

IN THE COURT OF APPEAL OF BELIZE, A.D. 2003

CIVIL APPEAL NO. 13 OF 2003

BETWEEN:

**BELIZE CITY COUNCIL
and
THE ATTORNEY GENERAL**

Appellants

AND

BRIAN BROWN

Respondent

BEFORE:

The Hon. Mr. Justice Rowe	-	President
The Hon. Mr. Justice Sosa	-	Justice of Appeal
The Hon. Mr. Justice Carey	-	Justice of Appeal

**Mr. Edwin Flowers, S. C. for the Appellants.
Mr. Dean Barrow, SC, for the Respondent.**

October 7, 2003 & March 12, 2004.

ROWE P

1. We allowed the appeal in part. We set aside the declaration made in the court below that Statutory Instrument No. 136 of 2002 was null and void

as being *ultra vires* the Belize City Council Act, Chapter 85 of the Laws of Belize. In other respects we affirmed the judgment of the Chief Justice. We ordered the appellants to pay the costs of the appeal to be agreed or taxed. I now provide my reasons for concurring in that decision.

2. On 31 October 2002, the Belize City Council, pursuant to section 61 of the Belize City Council Act, Chapter 85 of the Laws of Belize, Revised Edition 2000, and all other powers thereunto it enabling, enacted the Belize City Council (Fences Control) Regulations 2002, as Statutory Instrument No. 136 of 2002 (“S.I. 136”). Regulation 4(1) provided that all fences in Belize City shall conform to the regulations set out in the Second Schedule and Regulation (1) of that Schedule provided that “No fence shall have more than four feet in height of solid or opaque wall or surface which shall be measured from the grade of the street”. The policy reasons given to the court for the enactment of the Fences Control Regulations were to deter crime, promote health, morality, safety and order in the City of Belize.
3. The appellant is a resident of Belize City at 7476 Jimmy Dyer Crescent (sometimes referred to as “Jimmy Dyer Ave”). It appears that he had constructed a fence, including posts, on the premises bordering the public street, which fence went to the roof of a structure that provided protection for the business of “Brown’s Enterprise Auto Rental Sales” operated by the respondent. There were also contraptions described as dirt boxes that appear to have been part of or connected with the fence. The City Council determined that the respondent should bring his fence into conformity with the Fences Control Regulations and the Mayor issued verbal instructions to the Commissioner of Police during the last week of March 2003 to accomplish this purpose.
4. There was a conflict of evidence as to whether the respondent was notified of the City’s demand that he should modify his fence. Senior

Superintendent Westby gave an affidavit that he personally notified the respondent on a day during the last week of March of the requirement of the City Council that he should modify his wall and that he had one month within which to do so. The respondent, he said, acknowledged that he was aware of the new Fences Control Regulations and that he knew he was in breach thereof. The respondent, on the other hand, denied that he was verbally informed by the police officer as alleged or at all and stated that he had no prior notice that his fence was in danger of being demolished by the City Council. The learned trial judge disposed of this conflict of evidence by stating:

“On the facts of this case, I do not believe that any notice at all was given to Mr. Brown. The averments of Superintendent Westby in his affidavit notwithstanding, there was no proper notice or any notice in any meaningful sense, given to Mr. Brown about his fence”.

I interpret this finding of the Chief Justice to mean that pursuant to the City Council Act and the Fence Control Regulations, verbal notice to a fence owner to reconstruct his fence would be insufficient in law.

5. A party of police officers and employees of the Belize City Council attended at the premises of the respondent on Friday, May 2, 2003 and commenced the demolition of the respondent's fence at 7476 Jimmy Dyer Drive. After some protest, the exercise was halted and the police threatened to return in a week if the respondent had not voluntarily dismantled the fence.
6. The respondent initiated an action pursuant to section 20(1) of the Belize Constitution and Rule 3(1)(a) of the Supreme Court (Constitutional Redress) Rules and the inherent jurisdiction of the Court, seeking (a) a declaration that his constitutional rights under sections 6(4), 9(1), 14(1) and 17(1) of the Belize Constitution had been contravened by the Minister of Home Affairs and the Commissioner of Police; (b) that S. I. 136 of 2002

was null and void in that it violated sections 6(4), 14(1) and 17(1) of the Belize Constitution; (c) a claim for exemplary damages for breaches of the constitutional rights stated above; (d) an injunction to prevent further demolition action by the police and (e) costs and other relief.

7. The Chief Justice found that the criminal charge that was brought against the respondent for violating S. I. 136 was not in breach of section 6(4) of the Constitution. There has been no appeal from that finding. He found, too, that, although the entry by the Police and Council employees into the premises of the respondent was wrongful, as also the demolition of his fence and dirt box, these acts did not amount to a taking of property in violation of section 17(1) of the Constitution. There has been no appeal from that finding.
8. The Court held that the wrongful entry constituted a violation of section 9(1) of the Constitution and constituted as well an arbitrary and unlawful interference with Mr. Brown's privacy and home within the contemplation of section 14(1) of the Constitution. He awarded the respondent damages in the sum of \$20,000. An appeal was taken from these findings. We dismissed the appeal and affirmed the judgment for reasons which will follow.
9. In determining that S. I. 136 was *ultra vires* The Belize City Council Act, ("the Act"), the Chief Justice held, *inter alia*, that (a) Section 61(f) of the Act only enabled the City Council to make regulations for the purpose of the erection of fences between adjacent lots and messages, (sic) not for all fences, including existing fences; (b) that the S. I. 136 was given retrospective effect in relation to existing fences; (c) there was an absence of "a notice in writing" requirement under Regulation 6 of S. I. 136; (d) that Regulation 7 extended the definition of "dangerous fences" beyond the definition given in the Act; (e) Regulation 7 gave the City

Council power to remove, alter or demolish “dangerous fences” when the parent Act gave the City Council no such power; (f) application of S. I. 136 involved oppressive and gratuitous interference with privacy rights relating to existing fences. The appellants stoutly attacked each and every finding of the Chief Justice on these matters.

10. Section 29 of the Act is entitled “General Powers and Duties” and states broadly that the Council is entrusted with the general rule and good government of Belize City and subject to the provisions of the Act, to have such powers to carry out such trust. Section 29 then enumerates a number of activities that the Council is empowered to carry out. What is important here, in my view, is that the general micro-management, the “nitty-gritty” of the City’s affairs, is conferred upon the City Council. Section 49 of the Act empowers the Council to make bylaws on all matters concerned with the rule and good order of Belize City and for the proper carrying out of the objects and purposes of the Act. Then in the same part of the Act in which Section 49 falls, the Council is given power to make regulations. Section 61(1) of the Act, empowers the Council to make regulations for the better carrying out the objects and purposes of the Act and without prejudice to the generality of the section, a number of specific objectives were identified. The specific provisions included:

“61(f) the erection of fences between adjacent lots and messages”.
(sic)

11. Implicit in his judgment, the Chief Justice accepted that the City Council had a power to regulate **fences** in the City of Belize. It must be common knowledge that fences may be erected anywhere on property in the City of Belize. Fences with which the City Council would have the greatest interest are those that abut on streets. The City Council has a duty to maintain streets and sidewalks, which is

spelt out in Section 49(1)(d) of the Act. It has a duty to ensure that dilapidated buildings do not become a danger to surrounding properties, see Section 29(d) of the Act. Fences with which the Council would, as a matter of commonsense, be most concerned are those which border on the public streets. It would ordinarily be considered invasive for the Council to be expected to have an interest in the kinds of fences that neighbours erect to protect their individual sense of privacy and which do not immediately affect other members of the public, but the Legislature considered that special power should be given to the Council to regulate even fences “between adjacent lands and messages” (sic). In so doing, the Legislature could never be accused of denying to the Council its general power to control the fences that could be erected abutting the streets and neighbourhoods of Belize City.

12. As to the proper route to the interpretation of Section 61(1) of the Act, Mr. Flowers prayed in aid of his submissions that S. I. 136 was a valid exercise of the powers of the City Council, sections 21, 22 and 23 of the Interpretation Act. Pursuant to section 21(a) of the Interpretation Act:

“Where an Act confers power on any authority to make subsidiary regulation, the following provisions shall, unless the contrary intention appears, have effect to the making thereof:

- (a) when any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all other powers thereunto enabling;
- (c) when any Act confers power on any authority to make subsidiary legislation for any general purpose and also for any special purpose incidental thereto, the enumeration of special purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general powers” .

I agree with the submission of Mr. Flowers that the City Council had power under the Act to make regulations relating to all fences in Belize City. In my view, there is nothing in section 61(1)(f) to restrict the general power of the City Council to regulate fences within the City limits, if, as a matter of public policy, the Council determined that this was part of its trust to provide good government to the City. The evidence was that the Fence Control Regulations were made for the public purpose to effect orderly town planning, deter crime, promote health, morality, safety and good order in the City by restricting fences to a certain height and of specified construction. There was absolutely no contrary evidence.

13. I am fortified in this view as I believe the Legislature spoke with some clarity in section 27 of the Act, regarding what it wished the City Council to do in relation to roadside fences. Section 27 provides:

“If any land adjoins any street within the boundaries of Belize City, is allowed to remain unfenced or if the fences of such land are allowed to be, or remain out of repair and the land is, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, cyclists or pedestrians or is used for any immoral or indecent purpose or for any purpose causing inconvenience or annoyance to the public, the Council may, at any time after the expiration of service upon the owner or occupier of the said land by a notice in writing requiring the land to be fenced or any fence on the land to be repaired, cause the lands to be fenced or the lands to be repaired in a manner it thinks fit and the reasonable expenses thereby incurred shall be recoverable from the owner or occupier summarily as a civil debt”.

It would not, in my view, make sense, for the City Council to be given power over dangerous roadside fences for a variety of purposes and yet be unable to make regulations relating to roadside fences. As the court said in **Supreme Court Employees’ Welfare Association v. Union of India** (1989) 4 SCC 187, “where the validity of a subordinate legislation (whether made directly under the Constitution or a statute) is in question,

the court has to consider the nature, objects and the scheme of the instruments as a whole, and, on the basis of that examination, it has to consider what exactly was the area over which, and the purpose for which, power has been delegated by the governing law”.

14. In my view, all the provisions of the Belize City Council Act should have been read together to ascertain whether the Council had a general power to control **fences** within the City boundaries and that the highlighting of Section 61(f) of the Act as the primary authority to regulate fences was not exhaustive of the powers of the City Council in that regard.

15. Regulation 6 of the Fences Control Regulations requires owners or occupiers of buildings anywhere in the City of Belize whose fences did not then comply with the Fence Control Regulations to carry out works within a month of the commencement of the Regulations to bring the fence into conformity with the Regulations. Regulation 6(2) empowered the Council to effect the necessary modifications if the owner or occupier failed in his duty to do so. No procedure was provided in the Regulations for notices or objections. But that is not an end of the matter. If action is to be taken under any law or regulation it must be done in a reasonable manner at a reasonable time unless the law otherwise provides. Regulation 6(2) did not give the City Council power to destroy and damage property under the guise of remodeling fences. The Chief Justice made his order for damages on the basis that there was a breach of section 9(1) of the Constitution which provides that:

“except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises”;

and section 14(1) which provides that:

“A person shall not be subjected to arbitrary or unlawful interference with the privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation. The private and family life, the home and the personal correspondence of every person shall be respected”.

16. The Chief Justice proceeded on the basis that the status quo was preserved in Belize and that the Council could only act prospectively in respect to fences. In one respect he was right. The Council could not say to an owner or occupier that he had built his wall above 4 feet of opaque material and had therefore committed a criminal offense at the time when he did so. There is, in my opinion, nothing in the relevant laws of Belize that prevented the Council in the exercise of its plenary powers to say to an owner of property, he must bring his existing fences into conformity with the Fences Control Regulations. **Lord Goddard, CJ**, dealt with the matter in a succinct way in **Re A Solicitor’s Clerk**, [1957] 1.W. L. R. 1219, at 1920-21

“But in my opinion this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor’s clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect. It would be retrospective, if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable”.

17. These valid Fence Control Regulations could be implemented in a reasonable manner. They were not. The learned trial judge was justifiably incensed that the City did not serve a written notice on the respondent giving him a detailed account of the manner in which the City Council alleged that he was in breach of the Fence Control Regulations and of the minimum modifications that the City Council required. This was absolutely necessary because if the City acted to effect the modifications it was entitled to reimbursement for the money employed. Before the civil court it would have to justify every cent that it had expended. It would have to

justify the reason for the expenditure. Telephone calls and personal visits are no alternative for legal notices in writing served within a reasonable time.

18. In my view, this case does not turn on the vires of the City Council's Fences Control Regulations but rather in the manner in which they were carried out on May 2, 2003. Bulldozers and jack-hammers are mightily handy instruments in the construction and demolition trades, but when employed by a governmental agency against a citizen, the conditions must be favourable to the governmental agency. In this case they were not. There was, as the Chief Justice found, no notice to the respondent that his property would be destroyed by the Council on May 2, 2003 and in the circumstances, the damages awarded are affirmed.
19. A number of grounds argued by Mr. Flowers have not been mentioned as, in my view, they did not affect the central issues.

CAREY JA

20. Mr. Brian Brown is a businessman of Belize City. In May, he launched proceedings against the Attorney General claiming that his constitutional rights had been contravened by the Minister of Home Affairs and the Commissioner of Police, and claimed declarations, exemplary damages and an injunction. He based the proceedings on the grounds:

(a) “that he had been charged with an offence under the Belize City Council (Fences Control) Regulations 2002 for erecting a fence of a certain height and nature at a time when to do so constituted no offence,” and

(b) An employee of the Belize City Council and police officers wrongfully entered his premises at 7476 Jimmy Dyer Avenue, Belize City on Friday 2nd May 2003 at about 5:00 p.m., commenced without lawful excuse the taking possession and destruction of his fence, completed the destruction of his dirt box and that part of the fence which it formed, and having threatened to return in one week’s time to complete the destruction of the entire fence and the roofing that it supports.”

21. It should be noted that in the proceedings below, the Belize City Council was not joined as a party, and did not appear by counsel. The Mayor did however put in an affidavit explaining the role of the City Council in this imbroglio. As the trial judge made an order enjoining the Belize City Council from returning to Mr. Brown’s premises and continuing with the demolition of his fence, it is necessary to mention how it came about that

in these proceedings, it is now transmuted into an appellant. Mr. Flowers S C, who appeared before us on behalf of both appellants was critical not only of the proceedings below being heard in the absence of the City Council, but also of the order of injunction made against it.

22. The Chief Justice, with the co-operation of counsel, heard and disposed of this matter with commendable expedition. A reserved judgment was delivered almost within two months of the incident, which generated the constitutional action. This court should pay respectful tribute to the efforts of all those who contributed to make it possible.
23. In the result, the Chief Justice found that the entry by the Council's employee on the premises of the respondent was wrongful and constituted a wrongful entry within the contemplation of section 9 (1) of the Constitution and, as well, an arbitrary and unlawful interference with the respondent's privacy and home within the contemplation of section 14(1) of the Constitution. He declared that Statutory Instrument (SI) No. 136 of 2002 was null and void as being *ultra vires* the Belize City Council Act – Chapter 85 of the Laws of Belize. For the emotional stress suffered by the Respondent, the Chief Justice awarded the sum of \$20,000. He also granted injunctions against the police and the City Council. The appeal is against his judgment.

The Appeal

24. Mr. Flowers S.C. began his attack with two grounds, which he argued together. They were as follows:
 - (2) The learned Chief Justice erred in law in proceeding to hear and determine the action without The Belize City Council being made a party to the proceedings.

and

(3) The learned Chief Justice erred in law in enjoining the Belize City Council from returning to the Respondent's premises and continuing with the demolition of the fence when the Belize City Council was not made a party to the proceedings before the Court.

No application was ever made to the judge to join the Belize City Council as a party. The applicant sought constitutional redress in respect of police action. A large number of armed police officers led by a senior superintendent descended on the premises of the applicant in 6 vehicles and the entire block was cordoned. They allowed an employee of the City Council to bulldoze the applicant's fence. This would bring the Minister of Home Affairs into the equation: arms of the State were involved. The Attorney General is a proper party in a constitutional proceeding.

Section 42(5) of the Constitution prescribes as follows:

“Legal Proceedings for or against the State shall be taken in the case of civil proceedings in the name of the Attorney General and in the case of criminal proceedings in the name of the Crown.”

So when the action was taken, the proper parties were before the Court: the action was properly constituted. The applicant in those proceedings was not obliged to join the City Council. So far as this ground goes,

there is little to recommend it. Mr. Barrow S.C., for his part, said he chose to sue the Attorney General alone and saw no necessity to join the Belize Council. He had not sought an injunction against the City Council.

25. Neither of these grounds assist in the ultimate disposition of this appeal and in the absence of full arguments, it is altogether unnecessary to come to any concluded view on either.

26. Ground 4:

The learned Chief Justice erred in law in holding that Statutory Instrument No. 136 of 2002 Belize City Council (Fences Control) Regulations 2002 was null and void as being *ultra vires* the Belize City Council Act.

Mr. Flowers S.C. made this ground the main thrust of his attack against the judgment. The Chief Justice had held that the City Council stepped outside the provisions of its parent Act, i.e. the Belize City Council Act, Cap. 85 in promulgating the Belize City Council (Fences Control) Regulations 2002 – S I No. 136 of 2002. He argued that this rendered the actions of the City Council and the Commissioner of Police in entering the respondent's premises and demolishing his fence, without lawful authority and was therefore in contravention of his rights to privacy under the Constitution. See 9(1) –

“Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.”

and Section 14(1) -

“A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. The private and family life, the home and the personal correspondence of every person shall be respected.”

The Ultra Vires Point

27. In any consideration of the submissions in this regard, we must start with the regulation making powers of the City Council, viz, Section 61. It provides as follows:

“(1) The Council may make regulations for the better carrying out of the objects and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for:

(so far this appeal is concerned)

(f) the erection of fences between adjacent lots and (sic) messages;

...

(j) any other matter not specifically included in the paragraphs above which may properly be dealt with by way of regulations.

Exercising the powers conferred by this section, the Council enacted Statutory Instrument No. 136 of 2002, the Belize City Council (Fences Control) Regulations, 2002. It provided that written permission was required to construct or alter fences in Belize City (Regulation 3); Fences were to conform to certain criteria stipulated in the Second Schedule [Regulation 4(1)]; gave the Council power to require persons to alter, remove pull down fences not authorized or in breach of the regulations (Section 5(1)): giving the council power to remove alter or pull down fences notified to the owner or builder as being in breach and imposing costs therefor on the owner [Regulation 5(2)]. By Regulation 5(6) a right of appeal to a Magistrate is given to the owner or builder on whom a notice has been served. In respect of owners of fences in existence at the time of promulgation, they are given one month thereafter to comply (Regulation 6), failing which the Council is enabled to charge and recover the costs incurred to the owner [Regulation 6(2)].

Finally, (so far as relevant to this point Regulation 7 gives the Council power to deal with “dangerous fences” which is defined in Regulation. A fence is dangerous if, in the opinion of “the authorized officer,” it is constructed of a material that may cause injury to the public, or which may contribute to harbouring or promoting illicit activities.”

28. There is, as the Chief Justice himself noted, respectable authority for leaning rather towards support of subsidiary legislation, if at all possible. He endorsed the words of Lord Russell of Killowen in **Kruse v. Johnson** (1898) 2 Q.B. 91 at 99. His words bear repetition –

“... when the court is called upon to consider the bye-laws of public representative bodies clothed with ample authority ... and exercising that authority accompanied by checks and safeguards ... I think the consideration

of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them. I think Courts of Justice ought to be slow to condemn as invalid any by-laws so made under such conditions, on the ground of supposed unreasonableness. Notwithstanding what Cockburn, C.J. said in ***Bailey v. Williamson*** – an analogous case – I do not mean to say that there may not be cases in which it would be the duty of the court to condemn by-laws made under such authority as these were made as invalid because unreasonable. But, unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.”

29. But the Chief Justice found that the qualifications and considerations to which Lord Russell alluded, led to the conclusion that Parliament never intended to give authority to make such rules. He was persuaded to this view on a number of grounds. Section 61(1) in relation to fences only gives power to make regulations governing the erection of fences between adjacent lots [Section 61(1)]. Further, the Council, cannot make regulations relating to fences for lands adjoining streets because, sections 27 and 28 of the Belize City Council Act already deals with them. The Chief Justice expressed himself in this way:

“... by Regulation 4 of the S.I. the Council has assumed the power to regulate all fences in Belize City by mandating that they conform to the Second Schedule of the S.I. This, I am afraid, the Council cannot, consistent with its powers under the parent Act, does Section 61 only allows the Council to make regulations for the erection of fences between adjacent lots and cartilages and not for all fences: a power to make regulations for the erection of fences between adjacent or contiguous lots and cartilages does not include a power to regulations for all fences in Belize City.”

He was suspicious of what he described as “elements of micro-management stipulations under the Second Schedule of the S.I. because “these were not easy to reconcile with the duties regarding fencing by owners of lands adjoining streets as provided for in sections 27 and 28 of the Act.”

30. Another basis on which the Chief Justice founded his conclusion, was that the S.I. was retrospective in its effect, in that it “related back ... to fences

existing before its operative date ...” Section 61(1) gave power to provide for the erection of fences and could thus, only speak to the future.

31. It is not doubted that the Belize City Council has power to repair or restore fences under the Act itself on any land adjoining streets (section 27) and it is true it has power to make regulations with regard to the erection of fences between adjacent lots. But with respect, the regulatory powers given in pursuance of Section 61(1)(f) is not exhaustive of the law making powers of the Council. By virtue of Section 61(1) of the Act, the Council may make regulations “for the better carrying out of the objects and purposes of the Act and goes on to enact - ... “and without prejudice to the generality of the foregoing.” The effect of these words, I would suggest, is that the Council is given a general power to make regulations to give effect to the Act and then condescends to particular matters enumerated between (a) to (f). Subsection (i) (j) should not be ignored – “any other matter not specifically included in the (previous) paragraphs which may properly be dealt with by way of regulations.”

If Lord Russell’s words are heeded, then a court should lean towards support of the impugned legislation. The management of the city of the Belize is the responsibility of the Belize City Council, a duty to be exercised in keeping with the governing Act. Although Section 61(1)(f) authorizes specific regulations regarding the erection of fences between adjacent lots, this should be seen as not derogating from its general power to make regulations for better carrying out what the council considers the objects and purposes of the Act. Alternatively, regulations governing fences on lands adjoining streets falls within 61(i) (j) “any other matter not specifically included in paragraphs (a) to (i). The management of fences on lands adjoining streets can scarcely be outwith the Act when fences between adjacent lots are specifically brought within the Council’s powers. In the case of fences adjoining streets, since these could conceivably

pose risks to the public, it would seem reasonable for the Council to take steps to protect the public. It is entirely reasonable from the scheme of the Act to conclude that all fences were within the range of the Council's responsibility. The Act itself dealt with fences on land adjoining streets and paragraph (f) of section 61(1) of the regulations thus meant that the Council had authority to deal with all fences. To repeat, fences, wherever they were situate, were plainly within the remit of the City Council.

32. The interpretation of the SI should be approached in keeping with the words of Lord Russell previously noted, which is the antithesis of the approach of the Chief Justice which, with respect, was restrictive and narrow.
33. There is undoubted merit in Mr. Flowers' submission that no provision in the SI is inconsistent with the Belize City Council Act and all are within the powers conferred by the Council by the general regulation making power of section 61. Mr. Barrow, S.C. as I observed previously, cared little about the question of *vires*. He was perfectly happy with the judge's finding that the manner in which the SI was used, amounted to an oppressive or gratuitous interference with the rights of a fence owner which breached his constitutional rights to privacy. So be it.
34. It is I think demonstrably clear that the Belize City Council were *intra vires* Section 61(1) of the Belize City Council Act. I cannot therefore agree with the learned Chief Justice that the Council acted *ultra vires* in its promulgation of the Belize City Council (Fences Control) Regulations 2002 (SI No. 136 of 2002).

Etcetera

35. No serious argument was raised with respect to the unconstitutionality of the council *cum* police action in relation to Mr. Brown's fence. Mr. Flowers attempted to argue that the award of \$20,000.00 was excessive but better counsel prevailed and he desisted.

Conclusion

36. These reasons which I have set out led me to uphold the bye-law in question and to set aside the declaration that the SI was *ultra vires* the Belize City Council Act, Cap. 85 of the Laws of Belize. I agreed that the award should be confirmed and that the respondent have his costs.

SOSA JA

37. On 7 October 2003 I agreed that the appeal should be allowed in part; that the declaration of the court below that Statutory Instrument No 136 of 2002 was null and void as being *ultra vires* the Belize City Council should be set aside; that the judgment of that court should, in other respects, be affirmed; and that the appellants should pay to the respondent his costs of the appeal, to be agreed or taxed. I have read, in draft, the reasons for judgment delivered by Carey JA and concur in those reasons.