



(INTERIM) REPORT

ON

INVESTIGATIONS INTO INCIDENT

ON

FRIDAY, SEPTEMBER 18, 2015

– PRICKLY POLE AND

CLAREMONT, ST. ANN

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October 2015



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BACKGROUND

At approximately 2:00 P.M. on Friday, September 18, 2015 the Office of the Children's Advocate (OCA) became aware of an incident which was said to have originated at the Prickly Pole Primary and Infant School in Prickly Pole, St. Ann. Our report was that a female child (11 year-old Akella Lewis) who was a student at that institution died; there was also mention of bus(es) that departed from the school for Claremont, St. Ann where a demonstration was subsequently staged within the precincts of Minister Lisa Hanna's South East St. Ann Constituency Office. It was alleged that students of the Prickly Pole Primary and Infant School participated in this protest along with adults.

Consequent upon this report, I commissioned a team of investigation officers from the OCA to journey to the Prickly Pole community and its environs that very afternoon. The purpose of the team's visit was to enquire into the surrounding circumstances, to interact with and seek to comfort the family members of the deceased child as well as to

conduct an initial “on the ground” assessment so that we could appropriately structure our substantive investigations.

LEGAL AUTHORITY OF THE OCA TO INVESTIGATE

The OCA is the Commission of Parliament that was established to protect the rights and best interests of all children in Jamaica¹; that is, anyone who is below eighteen (18) years of age. Of more specific relevance to the matter at hand, however, is the OCA's **statutory obligation and authority** to investigate matters of this nature as expressed in Paragraph 13 of the *First Schedule* to the *Child Care and Protection Act (CCPA)*. The material section(s) of Paragraph 13 provide:–

13(1) *Subject to the provisions of this paragraph, the Children's Advocate may conduct an investigation into a complaint made by a child, that–*

(a) *the child's rights have been infringed by any action taken by a relevant authority; or*

(b) *the child's interests have been adversely affected by any such action.*

¹ Section 4 of the *Child Care and Protection Act*

(2) Where the Children's Advocate decides not to conduct an investigation into a complaint made under sub-paragraph (1), he shall prepare a statement of his reasons for that decision and shall send a copy of the statement to—

(a) the complainant; and

(b) the Minister and such other persons as the Children's Advocate considers appropriate.

(3)

(4)

(5) A complaint under this section may be submitted orally or in writing by—

(a) the child, his parent, guardian, next friend or person in loco parentis; or

(b) where the child is unable to act for himself by reason of infirmity or for any other cause **or has died**, his personal representative, or a member of his family, or any other suitable person.

The allegations as presented to the OCA, indicated that a child had lost her life in unclear circumstances and also that children were involved in a demonstration that had elicited concern from several quarters. There were therefore, very live issues as to whether a child's right to life had been breached in the first instance, and if any best interest principles or other rights were compromised in regard to the other children. Together, these considerations provided a justifiable basis for the OCA to exercise its legislative authority to investigate the circumstances.

THE ISSUES

There were three (3) broad issues that required very deliberate assessment. These were:-

- (1) The death of Akella Lewis, 11 year-old student.
- (2) The fact of, and the process of, the removal of children from the premises of the Prickly Pole Primary and Infant School.
- (3) The participation of children in a demonstration which took place in Claremont, St. Ann on Friday, September 18, 2015.

The objective(s) of the investigations, therefore, were to determine:-

- (1) whether there is any causal link between the actions of any person (or group of persons) and the death of Akella; and

- (2) whether any rights and/or best interest principles' violations occurred in relation to the children who were transported from the Prickly Pole Primary and Infant School to Claremont, St. Ann.

ASSESSMENT OF THE ISSUES

Throughout this section of the report, each issue as identified under the previous section will be more closely examined. Local Jamaican law, as well as any relevant international principles will be considered and appropriately linked to the issues at hand. Three (3) primary instruments, therefore, will be frequently referenced, viz;–

- (1) The Charter of Fundamental Rights and Freedoms [Jamaica]
- (2) The Child Care and Protection Act, 2004 [Jamaica]
- (3) The United Nations Convention on the Rights of the Child

In addition to these primary instruments, the law of tort will also be referenced.

A. DEATH OF AKELLA LEWIS- 11 YEAR-OLD, STUDENT

Akella Princess Lewis,² who was born on April 24, 2004, died on Friday, September 18, 2015. At the time of her death she was a Grade 5

² Akella's Birth Certificate reflects "Lewis" as her surname even though her father's surname is "Smith". According to Akella's mother, she registered her as "Lewis" because during her pregnancy with Akella, Mr. Ernest Smith (Akella's father) did not treat her well.

student at the Prickly Pole Primary and Infant School. Since then, there have been a number of theories and versions that have surfaced within the public domain. Two of the more popular stories have been that the child died after being hit by a bus while she was a participant in the protest at Claremont, while yet another, is that she died whilst on one of the buses headed for Claremont.

The OCA's investigations have found that neither of these is accurate. To this end, the sequence of events as confirmed by our investigations is of paramount importance. On the day in question (i.e. Friday, September 18th) at approximately 9:00 a.m., two (2) Toyota Coaster buses arrived at the Prickly Pole Primary and Infant School. These buses had no passengers and the school's Principal, Mrs Judith Whyte-Brown, spoke to one of the drivers who indicated that they were there to collect some students and parents. The principal's account is that the driver did not reveal who had sent him and that she recommended that he have discussions with the Chairman of the Prickly Pole School Board, Mrs. Vinnette Robb-Oddman. To facilitate this process, she provided the driver with the Chairman's telephone number. The buses thereafter departed empty from the school compound. Sometime after 11:00 a.m., shortly after classes had resumed following upon the morning break, what is described as a noisy motorcade that consisted of buses, cars, motorbikes and vans was seen parked by the roadway above the school;³ all vehicles were

³ The actual school premises are situated below the main roadway as the school building is within a valley. One would have to drive down a slope from the roadway towards the school gate to gain entry to the school premises.

facing the direction of Claremont. The scene as described, was a rather chaotic one as horns were being blown, persons who were later identified as parents/guardians were beckoning from the vehicles for children to come and at least two persons were heard to say “*send out de pickney dem*”. The principal did not acquiesce to their urgings and as such parents came into the school yard and commenced the process of removing their children from the school.

While this was unfolding, Akella is said to have commented to the principal “*Miss, mi aunty up a road*”. The principal told Akella to return to her seat as no parent or guardian had come onto the premises to retrieve her. Akella’s best friend, a fellow student of Prickly Pole Primary and Infant, says that she saw when Akella’s aunt named Roxanne called to Akella from the roadway⁴ saying “Cindy”⁵, she notes, however, that the aunt never indicated whether “*Cindy must come or stay*”, but that Akella subsequently took up her school bag and ran across the field toward the school gate. Upon reaching the gate, Akella reportedly went through the gate and up onto the roadway towards

⁴ For Roxanne’s part, she agrees that she and her sister who were both on a bus that was a part of the motorcade, saw Cindy on the school compound and called to her and thereafter proceeded to talk to her from inside the bus. She says she saw when Cindy ran across the field and then she lost sight of her subsequently. Of significance is that at no time did she or anyone else who was either on the school compound or in the motorcade, mention that she or her sister told Akella to come. There is, however, one discrepant account which comes from the Vice Chairman of the School Board; he spoke of “someone” telling Akella to come – his observation was made from his home which is next door to the school compound and was imprecise as to the identity of the person who did so. As such, this Report is constrained to rely on his version.

⁵ Cindy was Akella’s nickname.

where the vehicles in the motorcade had stopped. While on the side of the road, she collapsed and a group of persons encircled her. From all accounts, when Akella fell, an alarm was raised by several persons that “someone drop down” and various attempts were made by members of the motorcade to revive her by fanning her, and calling her name as well as requesting rubbing alcohol from the school. Some persons even started praying at this time. The principal asserts that it was a parent of a student who was a part of the motorcade who requested the rubbing alcohol from her and communicated to her that “waan pickney drop dung up a road”. The principal secured the alcohol for him and both he and the principal rushed towards the roadway. It was at that time that she discovered that Akella was the child being referred to as she saw her lying **on the roadway immediately above the school compound**. At least three (3) female relatives⁶ of Akella who were members of the motorcade were reported to have alighted from the various vehicles in which they were passengers and tried to lend their efforts to the attempts at reviving Akella. When it was apparent that the efforts were not reaping much success, the principal called out to Ms. Colleen Robb, who is employed as the Cook at the school, instructing her to call Mr. Francois Douglas; he is the teacher for Grade(s) 5 and 6 and he owns a motor vehicle. Mr Douglas responded shortly thereafter and was asked to transport Akella to the Alexandria Community Hospital. He did so and was accompanied by Ms. Robb, the Cook. After Mr Douglas departed from the school with Akella, the vehicles in the motorcade

⁶ None of these relatives was Akella’s mother even though she was present. She has stated that she was too frightened to get off the bus and also that “mi eye get dazzle, it come een like mi couldn’t see.”

travelled with their passengers in the opposite direction towards Claremont. *En route* to the Alexandria Hospital, Ms. Robb⁷ reports that Akella was crying out and seemed to be in a lot of pain. Ms. Robb also mentions that “*something slimy was coming from her mouth*”. Upon reaching the Eight Miles district, which is along the way to the hospital from the school, they stopped along the roadway to collect Akella’s father, Mr. Ernest Smith otherwise called “Bamboo”. He joined them on the journey; up to this point Akella was still alive as she was still crying out in pain. Ms. Robb’s account, however, is that “*after a while she stopped crying and there was no response*”.⁸

When they arrived at the Alexandria Hospital, Mr Smith lifted his daughter out of the vehicle and rushed her inside. She was attended to by two nurses and one doctor. According to Akella’s medical records, the doctor on duty performed certain routine checks as well as Cardiopulmonary resuscitation (CPR) on her, but got no response; Akella was pronounced dead at approximately 12:30 p.m. on Friday, September 18, 2015.

Cause of Death

The cause of Akella’s death is a medical matter which can only be conclusively resolved by the conduct of a post mortem examination and other attendant medical matters. At the time of this report, the result

⁷ She had Akella’s head in her lap as she sat with her in the rear passenger seat of Mr Douglas’ motor car and was thus in a good position to make these observations.

⁸ Akella’s father also corroborates Ms. Robb’s account in this regard as whilst *en route* to the hospital he repeatedly told Ms. Robb (who he calls Nicole) to check her (Akella’s) pulse because “*it look like she dead*”.

of the post mortem examination remains inconclusive⁹ and as such, a definitive conclusion is not yet available. Despite its absence, however, the legal considerations as to what constitutes causation in fact and remoteness of damage will be discussed within the context of preliminarily answering the question that many persons seem to be interested in; viz. can the demonstration and/or its organizers be properly seen to be the cause of Akella's death?

In assessing this issue, it is of importance to mention aspects of Akella's medical history which surfaced on May 1, 2015. That day was Sports Day at the Prickly Pole Primary and Infant School and Akella was in Grade 4 at the time. During one of the races in which Akella was participating she collapsed and had to be lifted from the field into a classroom. From there, Akella was transported from school by the teacher, (Mr. Francois Douglas), in his private motor car, to the Alexandria Community Hospital. On that occasion, they were accompanied by Mr. Alanzo Johnson who was employed as a caregiver in the Infant Department at the Prickly Pole Primary and Infant School, and served as a volunteer in the canteen. Mr. Johnson is also Akella's brother as they share the same mother. It is estimated that Akella lost consciousness for approximately twenty (20) minutes before regaining consciousness while on way to the hospital. Upon arrival, she was attended to by a doctor who physically examined her and according to her brother, Alanzo Johnson, commented that Akella's

⁹ The post mortem examination was conducted on Akella's body on Monday, October 5, 2015. The OCA's Director of Investigations attended; the result was inconclusive and we now await the results from the Government Forensic Laboratory in relation to certain samples that have been sent for testing.

heart was beating faster than it should under normal circumstances. His version is corroborated by the medical records as the doctor opined therein, that Akella was experiencing tachycardia¹⁰ and as a consequence the need arose for further investigation to be done to explore whether she had some congenital cardiac issues. It is documented that an **urgent** referral was made to the St. Ann's Bay Hospital for an **urgent** electrocardiogram (ECG) and further examinations to be conducted on Akella. To date, that referral was never acted upon¹¹ and the issue is shrouded in some amount of discrepancy. What further compounds the problem is the additional information concerning the medical history of Akella's family on the maternal side that was provided to the doctor on May 1st by

¹⁰ This is a condition which sees the individual suffering from an abnormally rapid heart rate.

¹¹ There is some discrepancy as to which member of Akella's family actually received the referral letter. Mr. Douglas confirms taking it from the doctor at the Alexandria Hospital and indicates that it was subsequently handed over to an aunt who was at the school to collect Akella upon their return from the hospital. The principal, Mrs. Whyte-Brown, says that while she knew about the referral, she never actually saw the letter but that she was aware that it required Akella to do an urgent heart test. As a result of this, she contacted Akella's father on the Saturday and the Sunday of that weekend to check to see whether he had taken her to the doctor and he allegedly promised to do so on the Monday. Akella was absent from school for the entire week following upon the incident at Sports Day, i.e. the school week beginning Monday, May 4, 2015. The Attendance Register, a copy of which we secured in our investigations, reflected her as being absent on the Monday and Tuesday and sick for the remainder of that week. For the family's part, they all claim to be unaware of the official referral even though Alanzo says that on the way back to school from the hospital, they saw Akella's father in Eight Miles and told him what the doctor said about the urgent heart test in St. Ann's Bay. While the father agrees with this, he says that he thought that the teacher would take Akella to the St. Ann's Bay Hospital for the test and he never actually saw the paper; he also says that later that day he realized that Akella was not in fact taken to St. Ann's Bay because "*mi see Cindy and mi niece Roxanne come up [home] so that's how mi know Sir neva carry her go St. Ann's Bay.*" Roxanne, the aunt, also says she knew of a paper but never read it and just assumed that Akella's father would deal with this St. Ann's Bay aspect. All in all, this aspect of the child's health needs was **not** properly attended to by her caregivers/family members, to say the very least.

Alanzo. It is documented that one of Akella's brothers, Jowayne Johnson, had heart surgery during which a "machine" was placed in his heart; he subsequently died at 18 years of age. Yet another sibling, a sister named Shana-Kay Henry, who is still alive is reported as having a disease of the heart which caused her on one occasion to be hospitalized for approximately one (1) week.

Our assessment of all that was unearthed in our investigations, however, point to an element of denial on the part of the family in relation to any underlying medical issues that Akella may have had and the need to attend to them through orthodox methods of medical science. There seems to have been a predisposition which favoured a greater reliance on superstitious beliefs and practices. Akella's father, for instance, has openly expressed the view that "a duppy" had been on Akella from she came to live with his family at the age of six (6) weeks old and as a result he carried her to a "mother woman"¹² to find out if something was really wrong with her. The *mother woman's* assessment, according to Mr Smith, was that Akella indeed had evil spirits on her and in order to get rid of them he needed to call her Cindy which was the name of his (Mr Smith's) deceased grandmother.¹³ Another example of this belief in superstition, manifested itself in his assessment of how Akella came to collapse at Sports Day in May of this year; he opined that "*a duppy had boxed her down*".

¹² Mr Smith defined a mother woman as a woman who can read up your life and tell if something is wrong with you; for example, if "*duppy deh pon yuh*".

¹³ Mr Smith accepted this mother woman's advice and this is how Akella acquired the nick name "Cindy" which family members and persons in the Eight Miles District called her.

This preference for the supernatural is perhaps what led Mr Smith to assert that Akella was “*never a sickly child*”, even when in another breath he admitted in conversation with the police at the Alexandria Police Station, that he always told Akella not to run because when she did, she sometimes complained of pains in the chest and shortness of breath.

Against this background, it seems reasonable to cautiously infer, pending the final outcome of the post mortem examination,¹⁴ that Akella may very well have had a pre-existing medical condition that significantly contributed to, or caused her untimely death. If that condition related to the heart and went undetected and untreated, it seems rather probable that this would have compromised her health in a very serious way. Despite this perspective, could the events of September 18th be properly linked and portrayed as the “**cause**” of Akella’s death?

In law, the principle of causation has been widely and repeatedly considered and it is the **legal** concept that determines when an event or a would-be tortfeasor’s action(s) can be said to be the **cause** of a particular result. There is no place for the emotive assessment or for the casually expressed thought, for example, that it must have been the demonstration that led to Akella’s death. Likewise, before a would-be tortfeasor can be properly held liable for the harm suffered, even

¹⁴ The comments and opinions expressed within this Interim Investigative Report will be reassessed and finalized once the post mortem examination has been conducted and a certified cause of death is identified by the pathologist.

where causation in fact has been established, remoteness of the damage has to be assessed in a bid to determine if the causal link has been broken.

Causation in Fact

If the result would not have happened but for the would-be tortfeasor's action or but for a certain event, then that action (or event) can properly be seen as the cause of the result. Conversely, if on a balance of probabilities the result would have occurred anyway, the action or the event complained of, cannot properly be described as the cause of the result. To relate this principle more precisely to the matter at hand, the questions to be considered are:-

- (1) Did Akella meet her death because a demonstration was planned and a motorcade stopped at the school?
- (2) Is it more probable than not, that Akella would have died in any event because of an untreated pre-existing heart condition?

These questions are a direct derivative of what is known as the "*but for*" test. The case of **Barnett v Chelsea and Kensington Hospital Management Committee**¹⁵ provides a very clear illustration of how this test is applied. The facts there surrounded three night watchmen who attended upon the defendant's hospital early one morning and

¹⁵ [1968] 1 All E.R. 1068; [1969] 1 Q.B. 428

complained of persistent vomiting for three (3) hours after drinking some tea. The nurse who received them contacted the doctor on duty by telephone and advised him of the men's symptoms. The doctor in turn sent a message to the men through the nurse that they should go home to bed and consult their own doctors later in the morning. A few hours later the plaintiff's husband died of arsenical poisoning and the coroner's verdict was one of murder by persons unknown. The plaintiff was firmly of the view that it was the doctor's failure to attend to her husband that led to his death a few hours later. The court in applying the "*but for*" test, however, held that even though the doctor was in breach of the duty of care which he owed to a [prospective] patient, this breach was not a cause of the death because even if the deceased had been examined and treated with proper care, the probability was that it would have been impossible to save his life, as he would in all probability have died anyway. In other words, it could not be said that '*but for*' the doctor's negligence the deceased would have lived. The plaintiff's claim therefore failed.

In yet another case of more recent vintage, **Gregg v Scott**¹⁶, the principle was again illustrated in like form. The facts there related to a claimant who was misdiagnosed in 1994 by a medical practitioner. When he attended upon his surgery because of a lump that had developed under his left arm, the doctor told him that it was a benign collection of fatty tissue and that no further action was required. In 1995 the claimant registered with a

¹⁶ [2005] 2 A.C. 176

different medical practitioner and was subsequently diagnosed as having non-Hodgkins lymphoma¹⁷; by this time the tumour had spread into the claimant's chest effectively leaving him with a poor prospect of survival. The claimant instituted proceedings against the first doctor for negligence, but was unsuccessful at trial as the Judge found that the defendant had been negligent in excluding the possibility that the growth might not be benign and so was in breach of duty but that even if treatment had been started earlier, there is no guarantee that the outcome would have been materially different for him. The claimant subsequently went to the Court of Appeal and they too dismissed his appeal. He therefore brought the matter on appeal to the House of Lords who also dismissed his appeal on the basis that the '*but for*' test was not satisfied. The House of Lords maintained that he, the claimant, had to prove on a balance of probabilities that the negligence complained of was the cause of his shortened life span.

Perhaps the third example which is provided by the case of **McWilliams v Sir William Arrol and Company Limited**¹⁸ provides an even more vivid illustration of how strictly the issue of causation/the '*but for*' test is applied. A steel erector was killed when he fell from a building on which he was working. At the time of his fall he was not wearing a safety harness which would have prevented a fall and it was established that his employers did not in fact even provide such a harness for him even though they had a statutory obligation to do so. Despite this breach of duty on the part of his

¹⁷ A form of cancer that affects the lymph nodes

¹⁸ [1962] 1 W.L.R. 295

employers, the court did not find that the employers' failure to provide the safety harness was a cause of his death because there was evidence to show that on previous occasions when they provided safety harnesses, the plaintiff had never bothered to wear one. The inference, therefore, was that even if a harness had been provided on the day of the accident, the plaintiff would not have worn it.

Together, these authorities make quite clear, the approach that is endorsed by the courts. In applying this approach to the instant case, therefore, one would have to clearly establish on a balance of probabilities that Akella would not have died at a young age, if a sound argument were to be advanced that but for the demonstration on September 18th , she would not have died. In all the circumstances, this would prove to be an uphill task given the fact of the unresolved issue of whether Akella suffered from congenital heart problems, the medical history of her family and her complaints of chest pains and shortness of breath. Based on the foregoing, it is my considered opinion that the demonstration, those responsible for its organization and/or those involved in it, cannot be justifiably said to be the **cause** of Akella's death. These events thus failed the 'but for' test.

By way of elaboration, even if one were to argue contrarily and assert that the circumstances indeed passed the 'but for' test, the question of remoteness of damage would have to be considered. The basic rule is that a would-be tortfeasor will be liable **only** for those consequences of his actions which are not too remote in law, even where that act may be said to be the cause of the damage complained of. In the instant case,

therefore, the question that would need to be resolved is whether a reasonable man would have foreseen during the organization of the demonstration and/or by virtue of the motorcade arriving at the Prickly Pole school, that Akella would have collapsed and died. Undoubtedly, this seems to be a stretch and thus would be too remote a basis on which to hold any of these persons liable. The 'egg-shell skull' principle¹⁹ was also considered but even with this, it would be difficult to establish liability on the part of the organizers of the demonstration and/or the participants in the motorcade. While it is agreed that the tortfeasor must take his victim as he finds him (whether he has an unusually thin skull or an unusually weak heart), the category of damage suffered, at the very least, would have to be foreseeable. That is, if it were foreseeable to the reasonable man that Akella would have run towards the motorcade on September 18th and would have more likely than not collapsed, then perhaps a more justifiable basis on which to ground liability for her death would exist. On all counts, therefore, there is no basis in law on which to link the responsibility for Akella's death to the demonstration or its related circumstances.

B. REMOVAL OF STUDENTS FROM THE PRICKLY POLE PRIMARY AND INFANT SCHOOL²⁰

¹⁹ This principle was explained in the authority of *Dulieu v. White and Sons* [1901] 2 K.B. 669 per Kennedy, J.

²⁰ This section will focus on those children who were removed from school during the school day. Our investigation notes that the police document in a relevant diary entry that "approximately 30 students in uniform were seen at the demonstration". This number appears to be accurate as some parents may very well have exercised the option "suggested" to them by the principal to take their children from home as well as out of a total school population of 107 students, only 81 were present at school on September 18th.

Based upon the OCA's investigation, there is evidence that seventeen (17) children²¹ who are students at the institution, were transported from the school in uniform to Claremont, St. Ann on September 18, 2015. Of these seventeen, four (4) were from the Infant Department, one (1) was from Grade 1, two (2) were from Grade 3, five (5) were from Grade 4 and five (5) from Grade 5.

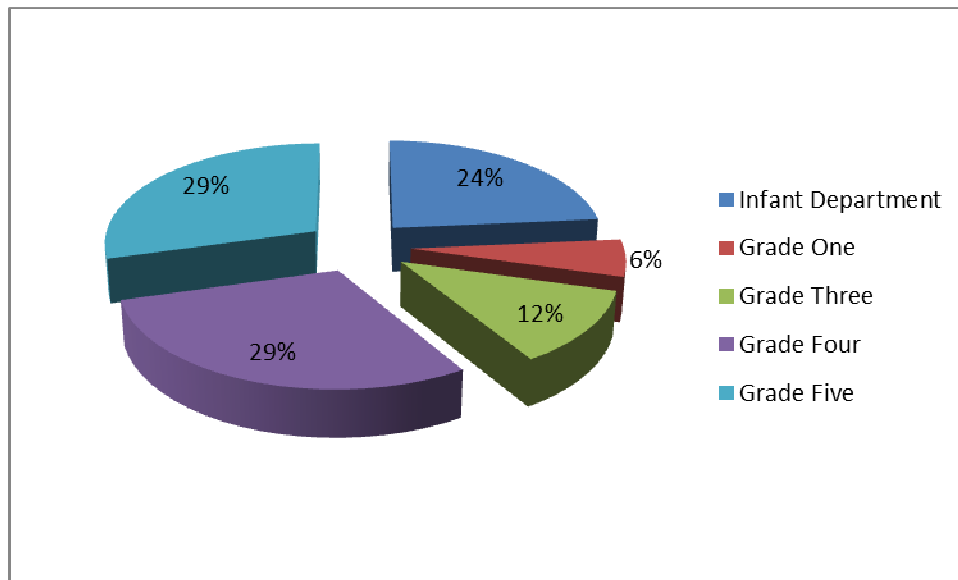


Table 1: Number of students removed from Prickly Pole Primary & Infant School – Friday, September 18, 2015

What has also been confirmed, is that each child who was removed from the school, had a parent/guardian on the motorcade who reportedly attended upon the school on the Friday morning in question and removed their children for the purpose of accompanying them to the protest. The narrow issue which falls for consideration on this specific point, is the actual process through which the students were removed. In this regard, three (3) questions are material:-

²¹This information was confirmed through school records which not only listed the name(s) of the students who departed the school, but also the name(s) of their respective parents/guardians, along with contact numbers for each.

- (i) Parents and guardians, who are primarily responsible for the supervision of their children, visited the school to pick up their children before the end of the school day. Was anything inherently wrong with such an act?
- (ii) What role did either the Chairman of the School Board and/or the school principal play in the removal process, if any?
- (iii) Were there any applicable school rules and procedures at the material time which governed, *inter alia*, the removal of children from the premises? If so, were these observed?

As far as question (i) is concerned, there is nothing inherently wrong with parents removing their children from school at any time of day. Usually, once there is parental consent, the administration of a school would not interfere with the parent's right of access to his/her child; this consent can either be provided in writing or in person as was done in the instant case.

The response to Question (ii) will have to be inferred from the surrounding circumstances as presented to the OCA through its investigations. What is evident, is that Mrs. Vinnette Robb-Oddman, Chairman of the School Board (as she then was), coordinated a meeting with the parents of students at the Prickly Pole school. The purpose of this meeting was ostensibly to discuss the non-paving of the school yard and missing monies based on an allegation that the sitting Member of Parliament reportedly listed this project as one which had been done. Mrs. Robb-Oddman solicited the assistance of the school's principal, Mrs. Judith Whyte-Brown, to secure the attendance of the parents at this meeting which was slated

for Wednesday, September 16, 2015 at 3pm on the school grounds. One parent who attended the meeting, reports that Mrs. Robb-Oddman briefed the meeting about the “missing money” and expressed concern that persons were saying that both she and the former principal knew about the money. Following upon the meeting, plans were made for a demonstration to take place on Friday, September 18, 2015 in Claremont within the precincts of the Member of Parliament’s office. It has also been established from our investigations that during this meeting on September 16th, some parents openly voiced their intention that “*if mi a go, mi a bring mi pickney.*” There is no information available from this meeting to suggest that Mrs. Robb-Oddman either encouraged this move on the part of the parents or sought in any way to dissuade them. It subsequently becomes apparent, however, that even if she did not *actively* encourage the parents to take their children, she took steps which can properly be viewed as facilitating the removal of the children from school. The same parent referenced above, was sent by Mrs. Robb-Oddman on Thursday, September 17th (the day before the protest) to advise the principal of the school that she should let the parents know that the buses will arrive at the Prickly Pole school at 9am on Friday, September 18th “*to carry dem to Claremont to go to the MP office.*” In addition to this information which comes from this messenger, there is also the account from both the principal and the Vice Chairman of the School Board, Mr. Neville Hall,²² that on Friday, September 18th at approximately 9am, two (2) Toyota Coaster buses did arrive at the school without passengers and that one of the drivers spoke to the principal. It is the principal who goes further to

²² Mr. Hall lives immediately above the Prickly Pole Primary & Infant School and has a clear view of its premises from his yard.

advise that the driver informed her that they were there “to pick up some parents and children.” An element which also underscores the facilitating role that Mrs. Robb-Oddman played, is the fact that sometime after 11 am on the Friday in question, the motorcade stopped at the Prickly Pole Primary and Infant School *en route* to Claremont and it was at this time that parents went onto the school’s compound to extract their children and have them accompany them to Claremont. Mrs. Robb-Oddman was not only the person who organized the demonstration on her own admission,²³ but she was also present when the parents so acted.

It is my considered opinion, that as Chairman of the School Board, Mrs. Robb-Oddman was a person in a position of authority and trust in relation to both the students and the parents of the school community. As such she owed a duty of care to all the members of her school community which I find was breached as her best judgment was not exercised in facilitating the participation of the children in this protest. Even where the protest is for a worthy cause as she contends, there are other factors which ought properly to have been considered by someone in her position, such as the time of the demonstration as well as the age and maturity of the children being so involved. At the time when the students were removed from school,²⁴ our investigations reveal that *Guided Learning* was taking place in the Infant Department, Grades 1 – 3 were having *Integrated Studies* and Grades 4 – 6, *Drama*. The students were therefore, deprived of valuable instruction time and contact hours. One

²³ Mrs. Robb-Oddman admitted her role as the organizer of the demonstration at a Press Conference which she hosted on Tuesday, September 22, 2015 at the Hibiscus Lodge Hotel in Ocho Rios, St. Ann.

²⁴ Shortly after 11AM on Friday, September 18th.

wonders whether the demonstration could not have taken place later in the day; school is dismissed at 3pm which is not unduly late for events of this nature. The Prickly Pole Primary and Infant School is 16.2 kilometres²⁵ away from the Claremont Square which is approximately forty-five (45) minutes driving time – ample time to have set out after school had concluded for the day. Some parents also sought to justify the removal of their children on the basis that with them (the parents) participating in the protest, no-one would be home to receive their children upon the dismissal of school; this mischief would also have been cured with a later start time to the demonstration.

In relation to the principal, it is to be noted that she at all times seems to have maintained that once the students came onto the school premises, they were her responsibility. Indeed, this is the correct posture to have as a principal of a school. She was also proactive in reaching out to the Regional Director in the Ministry of Education, Ms. Maxine Headlam, prior to September 18th²⁶ to advise her of the impending demonstration against the Member of Parliament and the possible participation of students from the Prickly Pole Primary and Infant School in uniform. While these steps are *prima facie* commendable ones, there are two (2) concerns about how this particular issue was handled. The first relates to the principal's admission that it was she who communicated (after learning that there was a desire for students to be involved), that "*if parents wanted to take children to Claremont they would have to do so from their homes*". The

²⁵ This is equivalent to 10.07 miles.

²⁶ Mrs. Whyte-Brown alerted the Regional Director on Thursday, September 17, 2015 via electronic mail.

second, is Mrs. Whyte-Brown's assertion after the events of Friday, September 18th that she was never aware that there was any contemplation that any demonstration would be held; she maintains that she only knew of a possible meeting with the Member of Parliament to discuss the grouses being complained of and as such, she never really thought that the students would have been involved with any protest. This, of course, is in direct contrast to the information which she passed to the Ministry's Regional Director the day before the demonstration. Vice-Chairman Neville Hall, as well, indicated that in a conversation that he had with Mrs. Whyte-Brown on Monday, September 14, 2015, they discussed that Mrs. Robb-Oddman "*wanted to carry a demonstration go down to [Ms. Hanna's] office.*"

While this represents an inconsistency in Mrs. Whyte-Brown's account on the specific issue of whether or not she was aware of a planned demonstration prior to September 18th, in the broader scheme of things which treat with a child's involvement in demonstrations and similar events,²⁷ this may not prove to be so material an inconsistency after all. Mrs. Whyte-Brown seems to have thought herself helpless²⁸ in all the circumstances of the chaotic events as they unfolded on that morning as well as because of the 'blessing' seemingly given by the Chairman to the decision of the parents to remove their children. The opinion on this issue, is that while we found that Mrs. Whyte-Brown exerted some effort to resist the involvement of the children thereby exercising a duty of care towards

²⁷ These will be dealt with more fully under **Part C** of this report.

²⁸ This posture may arguably improve with time and more experience. Our investigations unearthed that Mrs. Whyte-Brown has only been acting as principal since May 2015.

them, this effort was perhaps not as strident as it could have been. We are, however, mindful of the unwieldy sequence of events of the morning, the general uncertainty and the principal's relatively short time operating in this capacity.

Question (iii) refers to any existing rules and procedures which may have existed at the material time for the removal of students from the school. During the OCA's investigations, a copy of the school's *Safety and Security Plan* was obtained. The first provision of that *Plan* reads as follows:-

"Students are not allowed to leave the school compound at any time during the school day. If students have to leave, a parent/guardian must come to pick up such child or children and must sign to say that they are carrying out such action."

The aspect of the requirement for a parent or guardian to collect the child was satisfied; there is, however, no evidence that any of them signed before departing with their children. The strict provisions of the *Plan*, were therefore not fully complied with in this regard. This, however, may be seen as the less substantive aspect of the provision as this was more for record keeping than anything else and as previously stated in this Report, the principal was able to compile a list of all the students who left and with whom.

C. PARTICIPATION OF CHILDREN IN THE DEMONSTRATION ON FRIDAY, SEPTEMBER 18, 2015

Perhaps the primary issue here, is whether children ought properly to be participants in a demonstration, and more specifically, one with political undertones. From the outset, this Report wishes to make it clear, that we found no rights' breaches whatsoever in this regard, nor did we find that any laws of the land were contravened. The focus will thus be confined to whether or not the best interests of any of the children who participated in the demonstration were compromised in any way.

The Charter of Fundamental Rights and Freedoms which is contained in Chapter III of the **Constitution of Jamaica**, secures certain entitlements for **all** persons in Jamaica; as children (that is persons below 18 years of age) are seen as *full* rights holders, these entitlements are also applicable to them. Section 13 (3) outlines the relevant rights and freedoms and this Report wishes to highlight sub-sections (b), (c) and (e), within the context of the matter at hand. These provisions indicate that all persons have:-

- (b) *the right to freedom of thought, conscience, belief and observance of political doctrines;*
- (c) *the right to freedom of expression;*
- (e) *the right to freedom of peaceful assembly and association.*

Prima facie, an application of the provisions here outlined, do not reveal any issue that can be justifiably taken with the children's participation *per se* in the demonstration.

Further afield, is the *United Nations Convention on the Rights of the Child (UNCRC)* which provides very comprehensive guidance on a wide cross-section of matters that treat with situations impacting upon children. Jamaica ratified this Convention in 1991 and is thus a State Party which means that Jamaica has certain obligations which it ought to seek to uphold in order to be compliant with the principles articulated therein. *Articles 13 and 15 of the UNCRC* echo the provisions in *Section 13(3) (c) and (e) of the **Constitution of Jamaica***.

Article 13(1) provides as follows:

“The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.”

Article 15 provides as follows:

- 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
- 2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public*

health or morals or the protection of the rights and freedoms of others.

The United Nations Committee on the Rights of the Child²⁹ (hereinafter referred to as “the Committee”) has had cause to comment on the observance by States Parties of these specific Articles in various country reviews and assessments. Both Japan and the Republic of Korea were the beneficiaries of negative comment from the Committee in this regard. In relation to Japan, the Committee expressed concerns “*about restrictions on political activities undertaken by schoolchildren both on and off school campuses*” and went on further to recommend that Japan review its legislation and any regulations governing activities undertaken by schoolchildren on and off campus. For its part, the Republic of Korea caught the attention of the Committee for the limitations placed on students’ freedom of expression and association as a result of strict administrative control of student councils and school regulations that limit or prohibit outside political activities of students in elementary and secondary schools. It was recommended that they should amend legislation and any relevant guidelines in a bid to facilitate children’s active participation in decision-making processes and in political activities both within and outside schools. Closer to home, is an observation that emanates from the Committee in relation to Belize. The Committee noted with concern, violent incidents that were said to have occurred during a peaceful student demonstration against a rise in bus fares which took place on April 24, 2002 in the village of Benque Viejo del Carmen. It was

²⁹ This Committee essentially functions as the monitoring and oversight body for the implementation of the UNCRC by States Parties; it conducts periodic reviews of countries’ performance in this regard.

reported that the police disproportionately used force to 'control' the situation. The Committee saw this action as a breach of the children's right to freedom of expression and freedom of association and peaceful assembly which was a means through which they would be prevented from freely discussing, participating and expressing their views and opinions on all matters affecting them. Similarly, Costa Rica received a recommendation that it should "*take all appropriate measures to ensure the coherence of its legislation with regard to the right of persons below the age of 18 to be involved in political activities.*" Yet another interesting comment emanated from the Committee during its country review of the Euro-asian country of Georgia. The view was there expressed that because the law prohibited children (and youth) from becoming members of parties, this prohibition limited the opportunity for youth to learn about the political process, delayed their preparation for political leadership and denied their full right to freedom of association. So serious does the Committee take this right to freedom of association and peaceful assembly, that even the imposition of curfews to prevent unaccompanied children from being out of their homes after a certain time in the evening can be seen as a 'blanket restriction' on the child's right and without more, do not seem to fall within the exceptions contemplated by *Article 15(2)*. Taken together, therefore, it seems reasonable to conclude that from the perspective of the *UNCRC*, there is nothing wrong *per se* with children participating in demonstrations, whether they are of a political nature or not.

Against this background then, the only questions left to be resolved, seem to be whether the demonstration on Friday, September 18, 2015 could

qualify as a peaceful one and what other considerations, if any, should be taken into account to determine if the children's best interests were preserved.

From all accounts, the demonstration was a peaceful one. The relevant entry from the Station Diary of the Claremont Police Station describes it as "incident free" and all the persons present, including students of Prickly Pole Primary and Infant School who were interviewed by OCA's investigators, say it was peaceful. In fact, of further note, is that the police have documented that upon seeing that children were involved in the demonstration, they (the police) took them from the group and placed them in one of the buses in the care of some adults. There was no resistance from anyone when this was being done.

In relation to the preservation of the children's best interests, the issue as to whether or not the children were of sufficient age and maturity to understand the issues at hand becomes relevant. Were they participating to voice their own personal concerns and exercise their right to contribute to the making of a decision that would affect them? Or were they merely there as an adjunct to the interests and motives of the adults who took them? If the latter is true, then this would not be in sync with the children advancing their right to embrace all the freedoms previously mentioned and discussed, and as such could properly be described as the adults manipulating the children for their own purposes. Based on the material gathered, this Report is persuaded towards the view that at least in some instances, the latter is what actually occurred. The children in the Infant Department are 4 and 5 year olds; those in the Primary Department are

between 6 – 12 years of age. While every child is different and matures at a different rate, it is reasonable to conclude that a 4 or 5 year old would not have the requisite maturity, understanding or interest in “missing monies” to be staging any protest in a bid to demand answers. The same can be said of the Grade 1 and Grade 3 students who would on average be aged 6 and 8 years, respectively. They, therefore, would not have been exercising **of their own volition**, their right to freedom of expression, association or peaceful assembly. The argument could theoretically differ when dealing with the students in Grades 5 and 6 whose average ages would be 11 and 12 years, respectively. In the present circumstances, however, any attempt to do so may be impinged by the utterances of the parents from the very early stages of the planning. Even without consultation, parents expressed the view from the Wednesday meeting that they would be carrying their children with them. If this is so, then these children were not acting in keeping with their own wishes, but were merely conforming to the wishes of the adults.

These views, taken together with the absence from school during class time, cumulatively speak to a violation of the children's best interests. As stated before, there is no infringement of any law nor is there any breach of any rights of the child. There is, however, the concern that neither the parents nor those who organized the protest had the children's best interests as a priority. They were in Claremont incidental to the desires of the adults involved and during a time when their absence from school was ill-advised. While their best interests were compromised by those who owed a duty of care to them, thankfully there was no resultant harm thereby removing the possibility of any viable cause of action.

CONCLUSION

1. There is no causal link that exists between the death of Akella Lewis and the organizers of the demonstration that took place on Friday, September 18, 2015 or its participants.
2. Akella Lewis was not in Claremont at any time during the protests and was not, as is contended by some quarters, hit by any bus which led to her subsequent demise.³⁰
3. The [former] Chairman of the School Board did not exercise the best judgment in planning the protest as it relates to the time of its execution and her perceived facilitation of the students' participation.
4. There is nothing wrong *per se* with children participating in political events; what is important in this regard, however, is that they are of sufficient age and maturity to understand and exercise their inherent freedom to so participate without any manipulation. The timing of such activities and all relevant circumstances that may affect their overall best interests must also necessarily be considered. These 'relevant circumstances' include the threat of

³⁰ Akella was being transported to the Alexandria Community Hospital sometime after 11am on Friday, September 18, 2015 and was seen at the hospital sometime after midday. Various routine tests and CPR were performed on her before she was pronounced dead at 12:30pm. The distance between the hospital and Akella's school is 10.75 miles (17.3km) and Claremont is another 10.07 miles (16.2km) going in the opposite direction from Prickly Pole Primary and Infant School. These facts of the distance, the sequence of events and the timing, make it **impossible** for Akella to have been in Claremont during the time of the protest let alone to be hit by a bus whilst being there.

harm or the children's possible exposure to harm, any foreseeable violence and proper planning and execution.