

THE PRINCIPAL AND THE HEAD GIRL - ST. HILDA'S HIGH SCHOOL.

THE PUBLIC DEFENDER'S REPORT

There has been much national media attention on the removal of 16 year old student from the Office of head girl at St. Hilda's. She was elevated to head girl and school captain and within days, her appointment was rescinded.

The Public Defender started an investigation because as far as she could decipher from media reports there was no adequate explanation as what caused the recession of the appointment.

The areas of focus are identified below:

1. What were the circumstances leading up to the appointment of the head girl and the circumstances leading to the rescission of the appointment?
2. Whose decision was it to have her removed from the office of head girl?
3. Whether she was removed from the office of head girl because she is a Jehovah Witness, is suspected to be a Jehovah Witness or is believed to be one?
4. Whether there is a policy at the St. Hilda's which excludes Jehovah Witnesses from holding the office of head girl.
5. Whether this 16 year old has suffered, is suffering or is likely to suffer an infringement of her constitutional rights as a result of the action(s) of the St. Hilda's High School and in particular whether her Charter rights were infringed?
6. Recommendations for a resolution.

CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

Of necessity the Public Defender is required to conduct this investigation using the Charter as the yardstick to measure whether the treatment of this 16 year old child resulted in any violation of her human rights. The discussion on the Charter is not intended to be exhaustive.

There were several significant features of the Charter of Fundamental Rights and Freedoms but of particular note is the fact that for the first time in our history Parliament made specific provisions for the protection and safeguarding of our children. The Charter guarantees:

'13 (k) the right of every child-

(i) to such measures of protection as are required by virtue of the status of being a minor or as part of the family, society and the State;'

This unique provision of the Charter recognizes the need for special constitutional protection for children.

Under the new dispensation Parliament sought to share the responsibility for the respect, observance and protection of human rights by creating layers of protection and responsibility.

By sections 13 (1) (b) and (c) Parliament created layers of protection for the respect and observance of human rights. It was no longer solely the responsibility of the state to protect and respect human rights. That responsibility was now shared with all of us.

In the first instance section 13 (1) (b) summons each one of us to claim our fundamental rights not only for ourselves but for the future generations of our families. Those rights referred to are our fundamental rights and freedoms to which we are entitled by virtue of our inherent dignity as persons and as citizens of Jamaica, a free and democratic society.

Section 13 (1) (c) provides yet another layer of protection in that it proscribes that all of us are under a responsibility to respect and uphold the rights of others, those rights being those contained in the Charter.

'13-(1) (c) all persons are under a responsibility to respect and uphold the rights of others recognized in this Chapter'

Parliament went further in its efforts to share the responsibility of what was once the state's duty when it included section **13 (5)** which states:

'A provision of this Chapter binds natural or juristic persons if, and to the extent that, it is applicable, taking account of the nature of the right and the nature of any duty imposed by the right.'

This provision seem plain that one private citizen can enforce against another private citizen, any Charter right being infringed within the language of the provision. This provision is of immeasurable importance in the protection of fundamental rights. How it is interpreted by our courts is left to be seen.

A constitution is **'a living document** 'to be given a liberal and purposeful interpretation provided that the words of the constitution are capable of supporting such an interpretation.

Lord Bingham in the case of *Reyes (Patrick) v R* (2002) 60 WIR 42 stated:

'As in the case of any other instrument, the court must begin its task of constitutional interpretation by carefully considering the language used in the Constitution. But it does not treat the language of the Constitution as if it were found in a will or a deed or a charterparty. A generous and purposive interpretation is to be given to constitutional provisions protecting human rights. The court has no licence to read its own predilections and moral values into the Constitution, but it is required to consider the substance of the fundamental right at issue and ensure contemporary protection of that right in the light of evolving standards of decency that mark the progress of a maturing society.'

The Charter rights engaged in this investigation include:

13 (3) (b) the right to freedom of thought, conscience, belief and observance of political doctrines;

13 (3) (h) the right to equitable and humane treatment by any public authority in the exercise of any function;

13 (3) (i)

The right to freedom from discrimination on the ground of-

(i) ...

(ii) race, place of origin, social class, colour, religion or political opinions;

JURISDICTION OF THE PUBLIC DEFENDER

The actions which the Public Defender may investigate include any situation where she is of the opinion that a citizen 'has **suffered, is suffering or is likely to suffer an infringement of his constitutional rights as a result of any action taken by an authority or an officer or member of that authority.**'

'*Authority*' as defined in the Public Defender (Interim) Act includes an institution like St. Hilda's High School which benefits from GOJ subventions. It is a Church school operation by the Anglican Diocese of Jamaica.

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This investigation is conducted pursuant to the terms of section 17 of the Public Defender (Interim Act) 2000. The section 17 provision enables the Public Defender to solicit the assistance of any officer or member of an authority or any other person who in the Public Defender's opinion is able to '**... give any assistance in relation to the investigation of any matter, to furnish such information and produce any document...**'

The Public Defender interviewed the child's mother, the child, the Principal of St. Hilda's High School and the Chairman of the Board. The Principal attended with Counsel Mr. Crafton Miller.

The Principal of the St. Hilda's High School was not summoned nor was the Chairman of the Board. Both were invited by the Public Defender to attend at the OPD on October 14. The Principal on the advice of her attorney-at-law did not give evidence on oath, but engaged in conversation and was subject to questioning, though towards the end of the interview she complained that she was being cross examined. Verbatim notes were taken of the conversation. It was actually in the interview with the Principal that the Chairman of the School Board arrived. This was in keeping with his scheduled appointment for 1:00 pm with the Public Defender.

It is to note that the guidance counselor was not interviewed. Any reference to her is a direct result of what was said by the Principal.

THE FACTS BELOW ARE DERIVED FROM THE INTERVIEW WITH THE PRINCIPAL

1. The now 16 year old entered St. Hilda's in Grade 7 having passed her GSAT Examination from Columbus Preparatory School.
2. It is accepted by the Principal that the child is an exemplary student and on that basis was appointed head girl. Also accepted by the Principal is that the child met all the requirements set out in the School's handbook for appointment to the top leadership office in the student population.
3. The Principal confirmed that the child had previously served in other leadership positions such as Form Captain, Student Council Representative and there was no complaint whatever of her in the performance of her duties while holding office. The principal was unclear of her involvement in the Debating Society and the 4 H Club.
4. As the Principal explained, the child's appointment to the Office of head girl was announced by the Principal to the school on Monday, September 21,

2015. The occasion of the announcement was morning Assembly when the full student population of approximately 950 girls and teaching staff gathered for devotion. The Principal also announced the 15 girls selected to form the Student Government of the School.

5. The rest of September 21, 2015 was uneventful. After devotion the girls dispersed to their respective classes.
6. On September 22, 2015 there was devotion for the upper school of Grades 10-11. The newly appointed head girl was present and was required to offer the vote of thanks to the Guidance Counselor who conducted devotion.
7. The Principal told us she, the Principal was not present.
8. At the end of devotion the Guidance Counselor reported to the Principal that she **'wondered'** about the head girl's religious denomination. At that time the Principal told us that she did not know head girl's denomination.
9. Whatever the Guidance Counselor told the Principal was sufficient to warrant the Principal and the Guidance Counselor, together to attend at the General Office, where the head girl's file was located. On the file was the application form completed by her mother for entry to St. Hilda's which disclosed that the head girl's religious denomination was Jehovah Witness.
10. In trying to find out exactly what the head girl had said at devotion on the morning of September 22, to cause the **'wonder'** the Principal reported that which was communicated to her by the Guidance Counselor.
11. The Principal explained that the head girl was required to offer the vote of thanks to the Guidance Counselor who conducted the devotion. In so doing the head girl spoke of Jehovah '.....saying something about what he can do for them.....' The Principal explained further that it was customary for the

student presenting the vote of thanks to highlight some aspect of the devotion.

12. Once the head girl's file was located and the discovery made that her religious denomination was Jehovah Witness, the Principal summoned her to the Principal's office.

13. The Principal's secretary was invited to be present. It was in this meeting that the Principal questioned the head girl and asked her straight up what was her religious denomination. The Principal pointed out to her that on her file it was stated that her religious denomination was Jehovah Witness. The Principal stated that the head girl expressed surprise. According to the Principal the head girl admitted that she visits Kingdom Hall but explained that she was on a spiritual journey.

14. When specifically asked as to the reasons for Jehovah Witnesses non participation in leadership roles the head girl explained to the Principal and her secretary, that in Kingdom Hall " ... **we are told that we are not to go for leadership positions because what you and other churches do is satanic.**"

15. The Principal found that the use of the word '**we**' by the head girl convinced her that the head girl had embraced the teachings of the Jehovah Witness faith.

16. The Principal enquired of the head girl whether she could discharge her duties as head girl and whether there would be any conflict of interest. The head girl, it is said paused before answering each question but to each question the head girl stated that she could in fact perform all civic duties required of the office of head girl.

17. At the close of the meeting the Principal advised the child that the conversation was not over, she should sleep on it, the possible conflict, and

the conversation would continue tomorrow. The Principal however warned **“this is not going to happen.”**

18. When asked what did **“this is not going to happen’** mean the Principal explained that what she conveyed to the child was that her appointment would be rescinded.

19. On September 23 2015 the child was advised by the Principal that she was no longer the Head Girl and no longer House Captain.

20. The Principal explained that once a student is a Jehovah Witness that student is automatically excluded and disqualified from becoming head girl and from holding other leadership positions at St. Hilda’s. If a student is Anglican, Roman Catholic, Methodist, Seventh Day Adventist or Baptist such girls can become head girls but not Jehovah Witnesses. The principal explained that in the past it was her experience that persons of that faith do not participate in civic activities and a head girl is required to participate in such activities.

21. The Principal was unequivocal in expressing that being a Jehovah Witness disqualifies any girl from becoming the head girl and holding leadership positions. The Principal went further to state that the exclusion of Jehovah Witnesses from such positions was a policy of the School.

22. The Chairman of the School Board disagreed. He denied that there was any such policy at the school and expressed a contrary view.

23. There was no disciplinary proceeding brought against this student. There was no complainant against her that in the past she had refused to participate in civic activities.

24. Her fate rested with the Principal who appointed her and rescinded the appointment. Her rise and fall occurred within no more than 36 hours. Her transgressions included her mother describing her religious denomination as

Jehovah Witness four years previously when she entered the school and her vote of thanks which was received with suspicion.

POSSIBLE RESOLUTION

1. When the Public Defender sought to get a commitment from the Principal that no appointment would be made to fill the Office until this matter was resolved, the Principal was non committed. When pressed on this specific issue against the background of her power to appoint and to rescind appointments, the Principal said now that the matter had developed to the stage where the situation had spiraled out of her control, such an appointment was now out of her hands.
2. The Chairman of the Board said that it was a matter over which the Principal had authority but because of the widespread media exposure it would be wise for her not to make any decision at this time but that the Board will convene to consider the entire case.
3. The Chairman acceded to the Public Defender's request to bring the Board meeting originally scheduled for October 28 forward and he would communicate to this Office the new date of the meeting. At this meeting the Chairman promised that the child and her mother would be represented.
4. On Friday, October 16 2015 the Chairman telephoned the Public Defender and confirmed that the Board meeting will take place on Thursday October 22.
5. The Principal in responding to whether there could be a resolution of the matter with the child being reappointed offered that her conduct had become a matter of concern. According to the Principal she had become disrespectful.

6. The Chairman appreciated that this alleged disrespectful behavior was a direct response by the child to a dreadfully humiliating situation which had suddenly befallen her: a situation over which she had no control nor had she contributed in anyway whatsoever to it.
7. No commitment was given by the Principal, instead she informed that a decision was already taken by herself and the teachers to promote the deputy to the post of head girl.

PUBLIC DEFENDER'S FINDING

1. The sixteen year old who was appointed head girl is an exemplary student, a role model who satisfied every standard of the school to be appointed head girl. Her history of participation in school life, the performance of civic duties evidences the fact that on entering entered St. Hilda's she became a full citizen of that institution.
2. Her appointment to the office of head girl was merit- based as also her other appointments to leadership positions.
3. The child's participation in school activities was unquestioned until the Guidance Counselor reportedly 'wondered' about her religious denomination on the morning of September 22, 2015.
4. The exclusion / disqualification of girls from leadership positions based on their denomination is a discriminatory practice and has no place in our schools and no place in our democracy. In the result whether the child is on a spiritual journey, expressed surprise as to the description of her denomination on her file or is or is not a Jehovah Witness is of no moment.

5. The child was stripped of her office as head girl and House Captain because her mother described her religious denomination as Jehovah Witness and because the Principal was not satisfied with her answers in the meeting and not as a result of any failure to perform any duties.
6. Within 24 hours of her appointment as head girl after her file was located the Principal told Jade **'this was not going to happen'** which meant that the appointment was to be rescinded.
7. This Commission of Parliament recommends that in the context of this case and in others, parents are to be called in. A child should not be subjected to an interview with the Principal and the Principal's secretary, two persons in authority over her.
8. Such an interview was uncaring of the child. Furthermore, a Principal does not have any right to question a child about her religious denomination, she overstepped her authority.
9. Under the Charter of Fundamental Rights and Freedoms all religions, all denominations are equal, they stand on equal footing.
10. To believe that in today's Jamaica the act of stripping a girl of her office by virtue of her religious denomination without public outcry is impalpable. To strip this child of her office because of her religious denomination, real or perceived, is unjust and a violation of constitutionally protected rights.
11. Not only were several of her Charter rights violated, the Public Defender expresses concern as to how this young girl was treated by the Principal and has concluded that the treatment was uncaring by the Principal who continues to believe it is acceptable and within her authority to disqualify some girls from holding office because of their religious denomination and who continues to believe it is within her authority as Principal to question girls about their denomination without the consent of parents or guardians.

12. The Public Defender is concerned as to the impact this event and its sequel has on the child. The Principal in our interview alleged misbehavior on the child's part without one scintilla of accepting responsibility or some responsibility for the alleged new behaviour.
13. This child was not treated in a humane manner and no allowance given by the Principal to the child's age appropriate reaction to the emotional hurt heaped on her, she having done nothing to incur the humiliation and embarrassment caused by the Principal's action founded in raw discriminatory practice.
14. It is the Public Defender's finding of fact and law that this child was treated in a discriminatory manner by virtue of her religious denomination and association with Kingdom Hall.
15. The Public Defender finds that the Principal appointed and rescinded the child's appointments.
16. It is the Public Defender's finding that the School Board took no part in the appointment and rescission, as this is regarded as part of the day to day management of the school.
17. The Public Defender finds as a fact that neither the school nor the Church has any policy of discrimination whatsoever.
18. The actions of the Principal infringed the child's Charter rights. Those actions were solely of the Principal.

RECOMMENDATIONS

1. That the child be restored to the office of Head Girl and School Captain.
2. That the School Board meets and makes the appointment

3. That there be a guarantee by the Board, the Principal and school that there be no further acts of discrimination or retribution taken against the child on her reappointment.
4. That acts of discrimination by virtue of religious denomination be investigated by the School Board.

ARLENE HARRISON HENRY

PUBLIC DEFENDER

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