

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCVAP2013/0007

GDAHCVAP2013/0008

GDAHCVAP2013/0009

BETWEEN:

- [1] THE DIRECTOR OF PUBLIC PROSECUTIONS**
- [2] THE MAGISTRATE, EASTERN MAGISTERIAL DISTRICT, ST.
DAVID**
- [3] THE COMMISSIONER OF POLICE**

Appellants

and

- [1] RODDY FELIX**
- [2] EDWARD GIBSON**
- [3] SHAWN GANNESS**
- [4] WENDELL SYLVESTER**
- [5] KENTON HAZZARD**

Respondents

Before:

The Hon. Mde. Louise Esther Blenman
The Hon. Mr. Mario Michel
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Thomas W. R. Astaphan, QC, with him Mr. Dwight Horsford, Solicitor General
and Mr. Deon Lawrence Hibbert for the Appellants
The Director of Public Prosecutions, Mr. Christopher Nelson in person
Dr. Francis Alexis, QC, with him Ms. Olabisi Clouden for the Respondents

2016: December 8;
2017: April 26.

*Civil Appeal – Preliminary inquiry – Coroner’s inquiry – Section 71 of the Grenada Constitution
Order, 1973 – Section 9 of the Coroners Act – Section 78 of the Police Act – Whether power of the*

Director of Public Prosecutions and/or the Commissioner of Police to initiate criminal proceedings is suspended pending outcome of a coroner's inquiry when a person dies in circumstances that bring section 9 of the Coroners Act into play

This appeal arises out of the decision of the learned judge by which he quashed the decisions of the Commissioner of Police ("the Commissioner") to charge Royal Grenada Police Force officers, Messrs. Roddy Felix, Edward Gibson, Shawn Ganness, Wendell Sylvester and Kenton Hazzard ("the respondents") with the manslaughter of Mr. Peter Oscar Bartholomew ("Mr. Bartholomew") and suspend them from duty, and prohibited the learned magistrate from proceeding with the preliminary inquiry into the charges of manslaughter against the respondents.

On 26th December 2011, the respondents were on duty at the St. David's Police Station when Mr. Bartholomew was taken into custody. It is alleged that he was being aggressive towards the police officers and they had to subdue him and place him under arrest. Mr. Bartholomew collapsed and was taken to the hospital where he died the following morning. The police carried out an investigation into Mr. Bartholomew's death and subsequently detained, questioned and charged the respondents with the offence of manslaughter arising out of the death of Mr. Bartholomew. The respondents later received letters from the Commissioner notifying them that as a result of the charges of manslaughter they were suspended from duty on half month's pay.

The magistrate for the Eastern Magisterial District of Saint David ("the magistrate") then commenced a preliminary inquiry into the manslaughter charges. The respondents' counsel challenged the magistrate's decision to proceed with the preliminary inquiry without holding a coroner's inquiry or inquest. The Director of Public Prosecutions ("the DPP") opposed the challenges. Consequently, the respondents commenced proceedings in the High Court seeking, inter alia, an order of certiorari quashing the Commissioner's decision to lay manslaughter charges against them and to suspend them from duty with half month's pay, and an order of prohibition prohibiting the magistrate from holding a preliminary inquiry into the manslaughter charges without first holding a coroner's inquest into Mr. Bartholomew's death in compliance with the provisions of the Coroners Act.

The learned judge determined that the two main issues for consideration were whether section 9 of the Coroners Act imposes on the coroner a mandatory requirement to conduct an inquest in the circumstances of this case and whether the Commissioner and the DPP had the power to charge the respondents with manslaughter without holding a coroner's inquiry and inquest pursuant to the provisions of the Coroners Act. The learned judge found that section 9 is mandatory and the coroner was duty bound to inquire into the cause of Mr. Bartholomew's death and to conduct a coroner's inquest. The learned judge further found that the holding and completion of such an inquest under section 9 was a condition precedent to the institution of criminal proceedings by the DPP or the Commissioner against the person or persons suspected of having caused the death. Consequently, the constitutional powers of the DPP to initiate criminal proceedings were suspended until after the completion of the coroner's inquest and the preferment of the manslaughter charges, the suspension of the respondents from duty and the reduction of their salaries by the Commissioner were premature. The judge therefore granted the relief prayed for by the respondents.

The appellants appealed against the learned judge's decision on the grounds that he erred in holding that the power of the magistrate *qua* coroner under the Coroners Act had to be exercised before those imposed on the magistrate under sections 94, 95, 97 - 99 of the Criminal Procedure Code which deal with preliminary enquiries; that the order of certiorari had the effect of subjecting the DPP to a direction that is contrary to the provisions of section 71 of the Grenada Constitution;

and in the alternative if necessary, that the Coroners Act is an existing law which must be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of section 71 of the Constitution. The appellants therefore sought to have the orders and declarations contained in the learned judge's decision set aside; a stay of those orders pending the determination of the appeal and that the respondents pay the appellants' costs of the appeal and in the court below.

Held: allowing the appeal and setting aside the orders and declarations made by the learned judge in paragraphs 47, 48 and 49 of his judgment, that:

1. Both the DPP and the Commissioner have the power to initiate criminal proceedings and there is nothing in **the Coroners Act** that postpones or takes away that right. If these officials have to await the outcome of a coroner's inquest before they can initiate criminal proceedings, it would be a restriction on their powers, and, in the case of the DPP, a breach of section 71 of the Constitution. The **Coroners Act** contains one of the two ways of initiating criminal proceedings in the case of a suspicious death of a person in custody. It does not shut out or postpone the alternative route of the Commissioner or the DPP exercising their independent power to initiate murder or manslaughter proceedings in the Magistrate's Court. The learned judge therefore erred when he decided that the preferment of criminal charges for manslaughter against the respondents by the Commissioner was premature and had to await the outcome of the mandatory inquest to be conducted by the coroner. The charges were not premature and were properly laid by the Commissioner.

Grenada Constitution Order, 1973, section 71 applied; **Police Act**, Cap. 244, Act No. 8 of 2006, section 78 applied; **Coroners Act**, Cap. 69, Act No. 10 of 1990, Revised Laws of Grenada, section 9 applied; **Commissioner of Police and another v Steadroy C. O. Benjamin** [2014] UKPC 8 applied; **Re Cook** (1845) 7 QB 653 distinguished; **Batary v AG for Saskatchewan** [1965] SCR 465 distinguished.

2. The DPP's powers to initiate, take over and continue, or discontinue criminal proceedings at such times as the DDP sees fit are clearly defined in section 71 of the Constitution. Restricting the DPP's constitutional power to prosecute criminal offences by an existing law, namely, section 9 of the **Coroners Act** would be an improper, if not contrary use of the existing law principle. Section 9 should not be construed by reading into the section a limit on the DPP's constitutional powers. If anything, the coroner's mandatory duty under section 9 should be construed as being subject to the DPP's overarching constitutional power to control criminal proceedings. The power to prevent the DPP and the Commissioner from commencing criminal proceedings was not included in the **Coroners Act** and that power should not be implied into the Act. Even if the power could be implied into section 9, it would be inconsistent with section 71 of the Constitution and to that extent would be void, or, as an existing law, would be required to be read with such modification as to yield to the provisions of section 71 of the Constitution.

Grenada Constitution Order, 1973, section 71 applied; **Police Act**, Cap. 244, Act No. 8 of 2006, section 78 applied; **Coroners Act**, Cap. 69, Act No. 10 of 1990, Revised Laws of Grenada, section 9 applied; **Commissioner of Police and another v Steadroy C. O. Benjamin** [2014] UKPC 8 applied; **Re Cook** (1845) 7 QB 653 distinguished; **Batary v AG for Saskatchewan** [1965] SCR 465 distinguished.

JUDGMENT

- [1] **WEBSTER JA [AG.]:** This is an appeal against the decision of the learned judge contained in his judgment delivered on 15th March 2013 by which he quashed the decisions of the Commissioner of Police (“the Commissioner”) to charge the respondents with the manslaughter of Peter Oscar Bartholomew (“Mr. Bartholomew”) and suspend them from duty, and prohibited the learned magistrate from proceeding with the preliminary inquiry into the charges of manslaughter against the respondents.

Background

- [2] The respondents are members of the Royal Grenada Police Force. On 26th December 2011, they were on duty at the St. David’s Police Station when Mr. Bartholomew was taken into custody. It is alleged that he was being aggressive towards the police officers and they had to subdue him and place him under arrest. Mr. Bartholomew collapsed and was taken to the General Hospital in St George’s where he died the following morning. An investigation into his death was carried out by the police who detained and questioned the respondents and charged them with the offence of manslaughter in respect of the death of Mr. Bartholomew.
- [3] On 3rd January 2012, the respondents received letters from the Commissioner notifying them that as a result of the charges of manslaughter having been laid against them they were suspended from duty on half month’s pay. The magistrate for the Eastern Magisterial District of Saint David (“the magistrate”) then commenced a preliminary inquiry into the manslaughter charges against the respondents. The respondents’ counsel challenged the magistrate’s decision to proceed with the preliminary inquiry without holding a coroner’s inquiry or inquest. The Director of Public Prosecutions (“the DPP”) opposed the challenges. As a result, the respondents commenced proceedings in the High Court by fixed date claim form seeking the following reliefs:

By the respondents Roddy Felix and Edward Gibson in claims numbered GDAHCV2012/0021 and GDAHCV2012/0022:

- (a) An order of certiorari quashing the decision of the Commissioner to lay charges of manslaughter against the respondents in the sudden death of Mr. Bartholomew and to suspend them from duty with half month's pay.
- (b) An order of prohibition prohibiting the magistrate from holding a preliminary inquiry into the charges of manslaughter without first holding a coroner's inquest into the death of Mr. Bartholomew in compliance with the provisions of the **Coroners Act**.¹
- (c) Costs.

The respondents Shawn Gannes, Wendell Sylvester and Kenton Hazzard sought similar reliefs in claim GDAHCV2012/0037 plus consequential reliefs relating to their suspension from work with reduced pay.

The Learned Judge's Decision

- [4] The learned judge heard the respondents' claims and delivered his written judgment on 15th March 2013. He isolated the two main issues for the court's consideration as:
 - (a) Whether section 9 of the **Coroners Act** imposes on the coroner a mandatory requirement to conduct an inquest in the circumstances of this case; and
 - (b) Whether the Commissioner and the DPP had the power to charge the respondents with manslaughter without holding a coroner's inquiry and inquest pursuant to the provisions of the **Coroners Act**.
- [5] The learned judge commenced his analysis of the case at paragraph 26 of the judgment by referring to sections 9, 10 and 42 of the **Coroners Act**.
- [6] In reverse order, section 42 provides that a coroner who refuses or neglects, without reasonable excuse, to hold an inquest or inquiry which it is his or her duty to hold, or to perform any duty which he or she is required by the Act to perform, shall be guilty of an offence and liable to a fine of \$5,000.

¹ Cap. 69, Act No. 10 of 1990, Revised Laws of Grenada.

- [7] Section 10 imposes a duty on the coroner to inquire into the cause of death of any person found dead in his or her district and, if necessary, to hold an inquest where there is reasonable cause to suspect that the death was caused by either accident or violence, or was sudden or unnatural from a cause that is unknown. The section gives the coroner the discretion to hold an inquest in circumstances which do not apply to the instant case.
- [8] Section 9 goes further than section 10 and plays a pivotal role in this matter. The section imposes a duty on the coroner to make inquiries and hold an inquest into the death of any person who dies in a place of confinement such as a prison or a police station as a result of accident, violence or a sudden death from an unknown cause. The section is headed “Inquiry into cause of death of persons confined in prison, lunatic asylum, etc.” and reads:
- “(1) The keeper or other person in charge of any prison, mental hospital, or other place of lawful detention, shall forthwith report to the Coroner of the district the death of any person confined in any such public institution.
- (2) It shall be the duty of the Coroner to inquire into the cause of every such death and, where there is reasonable cause to suspect that such death was occasioned by accident or violence, or in the case of a sudden death of which the cause is unknown, to hold an inquest.”
- [9] The section is worded in mandatory terms to ensure that when persons die in suspicious circumstances in institutions where they are confined a proper and transparent investigation is carried out in the form of coroner’s inquiry and inquest. Mr. Bartholomew died within hours of receiving injuries in a police station and it is not disputed that the provisions of section 9 apply to his death. The learned judge found that the section is mandatory and the coroner was duty bound to inquire into the cause of Mr. Bartholomew’s death and to conduct a coroner’s inquest. There is no appeal against this part of the judge’s decision.²
- [10] The learned judge went on to find that where there is a death in the circumstances that bring section 9 into play and the coroner must hold an inquest, the holding and completion of the inquest is a condition precedent to the institution of criminal proceedings by the DPP or the Commissioner against the person or persons

² Appellants’ skeleton arguments, para. 7.

suspected of having caused the death. It follows that the constitutional powers of the DPP to initiate criminal proceedings are suspended until after the completion of the coroner's inquest. The preferment of the manslaughter charges by the Commissioner was therefore premature as was the suspension of the respondents from duty and the reduction of their salaries. The judge therefore granted the respondents' claims, quashed the decision to charge them with the offence of manslaughter as being premature, prohibited the magistrate from holding the preliminary inquiry into the charges of manslaughter against the respondents, declared their suspension and reduction in salary to be premature and ordered their reinstatement with full salary effective 30th December 2011.³

The Appeal

[11] The appellants appealed against the orders contained in the judge's decision. They complained in their notices of appeal that the learned judge's findings outlined in the preceding paragraph were incorrect in law and in fact and relied on the following grounds of appeal:

- (a) The learned trial judge erred in holding that the power of the magistrate *qua* coroner under the **Coroners Act** had to be exercised before those imposed on the magistrate under sections 94, 95, 97, 98 and 99 of the **Criminal Procedure Code**⁴ (dealing with preliminary inquiries).
- (b) In the circumstances of this case, the order of certiorari (setting aside the decision to charge the respondents for manslaughter) had the effect of subjecting the DPP to a direction that is contrary to the provisions of section 71 of the **Grenada Constitution Order, 1973** ("the Constitution").
- (c) Further, and in the alternative if deemed necessary, the **Coroners Act** is an existing law which must be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of section 71 of the Constitution.

³ The judge's findings on these points are set out in paras. 42 to 44 of the judgment.

⁴ Cap. 72B, Act No. 38 of 1993, Revised Laws of Grenada.

The appellants seek orders setting aside orders and declarations made by the learned judge, a stay of those orders pending the determination of the appeal and that the respondents pay the appellants' costs of the appeal and in the court below.

Analysis – the Legislation

[12] The grounds of appeal overlap and can be reduced into a single issue: whether the DPP and/or the Commissioner had the power to charge the respondents with manslaughter before the hearing and completion of a coroner's inquest. Put another way, whether the power of the DPP and/or the Commissioner to initiate criminal proceedings is suspended pending the outcome of a coroner's inquiry when a person dies in circumstances that bring section 9 of the **Coroners Act** into play. The analysis of this issue requires considering three pieces of legislation, namely: section 9 of the **Coroners Act** which is set out in paragraph 8 above, section 78 of the **Police Act**⁵ and section 71 of the Constitution.

[13] Before considering the relevant provisions of the legislation, I should address a finding made by the judge in paragraph 43 of the judgment where he found as a fact that the decision to charge the respondents was that of the Commissioner. This is correct in the sense that the final decision to prefer a charge of manslaughter was made by the Commissioner by laying the charge in the Magistrate's Court. This initiated the charge and was followed by the preliminary inquiry. However, the evidence in this case is that the DPP reviewed the statements and reports into the death of Mr. Bartholomew and concluded that his death was unlawful.⁶ He then gave the police instructions to charge the respondents for the offence of manslaughter. The evidence goes further and shows that the DPP himself had personal conduct of the case and appeared on behalf of the prosecution from as early as 3rd January 2012 when the case was first called in the Magistrate's Court. He was a defendant in the proceedings in the High Court and he has personally appeared and participated in the High Court and the Court of Appeal proceedings. These circumstances suggest that even if the DPP did not, as a matter of fact, make the final decision to charge the respondents, the evidence is that the decision was made on his instructions and that he took over the conduct of the proceedings in the Magistrate's

⁵ Cap. 244, Act No. 8 of 2006, Revised Laws of Grenada

⁶ Record of Appeal vol. 1 tab 4 paras. 11 and 12; tab 18 paras. 11-13.

Court from as early as 3rd January 2012. I will therefore deal with this case on the premise that the DPP caused the charges to be laid against the respondents and then took over conduct of the proceedings on behalf of the prosecution from the first court proceeding on 3rd January 2012.

- [14] Returning to the legislation, the power of the Commissioner to lay charges against persons suspected of committing criminal offences is in section 78 of the **Police Act** which provides that:

“Notwithstanding anything to the contrary in the Criminal Procedure Code [...], it shall lawful for a police officer to lay any information or to make any complaint before a magistrate in the name of the Chief of Police, and every such information or complaint shall be signed by the police officer laying or making the same.”

- [15] The powers of the DPP to initiate, take over and discontinue criminal proceedings are set out in section 71 of the Constitution:

“(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power in any case in which he or she considers it desirable so to do –

- (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself, herself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions.”

- [16] The appellants submitted that the power of the DPP under the Constitution to initiate criminal proceedings in any case that the DPP sees fit remains unaffected by the provisions of the **Coroners Act**. They emphasised that the words “The Director of Public Prosecutions shall have power in any case” in section 71(2) mean what they say and the DPP has power in any case to initiate, take over, continue or discontinue any case, even a case where the coroner is under a mandatory duty to hold an

inquest as in section 9 of the **Coroners Act**. They further argued that the learned judge erred by conflating two separate matters, namely, the coroner's duty to hold an inquest in the circumstances of a death falling under section 9 of the **Coroners Act** and the power of the DPP and the Commissioner to initiate criminal prosecutions in any case. As a result, the learned judge concluded in paragraph 46 that having found that the coroner was duty bound to hold the inquest "...it naturally follows..." that the second issue and any tangential issues have also been determined. The appellants concluded that in approaching the matter this way the learned judge fell into error and his decision should be set aside.

[17] The respondents adopted and supported the findings of the learned judge and submitted further that there was no inconsistency or disharmony between the provisions of the three pieces of legislation being considered. The **Coroners Act** provides a mandatory scheme for dealing with deaths occurring in the special circumstances contemplated by section 9 of the Act. Both section 71 of the Constitution and section 78 of the **Police Act** deal with the more general power to initiate criminal prosecutions by the DPP and the Commissioner respectively. It is only in the limited circumstances contemplated by section 9 that the powers of the DPP and the Commissioner are suspended, and even then the suspension ends when the inquest is completed.

[18] I do not accept that the position is as simple as suggested by the respondents and I accept the appellants' submissions. I find that both the DPP and the Commissioner have the power to initiate criminal proceedings and there is nothing in the **Coroners Act** that postpones or takes away that right. If these officials have to await the outcome of a coroner's inquest before they can initiate criminal proceedings, it would be a restriction on their powers, and, in the case of the DPP, a breach of section 71 of the Constitution. The **Coroners Act** contains one of the two ways of initiating criminal proceedings in the case of a suspicious death of a person in custody. It does not shut out or postpone the alternative route of the Commissioner or the DPP exercising their independent power to initiate murder or manslaughter proceedings in the Magistrate's Court.

- [19] On this simple point of construction, I find that the learned judge erred when he decided that the preferment of criminal charges for manslaughter against the respondents by the Commissioner was premature and had to await the outcome of the mandatory inquest to be conducted by the coroner. The charges were not premature and were properly laid by the Commissioner.

Coroners Act - An Existing Law

- [20] The conclusion in the preceding paragraph is sufficient to dispose of the issue of the proper construction of the relationship between the Constitution and the **Coroners Act**. For completeness, I will also deal with a submission that was made by both parties that the **Coroners Act** was in force when the Constitution came into effect and the **Coroners Act** is therefore an existing law within the meaning of Schedule 2 of the Constitution and should be construed with such modifications as may be necessary to bring it into conformity with the Constitution.
- [21] The respondents submitted that as an existing law section 9 of the **Coroners Act** should be construed in conformity with section 71 of the Constitution by holding that it is only after the coroner has performed his mandatory function of holding the inquest that the DPP is free to launch his powers under section 71. The DPP's powers under section 71 are therefore left untrammelled.
- [22] The appellants also relied on the existing law provision but took it in the opposite direction. They included it in ground 3 of the notice of appeal and submitted in their written submissions that because the **Coroners Act** is an existing law the proper construction is to give section 9 its plain and ordinary meaning and not to read into the section an implied prohibition against the DPP bringing criminal proceedings where the coroner's duty under section 9 is engaged.
- [23] I think the appellants' argument on the existing law point is the more attractive and is also consistent with the findings in paragraph 19 above. The DPP's powers to initiate, take over and continue, or discontinue criminal proceedings at such times as the DPP sees fit are clearly defined in section 71 of the Constitution. The substance of the respondents' submission is that this Court is being invited to restrict the DPP's constitutional power to prosecute criminal offences by an existing law, namely,

section 9 of the **Coroners Act**. This would be an improper, if not contrary use of the existing law principle. Section 9 should not be construed by reading into the section a limit on the DPP's constitutional powers and the respondents' submission to this effect is rejected. If anything, the coroner's mandatory duty under section 9 should now be construed as being subject to the DPP's overarching constitutional power to control criminal proceedings.

- [24] My conclusions regarding the interpretation of the legislation can be tested by reference to a hypothetical situation. If a heinous murder is committed in circumstances that bring the case under section 9 of the **Coroners Act** and the police have compelling evidence that the murder was committed by X who is either a threat to the community, or a person with little or no ties to Grenada and likely to leave the country to avoid being prosecuted, in any of these situations the police should not have to stand by powerlessly while X continues to be a threat to the community or leaves the country to avoid prosecution. The DPP and the police should be able to charge X as soon as possible and deal with him as such and not have to await the outcome of an inquest as by this time X may have caused additional damage or left the state.

The Cases

- [25] The respondents relied on the decision of the Privy Council in **Commissioner of Police and another v Steadroy C. O. Benjamin**⁷ in support of their position that even though the powers of the DPP under section 71 of the Grenada Constitution are very wide they are not without limits. The issue before the Privy Council was whether the DPP in Antigua and Barbuda had the power to prevent the police from instituting criminal proceedings against the respondent, Mr. Steadroy Benjamin. The Board decided that the power given to the DPP under section 88(1)(a) of the Constitution of Antigua and Barbuda⁸ to initiate criminal proceedings did not allow him to prevent the police from exercising their own statutory powers under section 23 of the Police Act "[...] to prosecute persons ... whom they reasonably suspect of having committed any offence..."⁹ However, this is not the point in the instant appeal and the decision in the

⁷ [2014] UKPC 8.

Section 88(1) is the same as section 71(2) of the Grenada Constitution.

⁹ See paras. 1, 8 and 29 of their Lordships' judgment.

Steadroy Benjamin case supports the appellants' position that there is nothing in the **Coroners Act** that restricts the DPP and/or the Commissioner from charging the respondents with manslaughter in connection with the death of Mr. Bartholomew.

[26] The **Steadroy Benjamin** case also shows the Privy Council paying due regard to the principle of interpretation that the court should not read words into a statute (in **Steadroy Benjamin's** case, the Constitution) when the language of the statute is clear. At paragraph 25 of the judgment, Lord Wilson referred to the principle that the Constitution requires a generous interpretation to meet changing conditions, and continued by citing the passage at page 682 of the Board's judgment in **Attorney General of Fiji v Director of Public Prosecutions**: "But that [...] does not require the courts, when construing a constitution, to reject the plain ordinary meaning of words."¹⁰ In Grenada, the power to prevent the DPP and the Commissioner from commencing criminal proceedings was not included in the **Coroners Act** and that power should not be implied into the Act. Even if the power could be implied into section 9, it would be inconsistent with section 71 of the Constitution and to that extent would be void, or, as an existing law, would be required to be read with such modification so as to yield to the provisions of section 71 of the Constitution.¹¹

[27] The respondents also submitted that it could not have been the intention of Parliament that the DPP and the coroner could conduct concurrent proceedings regarding the death of the same person. This Court was not provided with any cases that support this point but we were directed to two cases that involved concurrent proceedings, namely the English case of **Re Cook**¹² and Canadian case of **George William Batary v AG for Saskatchewan et al.**¹³

[28] In **Re Cook**, a preliminary enquiry was ongoing against Mr. Daniel Cook ("Mr. Cook") for the murder of Hannah Moore ("Ms. Moore") when the coroner's jury inquiring into Ms. Moore's death wished Mr. Cook to attend the inquiry. The request for a writ of *habeas corpus* to compel his attendance was refused by the Queen's Bench Division.

¹⁰ [1983] 2 AC 672.

¹¹ See discussion in para. 24 above.

¹² (1845) 7 QB 653.

¹³ [1965] SCR 465.

- [29] In **Batary v AG of Saskatchewan**, the coroner's inquest was ongoing when the appellant and other persons were charged with the non-capital murder of the deceased. The coroner immediately closed the inquest but subsequently reopened it at the request of the Attorney General. On the fourth day of the reopened inquest counsel for the Crown stated his intention to call and examine the appellant and the other persons charged with the murder, all of whom had been subpoenaed to attend the inquest. The appellant challenged the subpoenas all the way to the Supreme Court of Canada which set aside the subpoenas mainly on the ground that a person charged with murder and awaiting trial could not be compelled to testify at an inquest into the death of the deceased person with whose murder he was charged.
- [30] These cases are not very helpful because they do not deal with the specific statutory provision in section 9 of the **Coroners Act** that is being considered in this appeal. However, they are noteworthy because in both cases no point was taken that there were concurrent proceedings in the Coroner's Court and the Magistrate's Court which suggests that whatever inconveniences may result from concurrent proceedings they are not enough to stay the preliminary inquiry until after the completion of the coroner's inquest.
- [31] How then is the apparent overlap between the **Coroners Act** and the Constitution to be resolved? The Constitution allows the DPP in an appropriate case to charge the respondents for manslaughter in the Magistrate's Court before or during the inquest. If he or she does so and the coroner suspends the inquest, the coroner would have a reasonable excuse for not proceeding with his or her mandatory duty under section 9. The answer, at least for the time being, is a matter of practice. As Lord Wilson reminded us in the **Steadroy Benjamin** case referring to the relationship between the police and the DPP: "The Director can generally be expected to have a wider perception than the police of whether, for example, a proposed prosecution is in the public interest."¹⁴ Similarly, I would expect the magistrate *qua* coroner to yield to the direction of the DPP in these situations. The ultimate solution to this apparent problem lies with Parliament to amend the **Coroners Act**, as was done in the United Kingdom in 1926 by the **Coroners (Amendment) Act, 1926**, to say that the coroner

¹⁴ Supra at para. 33.

must adjourn the inquest if someone has been charged for the murder, manslaughter or infanticide of the deceased.

Conclusion

[32] Having considered the evidence, the provisions of the relevant legislation, the authorities and the submissions of counsel, I am satisfied that the answer to the main issue in this appeal is that the DPP and the Commissioner had the power to charge the respondents with manslaughter before the inquest into the cause of death of Mr. Bartholomew. The laying of the charges against the respondents complied with the law and was not premature.

[33] I would make the following orders:

- (1) The appeal is allowed and the orders and declarations made by the learned judge in paragraphs 47, 48 and 49 of his judgment are set aside.
- (2) No order for costs in this Court and in the court below.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar