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## Auditor-General v Commander of the Republic of Fiji Military Forces [2000] FJLawRp 19; [2000] 2 FLR 1 (28 January 2000)

[\[2000\] 2 FLR 1](#)

IN THE HIGH COURT OF FIJI

AUDITOR-GENERAL

v

COMMANDER OF THE REPUBLIC OF FIJI MILITARY FORCES  
& ATTORNEY-GENERAL

High Court Civil Jurisdiction  
Byrne, J  
28 January, 2000  
HBC0240.1999

*Public accounts - whether Fiji Military Forces regimental and other funds private purposes - whether auditor general has a right to inspect private funds held by commander - definition of 'public officer' and 'public moneys' explored - [Audit Act](#) s6(1); 1990 Constitution s148(2); 1997 Constitution s167; [Interpretation Act](#) (Cap 7) .s2; Republic of Fiji Military Forces Act Cap. 81 s67; FMF Regulations reg 3, FMF (Queen's) Regulations, Chapter 5, part 15, paragraph 5.613*

The plaintiff filed an Originating Summons seeking a declaration that he is entitled to records and accounts of funds maintained by the Commander for audit purposes. Defendant resisted on the basis that the funds were private.

**Held** - (1) Duties of the Auditor-General are restricted to audit of accounts of public officers in respect of public moneys received by public officers. The Commander is a public officer.

(2) Well-entrenched British custom in management of private funds held by the British Armed Forces must give way to local statutory law governing audit.

(3) Auditor-General is legally required to audit the records and accounts of the various funds maintained by the Commander of the Republic of Fiji Military Forces namely the Regimental Fund, the Canteen Fund, the Benevolent Fund, the Health and Life Scheme and the RFMF Welfare Fund, or any one or more of them.

(4) The Commander is legally required to allow the Auditor-General access for audit purposes to the records and accounts of the funds or of any one or more of them.

Declarations answered in the affirmative.

**Case referred to in judgment**  
cons *Rex v Whitaker* (1914) 3 K.B. 1283

[note: this case was upheld on appeal to the Supreme Court.]

*Peter I Knight for the plaintiff*  
*Tevita v Bukarau for the First defendant*

28 January 2000.

## **JUDGMENT**

**Byrne, J.**

### **Facts**

In the Auditor-General's inspection and audit of the Public Accounts of the Republic of Fiji Military Forces in 1997 the Auditor-General came to know of the existence of a number of private fund accounts maintained by the Commander of the Republic of Fiji Military Forces. Upon the Auditor-General's insistence to inspect these funds, the then Commander, Brigadier General E.G. Ganilau refused, stating that because the funds were for purposes private to the Republic of Fiji Military Forces (hereinafter referred to as "the RFMF"), it was outside the responsibility of the Auditor-General.

The funds are listed in paragraph 10 of an affidavit of Lieutenant Sainivalati Navoti sworn on 10th August 1999. Lieutenant Navoti is a Legal Officer of the First Defendant.

The funds referred to by Lieutenant Navoti are the following which are currently maintained by the RFMF:

(a) Regimental Fund

(b) Fines Fund

(c) Benevolent Fund

(d) Band Fund

(e) Bula Malaya Fund

**(f) FMF Church Fund**

(g) FMF Chapel Fund

(h) UNIFIL Welfare Fund

(i) Injured Rugby Players Fund

(j) Army Medical Scheme

(k) Army Life Scheme

(l) Canteen Fund

Lieutenant Navoti states also that the audit of private funds has been carried out from time to time by officers selected in accordance with the Forces Standing Orders and that two funds, namely the Regimental and the Band Funds, have been subject to periodic audits but all other funds do not experience what he terms "specific fluctuation" in any year to require periodic scrutiny.

He also deposes that the private funds accounts have never been the subject of audit by past Auditors-General. This is acknowledged by the Plaintiff but in these proceedings claims the right and duty to audit the records and accounts of the funds maintained by the Commander of the RFMF.

By Originating Summons dated the 14th of May 1999 the Plaintiff seeks the determination of this Court on the following questions, namely:

(1) Is the Auditor-General legally required to audit the records and accounts of various funds ("the Funds") maintained by the Commander of the Republic of Fiji Military Forces ("the Commander") namely the Regimental Fund, the Canteen Fund, the Benevolent Fund, the Health and Life Scheme and the RFMF Welfare Fund, or any one or more of them?

(2) Is the Commander legally required to allow the Auditor-General access for audit purposes to the records and accounts of the Funds or of any one or more of them?

## **THE LAW**

### **The Constitution of 1990**

Because the dispute with the Auditor-General emerged at a time when Fiji was in the transition of moving from the 1990 Constitution to the Constitution promulgated on 27th July 1998 it is useful to mention the provisions of both those Constitutions to understand the important question raised by these proceedings.

Section 148(2) of the 1990 Constitution reads as follows:

"The public accounts of Fiji and all Courts of Law and all authorities and officers of the Government shall be audited and reported on by the Auditor-General or any person authorised by him in that behalf shall have access to all records, books, vouchers documents, cash, stamps, securities, stores, or other Government property in the possession of any officer:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be prescribed."

## The Constitution of 1998

The 1998 Constitution gives the Auditor-General the same power. Section 167 states:

"(1) At least once a year, the Auditor-General must inspect and audit and report to the Parliament on:

(a) The Public Accounts of the State.

(b) The control of public money and public property of the State.

(c) All transactions with or concerning the public money or the public property of the State.

(5) A law made by the Parliament may provide that the accounts of a specified body corporate are not subject to audit by the Auditor-General but are to be audited as prescribed in that law.

(6) If the law so provides, it must also empower the Auditor-General to review those audits and report the results of a review."

The terms "public accounts", "public money", and "public property" are not defined in the 1998 Constitution.

Section 6(1) of the [Audit Act](#) Cap. 70 provides that the Auditor-General shall, on behalf of Parliament, and in such manner as he deems necessary, examine, enquire into and audit the accounts of all accounting officers. The term "accounting officer" is defined in the Act to include every public officer who is charged with the duty of collecting, receiving or accounting for, or who in fact collects, receives or accounts for, any public moneys. The term "public moneys" is defined in the Act to mean all revenue, loan, trust and other moneys and all stamps, bonds, debentures and other securities whatsoever received by or on account of the Government, and for the avoidance of doubt includes moneys received or held in trust by the Public Trustee, the Official Receiver or any public officer for purposes other than the purposes of Government. The term "public officer" is not defined in the Act but is defined in the [Interpretation Act](#) Cap. 7 as a person in the permanent or temporary employment of the Government of Fiji.

The duties of the Auditor-General are therefore restricted to the audit of accounts of public officers in respect of public moneys received by public officers. It follows therefore in my view that the moneys received by the Funds fall within the definition of "public moneys" if they are received by a "public officer". The question therefore is: Is the Commander a public officer?

Although the term "public officer" is not defined in the [Audit Act](#) the term "public office" is defined in the Constitution Amendment Act 1997 to include an office created by or continued in existence under the Constitution, an office in respect of which the Constitution makes reference, the office of a commission or an office in a state service.

"State service" is defined to mean the public service, the Fiji Police Force or the Republic of Fiji Military Forces. Accordingly the Plaintiff submits that the Commander holds public office and is therefore a public officer.

It thus follows according to the Plaintiff that as the Commander is a public officer and the moneys received by the Funds are public moneys, the Commander is an accounting officer as defined in the [Audit Act](#) and the Auditor-General is thus legally required to audit the records and accounts of the Funds. The Defendant disputes these submissions. He says that the Regimental Fund Accounts held within the RFMF are accounts that members may subscribe to voluntarily (Queen's Regulations, Chapter 5, [part 15](#), paragraph 5.613).

Non-contribution does not in anyway result in an unlawful act being committed so that according to the Defendant this is a decisive distinguishing feature about the "non-publicness" of the accounts kept within the RFMF.

It is then submitted that because the RFMF cannot by law create or join Unions, it has created for itself the various private fund accounts listed above.

It is said, and I think the Plaintiff agrees, that the facilities provided for members of the Forces by the respective funds are essentially for a range of activities which Government does not provide for. It does not provide for them according to the Defendant because by their very nature they are private to the RFMF.

Earlier I mentioned the Queen's Regulations. Section 67 of the [Royal Fiji Military Forces Act](#) Cap. 81 gives the Minister power to make Regulations for various purposes connected with the Military Forces.

Regulation 3 states:

"The Queen's Regulations and the customs of the Imperial Army shall be taken generally as a guide in all matters not especially dealt with in these Regulations, so far as the Queen's Regulations are not inconsistent with the [Royal Fiji Military Forces Act](#)."

It will be noted that the Queen's Regulations and the customs of the Imperial Army shall be taken as a guide (my emphasis) in all matters not specially dealt with in the regulations so that in my judgment whilst the practice of the Imperial Army, i.e. the British Army, may provide some assistance in the resolution of the question before the Court, it can not over-rule any statutory provisions which the Court considers bear on the issues. I accept in the absence of any contrary evidence that whilst there may be a well-entrenched British custom in the management of private funds held by the British Armed Forces such custom must give way to any local statutory law governing the question.

In my judgment the fact that the Commander of the Republic of Fiji Military Forces falls within the definition of a public officer in the constitution renders him liable to have the accounts of the various private funds audited by the Auditor-General.

In my view the case of ***Rex v. Whitaker*** (1914) 3 K.B. 1283 is a useful aid to answer the questions posed by the Originating Summons. The Judgment of the Court of Criminal Appeal consisting of Lawrence, Lush and Atkin JJ was delivered by Lawrence J. who at p. 1296 said this:

"A public officer is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public. If taxes go to supply his payment and the public have an interest in the duties he discharges, he is a public officer."

The Defendant argues that because the Constitution Amendment Act 1997 (the Constitution) refers only to "public moneys" then any reference in the [Audit Act](#) to the duty of the Auditor-General to audit funds which are not of a public nature is repugnant to the provisions of the Constitution and should therefore be ignored. I cannot accept this argument because the fact is that the Commander of the Republic of Fiji Military Forces falls within the definition of a public officer in the Constitution. The [Audit Act](#) clearly provides that any moneys received or held in trust by any public officer for purposes other than the purposes of Government fall within the definition of "public moneys" which it is the duty of the Auditor-General to audit. In my judgment this can not be repugnant to the provisions of the Constitution as in my view it is the clear intent of the Constitution that all moneys under the control of or administered by a "public officer" should be subject to audit by the Auditor-General.

The two questions posed for determination by the Originating Summons are therefore answered in the affirmative.

*Declarations granted.*

**Marie Chan**

