

**Judgment 30/2006 Stephens v Minister of the Department of Education – Royal Court  
(Civil Action File 1021) – 14<sup>th</sup> June, 2006**

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**Contract of employment – dismissal of head teacher – judicial review not appropriate – arguable that adequate relief could be obtained by an action for breach of contract – chronology should be provided in all cases**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

**The** 14th day of June, 2006, before Richard Southwell, Esquire, QC,  
Lieutenant Bailiff, sitting alone.

Civil 1021

In the matter of

Between: TANIA JANE STEPHENS Applicant

and

MINISTER OF THE DEPARTMENT  
OF EDUCATION Respondent

Whereas on the 12<sup>th</sup> day of June, 2006, the Lieutenant Bailiff considered an application for Judicial Review and heard thereon Advocates C. Hay and R. McMahon, Counsel for the Applicant and Respondent respectively, and REFUSED the Applicant permission to apply for the said Review and AWARDED costs against the Applicant on the standard recoverable basis; the Lieutenant Bailiff this day handed down the reasons for his decision in the terms attached hereto.

S. M. D. ROSS  
Her Majesty's Deputy Greffier.

**IN THE ROYAL COURT OF GUERNSEY  
ORDINARY DIVISION**

**Between**

**TANIA JANE STEPHENS**

**Applicant**

**and**

**MINISTER OF THE DEPARTMENT  
OF EDUCATION**

**Respondent**

**Judgment of Lieutenant Bailiff Richard Southwell QC**

Advocate Christian Hay appeared for the Applicant  
Advocate Richard McMahon appeared for the Respondent

**Hearing date 12 June 2006-06-14  
Judgment handed down 14 June 2006**

1. Mrs Jane Stephens started teaching in Guernsey in 1986. She later became Headteacher of the Mont Varouf School. On 22 March 2004 she was appointed Headteacher Designate of Le Rondin School while remaining the Headteacher of Le Mont Varouf School. On 1 September 2004 she gave up her operational role as Headteacher of Le Mont Varouf School (while retaining strategic responsibility for that site), and was seconded to the Education Development Team in the Department of Education, while remaining Headteacher Designate of Le Rondin School. This secondment ended on about 21 August 2005. On 8 September 2005 she became Headteacher with operational responsibility for the new Le Rondin School.

2. From 16 January 2004 onwards Mrs Stephens met the Director of Education, Mr Derek Neale, on several occasions to discuss what Mrs Stephens perceived as bullying and harassment of

her by officers of the Education Department, and problems arising in the professional relationships between her and those officers. On 3 March and 15 April 2005 she wrote letters highlighting the harassment to which she considered she was being subjected by those officers. Following an investigation by Mr Andrew Warren, the Head of Staffing Services in the Education Department, Mr Neale wrote to Mrs Stephens on 29 June 2005 rejecting her complaints as unjustified. A further meeting with Mr Neale took place on about 22 August 2005, during which Mr Neale is alleged to have said that, though clearly unfortunate events had occurred, he did not consider these events to be serious. Another meeting took place on 1 September 2005 to discuss the forthcoming school year at Le Rondin School which was as yet not completed. At this meeting Mr Neale told Mrs Stephens that caretakers at Le Rondin School would be answerable to and instructed by an Education Department officer, and not Mrs Stephens.

3. On 8 September 2005 Mrs Stephens began the new school year at the new but not yet completed Le Rondin School as its Headteacher. On 27 September 2005, less than three weeks after this, Mr Neale went to Le Rondin School to meet Mrs Stephens. I have only Mrs Stephens' account of this meeting, which is as follows. Mr Neale told her that he believed professional relationships between some Education Department officers and her had reached such a point that they were no longer able to work with her. Mr Neale asked her to tender her resignation, and said that the alternative was that he would instigate disciplinary procedures in order to dismiss her. Mrs Stephens told him, at least three times, that she did not wish to leave her post as Headteacher. Mr Neale said that that morning he had taken part in a meeting of the Education Department's senior management team, that this was the decision which they had taken, and that the decision would not be altered. Mr Neale said that there were no current alternative posts, and that no positions in future would be available to her in education in Guernsey. She asked Mr Neale to confirm the grounds for her dismissal in writing, but Mr Neale replied that that was not possible.

4. If Mrs Stephens' account of this meeting, less than three weeks after she started as the new Headteacher of a new school, is correct (and Mr McMahon did not indicate that it was not correct), these observations need to be made:

(1) There has been no suggestion at any stage that Mrs Stephens has been guilty of any misconduct whatever. The reference to possible disciplinary procedures was not carried forward, and in none of the letters and other written communications from Mr Neale or Mr Warren to Mrs Stephens has any misconduct been alleged against her.

(2) The history of poor relationships within the Education Department and between that Department and a Headteacher points to the need for an external assessment of the management of education in Guernsey, and in particular the role of the Director of Education. Detailed allegations about such management contained in a letter to Mrs Stephens dated 21 March 2006 from a former senior member of the Department (which I will not set out in this judgment) show that such history of poor relationships had begun by as long ago as early 1999.

5. Mrs Stephens remained as Headteacher of Le Rondin School during the autumn term of 2005. In her affidavit she refers to failures of the Education Department to provide appropriate support, including a refusal to improve pupil security (leading to Mrs Stephens herself being injured and off work for two weeks), long delays in dealing with problems in the new school buildings, and long delays in responding to her requests to discuss staffing levels.

6. Between October and December 2005 there was correspondence between Mrs Stephens' Advocates Collas Day and the Education Department concerning terms for an agreed termination. Collas Day did not place this correspondence before the Court. Guernsey Advocates must bear in mind that applicants for judicial review are required to make full and frank disclosure of relevant facts and documents by affidavits filed when the applications are first made. This is a similar requirement to that imposed on applicants for interim injunctions, such as was in fact applied for by Mrs Stephens in the present case. Failure to meet this requirement may itself lead to an application for leave being refused.

7. On 16 December 2005 Mrs Stephens had a meeting with Mr Neale and Mr Warren. Mr Neale told her that she would be receiving a letter giving her notice of dismissal from her post, that she would not be allowed to work during her notice period, and that she would be placed on "garden leave" until 30 April 2006.

8. On 19 December 2005 Mr Neale wrote to her stating that

(1) he was suspending her from her duties as Headteacher of Le Rondin School from 21 December 2005;

(2) he had proposed to the Board of the Education Department at its meeting on 13 December 2005 that it should give her contractual notice for the termination of her contract of employment from 30 April 2006, and that she should be on “garden leave” until that date;

(3) the reason for the termination was

*“the continued serious breakdown of relationships between yourself and the other senior members of staff of the Education Service and in particular with those who have direct involvement in the delivery of Special Education Services in the Island.”*

(4) the suspension and dismissal had to be confirmed (or otherwise) by the Department Board pursuant to the Conditions of Service for Teachers and Lecturers (Guernsey), and this would be considered by the Board at its next meeting on 10 January 2006, at which Mrs Stephens could attend with “a friend” and present her case against suspension and dismissal.

9. In the papers setting out the “Process” for the Board meeting on 10 January 2006 Mrs Stephens was informed (inter alia) that there was no provision for an appeal if she were dismissed, and that she would have the statutory rights under Guernsey employment legislation. The grounds for proposing her dismissal were stated to be:

*“The grounds are a breakdown in the working relationships between Mrs Stephens and various officers of the Education Department. This includes a number of Senior SEN officers and members of the EDP team, all of whom need or have needed to work closely with the Headteacher of Le Rondin School in order to ensure delivery of an effective service. The Senior Management Team at the Department has reached the conclusion that these breakdowns are irretrievable, and that this is having a deleterious effect on the effectiveness and efficiency of the service. The officers involved have also expressed the view that the relationships have broken down irretrievably.*

*The Education Department presentation will give indicative examples of the difficulties experienced in the relationships and the actions that have been taken by Department Officers to seek to resolve them.”*

10. In connection with paragraph 4(2) above it is to be observed that Mr Neale was proposing the instant removal from service of a Headteacher on the ground of poor relationships with the Department office staff, and was apparently not proposing that any steps be taken in relation to

such staff for failure to establish reasonable relationships with the Headteacher. Mr Neale was, accordingly, placing all the blame for such poor relationships on Mrs Stephens, and none on himself or his office staff.

11. The meeting on 10 January 2006 took place. Those present were Minister Ozanne, Deputy Minister Morgan, Deputy Le Cheminant, Deputy Hunter Adam and Deputy Grut, Mr Neale and members of his office staff (Mr Warren, Mr Flynn, Mr Bridel and Ms Campbell) and Mrs Stephens and Mrs Baird. This Court does not have any detailed account of what happened at the meeting, because the Department failed to supply minutes of the meeting to Mrs Stephens, despite a promise to do so by email from Mr Warren on 31 January 2006, and because Mrs Stephens in her affidavit provided no such account. But it does appear that Mrs Stephens again offered to take part in conciliation. When Mrs Stephens left the meeting, she was told that Mr Neale would remain to assist the Board in its deliberations.

12. On 11 January 2006 the Minister of the Education Department wrote to Mrs Stephens informing her that the Board, with the exception of one member, had decided to confirm her suspension, to give notice of termination as from 30 April 2006, and to place her on “garden leave” until then. The reasons given were:

*“As you will be aware from the meeting, these decisions have been taken on the advice of the Department’s Senior Management Team that there has been an irreconcilable breakdown in the working relationship between yourself and other staff involved in the delivery of Special Education Services, to the extent that the development of these services has been seriously impaired.”*

13. It is to be noted that in Mr Neale’s letter of 19 December 2005 (paragraph 8(3) above), in the statement of grounds for proposing her dismissal (paragraph 9 above) and in the Minister’s letter of 11 January 2006 (paragraph 12 above), there was no statement of any specific respect in which the development of Special Education Services in the Island had been “seriously impaired” by the breakdown in relationships, the blame for which was being placed wholly on Mrs Stephens.

14. On 8 February 2006 the Education Department wrote to Mrs Stephens asking for a reference in respect of an applicant for the Headteacher post at Le Rondin School.

15. The dismissal of Mrs Stephens after 20 years of service to the Island became effective on 30 April 2006.

16. The application for judicial review was launched by Collas Day on 2 June 2006. On 12 June 2006 I heard Mrs Stephens' application for leave to proceed by way of judicial review presented by Advocate Christian Hay, and opposed by Advocate Richard McMahon, to both of whom I am indebted for their brief and to the point submissions.

17. As I pointed out to Mr Hay at the start of the hearing, the main points which were obstacles in the path of Mrs Stephens' application were

- (1) whether this was a matter appropriate for judicial review, and even if it was, whether the discretion should be exercised in favour of allowing the judicial review application to proceed;
- (2) whether in any event the delay had been such that the application should be refused;
- (3) the failure to place all the relevant facts and documents before the Court.

### **Appropriateness for Judicial Review**

18. As Mr Hay submitted, the Board of the Education Department is a statutory body created by virtue of the Education (Guernsey) Law 1970, as amended: see section 9 which provides in the most general terms for the appointment and dismissal of teachers to be under the control of the Board. The Board was exercising its statutory powers under the Conditions of Service already referred to, which the Board had promulgated. So this matter is concerned with the exercise of statutory functions and powers by a statutory body.

19. Mr Hay began by submitting that in reality what the Board was doing in relation to Mrs Stephens amounted to the exercise of disciplinary powers. In my judgment that submission was misconceived. I emphasise again that no allegation or charge of misconduct whatever has been made against Mrs Stephens, despite what appears to have been a threat of disciplinary procedures made by Mr Neale at the meeting on 27 September 2005. The procedures adopted were not the

procedures relating to misconduct or gross misconduct as provided for in the Procedures for the management of conduct and capability applying to Headteachers in Guernsey.

20. I should mention here that the relevant procedures for dismissal and for discipline were not exhibited to Mrs Stephens' affidavit. At the hearing I received from Collas Day only some partial extracts from such procedures, making it difficult for me to understand how such procedures were intended to operate.

21. It is my understanding that the suspension and dismissal of Mrs Stephens fell within Section 6 of the Conditions of Service. Section 6 is separate from the provisions relating to discipline. It is to be noted that, whereas the discipline provisions permit appeals to an Appeals Panel at every stage of the disciplinary process from the first written warning to the final decision to dismiss, in Section 6 covering dismissal otherwise than for misconduct no provision is made for any appeal at any stage (as was stated by the Department to Mrs Stephens). Mr Hay relied on this absence of any appeal procedure as the first ground for Mrs Stephens being permitted to apply for judicial review.

22. A second ground was that Mr Neale (who had previously investigated complaints by and against Mrs Stephens, who had given Mrs Stephens an ultimatum of resignation or dismissal, and who had been the proposer of her dismissal) was present at the final decision-making by the Board. That was, he submitted, indicative of either actual bias or an appearance of bias.

23. A third ground was that a member of the Board (Deputy Hunter Adam) – and his family – were close personal friends of one of the Department officers who had claimed the irreconcilable breakdown in relationship with Mrs Stephens, and Deputy Adam had failed to declare this relationship. Mr Hay submitted that this was a further instance of actual bias or an appearance of bias.

24. A fourth ground was that the Board had failed to state on what criteria and on what evidence the Board had reached its decision that there was an irreconcilable breakdown in working relationships, and no evidence to support this was presented to the meeting on 10 January 2006 for Mrs Stephens to respond to (see in this connection paragraphs 11, 12 and 13 above).

25. These four grounds were relied on as rendering the Board's decision procedurally unfair.

26. Mr Hay also submitted, as a fifth ground, that the decision to dismiss was disproportionate and unreasonable, given that the only basis for the decision was a breakdown in relations with the Department office staff (and not Mrs Stephens' leadership of the school); Mrs Stephens had offered conciliation, but the Department had refused to attempt to effect any such conciliation.

27. The difficulty which Mrs Stephens faces in relation to all these five grounds is that, even assuming that there is a sufficient public law element connected with her dismissal to entitle her to apply for judicial review, all these matters arise out of the contract of employment between her and the States (see the letter to her dated 29 March 2004), and all of these matters are factually specific to Mrs Stephens' case, and could well be raised either in proceedings under the employment protection legislation of Guernsey, or in proceedings at common law. Mr Hay submitted that the employment protection legislation would afford Mrs Stephens little in the way of substantive remedies. He also submitted that an action for damages at common law would either not lie at all, or would give her no substantial remedy.

28. The Court was not referred to the employment protection legislation, and I can make no observation in that regard. As to relief at common law, I am not satisfied that adequate relief could not be obtained in a common law action. This is a case of a Headteacher with 20 years of service in education to the children of Guernsey who was summarily suspended in December 2005 on less than two days notice, and who was summarily dismissed on 10 January 2006 by a decision of the Board which (it is submitted on her behalf) was defective in the respects set out above. If the decision was defective in those respects, it seems to me to be arguable that the Board was in breach of and repudiated its contract with Mrs Stephens in such a way as to give her an arguable remedy in the form of damages for breach of the implied term of mutual trust and confidence and for repudiation of her employment contract. It seems arguable that (1) the conduct of Mr Neale and the Department office staff was in breach of that implied term, and (2) summary dismissal by the Board without any proper statement of the reasons for the dismissal (and in circumstances in which no allegation of any misconduct is made against Mrs Stephens), and in the absence of any ability to appeal, constituted a repudiation of her contract of employment. Naturally this Court can express no view as to whether any such arguments might succeed. But in my judgment Mr Hay went too far, when seeking to substantiate the application for judicial review, in pooh-poohing any common law claim.

29. This case, in my judgment, is specific to Mrs Stephens, arises in the context of her contract of employment, raises no issues affecting other States employees (except perhaps as a general matter the absence of an appeal), and does not raise any need for a judicial review application, since the issues can be pursued by a common law claim or a statutory application under Guernsey legislation. On this ground I refuse permission to proceed with an application for judicial review.

### **Delay**

30. I am strengthened in this conclusion by examination of the relief which Mrs Stephens seeks. She seeks a reconsideration of her suspension and dismissal. Such a reconsideration, if conducted as Mrs Stephens submits it should be, might lead to the conclusion that she is still Headteacher of the school. That is made clear by her application for an interim injunction restraining the States from appointing a replacement Headteacher.

31. This relief has to be viewed in the context of the chronology. The decision to dismiss her was made on 10 January 2006 and conveyed to her by letter of 11 January 2006. By 9 February 2006 she knew that the Department was seeking to appoint a new Headteacher in her place. But this application was not launched by Collas Day until 2 June 2006. In paragraph 6 of the Practice Direction of 26 April 2004 it is emphasised that applications for judicial review “*must be instituted promptly*”. In the present case the delay is far too long in any event, but even more so in relation to the relief which Mrs Stephens seeks. On this ground as well (and even if it were the only ground) I would refuse Mrs Stephens permission to apply for judicial review.

### **Disclosure of Material Facts and Documents**

32. I have already referred (in paragraph 6 above) to the “duty to make full and frank disclosure of all material facts” (and I would add, accordingly of all material documents) which also is emphasised in paragraph 6 of the Practice Direction. Though I would not have refused permission on this ground alone, I want to stress once again the importance of a full disclosure of material facts and documents, and I hope that through sight of this judgment the profession in Guernsey will be reminded of this essential duty resting on all claimants for judicial review.

### **The Law**

33. Mr Hay helpfully referred to two English authorities and three Scottish authorities. In my judgment this application falls to be decided on its specific facts and on well-established principles of law. Detailed reference to those authorities would lengthen this judgment, but not add to the grounds on which I consider permission must be refused.

### **Conclusion**

34. For the reasons set out above I refuse permission to Mrs Stephens to apply for judicial review.

### **Costs**

35. Mr McMahon sought and obtained the usual order for recoverable costs. But, as I indicated to him at the hearing, wise counsel within the States may conclude that this is an order which should not be enforced against Mrs Stephens as a servant of the States for 20 years.

## **Chronologies**

36. In this application the Court was not provided with any chronology, though such a chronology was essential for the Court **before** the Court could embark on any consideration of the facts and the issues. I would like to draw to the attention of the profession in Guernsey the need for the provision of chronologies to the Courts of Guernsey in all cases and all applications, however limited their scope.