

**IN THE SUPREME COURT OF BELIZE, A.D. 2005**

**CLAIM NO. 43**

**IN THE MATTER** of an interpretation of section 18 of the Development Finance Corporation Act, Chapter 279 of the Substantive Laws of Belize, Revised Edition 2000 – 2003, as read with section 9 of the Commissions of Inquiry Act, Chapter 127 of the Substantive Laws of Belize, Revised Edition 2000 – 2003

**THE COMMISSION OF INQUIRY INTO  
THE OPERATIONS OF THE  
DEVELOPMENT FINANCE  
CORPORATION**

**Claimant**

**BETWEEN**

**AND**

**THE DEVELOPMENT FINANCE  
CORPORATION**

**Defendant**

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**BEFORE** the Honourable Abdulai Conteh, Chief Justice.

Mr. Elson Kaseke, Solicitor General, with Ms. Andrea McSweeney, for the Claimant.

Mr. Michel Chebat for the Defendant.

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**RULING**

The seemingly innocuous principal application by the Commission of Inquiry raises a number of important legal issues. Some of these relate to the legal position when there is a seeming conflict between two different statutes. Ordinarily, of course, the provisions of the later statute would prevail. But when the difference or conflict is as to a subject-matter of special or general application, then the position is not so clear; also the application raises the question of the role of the Court, especially in applications for a declaration or a declaratory judgment: can the Court pronounce on a seemingly moot or academic point?

2. However, before the principal application could be pressed on the Court, the respondent named in the claim, the Development Finance Corporation (DFC), launched a preemptive attack to the effect that the applicant, that is, the Commission of Inquiry, set up to investigate the affairs of the respondent Development Finance Corporation, is not a legal person and therefore its application should not be entertained by the Court and must be dismissed.
3. This in itself is a weighty challenge which, if successful, would be enough to stop the applicant in its tracks. But the challenge of the Development Finance Corporation, the respondent, goes even further: it states that the declaration sought by the Commission of Inquiry is academic and there is no dispute before the Court to declare upon.
4. The Commission of Inquiry itself was created by the Prime Minister pursuant to section 2 of Chapter 127 of the Laws of Belize on Commission of Inquiries Act and promulgated in S.I. No. 24 of 2005.
5. Therefore, it is evident that the creation of the Commission of Inquiry itself, is an exercise in executive power granted by statute to the Prime Minister.
6. As an emanation of executive power by statute, therefore, the Commission is properly amenable to the supervisory jurisdiction of the Courts to ensure that it keeps within the bounds of the law and not transgress, for example, the individual's protected constitutional rights.
7. But qua a Commission of Inquiry the legal status and standing of the Commission is not clear, for example, to sue, or be sued, for whatever powers the Commission has, are conferred by statute

pursuant to which it was created and the terms of reference given to it by the instrument setting it up, that is, S.I. 24 of 2005.

8. Does the Commission have legal persona to initiate and prosecute legal proceedings? Certainly, the Commission has powers under section 18 of the Commissions of Inquiries Act to direct, in addition to the Director of Public Prosecutions, the commencement of proceedings for the imposition of penalties under the Act, for example, for failure to answer summonses by the Commission under section 9 and the penalties for failure thereto as provided for under section 10.
9. However, subsection (2) of section 9 immunizes individual Commissioners from suit for anything they may do as a Commissioner.
10. What is unarguable, however, is that an action can lie against the Commission qua Commission by a person affected on the ground that the Commission is transgressing its terms of reference or offending some constitutional right or the other of that person.

In such a case the claim may for example, be ventilated by way of judicial review seeking an appropriate order or a declaration and even an injunction from the Court. The proper party in that case would be the person affected as claimant and the Attorney General on behalf of the Commission as provided for in section 42 of the Constitution of Belize, that he shall in cases relating to civil proceedings be the respondent or claimant on behalf of the Government. Having said that, the setting up of the Commission itself was an exercise in executive power by the Prime Minister, as I have already stated.

11. What the Commission however is seeking in its application, the principal application in this matter, though couched in the form of a declaration, is really an advisory opinion to the effect that given the seeming conflict between sections 9 and 10 of Chapter 127 on powers of Commission to summon witnesses and order production of books etc. and section 18 of Chapter 279 of the Laws of Belize, on the Development Finance Corporation, dealing with the confidentiality and secrecy of matters relating to the affairs of the respondent Development Finance Corporation and the immunity from production in Court of its books and documents, except on the direction of the Court.
12. This, I am afraid, the Commission cannot for it has plainly statutory powers granted to it to call for papers and to summon witnesses. It must first do this and then the Development Finance Corporation or any affected person can then, if they so wish, moved to set aside the Commission's summonses.
13. The Commission of Inquiry cannot call for an opinion as to the legal obligation of a person. A person must resist that legal obligation by recourse to Court. Then there is an issue in dispute on which the Court can pronounce upon.
14. The Commission is seeking the Court's aid to assuage its frustration and particularly see in paragraph 8 of Mr. Price, the Chairman of the Commission's affidavit and it is therefore seeking a determination from the Court for a way out of its perceived frustration, not only as regards the Development Finance Corporation but also in relation to other entities which have similar provisions as in section 18 of the Development Finance Corporation Act on confidentiality.

15. The proper role of the Court is to adjudicate and pronounce upon live issues often involving the assertion of rights or powers and the resistance to that assertion. Often it is the person resisting the assertion of power who would move the Court. But here, it is the Commission who is asking the Court by a declaration, to help it assert its undoubted powers under the Act setting it up, in contradistinction from the person who may resist the assertion of the Commission's powers.
16. On the evidence from Mr. Price's affidavit, a summons to produce certain documents to the Commission by the Chief Executive Officer of the Development Finance Corporation was issued. The latter on reliance upon a legal opinion demurred about complying with the Commission's summons on the grounds of claimed confidentiality conferred on it by statute setting up the Development Finance Corporation.
17. I think the proper course to take is for the Commission to be guided by the Act creating it and the Statutory Instrument constituting it which are very clear in this instance in my view and pursue its summons as provided for in section 10 and section 18 of the Act under which the Commission of Inquiry was created and set up.
18. The declaration sought is therefore, in my view, moot at this point for no factual assertion of power has been taken by the Commission which could be adjudicated upon by the Court.

It is for the person or persons or entity affected by the assertions of the statutory powers of the Commission to resist, if they can, by coming to Court.

It is therefore not for the Commission to come to Court, as I have indicated that the issue of the very legal persona of the

Commission itself is not clear, being as it is, an emanation of an exercise of executive power by the Prime Minister who set it up.

For all these reasons, I accede to Mr. Chebat's objection to the Commission's claim as presently formulated and presented, and dismiss the declaration sought.

I will therefore dismiss the claim.

**A. O. CONTEH**  
**Chief Justice**

**DATED: 20<sup>th</sup> May, 2005.**