

*Privy Council Appeal No. 2 of 1999*

(1) John Benjamin  
(2) Mildred Vanterpool and  
(3) Sidney Gumbs

*Appellants*

v.

(1) The Honourable Minister of Information and  
Broadcasting and  
(2) The Attorney General for Anguilla

*Respondents*

FROM

**THE COURT OF APPEAL OF ANGUILLA**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

Delivered the 14th of February 2001

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*Present at the hearing:-*

Lord Slynn of Hadley  
Lord Nicholls of Birkenhead  
Lord Nolan  
Lord Cooke of Thorndon  
Lord Clyde

*[Delivered by Lord Slynn of Hadley]*

1. Radio Anguilla is a Radio Station owned by the Government of Anguilla and run by a non-statutory department of government within the responsibility of the Minister of Information and Broadcasting. It is the only secular radio station broadcasting throughout Anguilla, the other station being a privately owned station concerned with religious matters.

2. In 1994 a radio programme was instituted called "TALK YOUR MIND" which enabled members of the public to telephone their comments as part of the programme. Mr Benjamin, a lawyer and an active member of the community who had experience of producing a radio programme, was appointed to host the programme on the condition that he was responsible for its format and for obtaining sponsorship. This arrangement was made at the

instance of the Director of Broadcasting and with the approval of four Ministers of the coalition government formed in 1994, following undertakings by the political parties in the coalition to free broadcasting. The programme first went out on 19th October 1994 and was it seems a great success. Issues of wide importance to the public were ventilated and government ministers took part in the discussion. But by 1996 there was much criticism of the government during the programme and in July 1996 the Minister of Information and Broadcasting suggested that the programme should be changed to one with discussion panels but no phone-in participation by the public. Mr Benjamin considered this an interference with the public's right to freedom of expression and was unwilling to change the format which he personally arranged and paid for. The programme was then closed down which led to widespread criticism, indeed anger, on the part of the public. Subsequently, on 23rd October 1996, the programme was reinstated with the Minister of Information and Broadcasting as guest speaker.

3. On 16th July 1997, during the programme, a question was raised by a caller as to the legality and propriety of the national lottery which had recently been set up. Mr Benjamin expressed the view that the lottery was not appropriate for Anguilla and said that it had been turned down by the House of Assembly. Indeed he said that in his view it was illegal. A Mr Todd Washington, the Vice President of the Anguilla Lottery and Gaming Company Limited, also spoke to put his views. The next day Mr Washington asked for equal time to respond to the criticisms made in the programme but by letter dated 17th July 1997, he gave notice of the company's intention to sue Radio Anguilla and Mr Benjamin "for defamation, malicious intent to injure and destroy the economic interests of the Company in Anguilla and for other serious tortious actions".

4. The government then without discussing the matter with Mr Benjamin suspended "TALK YOUR MIND". The appellants applied to the High Court and, by their amended notion of motion, sought a declaration that the suspension of the programme was "a contravention, active suppression and abridgement of the First-named Applicant's rights to freedom of thought, freedom of expression and freedom from discrimination as guaranteed by sections 1, 10, 11, 13 and enshrined by sections 10, 11, 13 and 16 of the Constitution of Anguilla in that:-

- “(a) *It constitutes a refusal by the Respondents to allow further debate of the issue of the lottery through the medium which has the widest and most effective broadcast dimension in Anguilla.*
- (b) *It constitutes in relation to the Applicants a refusal by the Respondents to allow the Applicants access to the medium which has the widest and most effective broadcast dimension for the debate on matters of community concern.*
- (c) *It is discriminatory in effect of the Applicants in the exercise of their right to freedom of thought and expression”.*

5. The Applicants also asked for a declaration that suspending the programme infringed the Applicants’ rights to freedom of thought and of expression; that it was in breach of the First Applicant’s legitimate expectation that the programme would continue for the benefit of himself and the Community so long as the social need required it; that the State so operates and controls the radio station that the Applicants’ access to the public broadcast is governed by the arbitrary decisions of the Minister and the Applicants’ rights to freedom of expression were or were likely to be contravened. They further sought a declaration that the Respondents discriminated against the First Applicant and that the decision of the Minister with respect to the Applicants’ access to the radio and to the freedom of expression of views on the lottery constituted a contravention of the rights of the Applicants to freedom of thought, freedom of expression to express political views and to freedom of expression in general. As a consequence, the decision, with respect to the suspension of the programme, was void and damages should be paid to the First Applicant.

6. The Second Applicant is a Belonger by birth to Anguilla and a resident there. She had been a regular listener and contributor to the discussions in “TALK YOUR MIND” which in her affidavit she says in her neighbourhood “has developed as a necessary part of life, a means of expressing and airing our concerns and of knitting the Community together”. She passed on the concerns of her Community as to matters of public interest, so that they could be aired. She says that “since June 1997, a large part of the Community has been outraged by the introduction of the New Lottery in Anguilla ... ”.

7. The Third Applicant in his affidavit describes himself as “a regular member of the wide listening audience of the programme”. He regularly contributed to the programme and used it “as an opportunity to express my views and ideas of prevailing circumstances in Anguilla” discussing the issues raised with other members of his Community.

8. The Constitution of Anguilla provides as follows.

### Chapter I

#### “Protection of fundamental Rights and Freedoms

1. “Whereas every person in Anguilla is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely...(a) (b) (c)... the subsequent provisions of this chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms...

#### Protection of freedom of conscience

- 10-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion ...

#### Protection of freedom of expression

- 11-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this

section to the extent that the law in question makes provision -

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, telegraphy, posts, wireless, broadcasting or television; or
- (c) that imposes restrictions upon public officers:

11. Provided that the provision or, as the case may be, the thing done under the authority thereof is shown to be reasonably justifiable in a democratic society.

#### Enforcement of protective provisions

16-(1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, or is being, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.”

9. Section 13 provides for protection from discrimination on the grounds set out.

## The Trial Judge

10. Saunders J. held that the Minister's decision to suspend the programme on 19th July 1997 was a contravention of the Applicants' rights to freedom of expression guaranteed and enshrined in the Constitution and protected by section 11. He accepted that the idea of the programme came from Mr Benjamin who was Chairman of the Anguilla Democratic Party (ADP), one of the two Parties in the coalition government. Mr Benjamin's idea was that the programme would fulfil a promise of open government made by the ADP and would allow people to express their views on matters of concern to the Community. The judge said "the Ministers of Government, flushed with victory at the polls, welcomed the idea. Already, at the level of Executive Council, they told Mr Benjamin, they had collectively made a commitment to uphold freedom of the Press and of Expression". At the time that it began "TALK YOUR MIND" was the only interactive programme on Radio Anguilla. It gave a chance for frank discussion on topics of the day and though Mr Benjamin did not censor the discussion he "as host, tolerated no abuse, defamation or personal attacks".

11. Following criticism of the Government, the Minister wished to have the open, interactive aspect discontinued. Sanders J. quoted from Mr Benjamin's affidavit (the veracity of which he said was unchallenged):-

".....the First-Named Respondent expressed the view that since the radio station is a Government station the programme should be slanted to promote the government of the day. To that I respectfully expressed my disagreement and pointed out that the view was not in keeping with good journalism and his pre-administration expression of opinion that the radio station should be 'freed up' for open access and discussion".

12. After the reaction to the first closure the Minister gave to Mr Benjamin "a verbal assurance that...[he]... would not seek to interfere with the programme further and that it would be maintained in its [original] format" and in the revised programme the Chief Minister said:-

"As far as....TALK YOUR MIND going off the air is concerned, it was ill conceived, a lot of people misunderstood exactly what happened and therefore we have proved tonight that TALK YOUR MIND has not been abolished. It was never intended to be

abolished. It was never intended to be stopped for that matter”.

13. Whether or not the lottery should operate in Anguilla was a very controversial issue. On 25th July 1997 the Chief Minister “gave an undertaking that the lottery would have to be closed since the Church and the community were strongly opposed to it” though other Ministers and politicians were apparently in favour. The judge found that the discussion on 16th July was conducted in a polite way even if at times quite heated and that Mr Washington was allotted ample time to put his point of view. Subsequent to the latter’s threatening to sue and the decision to suspend ‘TALK YOUR MIND’, a decision taken without any consultation with Mr Benjamin and without his having the chance to respond to the threat of litigation, Mr Washington said to the Director of Broadcasting that he was pleased with the Government’s prompt and decisive action and that he would not sue.

14. Subsequently Mr Benjamin sought to have one of the privately owned stations carry the programme but the manager declined to do so on the basis that the station operated under a licence from the Government of Anguilla and he would not wish to have his licence revoked. He despatched to THE LIGHT newspaper, material containing his views but the Editor of that newspaper declined to publish the same. (Mr Benjamin’s affidavit of 16th September 1997 para. 53).

15. The judge rejected arguments that the second and third Appellants were trying to bring a representative action on behalf of the Community which was impermissible. On the basis of the statements in *The Attorney General v. Payne* (1982) 30 W.I.R. 88 and *Reg. v. Greater London Council Ex Parte Blackburn* [1976] I.W.L.R. 550 he concluded:-

“The receipt of ideas via the mass media necessarily has a social character attached to it. If there is an interference by the State with the conveyance of such ideas, I cannot see that an affected individual should be left without a remedy merely because hundreds of thousands of fellow citizens are simultaneously hindered in their enjoyment of that right. Any such citizen may come to the court to have his or her rights vindicated”.

16. Saunders J. further rejected the argument that as Mr Benjamin was only a licensee with a privilege to be on the radio,

he could not bring proceedings claiming that he was denied natural justice in not being able to deal with the allegedly defamatory remarks on the basis of which the programme was suspended. Moreover he rejected the Attorney General's argument that the proceedings should not have been by a constitutional motion but by an application for judicial review.

His conclusion was:-

“In this case there can hardly be any doubt that TALK YOUR MIND was a programme on Government owned property that was ‘dedicated to public expression’. I have no hesitation in finding that via TALK YOUR MIND the Applicants were enjoying their right ‘to hold opinions and to receive and impart ideas and information’.

The decision to suspend the programme directly trenched on those rights. It was calculated so to do. The fact that this was a purely executive act and not a legislative one is of no moment. The executive branch of Government also has an obligation scrupulously to refrain from infringing individual fundamental rights. In my view the Minister's decision was an interference with the fundamental rights of the Applicants.”

17. The decision to suspend the programme “and thereby interfere with people's rights to express themselves” was unreasonable and unjustified. It was, moreover, disproportionate since even if there were grounds for excluding a discussion about the lottery it would have been sufficient to exclude that. Even in regard to the lottery there was no assessment as to how serious was the threat to sue nor was there any inquiry as to the legality of the lottery.

18. Although it was unnecessary to decide the point, in view of his conclusion on Section 11, Saunders J. concluded that both the first and the second Applicants had a legitimate expectation that the programme would continue with Mr Benjamin as host unless there was some overriding public interest or national basis for the suspension. He made no finding as to whether there was a breach of section 10 of the Constitution and he rejected the contention that the Applicants had shown that they had been treated in a discriminatory manner.

19. He ordered that Mr Benjamin should have damages to be assessed by a judge in Chambers and that those damages be paid by the Minister.

### The Court of Appeal

20. The Minister and the Attorney General appealed on the basis (1) that no constitutional issue was at the heart of the case and that there was purely a challenge to the exercise of administrative discretion and (2) that Mr Benjamin had no fundamental right or legitimate expectation to host the programme. The second and third respondents had no fundamental right to listen to or participate in the programme.

21. The Court of Appeal allowed the appeal and set aside the judge's order.

22. Before the Court of Appeal, the essential argument was on the one side that the government was under no constitutional obligation to provide a platform for Mr Benjamin to express his views; on the other side that even if "the government may not be obligated to take positive action in providing the citizen with a platform to express his opinion but, when, as in this case, the government does provide one it cannot arbitrarily or discriminately withdraw that means".

23. The court rejected the argument that a radio station is a public place where there was a right to express views – on the contrary it was "property which is not by tradition or designation a forum for public communication." It was not a place "traditionally associated with or resembling sites where all persons have a right to express their views by any means at their disposal": *Committee for the Commonwealth of Canada v. Canada* (1991) 77 D.L.R. (4<sup>th</sup>) 385.

24. After considering that case and a number of other Canadian and American cases (e.g. *Perry Education Association v. Perry Local Educators' Association* (1983) 460 U.S. 37 and *Haig v. Canada* (1993) 105 DLR (4th) 577, Redhead J. A., with whom the other judges concurred, said;-

"I agree and I hold that freedom of expression and thought are fundamental rights. In fact I would say that they are sacrosanct. They must not be interfered with and must be protected and jealously guarded. However, under the Anguilla Constitution, in my judgment, the right to freedom of expression does not

place a positive obligation on the government to provide a means for exercising that fundamental right”.

He concluded that:-

“I cannot interpret the Constitution to mean that freedom of expression to the Anguillan gives every Anguillan a free right of access to the public medium the radio. If I were to so hold, in my view it would be a recipe for chaos. By extension of logic, therefore, Mr John Benjamin has no right to free access to media to express his views, opinion or thoughts. He was therefore granted a licence by the Minister of Information ‘a forum for and encouraged expression’. This licence in my view was revoked by Administrative decision”.

25. He held that there was no evidence that an express promise had been made to Mr Benjamin that he would be kept on the programme as host. None of the Appellants could rely on a legitimate expectation. He thus rejected the claim that there was either a fundamental right or a legitimate expectation.

26. On this appeal the government relies principally on two points. The first is that a radio programme is not in any event a public forum for communication nor (to adopt the words used in *Perry Education Association v. Perry Local Educators’ Association* (supra) is it property which is “by tradition or designation a forum for public communication”; the second is that Mr Benjamin did not have a right to broadcast but only a licence to host this programme which could be terminated at any time.

27. It seems to their Lordships, however, that the question here is not whether a person has a general right to time to express his views on radio or television. Their Lordships are prepared to assume for present purposes that he does not, any more than that he has a general right to have a letter published in a newspaper. Nor is the question here whether there was any breach of a contract or licence when the programme was closed down. Again in the absence of any evidence of a specific contract to give an unlimited right to continue the programme, or a right to continue it for a specific period or on specific conditions which have been fulfilled, their Lordships are prepared to assume that there is here no specific right under a contract or licence. These two

assumptions do not, however, conclude the matter. The question remains whether the existence of a contract or licence to broadcast or of a general right to broadcast are necessary conditions before the contravention of Section 11 of the Constitution can be established.

28. Section 11 (1) of the Constitution, the principal section in issue, provides, subject to the derogations in subsection (2), that no person shall be “hindered” in the enjoyment of his freedom of expression, which includes the freedom to “receive and impart ideas and information without interference, and freedom from interference with ... other means of communication”. These sections of the Constitution must be read in the light of the judgment of the Privy Council in *Minister of Home Affairs v. Fisher* [1980] AC.319 where Lord Wilberforce said at page 329:-

“Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms with a statement of which the Constitution commences.”

29. Lord Wilberforce said at page 328:-

“These antecedents, and the form of Chapter I itself, call for a generous interpretation avoiding what has been called ‘the austerity of tabulated legalism’, suitable to give to individuals the full measure of the fundamental rights and freedoms referred to.”

30. In *Attorney-General of The Gambia v. Momodou Jobe* [1984] AC 689 at 700H Lord Diplock said:

“A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled, is to be given a generous and purposive construction.”

31. Their Lordships are of the opinion that circumstances may exist where freedom of speech, as the judge stressed the basis of

democracy, may be hindered within the meaning of section 11 (1) where there is no contractual and no absolute generalised right to speak in the way in which the individual wishes to express his views. In *X and the Association of Z v. United Kingdom* (1971) 38CD86 (Application No. 4575/26 Decision of 12th July 1971) the European Human Rights Commission, having said at page 88 that article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd. 8969) could not be taken to include “a general and unfettered right for any private citizen or organisation to have access to broadcasting time on radio and television in order to forward its opinion” went on:-

“On the other hand, the Commission considers that the denial of broadcasting time to one or more specific groups or persons may, in particular circumstances, raise an issue under Article 10 alone or in conjunction with Article 14 of the Convention.”

32. There are obviously limits to the exercise of this freedom even without a law falling within section 11 (2) of the Constitution. Thus no one has a right in all circumstances to insist on holding a meeting in another individual’s house or in the middle of a highway in a way which impedes traffic or to use language intended to stir up violence or a breach of the peace. But the circumstances of each case have to be looked at.

33. Whether it was legal and whether it was proper to have a lottery in Anguilla raised questions of serious public concern and controversy. In regard to the present programme it is said that the discussion of this topic was not launched by Mr Benjamin but was opened by a caller. This in form is true though it seems from the transcript that Mr Washington had been alerted to the fact that the subject was to be raised. On the transcript of the broadcast he began by saying:-

“I want to first thank Radio Anguilla for giving me the opportunity tonight maybe to clear up some of the questions and controversy that I have been hearing on the information as well as some of the misinformation that I have been hearing”.

34. What is more important is that it seems clear as the judge found that Mr Washington was more than willing to take part in the public discussion and was given adequate time to speak. He went on:-

“I could arrange for [my father] to come on and for us to answer questions and to have a discussion with you, to give us some time to prepare and to really allow us to come on the air ...

If you would like for me to stay on the line and discuss other relevant issues I would be happy to do so.”

35. This in itself reveals the importance both of the topic and the desire of people to have a public debate on what was either the only way or the most effective way open to the whole community.

36. As the judge put it:-

“In my view, a government owned radio station is a suitable and convenient medium for fostering and promoting free expression under the Constitution, subject of course, to reasonable limitations for the rights of others and the interest of the public....the government was deliberately affording the means for a greater exercise by the people of their rights under section 11 of the Constitution”.

37. The provisions of the International Covenant on Civil and Political Rights 1977 (Cmd. 6702) and the European Convention for the Protection of Human Rights and Fundamental Freedoms have been relied on by the Appellants. They show that the fundamental rights and freedoms set out in the Anguilla Constitution are widely recognised and enforced. The importance of freedom of expression has also been underlined in many decisions of courts of the Commonwealth and of the Privy Council. Their Lordships have been provided with a large number of reports of cases decided under these Conventions and under Constitutions of Commonwealth countries. They refer only to a few by way of example.

38. Thus, in *Lingens v. Austria* (1986) 8 EHRR 407, the European Court of Human Rights recalled in paragraph 41 at page 418:-

“that freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2, it is applicable not only to ‘information’ or ‘ideas’

that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.

39. See also *Oberschlick v. Austria* (1991) 19 EHHR 389 where it was said in paragraph 31:

“the Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance. Whilst the press must not overstep the bounds set, inter alia, in the interests of “the protection of the reputation and rights of others”, it is nevertheless..... to impart information and ideas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”. Although formulated primarily with regard to the print media, these principles doubtless apply also to the audio-visual media.”

40. See also in *Informationsverein Lentia v. Austria* (1993) 17 EHRR 93 and *Handyside v. United Kingdom* (1976) 1 EHRR 737.

41. So far as cases from the Commonwealth are concerned, their Lordships refer in particular to *Hector v. Attorney General of Antigua and Barbuda* [1990] 2AC 312; *Rajagopal v. State of Tamil Nadu* [1995] 3 LRC 566; *Belize Broadcasting Authority v. Courtenay* [1988] L.R.C. (Const.) 276.

42. In *Rangarajan v. Jagjivan Ram* [1990] LRC (Const) 412 Shetty J said at page 424:-

“Democracy is a government by the people via open discussion. The democratic form of government itself demands of its citizens an active and intelligent participation in the affairs of the community. The public discussion with people’s participation is a basic feature and a rational price of democracy which distinguishes it from all other forms of government.”

43. Reference was made to Application No. 3951/98 *McGuinness v. United Kingdom* (unreported), 8th June 1999 Application No. 3951 of 1998 E.C.H.R. where the applicant had been refused access to facilities of the House of Commons because he had not taken the oath. It was said that he could have expressed his views elsewhere. That however is a very different case and the dictum of the Commission on Admissibility is not to be taken as of general application. It is no answer to a case like the present that Mr Benjamin could have discussed matters elsewhere.

44. *Fernando v. Sri Lanka Broadcasting Corporation* (1996) 1 BHRC 104 is nearer to the present case. There a series of broadcasts on topics of public interest was planned which included discussion by specially invited experts but also by listeners on dedicated telephone lines. Mr Fernando had participated in these discussions. Following criticisms of government ministers, the service virtually came to an end and when it was performed the broadcasts included little or no listener participation.

45. The Constitution of Sri Lanka provides in Article 14 (1) that “every citizen is entitled to – (a) the freedom of speech and expression including publication”. After a review of many cases, in some of which it was considered that freedom of speech implied a reciprocal right to receive information, the Supreme Court of Sri Lanka rejected the contention that the right to freedom of information simpliciter is included in the right to freedom of speech and expression. The right to receive information was in Article 10 of the Constitution that “every person is entitled to freedom of thought” which was the corollary of freedom of speech. Fernando J. with whom the other two judges agreed said at page 118:-

“However, I have no hesitation in holding that the freedom of speech of the petitioner, qua participatory listener, has been infringed, because the stoppage of the NFEP prevented further participation by him. He was thus in the same position as the contributor of a column in *Visuvalingam* and the plaintiff in *Lamont*”.

46. There may be differences between the form of the broadcast in that case and the present and a difference in that the programme was part of a long series in Sri Lanka which was stopped or changed. Their Lordships do not consider that the present case is

significantly different in that regard since “TALK YOUR MIND” was a regular programme which no one suggested needed to be stopped because it had run its course.

47. In *Cable and Wireless (Dominica) Limited v. Marpin Telecoms & Broadcasting Company Limited* (Judgment 30th October 2000) it was accepted by the Board that “interference with the provision of a telecommunications service, such as that provided by Marpin, can amount to interfering with the freedom of expression of those who would wish to use that service”.

48. Further in *Olivier v. Buttigieg* [1967] 1AC 115, following the condemnation by the Archbishop of Malta of a weekly newspaper the ‘Voice of Malta’, the Chief Government Medical Officer decreed that the entry into hospitals and branches of his department of newspapers condemned by the church authorities was “strictly forbidden”. Upholding the decision of the Court of Appeal of Malta their Lordships’ Board decided that on the basis of the provisions of section 14 of the Constitution (whose terms so far as relevant are similar to those in Anguilla) even if the prohibition did not “prevent” the editor from imparting ideas and information yet it quite plainly “hindered” him in so doing and was an interference. In the judgment delivered by Lord Morris of Borth-y-Gest it was said at page 135:-

“Indeed it seems difficult to avoid the conclusion that the very purpose and intention of the prohibition was to hinder such imparting. The prohibition was imposed in order to aid the condemnation of the church authorities. In submissions to their Lordships it was contended that the prohibition did not prevent government employees from buying and possessing and reading the ‘Voice of Malta’ at all such times as would not involve their having a copy in their possession while on government premises. Nor did it. But that is merely to say that the most that the Minister thought that he could do was not effective to prevent government employees from reading the ‘Voice of Malta’ if any of them were determined to do so”.

49. It seems to their Lordships that the motive of the government in closing the programme in the present case is a relevant factor in deciding whether there was a contravention of section 11. This is not a case where the government, as owners of the radio station, felt that the programme had ceased to have

sufficient audience participation or appeal. Nor is it a case where there had been intended from the beginning a limited series or period. As long as people were not criticising the government on sensitive issues, it appears that the government was content for the programme to continue. The government-controlled media must, however, like the government, comply with section 11 just as must any other citizen, subject always to subsection (2) thereof.

50. There is no doubt on the judge's findings that the government in this case wished to stop discussion about the lottery on this radio programme. Whether this was a particular example of its opposition generally on the earlier occasion to "phone-in" discussion programmes, whether it was because the government wished to stop the subject being aired and people being "stirred up" about it or whether it was in response to the threat of legal proceedings, does not seem to their Lordships to matter. The government did in fact stop the expression of views in a radio station which the government owned and controlled and on a programme which, following an election promise, they initially wished to set up until it became inconvenient to the government.

51. As the judge found, there was here an arbitrary or capricious withdrawal of a platform which had been made available by the government.

52. Their Lordships consider that nothing advanced by the government establishes any of the derogations capable of justification under section 11 (2). Even if such a justification had been put forward in respect of the discussions about the lottery, nothing has been said to show that the closure of the entire programme was "reasonably justifiable in a democratic society" (section 11 (2)) nor has any law been produced which makes provision "that is reasonably required...for the purpose of ... regulating... wireless, broadcasting or television".

53. Their Lordships are accordingly of the opinion that Saunders J. was entitled and right to find here that in the case of Mr Benjamin there had been a contravention of his rights to freedom of speech and expression protected by section 11 of the Constitution. Mrs Vanterpool and Mr Gumbs were both denied access to the programme in which they had been regular callers joining discussions on matters of public importance and to which they had regularly listened. It seems to their Lordships that both the second and the third appellants are clearly participating listeners in the sense intended in *Fernando v. Sri Lanka*

*Broadcasting Corporation* and that the conclusion of the Supreme Court is fully applicable to them. Their Lordships agree with that conclusion in respect of participating listeners. In those circumstances it is not necessary to decide whether in the Sri Lanka Constitution the receipt of information “simpliciter” was or was not part of the freedom of speech. The present Constitution is in any case different in that it expressly provides that freedom of expression includes “the freedom to ... receive and impart ideas and information without interference, and freedom from interference with ... other means of communication”. There was accordingly also a contravention of their rights under section 11 of the Constitution.

54. It is unnecessary in their Lordships’ opinion to consider whether in the alternative there was a breach of their legitimate expectations. They agree with the learned judge’s conclusion that it was unnecessary additionally to consider whether section 10 of the Constitution had been violated and they accept his finding that no discrimination contrary to section 13 had been shown on the facts of this case.

55. They agree also with the conclusions of Saunders J. that damages should be awarded to Mr Benjamin but not to Mrs Vanterpool and Mr Gumbs for the reasons which he gives. They do not think it appropriate to make any order as to the restoration of the programme.

56. Their Lordships will accordingly humbly advise Her Majesty that the appeal of all the appellants be allowed in respect of the contravention of section 11 (1) of the Constitution of Anguilla, the respondents to pay the appellants their costs before the Judge, the Court of Appeal and before their Lordships’ Board.