed:

Civil Procedure Rules (S.I. 1998/3132), r.1.1: The relevant terms of this rule are set out at para. 19.

r.20.1: The relevant terms of this rule are set out at para. 19.
r.20.5(1): The relevant terms of this sub-rule are set out at para. 16.
r.20.9(2): The relevant terms of this sub-rule are set out at para. 16.

C. Rocca and *E. Phillips* for the claimant;
K. Azopardi and *Ms. S. Sacramento* for the first defendant;
J.J. Neish, Q.C. for the second defendant.

1 **STAUGHTON, P.:** The predecessor of this action was the case of *Defence Secy.* v. *Traverso*. That was one of 15 actions that raised similar issues involving (a) the Secretary of State as landlord of premises in Gibraltar which were used for soldiers and their families, until the time came when the soldiers left the premises; (b) their estranged wives, who thereafter continued in the premises although required to leave; and (c) the Attorney-General for Gibraltar, against whom the wives wish to bring a claim as an alternative to defending the claim which they face from the Secretary of State. The issue now is whether this litigation should proceed between three parties, or whether it should first be decided between the Secretary of State and the occupant of the house, and thereafter, if necessary, as between the occupant and the Government of Gibraltar.

2 In the case against Mrs. Traverso, the claimant was originally the Attorney-General, but he was replaced by the Secretary of State for Defence. There was a series of case management conferences. It was agreed that there should be a test case in which common issues would be determined. The test case would be that of Mrs. Traverso. Dudley, A.J. ordered that a Part 20 application be made if necessary. For those of us who practised in the law before 1997, Part 20 of the Civil Procedure Rules is the place which deals with what used to be called "third party proceedings." Whether or not at the judge's suggestion, an application was made in August 2005 under Part 20 for an order that the Attorney-General be added as a defendant to the proceedings.

3 Thereafter, Dudley, A.J. granted that application, appointing the Attorney-General as a defendant in the *Traverso* action but the action was settled. The present action was then made the test case. The Chief Justice stated a case for the Court of Appeal under s.27 of the Court of Appeal Ordinance in the case of Mrs. Williamson. He added:

"20. The question to be referred to the Court of Appeal is:

> 'Given the nature of the claim, the defence and counterclaim and the intended Part 20 claim, is the Government of Gibraltar a necessary and proper party that should be added to the proceedings pursuant to the CPR, Part 20, taking into account—

(a) the nature of the alleged rights and claims;

(b) the provisions of the CPR;

(c) the general factual matrix;

(d) the issues of law that arise?'

21. It is proposed that the Attorney-General be deemed to be the appellant and the defendant and claimant be deemed to be first and second respondents respectively."

4 The action was started as a private claim for possession of the premises said to be wrongly occupied by Mrs Williamson. But there is now added a public law claim, based for the most part on an agreement made in 1991 between the Secretary of State for Defence and the Government of Gibraltar. I shall call that "the Agreement." It is said that the Agreement contains provisions which, as part of private law, prevent the Ministry of Defence seeking to recover possession of the premises. There is said to be a legitimate expectation conveyed to Mrs. Williamson that she would not be required to leave the premises by the Ministry of Defence. There are also said to be the rights under the Constitution of Gibraltar and the European Human Rights Convention which impinge on the rights of the Ministry of Defence, and estoppel is put as an alternative to legitimate expectation.

5 That is a very brief outline of the defence pleaded by Mrs. Williamson against the Ministry of Defence. She also wishes to pursue a claim against the Government of Gibraltar and that has been achieved by the appointment of the Attorney-General as a Part 20 defendant to her claim. If the order of Dudley, A.J. stands, Mrs. Williamson will contest the claim of the Ministry of Defence and as an alternative make her own claim against the Government of Gibraltar.

6 Superficially, it can be said that there are two similar contests, between Mrs. Williamson and the Minister of Defence on the one hand, and between Mrs. Williamson and the Government of Gibraltar on the other. The Government is a party to the Agreement, as is the Ministry of Defence. The Government is called to answer for legitimate expectation, or estoppel, or the Constitution, or the European Human Rights Convention, and so is the Ministry of Defence. But this superficial similarity does not in fact exist as far as I can detect. Mr. Azopardi, as counsel for Mrs. Williamson, was invited by the court to show how the Ministry of Defence and the Attorney-General would be arguing the same cause, or be in a contest with each other. Despite his valiant attempts, he has not succeeded in finding a nexus. The nearest that he came to it in my opinion was the argument that the Minister of Defence might infect the Government by horizontal breach of the Constitution, or the European

Human Rights Convention. Even that would presumably be a breach by one or the other party but not both.

7 In contrast with the request of Mrs. Williamson for joinder of proceedings with the Minister of Defence and the Government of Gibraltar, there is a dislike of it by those other parties. The outline argument of Mr. Rocca for the Ministry of Defence argues that his claim is a simple action for possession. He is anxious to avoid unjustifiable mounting costs. He maintains that Mrs. Williamson and other irregular occupants prevent the Ministry of Defence from fulfilling its commitment to accommodate UK military personnel and their families. So it is said that it is inappropriate to raise breaches of public law duty in the context of defending a private law action. So, too, Mr. Neish for the Attorney-General argues that joinder in the present case would not ensure that the matter would be dealt with expeditiously and fairly; in fact the opposite would be the case.

8 The contest, which was at that time in the *Traverso* case, seems to have been much concerned with the difference between a private law action and proceedings for judicial review in public law. That may have obscured the important question as to whether the two cases should be tried separately or together. There has been much law under the bridge since *O'Reilly* v. *Mackman* (1) and it is recognized that the rules of public law must not always override all else. The important question of joinder or not is what matters.

9 As I have said, I have not found that there is a nexus between the claim against Mrs. Williamson by the Ministry of Defence and the claim which she wishes to bring against the Attorney-General. The Ministry of Defence can bring its proceedings against her, whether in private or public law or both. If that fails, Mrs. Williamson will be able to stay in her house without hindrance. If it succeeds, no doubt the Government will consider its position; Mrs. Williamson will be able to bring proceedings against the Government, whether in private or public law or both, if so advised.

10 I would set aside the existing order under Part 20 in this action, if indeed such an order has been made in this case. If, on the other hand, such an order has not yet been made then, in answer to the Chief Justice's question, it should not be made now.

11 **OTTON, J.A.:** This appeal comes before this court by way of a case stated by Schofield, C.J. dated February 6th, 2006, which arises out of a claim for possession by the Secretary of State for Defence of the United Kingdom against Valerie Williamson, of premises currently occupied by her at 6 London House, Devil's Tower Camp, Gibraltar.

12 The background can be briefly stated. The Ministry of Defence owns a number of services families' quarters in Gibraltar which are Crown lands for occupation by services personnel under a standard licence agreement. In 1991 an agreement was entered into between the Ministry of Defence and the Government of Gibraltar ("the Government") regarding the subject of housing of Royal Gibraltar Regiment ("RGR") personnel. The question of what rights (if any) this agreement creates in favour of servicemen's families is in issue between the parties.

13 The Ministry of Defence has given notice to quit to a number of RGR soldiers' wives who remain in occupation of service quarters after their marriages have broken down and after their husbands had left their quarters. The Ministry of Defence has filed claims for possession in those cases where occupants remain in occupation notwithstanding the notices to quit.

14 One of the issues which is common to all the claims is whether the 1991 agreement created rights upon which the defendants could rely against the Ministry of Defence for the Government. Dudley, A.J. decided that there should be a test case, the outcome of which should be binding upon all parties in all the other cases. The case originally selected was that of Traverso but later the present case of Williamson was substituted. Dudley, A.J. ordered that a defence be filed by the defendant in the substituted case and that a Part 20 application against the Government should be made if necessary. This was duly done.

15 Dudley, A.J. gave permission to join the Attorney-General as a Part 20 defendant for the purposes of the claims contained in the defence and counterclaim and Part 20 notice. Subsequently, at the indication of Dudley, A.J., the parties requested that a case be stated pursuant to s.27 of the Court of Appeal Ordinance, putting the following question:

> "Given the nature of the claim, the defence and counterclaim and the intended Part 20 claim, is the Government of Gibraltar a necessary and proper party that should be added to the proceedings pursuant to the CPR Part 20, taking into account—
>
> (a) the nature of the alleged rights and claims;
>
> (b) the provisions of the CPR;
>
> (c) the general factual matrix;
>
> (d) the issues of law that arise?"

It was proposed that the Attorney-General be deemed to be the appellant and the defendant and claimant be deemed to be the first and second respondents.

16 The relevant parts of the CPR Part 20 provide:

"20.5(1) A defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as an additional party."

and

"20.9(2) The matters to which the court may have regard include—

(a) the connection between the additional claim and the claim made by the claimant against the defendant;

(b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him;

(c) whether the additional claimant wants the court to decide any question connected with the subject matter of the proceedings—

(i) not only between existing parties but also between existing parties and a person not already a party; or

(ii) against an existing party not only in a capacity in which he is already a party but also in some further capacity."

17 Mr. James Neish, Q.C., for Her Majesty's Attorney-General on behalf of the Government, submits that there is no connection between the Part 20 claim and the claim made by the claimant (Ministry of Defence) against Mrs. Williamson (as required by r.20.9(2)(a)). Moreover, the Part 20 claimant (Mrs. Williamson) is not seeking substantially the same remedy which the Ministry of Defence is claiming from her (as required by r.20.9(2)(b)).

18 He further submits that Mrs. Williamson by her Part 20 application wants the court at trial to decide questions which are not connected with the subject-matter of the proceedings between the existing parties (*i.e.* Ministry of Defence and Mrs. Williamson) and a person not already a party (as required by r.20.9(2)(c)(i)). Accordingly, the application for the joinder of the Government is misconceived and should be refused and the answer to the question raised in the case stated should be in the negative. The Government is not a "necessary and proper party" that should be added to the proceedings.

19 Mr. Keith Azopardi on behalf of Mrs. Williamson submits that the issue and service of the Part 20 claim against the Government is necessary, proper and in the interests of justice. The objective of Part 20 is to ensure that such "claims . . . are managed in the most convenient and effective manner" (see the CPR, r.20). This provision is to be construed in the light of the overriding objective contained in the CPR, r.1.1 which enables the court to "deal with cases justly," by ensuring the "saving of expense," "expeditiously and fairly."

20 As to the CPR, Part 20, counsel contends that there is a connection between the claim and the Part 20 claim and the determination of connected questions. In the defence, Mrs. Williamson's central contentions are that she has contractual rights which (*inter alia*) require the court to assess issues of hardship and reasonableness. She has a legitimate expectation to be re-housed under the 1991 agreement and in view of the conduct, representations and statements of the Ministry of Defence/Government, the Ministry of Defence is estopped from seeking or enforcing any order for possession until she is adequately re-housed by the Government. Her rights under ss. 1(c) and 6 of the Constitution are being or are likely to be contravened. In construing such rights, consideration of her (and her family's) rights under art. 8 of the European Convention on Human Rights are useful. She has statutory and common law rights that require the issues of unreasonableness, harshness and oppression to be resolved before the making or enforcement of any order for possession. By her counterclaim she seeks relief related to the main issues on which she relies.

21 In the proposed Part 20 claim form, the defendant sets out her contentions that she has a claim against the Attorney-General *qua* Minister of Housing in respect of her constitutional and public law rights (it is conceded that she has no private law rights against the Government).

22 Counsel submits that it is plain from the issues that the claimant raises against her, that she in turn raises in her defence and that she wishes to raise against the Part 20 defendant, that the facts of the claim and the Part 20 claim are inter-related. It will be impossible or more difficult to deal comprehensively with the issues between the parties if the Government is not before the court. It is sensible to hear the Attorney-General in relation to the 1991 agreement. This is the first opportunity to add the Government to this action and the defendant has acted promptly in this regard. Allegations of fact will be made in respect of correspondence, statements and representations made by Ministry of Housing officials and therefore it would make sense for the Attorney-General to be represented. It would only serve to delay, unnecessarily complicate and stagger proceedings for the Part 20 claim to have to proceed by other means. It does not serve the interests of justice, the overriding objective, the desire to keep costs down or the attempt to determine issues as swiftly and as comprehensively as possible to refuse the Part 20 application.

23 The 1991 agreement between the Ministry of Defence and the Government was meant to facilitate the transfer of local families into service quarters and facilitate their eventual housing in the public housing sector by the Government when the engagement with the RGR was at an end. It gave rise to legitimate expectations of a substantial benefit, namely

that they would be re-housed and/or that proper consideration would be given to re-housing applications and/or that "every effort" aimed at re-housing would be made.

24 The defendants raise various defences to the possession claims that (a) they have contractual, constitutional or public law rights against the Ministry of Defence and (b) possession should not be granted or alternatively be suspended in view of the public and constitutional law rights raised against the Government. To deal with matters (a) and (b) separately will be unsatisfactory. It will be more costly and more protracted and will duplicate matters. An initial determination in favour of the Ministry of Defence will have unduly harsh effects (unless the order for possession is suspended) because the defendants will be ousted from their homes before the other issues against the Government are litigated in separate proceedings. Moreover, it will necessarily sever the legitimate expectation or constitutional claims against the Ministry of Defence and the Government by forcing duplicated proceedings.

25 Finally, Mr. Azopardi submitted that although the matter comes before this court by way of case stated (by agreement between counsel) it is in reality an appeal against the decision of Dudley, A.J. The learned judge gave careful and anxious consideration to all the relevant matters. He correctly identified the relevant legal principles and applied them to the facts and circumstances of the case. In the absence of manifest error on his part, this court should be slow to reverse or interfere with his decision or the exercise of his discretion.

26 Accordingly, the question referred to the court should be answered in the affirmative and this court should order the joinder of the Government as a Part 20 defendant and remit the matter to the Supreme Court to give directions for trial.

Conclusions

27 Dealing first with Mr. Azopardi's final submission, I am unable to accede to the argument that we should approach this case as if it were an appeal against the decision of Dudley, A.J. and that we should confine our consideration to the exercise of his discretion. A case stated is fundamentally different from an appeal. We are required to address the terms of the question posed in the case and to reach our own independent decision by way of an answer. We do so unencumbered by the question whether the learned judge erred in the exercise of his discretion.

28 I have given considerable thought to Mr. Azopardi's impressive arguments but with regret I am unable to accede to them. I take as my starting point the nature of the primary proceedings. This is a simple claim for possession of 6 London House, Devil's Tower Camp. Mrs.

Williamson's husband's change of marital status terminated his right to remain in possession and he was obliged to vacate the property in favour of the defendant where she resides as a temporary licensee terminable on notice. In such a situation, possession proceedings are generally summary in character. They conform to the overriding objective set out in the CPR, r.1.1. They enable the court to deal with cases justly by ensuring the saving of expense, that they are dealt with expeditiously and fairly and with an appropriate allocation of the court's resources. The defences raised here do not materially alter that position. Thus there is a heavy burden on the defendant to show that the Government is a "necessary and proper" person to be added to these proceedings.

29 Mr. Christian Rocca for the Ministry of Defence expresses the concern that in the context of the present application there would be an inevitable and unjustifiable escalation of costs. Counsel would be obliged to be present when the issues between the defendant and the proposed Part 20 defendant were litigated. Moreover, if the application were granted there would be inevitable delay while the Part 20 proceedings caught up with the possession proceedings. The claimant's affidavit evidence has already been served and the case is in advanced state of readiness for trial. There has already been delay arising out of case management conferences attended by counsel for other defendants.

30 Moreover, the interests of the Ministry of Defence have been and will be prejudiced by delay. In an affidavit in a related action, Mr Eddie Alvez, Acting Families Housing Manager of the Ministry of Defence Gibraltar, states:

> "11. The Ministry of Defence requires the premises urgently for service personnel on the Ministry of Defence's housing list. The Ministry of Defence is required to house service personnel serving in Gibraltar from abroad. Often the Ministry of Defence must require the serviceman to attend service in Gibraltar without his family due to the lack of vacant family quarters. The premises therefore must be released in order to house these new families."

To my mind this is convincing evidence and a potent consideration. As Mr. Rocca succinctly put it:

> "It therefore seems inappropriate that, in the context of defending a private law action for possession, the defendant should be seeking to raise breaches of an alleged public law duty by the proposed Part 20 defendant. The appropriate forum for raising these issues of public law against the Government of Gibraltar would be judicial review. Should the defendant fail successfully to defend the claimant's claim, and should the Government of Gibraltar refuse subsequently to re-house her, it would be open to the defendant to seek judicial

review of that decision if the defendant considered it to be a violation of her public law rights."

31 I would accede to Mr. Rocca's submission. On the ground of additional expense, delay and prejudice to the Ministry of Defence, I would disallow the application on this ground alone.

32 I turn to the matters contained in r.20.9(2) to which the court may have regard. I am not persuaded that there is a connection between the Part 20 claim and the Ministry of Defence's claim against the defendant. Although the Ministry of Defence and the Government were parties to the 1991 agreement, that fact in itself does not establish the necessary connection envisaged by the CPR, r.20.9(2)(a). The defendant makes separate and distinct assertions against each of those parties. She contends that on its true construction (coupled with representations made by Ministry of Defence personnel to the same effect), the Ministry of Defence would not seek to evict or alternatively enforce a possession order until such time as her husband, or the defendant or his/her family, were adequately re-housed. As against the Government, she avers that some time after 1990 it has wrongly failed to place her on or removed her from the housing list. She avers that the Government personnel in 2002 and/or 2003 told her that she was not and could not be put on the post-war housing list, the latter representation being incorrect. The Government has failed to re-house her and has only offered her alternative accommodation which was "wholly inadequate, inappropriate and unacceptable". It has failed to make "every effort" to re-house her as required by the 1991 agreement.

33 In my judgment, there is no nexus between these two incompatible cases. Accordingly, I am not persuaded that there is a sufficient connection between the Part 20 claim and the claim made by the claimant against the defendant.

34 The CPR, r.20.9(2)(b) deals with whether the Part 20 claimant is seeking substantially the same remedy which some other party is claiming against her. She clearly is not. The Ministry of Defence is seeking an order for possession against her. The Attorney-General is not being asked to say whether Mrs. Williamson is entitled to stay in possession. She is resisting the order for possession. She is seeking a declaration against the Government that she is entitled to be re-housed. Thus she fails to satisfy this requirement also.

35 Dudley, A.J. concluded:

"What is therefore required is for me to apply the provisions of Part 20. There seems to me to be sufficient nexus between the constitutional claims and the substantive possession action, given the 1991 agreement.

> Moreover it would undoubtedly be convenient to deal with matters arising in respect of the 1991 agreement with the benefit of having the two parties to it before the court."

36 With the utmost respect to the learned judge, I have reached a diametrically opposite view. He correctly considered the matters contained in r.20.9(2)(a) but appears not to have considered the implications of r.20.9(2)(b) which on my analysis I found compelling. When reaching his conclusion on convenience he took into account only part of the case advanced by the Ministry of Defence. He states:

> "As regards Ministry of Defence, it is fair to say that it would undoubtedly be disadvantaged by the joinder of the Government in that the determination of the issues would be delayed and that it would be dragged into a hearing involving consideration of public law issues. However, that the 1991 agreement and the Government's obligations, if any, was an issue has been apparent from the inception of the action (at the time brought in the name of the Attorney-General), so this application and the underlying issues can come as no surprise. The Ministry of Defence will be disadvantaged but not significantly so."

The learned judge does not appear to have taken into account the prejudice to the Ministry of Defence indicated in Mr. Alvez's affidavit that the Ministry of Defence requires the premises urgently for service personnel and their families on the Ministry of Defence's housing list. I attach considerable weight to this evidence. I also take into consideration that it is unlikely that the Ministry of Defence will enforce possession until after the judicial proceedings have been determined. Thus I arrive at the contrary conclusion that the overriding objective in the CPR, r.1.1 is better served by separating the issues into two independent actions.

37 Mr. Neish advanced a second but alternative argument that if we were to conclude that there was a connection within the CPR, r.20.9(2)(a) we should exercise our power under r.24.2 to strike out the Part 20 claim on the basis that there are no prospects of success in pursuing such a claim. In view of my conclusions above, it is not necessary to address the point. Moreover it would be premature to strike out what now become judicial review proceedings which have not yet been commenced.

38 In summary, I would answer the question raised in the case stated in the negative. Given the nature of the claim, the defence and counterclaim and the intended Part 20 claim, the Government of Gibraltar is not a necessary and proper party that should be added to the proceedings pursuant to the CPR, Part 20, taking into account the matters identified.

39 **ALDOUS, J.A.:** I agree that the question referred to this court should be answered in the negative. The Government of Gibraltar ("the

Government") should not be added to the proceedings pursuant to the CPR, Part 20.

40 The background has been fully set out in the judgments of the President and Otton, J.A. I can therefore turn to the reasons why I have answered the question in the negative.

41 The CPR, r.20.9 is pertinent as it applies where the court is considering whether to permit a Part 20 claim to be made. Rule 20.9(2) states that during that consideration the matters to which the court may have regard include—

> "(a) the connection between the additional claim and the claim made by the claimant against the defendant;
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> (b) whether the additional claimant is seeking substantially the same remedy which some other party is claiming from him;
>
> (c) whether the additional claimant wants the court to decide any question connected with the subject matter of the proceedings—
>
> (i) not only between existing parties but also between existing parties and a person not already a party . . ."

42 There is no dispute about the claim made by Ministry of Defence. It is a claim for possession of the married quarters that the defendant occupies. The claim is based upon the undisputed fact that she occupied the quarters as the wife of a licensee of Ministry of Defence and that the Ministry of Defence has served the appropriate notices to determine that licence and to require her to vacate the flat.

43 The Part 20 claim is made against the Government. It seeks relief to ensure that the defendant is properly re-housed. On the face of it, there is no connection between the claim to right to possession, which is a private law right, and that sought against the Government, which is a public law right based upon an alleged obligation to re-house the defendant.

44 The proposed amended defence and counterclaim seek to raise a connection based upon a legitimate expectation arising from the 1991 agreement and statements made by the Ministry of Defence and the Government which give rise to an estoppel. It is also alleged that both the Ministry of Defence and the Government have, are or are likely to contravene the defendant's rights under the Gibraltar Constitution.

45 The alleged connection, in my view, does not stand scrutiny. As I have said, the claim by the Ministry of Defence is for possession, whereas the Part 20 claim against the Government is based upon alleged statements and representations by the Government and acts by the Government alleged to be in contravention of the Constitution.

46 The Part 20 claimant is not seeking the same or similar remedy which the only other party, the Ministry of Defence, is seeking. The third element of the CPR, r.20.9(2) directs that the court may have regard to whether the Part 20 claimant wishes to have decided any question connected with the possession claim. As the defendant accepts, the claim for possession is a private law claim in which the enforcement of a private right is in issue. The dispute sought to be raised in the Part 20 claim is based solely on public law rights. There is in my view no reason why the defendant should want any of the questions that will arise in the possession claim to be decided as against the Government. No advantage would be obtained.

47 Of course the matters referred to in r.20.9(2) are not inclusive. Thus it is necessary to go on and consider the application to introduce a Part 20 defendant from a broader prospective, mainly whether it will achieve the correct administration of justice.

48 Although these proceedings are between the Ministry of Defence and the defendant, it has been chosen as a test case with about 14 other cases to follow. As constituted, it is relatively simple in that the Ministry of Defence's right to the property in question is not in dispute. The expense in deciding the case relates to the pleaded defences. However, that expense would be considerably less than proceedings in which the Government was included as a party. It follows that the introduction of the Government into the proceedings would increase the costs. The administration of justice requires the court to consider not only expense but what is the appropriate way for justice to administer it. If a defence which is pleaded succeeds, the addition to the proceedings of the Government would have resulted in increased costs and delay. That cannot be appropriate.

49 If all the defences fail, possession will be ordered; that cannot be enforced without a writ of execution. We were told that the Ministry of Defence normally waits two to three months before issuing that writ to enable the Government to take action under the 1991 agreement and under Gibraltar law to re-house a defendant. At the stage when possession has been granted, the burden falls on the Housing Manager of the Government. If appropriate action is taken, then the defendant will be re-housed. If not, there would be ample opportunity for the defendant to apply by way of judicial review for enforcements of her rights.

50 I do not anticipate that in many cases judicial review proceedings would be necessary. In any case, the position of the defendants in the other cases would not be likely to raise the same issues as in this case. I therefore do not believe it is necessary for the proper administration of justice for the Government to be added as a defendant in the action.

51 In my view, the correct procedure is to allow the possession proceedings to be decided as quickly as possible. Thereafter, the housing manager of the Government will have to apply his mind to satisfying the defendant's needs as required by law. It would not be right to include within these proceedings what in effect is a judicial review of matters that may never arise.

Case stated answered accordingly.
