

**[J-181A-1998]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 95 W.D. Appeal Docket 1997
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court at No. 2206PGH95 entered June
	:	13, 1997, affirming the Judgment of
v.	:	Sentence of the Court of Common Pleas
	:	of Armstrong County, Criminal Division, at
	:	No. 1991-0370-CRIM entered October 31,
LOUIS SHAFFER,	:	1995.
	:	
Appellant	:	696 A.2d 179 (Pa. Super. 1997)
	:	
	:	ARGUED: September 17, 1998
	:	

**OPINION**

**MR. JUSTICE ZAPPALA**

**DECIDED: JULY 21, 1999**

We granted allowance of appeal in this matter to determine whether the Superior Court erred in holding that the legislature's amendment of the Pennsylvania Corrupt Organizations Act (Pa.C.O.A.), 18 Pa.C.S. § 911 et seq., to include wholly illegitimate enterprises, applied to criminal activity that occurred under the Act in effect prior to the amendment, which this Court interpreted as applying solely to legitimate enterprises in Commonwealth v. Besch, 674 A.2d 655 (Pa. 1996). For the reasons that follow, we find that the Superior Court erred. Accordingly, we reverse its decision.

Appellant was found guilty by a jury of single counts of possession of a controlled substance, possession with intent to deliver a controlled substance, delivery of a controlled substance, criminal conspiracy, corrupt organizations and corrupt organizations

(conspiracy). He was sentenced to a term of imprisonment of forty-eight to ninety-six months for delivery of a controlled substance and concurrent terms of twenty-seven to sixty months for each of the conspiracy and corrupt organization convictions.<sup>1</sup>

Appellant appealed the judgment of sentence to the Superior Court. While his appeal was pending, this Court issued its decision in Besch, where we interpreted the applicable Pa.C.O.A. as not encompassing the prosecution of wholly illegitimate enterprises. Accordingly, Appellant argued that because the charges relating to his corrupt organization convictions stemmed solely from the government's allegation of his participation in a wholly illegitimate drug enterprise, his convictions could not stand.<sup>2</sup> The Superior Court rejected this argument, noting that

[i]f Besch were the last relevant pronouncement concerning the scope of the corrupt organizations statute, we would be constrained to reverse appellant's conviction. It is not. Within two weeks after the Besch decision, the Pennsylvania legislature amended the statute, and in so doing expressed its disagreement with the supreme court's ruling.<sup>[3]</sup> The legislature stated that it never intended to exempt illegal or illegitimate businesses from the reach of the Act.

Shaffer, 696 A.2d at 183. Former Senator Michael Fisher explained the House of Representatives' motive in seeking to amend the Pa.C.O.A.. He stated before the Senate:

[B]ut most importantly, Mr. President, the House of Representatives, in the action which they took on April 30, added amendments to that bill *in an*

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<sup>1</sup> A more detailed factual history is contained in the Superior Court's opinion below. Commonwealth v. Shaffer, 696 A.2d 179, 180-182 (Pa. Super. 1997).

<sup>2</sup> There is no dispute among the parties that the enterprise at issue here was a wholly illegitimate drug enterprise.

<sup>3</sup> Although the Superior Court stated that the legislature amended the Pa.C.O.A. within two weeks of our decision in Besch, in actuality, the House of Representatives made its proposed amendment, which was then sent to the Senate within two weeks. The actual legislative amendment to the Pa.C.O.A. occurred on June 19, 1996, effective immediately, two months after our April 17, 1996 decision in Besch.

*attempt to overrule* the decision of the majority, the four person majority of the Pennsylvania Supreme Court on April 17.

S.B. 1172, 180<sup>th</sup> Legis.; Pa. Legis. Journal No. 36, at 2028 (June 5, 1996) (emphasis added).

The Superior Court found the foregoing legislative action controlling regarding the interpretation to be given the Pa.C.O.A.. Moreover, because prior decisions of the Superior Court, and one non-precedential opinion of this Court, had interpreted the Pa.C.O.A. in accordance with the legislature's subsequently stated intent, the Superior Court concluded that our decision in Besch had no effect on its determination. See id., at 182, citing Commonwealth v. Yacoubian, 489 A.2d 228 (Pa. Super. 1985), and Commonwealth v. Wetton, 641 A.2d 574, 579 n. 5 (Pa. 1994) (Zappala, J., Opinion in Support of Reversal, wherein Yacoubian was cited to with approval in dicta). Yacoubian, where the Superior Court held that Pennsylvania's racketeering act could be read broadly enough to encompass illegitimate as well as legitimate "enterprises" and rejecting the argument that the preamble limited application of the statute to legitimate entities, was overruled in Besch.

While the Superior Court recognized a duty to maintain and effectuate the decisional law of this Court, given the legislature's stated intent contrary to our interpretation in Besch, the court concluded that

to apply the rationale of Besch in disposing of the instant case would be to ignore the intent of the legislature, despite the Besch court's belief that it correctly had discerned and applied same[.]

Shaffer, 696 A.2d at 183. By its holding, the Superior Court treated the legislature's action as effectively overruling Besch.

We must now decide what effect, if any, the legislature's subsequent amendment of the Pa.C.O.A. had on our prior decision in Besch since, as noted by the Superior Court,

“[i]f Besch were the last relevant pronouncement,” Appellant’s conviction would be reversed.<sup>4</sup>

Appellant was charged with and convicted of violating the same provisions of the Pa.C.O.A. as the appellant in Besch. These sections, 18 Pa.C.S. §§ 911(b)(3) & (4), provide:

(3) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.

(4) It shall be unlawful for any person to conspire to violate any of the provisions of paragraph (1), (2) or (3).

The Pa.C.O.A. defined “enterprise” as

any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, engaged in commerce.

18 Pa.C.S. § 911(h)(3).

Whether Appellant could properly be charged and convicted under the foregoing provisions of the Pa.C.O.A. in effect at the time his criminal activity occurred depended upon whether the Pa.C.O.A. embraced wholly illegitimate enterprises. Once the legislature finished its efforts, and the Pa.C.O.A. was signed into law, it was for the Courts, ultimately this Court, to interpret the legislative language. We did so in Besch.

After examining the extensive and specific preamble to the Pa.C.O.A., this Court concluded

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<sup>4</sup> We wish to make clear that this is the only issue before us. The parties do not dispute that if the amendment did not affect our decision in Besch, Appellant’s conviction must be reversed. The Commonwealth, however, in the alternative, advocates that we overrule Besch and affirm Appellant’s conviction.

[t]here is no escaping the clear intent of this statute. The General Assembly went to great pains to set forth the parameters of this piece of legislation. Pa.C.O.A. is directed at preventing the infiltration of legitimate business by organized crime in order to promote and protect legitimate economic development within Pennsylvania. Although the Commonwealth acknowledges this to be the precise intent of the General Assembly in enacting Pa.C.O.A., they choose to ignore same. However, once the intent of the General Assembly has been ascertained that intent cannot be ignored, rather, it must be given effect.

Besch, 674 A.2d at 659 (citations omitted).

Thus, based upon our interpretation, the applicable Pa.C.O.A. that Appellant was convicted of violating did not apply to wholly illegitimate enterprises. See Harry C. Erb, Inc. v. Shell Construction Co., 213 A.2d 383 (Pa. Super. 1965), citing City of Philadelphia v. Schaller, 25 A.2d 496 (Pa. Super. 1942) (judicial construction of a statute becomes part of the legislation from the time of its enactment); see also Commonwealth v. Peters, 306 A.2d 901 (Pa. 1973) (per curiam order of this Court noting that our decision interpreting Pa.R.Crim.P. 118 was the law in this Commonwealth after the effective date of the rule).

Although the legislature amended the act to state a different meaning of “enterprise” as follows:

(3) ‘Enterprise’ means any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, engaged in commerce *and includes legitimate as well as illegitimate entities* and governmental entities.

18 Pa.C.S. § 911(h)(3), *as amended*, June 19, 1996, immediately effective (emphasis added), the amendment could only be applied prospectively. Section 1953 of the Statutory Construction Act, entitled “Construction of amendatory statutes,” provides:

Whenever a section or part of a statute is amended, the amendment shall be construed as merging into the original statute, become a part thereof, and replace the part amended, and the remainder of the original statute and the amendment shall be read together and viewed as one statute passed at one time; but the portions of the statute which were not altered by

the amendment shall be construed as effective from the time of their original enactment, *and the new provisions shall be construed as effective only from the date when the amendment became effective.*

1 Pa.C.S. § 1953 (emphasis added). Moreover, amendatory statutes are to be construed retroactively only if such construction is clearly indicated under the provisions of the statute. Commonwealth v. Scoleri, 160 A.2d 215, 227 (Pa. 1960).

The legislature failed to clearly indicate in the amendatory act that the amendment of the Pa.C.O.A. should be applied retroactively. Although the legislative history accompanying the amendment indicated that certain legislators desired to overrule our decision in Besch, the legislature lacked authority to do so. See Commonwealth v. Sutley, 378 A.2d 780, 784 (Pa. 1977), citing Greenough v. Greenough, 11 Pa. 489 (1849) (the legislature cannot, by an act of assembly, overrule a judicial decision). Nor can the legislature create retroactive authority by passing “clarifying” legislation. St. Joseph Lead Company and Koppers Company, Inc. v. Potter Township, 157 A.2d 638, 642 (1957) (“[I]t is elementary that the legislature cannot create authority retroactively simply by passing ‘clarifying’ legislation. The intent of the legislature must be determined as of the time the original act was passed.”)<sup>5</sup>

The Superior Court’s decision, in treating Besch as a nullity based upon the legislature’s subsequent amendment of the Pa.C.O.A., was clearly erroneous. The

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<sup>5</sup> We are not unaware of our decision in Commonwealth v. Chamberland, No. 155 Capital Appeal Docket (filed June 11, 1999), where we concluded that the legislature’s amendment of Section 1420 of the County Code, 16 P.S. § 1420, which was obviously amended to correct our interpretation of the legislative intent of Section 1420 in Commonwealth v. Lawson, 669 A.2d 1246 (Pa. 1997), “eviscerated the holding and rationale of Lawson.” Chamberland, slip. op. at 11. In amending Section 1420, however, the legislature, unlike here, specified in subsection (d) of the amendment, that it “shall apply (continued...)”

Superior Court, in essence, reinterpreted the statutory language of the Pa.C.O.A. in a manner that was contrary to our interpretation in Besch. However, as the foregoing makes clear, once this Court interpreted the legislative language contained in the applicable act, our interpretation became a part of the legislation from the date of its enactment. The legislature's failure to clearly set forth its intent in the original act could only be remedied prospectively by the later amendment. Thus, the Superior Court violated its duty to effectuate the decisional law of this Court since our interpretation of the prior enactment controlled the matter.<sup>6</sup>

As Superior Court erred in affirming Appellant's convictions based upon Sections 911(b)(3) & (4), 18 Pa.C.S. §§ 911(b)(3) & (4) of the Pa.C.O.A., we now reverse its decision in this regard.

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(...continued)

to all cases pending on the effective date of this subsection and all cases thereafter, including, but not limited to, those cases on post-trial or on appeal.”

<sup>6</sup> We wish to note that we are extremely troubled by the Superior Court's seemingly effortless disregard of our precedent established in Besch. While we do not wish to speculate regarding the court's motives in this regard, we feel it necessary to, once again, remind the Superior Court of its duty and obligation to follow the decisional law of this Court. It was only several months ago, in Commonwealth v. Randolph, 718 A.2d 1242 (Pa. decided September 29, 1998), that we found it necessary to admonish the Superior Court in a similar fashion. In Randolph, we emphasized that “[i]t is a fundamental precept of our judicial system that a lower tribunal may not disregard the standards articulated by a higher court.” Id. at 1245. This canon is equally relevant to the within case and we again emphasize its applicability.

Mr. Justice Castille files a concurring opinion.

Madame Justice Newman and Mr. Justice Saylor concur in the result.