

**Judgment 63/2004**

**Castle Company Management LLC Limited v Guernsey  
Financial Services Commission – Court of Appeal (Civil  
Appeal 351) – 16 December, 2004**

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**Regulation of Fiduciaries, Administration Businesses and Company Directors, etc., (Bailiwick of Guernsey) Law, 2000 – appeal from dismissal of appeal to the Royal Court (See Judgment 36/2004) – appeal dismissed**

**IN THE COURT OF APPEAL OF GUERNSEY**

The 16th day of December, 2004 before Richard Charles Southwell, Esq., Q.C., Presiding, Peter David Smith, Esq., Q. C., and Christopher Simon Courtenay Stephenson Clarke, Esq., Q.C.

CASTLE COMPANY MANAGEMENT LLC LIMITED

(The Appellant)

v.

GUERNSEY FINANCIAL SERVICES COMMISSION

(The Commission)

In the appeal of the Appellant from the dismissal by the Royal Court on 27<sup>th</sup> August, 2004 of its appeal from the dismissal by the Court of the SÉNÉSCHAL of Sark on 10<sup>th</sup> February, 2004 of its appeal from the refusal by the Commission on 6<sup>th</sup> August, 2003 of its application for a fiduciary licence;

THE COURT, having heard Mr Michael Doyle, Managing Director, for the Appellant, and Advocate R J McMahon for the Commission, thereon, GAVE JUDGMENT in the terms attached hereto, DISMISSED the appeal and AWARDED costs on the standard recoverable basis to the Commission.

K. H. TOUGH  
Registrar of the Court of Appeal

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**THURSDAY 16TH DECEMBER 2004**

**COURT OF APPEAL**

**Before**

**Richard Charles Southwell, Esq., QC**

**Peter David Smith, Esq., QC**

**Christopher Simon Courtenay Stephenson Clarke, Esq., QC**

**CASTLE COMPANY MANAGEMENT LLC LIMITED**

**v.**

**GUERNSEY FINANCIAL SERVICES COMMISSION**

**Judgment delivered by Peter David Smith, Esq., QC**

**Introduction:**

1. The appellant is an American company, incorporated in Wyoming. It has its main place of business in Sark. On 28th March 2001, in anticipation of the introduction into Sark law of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc., (Bailiwick of Guernsey) Law, 2000 (“the Law”), the Appellant applied to the Guernsey Financial Services Commission (“the Commission”) for a full fiduciary licence (“the licence”). Section 1(1) of the Law prohibits a person other than a Bailiwick company, from carrying on by way of business in or from within the Bailiwick any of the “regulated activities” as defined in Section 2 without a fiduciary licence.
2. Section 5 of the Law requires a person wishing to obtain a fiduciary licence to apply to the Commission. Section 6 empowers the Commission to grant or refuse the application but requires it to refuse the application unless satisfied that the criteria specified in Schedule 1 of the Law are fulfilled. Section 19(1) provides, inter alia, that a person aggrieved by a decision of the Commission “to refuse an application by him for a fiduciary licence” may appeal to the Court (in this case the Court of the Seneschal of Sark – see Section 19(10)(b)). Section 19(4) provides that “*The grounds of an appeal under this section shall be that the decision*  
Judgment delivered by Smith, JA  
  
*was ultra vires or was an unreasonable exercise of the Commission’s powers.*”
3. In a letter dated 6th August 2003, the Commission informed the Appellant that its application for a fiduciary licence had been refused and it appealed to the Court of the Seneschal. An oral hearing was held before Mr. C.J. Le Trobe-Bateman, Deputy Seneschal, and in a written judgment dated 10th February 2004 he upheld the decision of the Commission. The Appellant appealed to the Royal Court of Guernsey. The appeal was heard by the Bailiff, sitting alone, and on 27th August 2004 he gave judgment dismissing the appeal. From that decision the Appellant now appeals to this Court.

**The Grounds of Appeal:**

4. These may be summarised as follows:
- (a) Section 5(9) of the Law requires the Commission, in a case of this sort, to consult the General Purposes and Advisory Committee (now the General Purposes and Finance Committee) of the Chief Pleas of Sark (“the Committee”). The Appellant argued-
    - (i) that the consultation should have been carried out after the Commission had provisionally decided to refuse the licence and that the Committee should have been informed of the grounds and of the procedure the Commission had followed;
    - (ii) that the Committee may not have understood its task; and
    - (iii) that the Commission failed to take into account the Committee’s response when making its decision.
  - (b) The information gathered by the Commission was obtained improperly, without any sufficient or adequate warning being given to the Appellant, and the Commission failed to inform the Appellant adequately or at all that the information would be used against the Appellant for the purposes of the application for the licence. Furthermore, the way in which the information was gathered amounted to a breach of natural justice.
  - (c) In permitting the Appellant to continue to carry out regulated activity for eighteen months whilst having information which the Commission believed was sufficient to prevent the Appellant from carrying out such regulated activity, the Commission raised a legitimate expectation that the Appellant would continue to be allowed to carry on business.
  - (d) The Commission itself failed to consider whether to grant or refuse the licence but merely adopted and agreed with the Opinion of the Guernsey Financial Services Tribunal (“the Tribunal”).
  - (e) The Commission was biased against the Appellant because Mr. Michael Doyle, its managing director, and who appeared for the Appellant before this Court and the lower Courts had opposed the extension of the Law to Sark.
  - (f) The Tribunal was inadequate for its task because the president, Mr. Michael Blair, QC, came from a regulatory background and would have had no experience in, or understanding of, the kind of business in which the Appellant was involved.
  - (g) The Tribunal was not independent and was really just an extension of the Commission.
  - (h) The Deputy Seneschal, a carpenter by occupation, was not competent to hear the case in Sark.
  - (i) The Bailiff was, as Mr. Doyle put it, “*part of the prosecution*”.
5. We deal with each of the grounds in turn.

**Consultation with the Committee:**

6. In a letter dated 7th June 2001, Mr. Stephen Trevor, an assistant director of the Commission wrote to Mr. C.P.M. Harris, vice-president of the Committee, furnishing him with lists of applicants for personal and full fiduciary licences. The Appellant was included in the latter list. The letter recorded that Mr. Trevor and Mr. Harris had previously discussed the Commission’s obligation to consult with the Committee where an applicant intended to carry on business in Sark. The letter ended with a reference to Section 5(9) of the Law, and stated that “*the*

*Commission would welcome any views which the ... Committee may have on these applications.*” In a fax dated 19th June 2001, Mr. Trevor supplied additional lists of applicants for personal and full licences, reiterating reference to Section 5(9) of the Law and indicated that the Commission would welcome the Committee’s views.

7. On 6th July 2001, Mr. Harris replied on behalf of the Committee recording that the Committee had reviewed the lists. Certain comments were made, but none were adverse to the Appellant.
8. The only information as to the Appellant supplied to the Committee was its name and the fact that it had applied for a licence, and it is clear that at that stage no decision had been made on the Appellant’s application and that the processing of it had barely begun.
9. We cannot accept that the consultation of the Committee ought to have taken place at the stage contended for by Mr. Doyle. Section 5(9) of the Law is explicit in requiring that it take place before the Commission decides whether or not to grant the licence. Furthermore, we do not accept Mr. Doyle’s further contentions that the consultation was inadequate or that the Commission failed to take the results into account in making its decision.
10. We accept that the essential requirements of proper consultation are the supply of adequate information and sufficient opportunity for the consultee to respond (see Rollo v. Minister of Town & Country Planning [1948] 1All ER 13, per Buchnill, LJ, at page 17, an authority helpfully drawn to our attention by Mr. Doyle). But what is required depends on the circumstances of the case. Here, the Commission’s essential function, as far as a licence is concerned, is to decide whether or not the statutory criteria set out in Schedule 1 of the Law are fulfilled (see Section 6(2)). Therefore, the question implicit in the consultation of the Committee is whether they are aware of anything relevant to the statutory criteria in respect of the named applicant.
11. In our opinion it was not necessary to supply the Committee with any information over and above the Applicant’s name. In particular, we do not consider that the Committee ought to have been furnished with documents comprising the application and/or the Commission’s processing of it. Apart from the fact that such documents might well contain confidential material we cannot see how revelation of their contents would add value to the consultative process as we have defined it.
12. As to the suggestion that the Committee may not have understood its task, this was clearly not the case. Each of the communications from Mr. Trevor to which we have referred mention Section 5(9) of the Law, and one of the comments made in Mr. Harris’s letter of 6th July 2001 refers to economic benefit, which is one of the criteria set out in Schedule 1.
13. As to the allegation that the Commission failed to take into account the Committee’s response, it is true that no explicit reference is made to the consultation or its outcome in the letter of 6th August 2003 in which the decision of the Commission was conveyed. However, the mere absence of adverse comment from the Committee was, by that stage, of no real significance when set against the overwhelming evidence of the inability of the Appellant to meet the statutory criteria which had become available to the Commission by that date.

#### **The Improper Obtaining of Information:**

14. The Appellant contended that it had been “lured” (its word) by the Commission into providing information which had been used against it subsequently and complained that it had not been warned or informed that the information would or might be used against it in relation to its application for a licence. The Appellant focused on a visit by the Commission’s staff to the Appellant’s premises on Sark on 14th November 2001, which was preceded by a letter from the Commission dated 4th October 2001 requesting the visit. However, this letter did not purport to require the Appellant to provide “*additional information or documents*” under Section 5(5) of the Law or purport to be a notice seeking information issued under Section 23.

15. The Appellant contended that the officers of the Commission were in a position analogous to Department of Trade and Industry inspectors in the United Kingdom who are bound by the rules of natural justice and must act fairly (see In Re Pergamon Press Limited [1971] 1 Ch. 388 and Fayed v. United Kingdom [1994] ECHR). We do not accept that this analogy is valid. Nevertheless, for the purpose of this appeal we are prepared to proceed on the basis that the officers of the Commission are bound by the rules of natural justice and must act fairly in processing applications. However, and having said this, we do not consider that any breach of these requirements has actually occurred in the instant case.
16. In our opinion, in gathering information from an applicant for a licence the Commission is not limited to the procedure set out in Sections 5(5) Judgment delivered by Smith, JA and 23 of the Law. It is perfectly entitled to seek to obtain the information it needs by an informal approach, as was the case here. In our judgment Sections 5(5) and 23 confer powers without in any respect limiting the manner in which the Commission may set about fulfilling its statutory responsibilities. We can see nothing unfair about this. An applicant for a licence must surely anticipate that the Commission may follow up the application by seeking further information. Having applied to the Commission, the obvious inference from the type of letter sent to the Appellant by the Commission in this case would be that the visit sought, and what might be discussed with and shown to Commission staff in the course of it, would relate to the question of whether or not it was appropriate that the applicant should be granted a licence. The letter of 4th October 2001 states that: “*Visits such as this are forming an essential part of the licensing procedure...*” One has to ask what, in agreeing to the visit, the Appellant thought the visit would be all about if it was not pertaining to the application? What more did the Commission or its staff have to tell the Appellant?
17. In our judgment there is no merit in this point.

**Legitimate Expectation:**

18. As Crown Advocate R.J. McMahon, for the Commission, pointed out to us, for a legitimate expectation to arise “... *the ruling or statement relied on should be clear, unambiguous and devoid of relevant qualification*” (per Bingham LJ, in R. v. Board of Inland Revenue, ex parte MFK Limited [1990] 1All ER 91 at p. 110h). There was nothing of that sort in the instant case. All that happened was that the Appellant was permitted to continue trading for the period during which the Commission was processing the Appellant’s application. But this was not the result of any concession or the exercise of any discretion on the part of the Commission. The right to continue trading was conferred by the transitional provisions set out in Section 59 of the Law. Accordingly, we consider that no expectation, legitimate or otherwise, could ever have arisen in this case.
19. Although it is not necessary for us to go further, we think we should add that it is difficult to envisage a substantive legitimate expectation being recognised or vindicated in relation to the grant of a licence under the Law. The power conferred on the Commission is not a discretion but the ascertainment of whether or not certain statutory criteria are met. If the grant of a licence to a person who has not met the criteria is ultra vires to the Commission we do not see how such a person could become entitled to a licence even if the Commission were to engender in that person the expectation that one would be granted.

**The Commission did not make the Decision:**

20. The Appellant contended that the Commission had merely adopted and agreed with the Opinion of the Tribunal without having formed its own opinion. Specifically, the Appellant complained that the Commission failed to consider sufficiently or at all the submissions of the Appellant or whether to grant a licence subject to conditions as provided for in Section 9 of the Law or whether to adjourn the decision pending further investigations.
21. The letter in which the decision of the Commission was conveyed, and to which we have already referred, does not support the Appellant’s contention that the Commission merely, as it

were, rubber-stamped the Opinion of the Tribunal. The letter records that the Commissioners had considered the Opinion of the Tribunal, a statement which is inconsistent with the Appellant's suggestion that they merely adopted its Opinion as their own. Furthermore, the letter refers to the Commissioners having regard to the Commission's duty to consider applications for fiduciary licences. Again, in our view, this can only mean that the Commissioners had in their minds the task required of them by the Law in all its aspects, and there is absolutely no reason to believe that they did not perform this task, including making up their own minds as to whether or not to grant to the Appellant the licence it sought. No doubt they were heavily influenced by the Opinion of the Tribunal, given the impressive cogency of its reasoning, but it does not follow from that that the Commissioners did not make up their own minds. As to the other points raised under this heading, obviously the Commissioners thought that in the circumstances the proper course was to refuse the application outright, and this they were perfectly entitled to do.

**The Commission was biased against the Appellant:**

22. Mr. Doyle neither adduced nor identified any evidence in support of this contention and we are left with his mere assertion that there was bias because he had opposed the extension of the Law to Sark. We have read carefully all the available material including and in particular the Opinion of the Tribunal. On the one hand we find more than ample justification for the Commission's decision to refuse the licence and, on the other, absolutely no hint of bias in its approach to its task. We reject this ground also.

**The Tribunal was Inadequate for its Task:**

23. The Opinion of the Tribunal comprises a damning indictment of the Appellant. In order to comprehend it, the reader does not require experience in or understanding of the kind of business in which the Appellant is involved. Furthermore, not only is it impossible to conceive of any factor peculiar to that kind of business which would or might have mitigated in any way the indictment of the Appellant comprised in the Tribunal's Opinion, but also we record that Mr. Doyle did not seek to canvass specifically any such factor before us. Accordingly, we do not accept this ground.

**The Tribunal was not Independent:**

24. This ground seems to involve the suggestion that the option afforded to the Appellant of putting its case for the granting of the licence to the Tribunal before being turned down by the Commission was really a sham – the Commission set up the Tribunal, reiterated to the Tribunal its arguments for refusing the licence and confidently expected the Tribunal to agree with it – as, of course, happened in this particular case.
25. In our opinion, this suggestion is comprehensively refuted when one reads the Tribunal's Opinion. It comprises a detailed and cogent examination of the relevant information and arguments put to it by both sides. All of its conclusions are amply supported by the information it had before it and, as we have said, the Opinion adds up to a damning indictment of the Appellant, strongly confirming the view of the Commission's Assessment Committee that the licence should not be granted.
26. In this context we wish to add the following: First, the Appellant agreed to have its case referred to the Tribunal and only sought to impeach its independence after the Opinion, which was unfavourable to it, was handed down. Secondly, we have noted that the Appellant's challenge to the Opinion of the Tribunal has been collateral and has not involved an attempt to refute or explain its substantive findings. Lastly, we wish to record that we consider that the provision of the Tribunal, which is non-statutory and, therefore, did not have to be provided, is an important safeguard for applicants for licences in the Bailiwick and we commend the Commission for making it available.

**The Deputy Seneschal was not competent to hear the Case:**

27. It appears that the Deputy Seneschal is a carpenter by occupation. Mr. Doyle suggested, on the one hand, that he was incompetent to act as the judge at first instance in this case, and, on the other, that the judgment could not have been his. Furthermore, he complained that the Deputy Seneschal had himself applied for a personal fiduciary licence.
28. We have had the advantage of reading the transcript of the proceedings before the Deputy Seneschal and his judgment. In our opinion, the proceedings were conducted in a most competent manner and the judgment addressed and dealt with each of the issues raised in a fair and comprehensive way. The quality of the Deputy Seneschal's assessment of those issues may be judged from the fact that his judgment has now been upheld by two higher Courts, each of which has endorsed substantially his findings. Furthermore, we have absolutely no reason to conclude that the Deputy Seneschal's judgment was other than all his own work.
29. We would add that Mr. Doyle conceded before us that he knew the Deputy Seneschal was a carpenter prior to the hearing before him but did not seek to have him recuse himself on this ground and that it is apparent from the documents which would have been available to Mr. Doyle prior to the hearing before the Deputy Seneschal that he had applied for a licence yet, once again, Mr. Doyle made no application in this respect at that hearing.

**The Bailiff as "Part of the Prosecution":**

30. Mr. Doyle complained that the Bailiff had made unreasonable criticism of the Appellant and suggested that the Bailiff would have found it difficult to find against the Commission because both were "*part of the establishment.*" Mr. Doyle went on to liken the adjudication by the Tribunal, the decision of the Commission, and the appeals to the various Courts to a snowball, suggesting that it became more difficult for each body in succession to act independently.
31. We have considered the Bailiff's judgment with great care. In our opinion it deals very fairly with all of the points raised by the Appellant and we agree with the Bailiff's conclusion. There is absolutely no reason to believe that the Bailiff was influenced by the Commission in any improper way. We reject the snowball analogy. Each body to which Mr. Doyle referred, together with this Court, reached the same conclusion not because of bias or prejudice against the Appellant but because the Appellant did not meet and has not met the criteria set out in Schedule 1 of the Law. Accordingly, we find against the Appellant on this ground also.

**Conclusion:**

32. The appeal is dismissed.

SOUTHWELL, JA: Is there any other application?

ADVOCATE McMAHON: Sir, I would seek the Respondent's recoverable costs to follow in the event of that decision, sir. And I would also seek in due course to address you on some guidance, if that's going to be available sir, on the transitional provision in Section 59?

SOUTHWELL, JA: Right, what about costs, Mr. Doyle?

MR. DOYLE: Sir, what exactly are Respondent's recoverable costs, does that refer to their costs- could you just explain?

SOUTHWELL, JA: Well perhaps Mr. McMahon can do it?

ADVOCATE McMAHON: Certainly, sir. The costs that I seek to recover will be the time that I've spent in preparing for presenting this appeal and the costs of preparing the bundles because that was undertaken by the Respondents rather than the Appellants in this case.

SMITH, JA: I think the word “recoverable” might be the word that’s-

ADVOCATE McMAHON: In that sense sir, there is a maximum of £173 per hour for Advocates’ costs at the moment on the recoverable basis.

SMITH, JA: Is that the sort of standard basis, is it?

ADVOCATE McMAHON: Yes, it’s described as the maximum but the maximum tends to be used across the board.

SMITH, JA: Yes, I see.

Discussion re costs

MR. DOYLE: Sir, what about costs of this particular court hearing, costs from?

SOUTHWELL, JA: What we’re being asked for is an order that you pay the costs incurred on the other side of preparing for the hearing, conducting the hearing and naturally for whatever time has been occupied listening to the Court’s judgment being delivered and the time that is now being spent talking about costs.

MR. DOYLE: Well on that point I’d like you to take into account that before this hearing we did in fact make an attempt to come to an agreement in this so this hearing wouldn’t take place. My suggestion was that I would withdraw from the scene and we could share the costs equally between us and this was on condition that I would relocate my activities outside the jurisdiction of the Financial Services Commission. They have chosen not to accept that offer, thus forcing me into these proceedings and as a result of that I think it would be fair to take it into account when considering whether I should pay the costs.

SOUTHWELL, JA: Thank you very much. Do you wish to add anything?

ADVOCATE McMAHON: I don’t wish to add anything, sir.

(Discussion between Judges of Appeal)

SMITH, JA: The Court awards the Respondent’s recoverable costs of this appeal against the Appellant.

ADVOCATE McMAHON: Thank you sir. I did mention some guidance in that the reason is, as you will have seen from Section 59 of the Law, transitional provisions operate so that there is a deeming of licensing whilst appeal proceedings are underway, and the time that deeming continues includes the end of the period within which under the appeal provisions an appeal against the refusal can be brought. Although there isn’t on the face of Section 19 of the Law a specific reference to appealing to the Judicial Committee of the Privy Council it is a course that would be open to the Appellant if he were to seek special leave by way of petition. My understanding of the rules of the Judicial Committee as to that the petition has to be presented within a reasonable time. “Reasonable” is actually a flexible concept-

SOUTHWELL, JA: Well it has to be presented to this Court first.

Discussion re costs

ADVOCATE McMAHON: It had to be presented to this Court and this Court, of course, had a time limit of one month from the date of the Bailiff’s judgment, which is the time it was met, and then until the determination of this appeal the deeming licensing continued.

SOUTHWELL, JA: Yes, we appreciate that, but if Mr. Doyle wished to consider an appeal to the Privy Council the first Court to ask for leave would be this Court to grant leave.

ADVOCATE McMAHON: Yes sir, but it would-

SOUTHWELL, JA: He would then, if he was minded to do so, seek to renew it to the Privy Council and plainly he would be wise in either respect to do so within a short time.

ADVOCATE McMAHON: Yes sir, it's whether or not this Court would give any guidance on what that short time might be so that the deemed licensing is known to both parties to end at that point if no step has been taken.

SOUTHWELL, JA: Well I think probably the best guidance- I'm speaking only for myself, my colleagues may think otherwise- is that it must be within a relatively short time, if it is not, then either this Court or the Judicial Committee is likely to think that the delay is an additional factor on the basis of which alone it might refuse leave.

ADVOCATE McMAHON: Yes sir, I'm grateful for that.

SOUTHWELL, JA: I'm not sure we can take it that much further, I'm afraid.

ADVOCATE McMAHON: No, I understand sir.

SOUTHWELL, JA: It flows from the fact that the Appeal Law is, with the greatest respect to its draftsmen, badly drafted, because it doesn't impose appropriate time limits, which plainly it should.

ADVOCATE McMAHON: It imposes a time limit for the initial appeal, the rules thereafter impose no time limits.

SOUTHWELL, JA: Absolutely.

Discussion re costs

SMITH, JA: Can I understand, I mean I was a bit puzzled by Section 59, it was mentioned, as you know, mentioned in the judgment. Am I to understand that the way it's interpreted is that once you give notice of your appeal to, in this instance to the Seneschal, your fiduciary licence continues – or your deemed fiduciary licence continues, you continue to have the benefit of that right through all the appellate procedures?

ADVOCATE McMAHON: Provided that each of those steps is taken within the time limit imposed by the respective Courts.

SMITH, JA: That's the way you would interpret it, I mean if you fall outside Section 59 you actually are committing a criminal offence, is that how I understand it?

ADVOCATE McMAHON: That's right sir, it would be an offence under Section 1 of the Law, because you would then be carrying out a regulated activity without a licence, but the deeming gives that licence before the Tribunal.

SMITH, JA: That's right, and you would have to construe it, if there are alternatives, you have to construe it in a way that is most favourable to the citizen, as it were, or the person?

ADVOCATE McMAHON: Certainly because it's penal at that point.

SMITH, JA: Absolutely, but you could in fact get this odd situation where there is a sort of- you have a gap when your appeal is rejected by this Court, there is no time limit for an

application to the Privy Council, what's the position in the interregnum, if you never actually appeal to the Privy Council you should have stopped on the day that the Court makes its decision. If you do at some subsequent stage within whatever appropriate time limit there may be, you actually bring your application, you actually make your application, does that mean that that actually retrospectively validates your operation during the interregnum or how would that work?

ADVOCATE McMAHON: Well that's the difficulty I was effectively seeking to address.

SOUTHWELL, JA: That's the very question you were asking. I don't think we can ask you the answer to that question. I've given such answer as I feel able to.

Discussion re costs

ADVOCATE McMAHON: Sir I understand, clearly-

SOUTHWELL, JA: I mean, there must within a relatively short time come a moment when the deemed licence must cease to have effect and if necessary you have to ask the Court for a declaration in that respect.

SMITH, JA: My asking the question wasn't actually to ask you the answer, but to ask you whether I had understood the question?

ADVOCATE McMAHON: That's the position as I understand the construction of that provision, sir.

SOUTHWELL, JA: The answer must be when the appeal proceedings must sensibly be regarded as at an end.

ADVOCATE McMAHON: Exactly sir, and it was whether this Court could give some guidance as to possibly, it's the Court of the Seneschal of Sark that would be potentially seized with a criminal prosecution in the event that steps aren't taken within a realistic time and there is still trading going on within that jurisdiction by this Appellant.

SOUTHWELL, JA: Well Mr. Doyle has heard that and he can derive from that some indication that unless- if he does want to go further- unless he moves relatively speedily he may find himself faced with a criminal prosecution.

ADVOCATE McMAHON: I fully understand that sir, and I'm very grateful, thank you.

SOUTHWELL, JA: Thank you very much. The Court will adjourn.

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I, Suzanne Margaret O'Neill, hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill  
Friday 7th January 2005