

(Civil Jurisdiction)

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Civil Action No. 178 of 1981

IN THE MATTER of the Constitution of Fiji, sections 76(1), 82, 85 and 97(1)

IN THE MATTER of an Order purportedly made pursuant to the Constitution of Fiji, section 76(1) (Fiji Royal Gazette, Friday, 6th February, 1981)

AND IN THE MATTER of an application by the Director of Public Prosecutions pursuant to section 97(1) of the Constitution of Fiji

Between:

THE DIRECTOR OF PUBLIC PROSECUTIONS Plaintiff

and

THE ATTORNEY-GENERAL Defendant

Mr. R. Lindsay with Mr. V. Maharaj for the Plaintiff.

Sir John N. Falvey Q.C. with Mr. G. Grimmett for the Defendant.

JUDGMENT

On 23rd July, 1970 Fiji became independent by virtue of the Fiji Independence Act 1970.

The Constitution of Fiji contains two short sections in the first Chapter. They read as follows:-

"This Constitution is the supreme law of Fiji and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void."

Chapter IV appoints the Governor-General as Her Majesty's representative.

Under Chapter V Parliament is established as one of the three organs which constitute the Government. Section 30 states:-

"30. There shall be a Parliament for Fiji which shall consist of Her Majesty, a House of Representatives and a Senate."

The executive or Cabinet, the second arm of Government, is created by Chapter VI under which executive authority vests in Her Majesty and is exercised by the Governor-General. Section 73(1) establishes a Prime Minister, an Attorney-General and provides for other Ministers to be appointed if need be. Section 75(1) provides for a Cabinet composed of the Prime Minister assisted by any Ministers he chooses to select. The Prime Minister can remain as the sole member of the Cabinet. By section 75(2) the function of the Cabinet is to advise the Governor-General in the governing of Fiji.

The third organ of the Government, the Judicature, is established by Chapter VII.

Chapter VI creates a Secretary to the Cabinet, a Commissioner of Police and section 85(1) creates a Director of Public Prosecutions whose office shall be a public office.

The Fiji Constitution follows the pattern described by Lord Diplock as the Westminster Model (Hinds v. The Queen; Privy Council; (1976) W.L.R. 366 at 373A). It establishes a democratic form of Government in which judicial powers are exercised exclusively by the Judicature, and executive powers by the Executive (Cabinet) and legislative powers by the Legislature, that is to say Parliament.

Chapter VIII creates various Commissions with powers to appoint individuals to specified offices and to control them. Section 85(1) appoints the Director of Public Prosecutions.

Section 85(4) vests the power of instituting and discontinuing all criminal proceedings in the Director of Public Prosecutions and subsection five makes it exclusive whilst subsection seven enacts that the Director of Public Prosecutions shall not be subject to external direction or control. During the past ten years the Director of Public Prosecutions has functioned without ministerial control or assistance.

On Friday, 6th February, 1981, the Fiji Royal Gazette, Volume 108, contained several notices under section 76(1) outlining departmental responsibilities of various Ministers. Notice 168 allocates to the Attorney-General the business listed in Column 1 namely the drafting of a wide field of legislation which does not fall naturally into any other Ministry. Column 2 delegates to the Attorney-General responsibility for departments connected with matters legal such as the Crown Law Office, Administrator-General, Registrar-General and the Office of the Director of Public Prosecutions. Regarding the Director of Public Prosecutions the notice states that the Attorney-General's responsibility is subject to the provisions of section 85(7) whereunder the Director of Public Prosecutions is excluded from the control or direction of any person or authority. Under Column 2 the Attorney-General is also given responsibility for the Judicial Department.

Section 76(1) reads:-

"The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department of the Government."

Section 82 reads:-

"Where any Minister has been charged with responsibility for the administration of any department of the Government, he shall exercise general direction and control over that department and, subject to such direction and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Minister) shall be under the supervision of a Permanent Secretary or of some other supervising officer whose office shall be a public office:

Provided that -

- (a) any such department may be under the joint supervision of two or more supervising officers; and
- (b) different parts of any such department may respectively be under the supervision of different supervising officers."

What does the Gazetted Notice mean by "the Office of the Director of Public Prosecutions"? It could mean "the clerks, typists, messengers and administrative staff of the Director of Public Prosecutions and the general administrative work done by them". To accept such a meaning could be unsafe because the framers of the notice may have in mind something wider such as the public office of the Director of Public Prosecutions. Therefore I think it necessary to consider the constitutional validity of the notice on the basis

- (a) that it refers to the "public office of the Director of Public Prosecutions" and
- (b) that it refers only to the clerical/administrative staff attached to the Director of Public Prosecutions.

In so doing one has to bear in mind that Ministers are responsible for departments of government.

The Director of Public Prosecutions regards the Notice 168 as providing the Executive organ of Government, with a measure of control over the Director of Public Prosecutions which could erode his authority and independence. Therefore he has filed a Notice of Motion for a declaration under section 97(1) of the Constitution as to the validity of the

notice in assigning responsibility for the administration of the Office of the Director of Public Prosecutions to the Attorney-General. Alternatively he asks for a declaration as to the scope of the notice.

Although I refer to the publication in the Gazette as a notice the Director of Public Prosecutions has described it as an Order in his Notice of Motion.

The Notice of Motion sets out the grounds upon which his application is based.

The first ground is that the Attorney-General's appointment is political and it is incompatible with the independence of the Director of Public Prosecutions to place him under the Attorney-General.

The second ground is based upon an explanation given by the Prime Minister to the Legislature that the gazetting of specific responsibilities to certain Ministries is a legal necessity. It alleges that the explanation reveals a misconception on the part of the Prime Minister's advisers that he was under a duty to place the Office of the Director of Public Prosecutions under ministerial control. I do not regard it as necessary to pursue the second ground.

Grounds 3 and 4 claim that the Office of the Director of Public Prosecutions is not a Government Department and that the Director of Public Prosecutions does not carry on any business of Government.

The notice states that the Attorney-General shall be responsible for "Criminal Law and Procedure" and "Evidence" and ground 5 alleges that this is not Government business assignable to a Minister under section 76(1). We see nothing wrong with that allocation of legislative drafting.

Grounds 6 and 7 allege that section 82 which gives the Minister general direction and control of the department assigned to him under section 76(1) conflicts with section 85(7) which exempts the Director of Public Prosecutions from such direction and control.

Grounds 8, 10 and 11 merely echo other grounds.

Ground 9 complains that the notice does not sufficiently delineate the extent of ministerial responsibility and is void for uncertainty. The notice makes the Attorney-General responsible for administration of the departments shown in Column (2), but Column (2) refers to the office, not the department, of the Director of Public Prosecutions, thereby clearly accepting the terminology used by the Constitution. I think that this ground depends, to some extent, on whether the Prime Minister can under section 76(1) assign to a Minister responsibility for certain public offices established by the Constitution when section 76(1) only refers to government departments.

Sir John Falvey referred to section 31 of the Supreme Court Ordinance which states that civil causes shall be heard by a "judge alone" and he wondered whether the present bench of three judges did not contravene that provision. We took the view that "judge alone" in that context meant a judge or judges sitting without assessors. Constitutional issues differ from civil causes contemplated by the Supreme Court Ordinance. The Constitution is silent as to the number of judges required to hear such applications but section 97(4) empowers the Chief Justice to make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by section 97.

Under Legal Notice 14 of 1981 the Chief Justice published the Supreme Court (Constitutional Redress and Relief Rules) 1981.

Rule 2 thereof states that jurisdiction to hear such motions "shall be exercisable by a single judge". Use of the word "exercisable" demonstrates that the jurisdiction is not limited to a single judge.

Grounds 1, 6 and 7 point to the undesirability of the Director of Public Prosecutions being subject to the direction and control of a politician. The undesirability of ministerial control would not affect the validity of the notice unless repugnant to the intention of the Constitution. A constitution is interpreted according to the intentions of the bodies who agreed to its provisions. Fiji's Constitution was agreed by representatives who attended the Fiji Constitutional Conference 1970 in April and May as shown in Council Paper No. 5 of 1970. There is no definition of department in the Constitution and it creates no department.

Section 121 refers to a Minister for Finance but does not create a Department of Finance nor a third Minister. Thus until he arranges for additional Ministers the Prime Minister will be Minister for Finance unless he allocates that responsibility to the Attorney-General.

Section 75(1) creates a Cabinet consisting of the Prime Minister and such Ministers as he may designate. Its function as stated by subsection two is advising the Governor-General in the governing of Fiji for which they are responsible to Parliament. As pointed out in Administrative Law, 4th Edition by H.W.R. Wade at page 49, the appointment of the Prime Minister is the act which sets the machinery of cabinet government in motion. The Cabinet is not the government; it is the administrative organ of the Government which functions through Ministers placed in charge of departments. The departments are created by the Prime Minister and approved by Parliament. If need be they can be abolished in the same way. They include numerous spheres of activity, e.g. Agriculture and Fisheries, Finance, Inland Revenue, Lands and Mines, Forests,

Health, Education, Marine to name but a few. An example of a recently created department is The Department of Energy which was placed under the care of an existing Minister.

The Constitution creates public offices and Commissions which control the holders of public offices. The word "department" is used in section 76(1) and in section 82. Although it does not create departments the Constitution envisages their existence and provides for their administration by Ministers. Presumably the words "department of government" and the expression "public office" are used deliberately and cannot be regarded as synonymous.

Is it the intention of the Constitution to screen public offices from political influence? De Smith's "New Commonwealth and its Constitution" page 74 refers to the creation by Constitution of a Judicial Commission with responsibility for appointment, promotion, transfer, disciplinary control and removal of magistrates and appointment of judges (other than the Chief Justice). The learned author states that such provisions give superior judges security from political influence. He shows that in order to protect criminal prosecutions from political influence Constitutions will create a Director of Public Prosecutions, vest him with special responsibilities and insulate him from the direction or control of politicians.

In Fiji the Judicial and Legal Services Commission appoints Judges, the Director of Public Prosecutions and certain of his legal officers as well as Registrars and Deputy Registrars of the Supreme Court and the Solicitor-General. De Smith says that this procedure is intended to protect them from political influence. Section 85(7) of the Constitution appears to support that view in relation to the Director of Public Prosecutions when it says:-



"85.--(7) In exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority."

If one accepts De Smith's views (supra page 144) it is apparent that the Director of Public Prosecutions is intended to be independent and when the Constitution describes the Office of the Director of Public Prosecutions as a public office it seems that the intention <sup>is</sup> ~~was~~ to screen him from ministerial interference by the exercise of the Prime Minister's powers under section 76(1) over government departments. If a public office created by the Constitution is to be placed under ministerial control it would have to be specifically provided for in the Constitution as in section 84 in regard to the Office of the Commissioner of Police.

Section 84(1) makes the Office of the Commissioner of Police a public office and subsection two places him in command of the Force. By subsection three a Minister authorised by the Prime Minister "can give to the Commissioner of Police general directions of policy for maintenance of public safety and public order". Thus the Constitution especially limits the independence of the Commissioner of Police. Subsection four demonstrates the difference between a public office created by the Constitution and a department of government. It reads:-

"84.--(4) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 76(1) of this Constitution for the organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and controlling the operations of the Force and, except as provided in the preceding subsection, the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority."

If the Office of the Commissioner of Police were a department of government then section 76(1) would automatically

apply to it. But section 84(4) declares that a Minister can under section 76(1) be assigned responsibility for the organisation, maintenance and administration of the Police Force. Subsection three and four demonstrate that even limited responsibility for a public office can only be assigned to a Minister by virtue of a special provision in the Constitution. It appears that section 76(1) only applies to the Office of the Commissioner of Police because section 84(4) says that it shall. In my view section 76(1) would only apply to the Office of the Director of Public Prosecutions if the Constitution included a provision to that effect similar to section 84(4).

Section 85 contains no such provision for assigning responsibility for "the Office of the Director of Public Prosecutions" to a Minister but this is what the notice does, subject to section 85.

The Fiji Constitution Order 1966, Schedule 2, section 38 vested the Attorney-General with the same powers that are now vested in the present Director of Public Prosecutions under section 85 of the current Constitution and also screened him from the direction and control of any other person or authority. There must have been good reason for transferring those exclusive powers to the newly created Director of Public Prosecutions. The Director of Public Prosecutions contends that this was done to ensure his independence from political interference. Support for his contention appears in the Fiji (Constitution) Order 1966 (Legal Notice 136 of The Laws of Fiji 1966, page 321) of which section 14 reads:-

"14.-(1) Until a member of the Executive Council who is also an elected member of the Legislative Council has, under section 34 of the Constitution, been appointed to hold, as a Minister, the office of Attorney-General, that office shall be a public office.

(2) When the office of Attorney-General ceases to be a public office -

(a) section 38 (other than subsection (1) thereof) and sections 89(2) and 100(5) of the Constitution shall have effect as if the references therein to the Attorney-General were references to the Director of Public Prosecutions;

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- (b) sections 41(1)(a) and 90(2) of the Constitution shall have effect as if references therein to the Attorney-General were references to the Solicitor-General;
- (c) section 89(2) shall have effect as if a reference to the Solicitor-General were included therein.

(3) Notwithstanding section 39 of the Constitution, no appointment shall be made to the office of the Director of Public Prosecutions as long as the office of Attorney-General remains a public office."

Section 14 enacts that when the Attorney-General ceases to be a public officer and becomes a politician he will cease to control criminal prosecutions and his powers vest in the non-political Director of Public Prosecutions. Obviously the present Constitution also intends that control of criminal prosecutions shall be beyond political interference thereby supporting the view that it distinguishes between the Office of the Director of Public Prosecutions and a department of government.

The Gazette Notice states that the Minister's responsibility for the Office of the Director of Public Prosecutions is subject to section 85. But section 85 expressly states that the Director of Public Prosecutions "shall not be subject to the direction or control of any other person or authority". There would be a clash between section 82 and section 85(7) if department of government and public office were synonymous. They can only exist together by accepting that the Constitution distinguishes between department of government and public office.

Section 127 of the Constitution defines "public office" as an "office of emolument" in the public service. In the layman's most basic parlance it is a "salaried job". It would be absurd to describe "a department of government" as an office of emolument.

The Attorney-General submits that the Director of Public Prosecutions needs office accommodation, equipment, clerks, typists and others to do the administrative work. To that extent there is, he argues, a department attached to the Office of the Director of Public Prosecutions which requires funds for that purpose. In order to make representation in Parliament for those funds there must be some form of parliamentary control and that is best achieved by having a Minister responsible for the administrative section. I concur in that proposition provided the extent of the ministerial responsibility is clearly set out in the notice. A vague statement that the Attorney-General is responsible for the administration of "the Office of the Director of Public Prosecutions" could, if accepted, become the "thin edge of the political wedge". It could be used to limit the Director of Public Prosecutions' right to administer his own office in carrying out his constitutional functions.

This very aspect was considered in The Queen v. Kirby and Others Volume 29 (1956) Aust.L.J. 658, by Dixon C.J. He referred on page 663 to the separation of powers by the Constitution of the Commonwealth in creating separate organs of government namely Executive, Judicature and Legislature. He quoted Sir William Harrison Moore's Commonwealth of Australia 2nd Edition as follows:-

"In the case of the Commonwealth Parliament it is impossible to avoid the conclusion that the separation of powers was intended to establish legal limitations on the powers of the organisations of government, and that the Courts are required to address themselves to the problem of defining those functions."

The learned C.J. at page 664 also quoted from Professor Willoughby's Constitutional Law of the U.S. 2nd Edition pages 1619 and 1620:-

"Thus it is not a correct statement of the principle of the separation of powers to say that it prohibits absolutely the performance by one department of acts which, by their essential nature, belong to another. Rather, the correct statement is that a department may constitutionally exercise any power, whatever its essential nature, which has, by the Constitution been delegated to it, but that it may not exercise powers not so constitutionally granted, which from their essential nature, do not fall within its division of governmental functions unless such powers are properly incidental to the performance by it of its own appropriate functions. From the rule as thus stated, it appears that in very many cases the propriety of the exercise of a power by a given department does not depend upon whether, in its essential nature the power is executive, legislative or judicial but whether it has been specifically vested by the Constitution in that department, or whether it is properly incidental to the performance of the appropriate functions of the department into whose hands exercise has been given."

In <sup>my</sup> ~~our~~ opinion that statement operates in two ways:-

- (a) It indicates that by implication the Judicature must have been vested with those administrative powers which are necessary to enable it to function under the Constitution which created it.
- (b) The Executive cannot exercise or vest itself with powers which were not granted to it by the Constitution and which do not fall incidentally within its direction as being governmental functions, viz. assuming control of the administration of the Judicature by purporting to make a Minister responsible for the administrative units without which the Judicature could not function.

Unlike the Judicature the Office of the Director of Public Prosecutions is not a separate organ of Government. Nevertheless I consider that the observations of Dixon C.J. (supra) apply to that office in a similar manner and that the Director of Public Prosecutions being especially created

by the Constitution is automatically invested with those powers of administration which are incidental to his functions.

The views of Dixon C.J. were endorsed by the Privy Council in Attorney-General v. The Queen and Kirby v. The Queen Volume 30 (1957) Aust. L.J. 638. At page 644 their Lordships stated:-

"Many functions perhaps may be committed to a Court which are not of themselves exclusively judicial, that is to say which considered independently might belong to an administrator. But that is because they are not independent functions but form incidents in the exercise of strictly judicial powers."

The various public offices and Commissions created by the Constitution require accommodation, furniture, administrative staff and money to enable them to function. In that respect they are no different from any other section of the Government. There cannot be a rigid definition of "department of government" but it does not mean every place where public servants carry on their functions. A "department of government" is a section or division which can be directed and controlled by a Minister. Judges and magistrates are employed and paid by the Government but that does not weld them into a department of government which can be directed and controlled by a Minister. Government departments do not happen accidentally; they are the deliberate creation of the Executive for the purpose of running the nation. Therefore such a notice should clearly state what it is that a Minister is assuming direction and control of because it may not be a government department and as a result may fall outside ministerial control and direction. With regard to statutory departments such as Highways, Public Works, Marine, they are the creations of statute and naturally fall within ministerial direction and control. However, the Constitution creates several public offices such as Auditor-General, Ombudsman, Director of Public Prosecutions and places the holders outside ministerial control; as stated in The Queen v. Kirby (supra) they necessarily have control of those administrative functions which are incidental to their own offices. Consequently the

notice in question cannot be valid if it results in two authorities namely the Attorney-General and the Director of Public Prosecutions independently directing and controlling the administrative employees and establishment without which the Director of Public Prosecutions could not carry out the functions of his office. The qualification in the notice that the Minister's powers are subject to section 85 is so vague that it would probably lead to conflicting directions.

How does one determine which administrative matters are necessarily incidental to the Director of Public Prosecutions' functions? I think I should again emphasise that the Director of Public Prosecutions is created by the Constitution and that the notice is issued under section 76(1) of the Constitution and any interpretation should have regard to the fact that the Constitution intends to screen the Director of Public Prosecutions from political pressure. Section 84 places the Commissioner of Police in command of a Police Force and section 84(4) allows responsibility for it to be assigned to a Minister under section 76(1) as in the case of any department. Unlike the Commissioner of Police no specific body of personnel is placed by section 85 under the command or direction of the Director of Public Prosecutions. Presumably the Director of Public Prosecutions' establishment is supplied by the Public Service Commission with such non-professional personnel as are from time to time necessary to enable him to function and without which the creation of his office and powers would be nullified. I do not think that the Director of Public Prosecutions will be allocated personnel who are superfluous and not incidental to his functions. Therefore if the notice means that "the Office of the Director of Public Prosecutions" is that portion of the office staff, equipment and office space which is not necessarily incidental to the Director of Public Prosecutions' functions it would be proper to conclude that it is superfluous to his requirement and cannot logically exist as an essential part of his establishment.

However if it can be accepted that a portion of the Director of Public Prosecutions' establishment does exist which he is not entitled to administer on the ground that it is not necessarily incidental to his functions then no doubt a Minister can be made responsible for it under section 76(1). If such a portion exists in my view the Prime Minister had allocated that responsibility to himself, albeit indirectly. Gazette Notice 166 of Volume 108 (supra) makes the Prime Minister responsible for the statutory functions of the Public Service Commission. By section 5(1)(c) and (d) of the Public Service Act (No. 4 of 1974) it is stated that:-

"5.-(1) The Commission shall, in respect of the Public Service be responsible for -

- (c) the provision of suitable office accommodation and the prescription and supervision of the physical working conditions of all employees in the Public Service;
- (d) approving and reviewing establishments and the grading of posts."

There is also provision under section 18 for the Public Service Commission to make regulations governing "the management and control" of the Public Service.

In using the words "establishment of the Director of Public Prosecutions" I am giving a meaning to the expression "Office of the Director of Public Prosecutions" in the notice which is different from that used in section 85(1) of the Constitution.

One may argue that if all the Director of Public Prosecutions' establishment is incidental to the exercise of his Constitutional functions then there is no portion for which a Minister can be made responsible and therefore the notice is meaningless. Accordingly, any attempt by the Attorney-General to exert general direction and control over "the Office of the Director of Public Prosecutions" could be



set aside by the Court at the instance of the Director of Public Prosecutions on the ground that the notice cannot vest him with any powers although it purports to do so.

If some portion of his establishment is not necessary to the Director of Public Prosecutions' functions then it is surplus and can be the Minister's responsibility. Any direction the Minister gave to the "Office of the Director of Public Prosecutions" would only affect that portion. An attempt to direct and control the rest of the Director of Public Prosecutions' establishment by including them in a directive to the non-incident portion could be set aside by the Court at the instance of the Director of Public Prosecutions. I cannot visualise such a situation arising since the Public Service Commission would not permit the Director of Public Prosecutions to purport to retain a part of an establishment which is not necessary to his functions.

If the notice is meaningless I would regard it as unconstitutional in that it could and probably would prove to be a recipe for confrontation and litigation between the Attorney-General and the Director of Public Prosecutions which could not be in the best interests of the nation.

The defendant argued that the Attorney-General is the Director of Public Prosecutions' boss and if some ministerial control could not be directed over the Office of the Director of Public Prosecutions he would not be answerable to Parliament for the conduct of his Office. That observation reveals that the Executive does not regard "the public office of the Director of Public Prosecutions" created by section 85 as being quite separate from "the administrative office of the Director of Public Prosecutions". The validity of the notice cannot be supported by that argument because it is not necessary for the Director of Public Prosecutions to come under the direction of the Attorney-General to make him answerable under section 199 to the Judicial and Legal Services Commission for the

conduct of his office and under section 136 the Supreme Court has jurisdiction to determine whether he has performed his functions lawfully.

If there is a portion of his establishment which is not necessary to his functions it is under the control of the Prime Minister via the Public Service Commission.

Section 85 does not state that the Director of Public Prosecutions shall have an establishment but assumes that one will be created to enable him to function. The notice in saying "Office of the Director of Public Prosecutions subject to section 85" does not have in mind that the Director of Public Prosecutions must have control of his establishment in order to function. The notice must be taken to mean what it says and it says "Office of the Director of Public Prosecutions subject to section 85". There is no reference in section 85 to the effect that the Director of Public Prosecutions is vested with control over his own establishment because incidental control is implied generally. Therefore the reference in the notice to section 85 cannot be intended to mean that ministerial control of the Director of Public Prosecutions' establishment is subject to the control vested in the Director of Public Prosecutions by section 85 because it is not section 85 which creates such control. What the notice means is that the Director of Public Prosecutions shall have full control over criminal proceedings as set out in section 85(4)(5) with freedom from direction and control under section 85(7) but that the Minister will control the establishment by which he carries out those functions. When the notice refers to "the Office" it must be taken to mean the entire office or the Director of Public Prosecutions' entire establishment; if it meant just some portion e.g. some financial or future development section the notice would obviously say so. It is not for the Court to look around for sections or portions of the Director of Public Prosecutions' establishment which are not incidental to his functions and to say that the notice must be taken to mean that the Minister only has direction and control over those sections and therefore it is legal.

In departments of government Ministers do not take over the direction and control of the personnel e.g. labourers, clerks, office boys, artisans, lorries, excavators, technicians. Ministers are concerned with the broad aspects of Executive and departmental policy and with priorities among those requiring and demanding the service and help of departments, not with the provision of a typewriter to the Legislature or of a spade to the Public Works Department or the cost of those items. The words "general direction and control" in section 82 are particularly appropriate to <sup>Govt.</sup> policies and to the way in which a department shall operate and the projects it should undertake. If one applies that reasoning to the notice the words "general direction and control" over "the Office of the Director of Public Prosecutions" probably do not mean direction and control of the individual members of the staff but of the mode in which the establishment shall operate in accordance with Executive policy regarding criminal prosecutions.

To give the Attorney-General power to control the Office or establishment of the Director of Public Prosecutions by directing the mode in which it shall operate would enable him to interfere with the Director of Public Prosecutions' functions and would be unconstitutional.

For the reasons I have given I regard the notice as drafted as investing the Attorney-General with power to direct and control the establishment or "Office of the Director of Public Prosecutions" and to override similar powers impliedly vested in the Director of Public Prosecutions. Accordingly the notice conflicts with section 85(7) and is unconstitutional and a declaration should issue accordingly.

*J. T. Williams*  
 (J.T. Williams)  
JUDGE

Suva,  
 10th April, 1981.