[2018] JMSC Civ. 126

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018 HCV 00627

BETWEEN	**MARLON DWAYNE MULLINGS**	**APPLICANT**
AND	**THE COMMISSIONER OF POLICE**	**1ST RESPONDENT**
AND	**POLICE SERVICE COMMISSION**	**2ND RESPONDENT**
AND	**OFFICE OF THE SERVICES COMMISSIONS**	**3RD RESPONDENT**

IN CHAMBERS

Mr. John Clarke for the Applicant.

Ms. Tamara Dickens, Senior Assistant Attorney General, & Ms. Donia Fuller Barrett, Crown Counsel for the Respondents.

HEARD: JULY 17, 2018, August 9, 2018 & September 13, 2018

Leave to Apply for Judicial Review – Rule 56.4 of the Civil Procedure Rules – Considerations to determine Promptitude of Application for leave to apply for Judicial review – Rule 56.6 of the CPR – Arguiable ground for judicial review having a realistic prospect of success

LISA PALMER HAMILTON (AG.)

Background

[1] The Applicant, Marlon Dwayne Mullings, a Police Constable and member of the Jamaica Constabulary Force, has applied for leave for Judicial Review against the Commissioner of Police, the Police Service Commission, a body established pursuant to the **Jamaica (Constitution) Order in Council, 1962** (hereinafter

referred to as “the Constitution”) and the Office of the Services Commissions, the Secretariat of the four (4) Services Commission within central and local government, including The Police Service Commission.

[2] In an effort to give insight into the circumstances giving rise to this application, the factual background and chronology of events are summarized below.

[3] The Applicant was at all material times a member of the Jamaica Constabulary Force (hereinafter referred to as the JCF). On or around the 22nd day of September 2009, the Applicant whilst stationed at the Gun Court Division of Remand Centre located at 5 Camp Road, Kingston 5, was arrested by a Senior Superintendent of Police (hereinafter referred to as “SSP”) at Mobile Reserve on reasonable suspicion of larceny of motor vehicle. After being held in custody for over six (6) days, it was discovered that the Applicant was in fact the owner of the motor vehicle. Thereafter he was released from police custody and upon his release he advised the SSP that he would institute proceedings for his unlawful arrest. He was subsequently charged by the said SSP and given a summons to appear in the Corporate Area Traffic Court for traffic offences. The Applicant was interdicted from performing his duties on the 28th day of September 2009. During the course of the Applicant’s appearance in the Corporate Area Traffic Court, he along with his main witness at the material time, was also charged for Attempting to Pervert the Course of Justice. I must disclose at this juncture that the latter charge was laid against the Applicant by the said SSP who arrested him on reasonable suspicion of larceny of motor vehicle and charged him for the traffic offences.

[4] The charge of Attempting to Pervert the Course of Justice was ventilated in the Saint Andrew Parish Court holden at Half Way Tree and on the 18th day of November 2014 the case against the Applicant and his then co-accused was dismissed on a No Case submission. The Applicant was however convicted on the traffic offences and was fined in relation to these offences on the 26th day of May 2015.

[5] The Applicant attempted to resume his duties but was again prohibited from doing so and was advised that he needed to await directions from the 1st Respondent. The Applicant subsequently received a notice dated the 6th day of October 2016 from the JCF advising him that he would not be recommended for re-enlistment in the Jamaica Constabulary Force. The Applicant through his Attorney-at-Law responded to this notice by letter dated the 16th day of November 2016 wherein Learned Counsel asked the JCF to reconsider their decision based on her proffered reasons as well as to formally request a hearing on behalf of the Applicant so that the issues raised in her letter could be properly ventilated. A formal hearing was not held however the Applicant was allowed to submit his application for re-enlistment. Although his application for re-enlistment was approved the Applicant was not permitted to resume his duties until he received said directive from the 1st Respondents.

[6] The 1st and 2nd Respondents subsequently decided to recommend the Applicant's dismissal from the JCF based on his traffic convictions. He was advised of this recommendation in letter dated the 5th day of July 2017 from the 3rdRespondent and letter dated 13th day of July 2017 from the Governor General's Secretary. Both letters stated that the recommendation that he be dismissed effective the 26th day of May 2016 is in keeping with **Regulation 38 of The Police Service Regulations, 1961**. The letter dated the 5th day of July 2017 directed him to apply for a reference of his case to the Privy Council through the Office of the Services Commission within fourteen (14) days of receipt of said letter and the Letter dated the 13th day of July directed him to apply to the Office of the Commissioner of Police within said time frame. Both letters were received by the Applicant on the 14th day of August 2017. The Applicant requested from the 3rd Respondent that his case be referred to the Privy Council within the stipulated time frame. He also wrote several letters requesting the release of documents to him that informed the decision of the 1st and 2nd Respondents.

[7] The 3rd Respondent replied to the Applicant's request to have his case referred to the Privy Council and indicated that the correct procedure in submitting said

reference is through the Office of the Commissioner of Police. The 2nd Respondent also denied the Applicant's request for disclosure. The Applicant however wrote several letters between September 2017 and December 2017 seeking an update on the status of the reference of his case to the Privy Council including letter dated the 12th day of September 2017 addressed to the Clerk of the Privy Council. He received a response to his efforts in a letter dated the 21st day of December 2017 from the 1st Respondent indicating that his matter is still receiving attention. This letter notably referred to the Applicant as an "Ex-Constable".

[8] It is against this background that the Applicant is seeking leave to apply for judicial review of the following decisions of the Respondents;

(a) The recommendation of his dismissal from the Jamaica Constabulary Force;

(b) The refusal to release to him the documents that informed their decision;

(c) The refusal to make the appropriate referral of his case to the local Privy Council on the basis that has engaged the 'wrong process'; and;

(d) The decision to effectively suspend him without pay.

[9] The Respondents contend that the Applicant's application for leave to apply for judicial review should be refused as it is premature. They aver that the Applicant has not been dismissed from the JCF and the reference to the Privy Council is not yet complete. The Respondents further claims that the Governor General has not acted on the advice or recommendation of the Police Service Commission and dismissed the Applicant from the JCF.

Issue to be Determined

[10] The primary issues raised in the application for my determination are as follows:

(i) Is the recommendation of the Respondents to the Governor General amendable to judicial review?

(ii) Was the application for leave to apply for judicial review made on time?

(iii) Whether the Applicant has met the test for Judicial Review?

(iv) Is judicial review the more appropriate remedy?

Law and Analysis

Is the recommendation of the Respondents to the Governor General subject to judicial review?

[11] This is the salient issue for my determination as my conclusion in this regard will determine whether it is necessary for me to consider any other issue in this case will be determinative of the Applicant's application.

[12] The undisputed fact in this matter is that the Respondents recommended the dismissal of the Applicant from the JCF. This recommendation was made pursuant to **Regulation 38 of The Police Service Regulations, 1961** which reads as follows: -

> *"38. If a member is convicted in any court of a criminal charge the Commission may consider the relevant proceedings of that court and if the Commission is of the opinion that the member ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon recommend the dismissal or other punishment of the member without the institution of any disciplinary proceedings under these Regulations".*

[13] The Applicant submits that the recommendation of the Respondents is subject to judicial review as it is an adverse recommendation which has an adverse impact on the Applicant and relied on the case of **George Anthony Levy v The General Legal Council** [2013] JMSC CIVIL 1.

[14] The Respondents contend that their recommendation does not amount to a decision and a decision has not yet been taken for the Applicant to be dismissed from the JCF as the Governor General has not acted upon their

recommendation. In their affidavit evidence the 3rd Respondent stated that they are awaiting the Applicant and/or his Attorneys-at-Law to submit the reference of his case to the Privy Council and until a reference is submitted or they make further contact with the Privy Council, no decision will be taken to dismiss the Applicant.

[15] Part 56.2 (2) (a) of **The Civil Procedure Rules, 2002**(hereinafter referred to as "the CPR") provides that a person who has been adversely affected by the decision of the application may apply for judicial review. The case of **George Anthony Levy v The General Legal Council** [2013] JMSC CIVIL 1 laid down the standard test for what makes decisions, actions or inactions susceptible to judicial review. In this case the Applicant, an Attorney-at-Law sought leave to apply for judicial review of the decision of the Respondent to proceed with the hearing of a complaint despite the numerous and varied challenges which have been made to the propriety of the decision-making panel and the irregularities of the proceedings. The Honourable Mrs. Justice Marva McDonald Bishop (as she then was) considered what constituted a decision, in light of evidence that indicated that the Respondents at the material time had not given a response to the application of the Applicant and no decision whatsoever was handed down on any of the issues raised. At paragraph 43 of the judgement, McDonald-Bishop, J, enunciated the following principle:

> *"What constitutes a decision for administrative law purpose was explained by Lord Diplock in* ***Council of Civil Service Unions v Minister for the Civil Service*** *[1985] A.C. 374, 408. Therein, his Lordship stated that the subject matter of every judicial review is a decision made by some person (or body of persons), the "decision-maker", or else a refusal by him to make a decision. His Lordship opined that for a decision to qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect the decision maker too."*

[16] The Honourable Mr. David Justice Fraser in the case of **Office of Utilities Regulation v The Contractor General** [2016] JMSV Civ 27 also considered circumstances where a recommendation may be susceptible to judicial review. In this case the Applicant sought leave to apply for judicial review of the decision of the Respondent contained in Report of Special Investigation- Right to Supply 360 Megawatts of Power to the National Grid Office of Utilities Regulation, Ministry of Science, Technology, Energy and Mining laid in Parliament. The Honourable Justice David Fraser in analysing the case highlighted an extract from **Judicial Review Principles and Procedure** by Auburn, Moffett and Sharland at paragraph 2.06 which states that:

> *"The courts regularly entertain claims for judicial review of matters that do not directly affect an individual or alter an individual's legal rights or obligations, such as policies and guidance. They also entertain claims for judicial review of non-binding recommendations and advice, and of reports that determine the facts of a matter but which do not have direct legal consequences"*.

[17] Fraser, J conceded this principle, he asserted at paragraph 63 of the judgement that "in each of the cases where judicial review was permitted, some practical consequence which negatively altered the rights of the applicant flowed from the recommendation or guidance which was challenged".

[18] Considering the evidence before me I find that the Applicant in this case is adversely affected by the recommendation of the Respondents and said recommendation is therefore subject to judicial review. In the case of **Dale Austin v The Solicitor General and The Permanent Secretary of the Ministry of Justice 2018 [JMSC] Civ 1** the Applicant, an Attorney-at-Law assigned to the Attorney General's Chambers sought leave to apply for judicial review of the present Solicitor General's recommendation to the Permanent Secretary that he be deployed elsewhere in the public service until his 2012 claim against the Public Service Commission and the Attorney General is fully resolved. The Honourable Mr. Justice Bryan Sykes (as he then was) in analyzing whether the Solicitor General's recommendation is subject to judicial review distinguished the

case of **Deborah Patrick Gardner v Mendez and another [2016] JMSC Civ 121** from the case before the bar at the material time. In the case of **Deborah Patrick Gardener** (supra), a recommendation was made by the PSC to retire Mrs Patrick Gardner. The Court granted leave to Mrs. Patrick Gardener to apply for judicial review. In his analysis, the Honourable Mr. Justice Sykes highlighted that not all recommendations are susceptible to judicial review. Much depends on the type of recommendation and its status in the decision-making process. In his distinction he noted the following actualities regarding the case of Mrs. Patrick Gardner at paragraph 10 of the judgement: -

> *(a) the PSC's recommendation would in all likelihood be followed by the Governor General. The PSC in effect does all the leg work necessary and then makes its recommendations to His Excellency who usually acts upon the recommendation. In that context the recommendation has great weight and significance because it will be followed unless there is some unusual development. Thus, in a sense the recommendation in that context is tantamount to the decision and so there was no need for Mrs Patrick Gardner to wait until His Excellency made a decision on whether to act on it or not.*
>
> *(b) also, the recommendation would have had the effect of separating Mrs Patrick Gardner from her job. Nothing of the sort is happening in the present case".*

[19] Whilst in the **Deborah Patrick Gardener** case (supra) the decision of the Governor General would have been the last resort and in the case at bar the Applicant's final source redress went beyond the Governor General to the Privy Council, I find that the reasons outlined above by the Honourable Judge can be adapted to the instant proceedings. Despite the Respondent's contention that the Applicant's application for leave to apply for judicial review should be refused as it is premature as the Applicant has not been dismissed from the JCF and the reference to the Privy Council is not yet complete and particularly that the

Governor General has not acted on their recommendation to dismiss the Applicant from the JCF, I find that in all likelihood the Governor General would have acted on the recommendation unless there are some unusual circumstances.

[20] The letter to the Applicant dated the 5th day of July 2017 illustrates this likelihood as it warned that if he failed to comply with the directives of said letter, the Governor General will act upon the recommendation of the Respondents without further notice to the Applicant. As such it would not be necessary for the Applicant to wait until his Excellency has acted. The recommendation in this context is equivalent to a decision.

[21] Furthermore, on the Respondent's contention that the reference to the Privy Council is not yet complete, before the filing of this application the evidence before me indicated that the Applicant sought several updates on the reference of his case to the Privy Council without much avail. It is also noteworthy that the Applicant sought to refer the matter to the Privy Council when he was advised that he did not follow the proper channel. Without further communication from the Respondents, it would stand to reason that accordance with the letter from the Governor General that within fourteen (14) days the decision of the Governor General would become final.

[22] Similar to the recommendation in the case of **Deborah Patrick Gardener** (supra) the recommendation separated the Applicant from his job and although he was placed on interdiction before the recommendation, the reasons for his initial interdiction inextricably formed the basis for the recommendation. The Applicant therefore has locus standi to apply for leave for judicial review.

Was the application for leave to apply for judicial review made on time?

[23] The Applicant overcame the first hurdle of establishing that he has locus standi to apply for leave for judicial review. Part 56.6(1) of the CPR provides that an application for leave for judicial review must be made promptly and, in any event,

within three (3) months from the date when the grounds for the application first arose. It is settled law that the operative timeline within which the application is to be made is the date of the judgment, order or decision and not the date that that the applicant became aware of the decision. This principle was enunciated by the Honourable Mr. Justice Sykes at paragraphs 18-21 in the unreported case of **City of Kingston Co-operative Credit Union Limited v The Registrar of Co-Operatives Societies and Friendly Societies and Yvette Reid** 2010 HCV 0204 delivered October 8, 2010. In this case The Honourable Justice Sykes heard an application by the 2nd Respondent to set aside an ex-parte grant of leave to apply for judicial review granted by Daye J. on May 17, 2010 to the City of Kingston Co-operative Credit Union Limited.

[24] The Applicant in his evidence stated that he received letters dated the 5th day of July 2017 and the 13th day of July 2017 from the Respondents notifying him of their recommendation on the 14th day of August 2017. Using the above stated principle, it follows that the Applicant would have to act promptly after either the 5th day of July or the 13th day of July 2017, the dates of the impugned decision, or within three (3) months of the decision. It would therefore mean that the latest date for the application to be made would be on or around the 14th day of October 2017 for it to fall within the parameters of the CPR. The Applicant's application was filed on the 19th day of February 2018. The Applicant in his further amended application requested an extension of time within which to apply for leave to file his application for judicial review, if necessary, and learned Counsel for the Applicant avers that the application was filed within the prescribed time. This of course is based on the Applicant's belief that the grounds for the application first arose on the 21st day of December 2017, the date of the last correspondence received from the Respondents in response to his request for the Respondents to forward his case to the Privy Council as well as his request pertaining to the status of same.

[25] The Respondents contend that the application is out of time and cited the principle stated in the case of **City of Kingston Co-operative Credit Union**

Limited(supra) in support of their submission that the court should find that the four (4) month delay is unusual. They also submitted that while the Applicant filed a further amended application seeking an extension of time within which to apply for leave to file judicial for judicial review there was no basis proffered in the affidavit of the Applicant which the Court can exercise its discretion and extend time.

[26] In analysing the evidence and submissions before me I will first note that there is a established rule of practice that applications for leave for judicial review must be made promptly. In the case of **Regina v The Commissioner of Police, Ex Parte Kadia Warren** [2014] JMSC Civ. 97 it was noted by The Honourable Mr. Justice Kirk Anderson that an application could be considered not to be prompt even when made within the three (3) month dead-line.

[27] In this case I must determine when the grounds for judicial review first arose. If I accept the Respondent's submission that the ground first arose on either the 5th day of July 2017 or the 13th day of July 2017 then the application would undoubtedly be out of time and I would have to consider whether there is a good reason to permit the application. In the case of **Regina v The Commissioner of Police, Ex Parte Kadia Warren** (supra) the applicant did not make an application for extension of time within which to file for leave to apply for judicial review and at paragraph 6 of the judgement The Honourable judge stated that *"even if such an application had been made, it would not at all automatically follow that an extension of time would be granted, since, rule 56.6 (2) of the CPR states 'However the court may extend the time if good reason for doing so is shown'"*.

[28] In analysing whether good reasons exist to permit the application I must give consideration to part 56.6 (5) of the CPR that states – *'When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to – (a) cause*

substantial hardship to or substantially prejudice the rights of any person; or (b) be detrimental to good administration'.

[29] The letters received by the Applicant notifying him of the recommendation to the Governor General advised him that he may refer his case to the local Privy Council before his Excellency acts upon the recommendation. The Applicant wrote to the 3rd Respondent four (4) days before the expiration of the time stipulated within the letter. The 3rd Respondent subsequently advised the Applicant that the letter dated the 5th day of July 2017 gave him the wrong directions and that he should follow the direction given in the letter dated the 13th day of July 2017 and apply to the 1st Respondent through the 3rd Respondent.

[30] The Applicant subsequently wrote several letters between September 2017 and December 2017 requesting the 3rd Respondent to refer his case to the Privy Council as well as that seeking an update on the status of the reference of his case. These letters included letter dated the 12thday of September 2017 addressed to the Clerk of the Privy Council outlining his case. The Applicant was active in pursuing the procedure or channel recommended by the Respondents and in my view acted with alacrity and perseverance in this regard.

[31] The Honourable Mr. Justice Sykes in the case of **Northern Jamaica Conservation** Association (**The) Et Al v The Natural Resources Conservation Authority and The National Environment and Planning Agency** HCV 3022 OF 2005, delivered on the 16th day of May 2006 examined the issue of delay and noted that the delay in applying for leave for judicial review has to be assessed in the context of the investigations into the facts and documents the applicant would to do before filing the application.

[32] The Applicant applied for judicial review after several unanswered request as to the status of his case at the local Privy Council. In my view the 3rd Respondent pointed out that the Applicant followed the wrong procedure in making the reference of his case to the local Privy Council. The 3rd Respondent notably

conceded that the Applicant was given the wrong directive by the Governor General. He received two different letters with two different directives as to the procedure he should follow in this regard. Since at the material time the Applicant was represented by Learned Counsel one could reasonably posit that Learned Counsel should have sought clarity in that regard. However, it is trite law that a litigant cannot be punished for the error of his Attorney-at-Law. There is no evidence to suggest that the Applicant after being directed to apply for his case to be referred to the Privy Council through the Office of the Commissioner of Police did same. However, there is evidence that the Applicant forwarded a letter to the Clerk of the Privy Council outlining his case and the Commissioner of Police was copied on this letter.

[33] In my view, one could reasonably argue that the ground for the application for judicial review arose after the Applicant received correspondence from the Office of the Commissioner of Police dated the 21st day of December 2017 wherein he was referred to as an Ex-Constable. Prior to the Applicant's receipt of that correspondence he would have had reason to believe that the recommendation regarding his dismissal was being addressed by the Privy Council. Having received that correspondence it would not have been unreasonable for the Applicant to have believed that as at the date of that correspondence he was deemed dismissed from the Jamaica Constabulary Force.

[34] In the light of the circumstances and considering the actions of the Applicant in vigorously pursuing the recommended channel, I find that even if there were a delay there is good reason for such a delay. In my judgment, refusing to grant the application for leave would likely cause hardship to the Applicant as he would lose his job and consequently his emoluments and benefits. Conversely, I find that in granting the application there would be no hardship attributed to the Respondents as in any event, if the Privy Council makes a decision adverse to the Applicant, his only recourse would be to seek judicial review. It would be detrimental to good administration in the circumstances to refuse leave at this juncture only to have the parties re-seek the Court's intervention at a later stage.

[35] It has not escaped me that the Respondents in their oral submissions sought to chastise the Applicant for his failure to indicate in his affidavit evidence the reason for the delay. It is to be remembered that the Applicant has maintained that the application is within the prescribed time. I am however of the view that whether or not there was a delay, there is sufficient evidence before me particularly the actions undertaken by the Applicant up to the point of filing his application that provide good reason for his delay in filing the application for leave to apply for judicial review.

Whether the Applicant has met the test for Judicial Review?

[36] In an application for leave to apply for judicial review the Court must consider whether the Applicant has an arguable ground for judicial review having a realistic prospect of success? The Court must be satisfied that the claim has sufficient merit to proceed. In **Gorstew Limited and Gordon Stewart O.J. v The Contractor General, Claim No. 2012 HCV 04918**,the court applied the test in the Privy Council case of **Sharma v Brown-Antoine and others [2007] 1 WLR 780**, where the joint judgement of Lord Bingham and Lord Walker stated:- *"The ordinary rule now is that the Court will refuse to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy*".

[37] There are several grounds on which the application is brought. Whilst this is not a substantial judicial review hearing and the Court at this stage should not determine what remedies would be appropriate I will consider briefly the nature and gravity of the issues to be argued.

[38] The general thrust of the remedies being sought by the Applicant are to the effect that the manner in which the Respondents acted in recommending his dismissal from the JCF was unfair and in breach of the principles of natural justice and consequently he is seeking to be re-instated.

[39] The Applicant has contended that he was never provided with the documents which formed the basis of the recommendation of the Respondents that he be dismissed from the Jamaica Constabulary Force notwithstanding several requests for same.

[40] Most notably, the letter recommending his dismissal referenced the basis of same as being a breach of **Regulation 38 of The Police Service Regulations, 1961** which makes reference to dismissal of an officer for a criminal offence. The offences for which the Applicant was convicted does not fall within the scope of a criminal offence. This aspect would carry much weight at the substantive judicial review hearing when the Court considers whether the decision of the Respondents was proper and within the ambits of the law.

[41] In my view, coupled with the foregoing, the Applicant having not been given access to the documents requested raises issues of fairness and whether there was proper regard had to the principles of natural justice, especially having regard to the dicta of Lord Mustill in the case of **R v Secretary of State for the Home Secretary, ex parte Doody [1994]1 AC 531**, at page 560 where he states '*…fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. Since the person affected cannot make worthwhile the mere representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer.'*

[42] For the foregoing reasons I therefore find that the Applicant has satisfied me that there is an arguable case with a real prospect of success.

Is judicial review the more appropriate remedy?

[43] In relation to this issue of an alternative remedy, Beatson J in **Regina (on an application by JD Wheatherspoon Plc) v Guilford Borough Council 2006**

EWHC 815 (Admin) (at paragraph 90) stated: *"The test of whether an Applicant should be required to pursue an alternative remedy in preference to judicial review is the 'adequacy,' 'effectiveness' and 'suitability' of that alternative remedy. It was said that the test can be boiled down to whether 'the real issue to be determined can sensibly be determined' by the alternative procedure and in* ***R v Newham LBC ex parte R 1995ELR 156*** *at paragraph 163 that it is whether the alternative statutory remedy will resolve the question at issue fully and directly"*.

[44] By virtue of **Regulation 42 of The Police Service Regulations, 1961** the Applicant has a statutory alternative to judicial review and was directed by the Respondents to apply to the Privy Council within fourteen (14) days of receipt of the letters dated the 5th day of July 2017 and the 13th day of July 2017. That time has undoubtedly elapsed and it would be in the discretion of the Privy Council to extend same. The Court ought not trample on the Privy Council's powers and compel it to extend time. The alternative possibility is that if the Applicant had applied to the Privy Council for an extension of time, the Privy Council may have refused same and the Applicant would have been at a disadvantage at this stage. Therefore, I find that an alternate remedy cannot be effected in these circumstances. Furthermore, I find that the Claimant has strenuously exhausted this alternate remedy. In my judgement, the alternative remedy of a civil trial is not the most suitable or effective and will certainly not resolve the issue directly as the issues involve the actions of public and governmental bodies.

Disposition and Orders

[45] It is hereby ordered;

1. Applicant is granted an extension of time within which to seek leave to apply for judicial review.

2. Applicant is granted leave to apply for judicial review proceedings within fourteen days of the date of this order.

3. First hearing of the Judicial Review is set for.

4. Cost of the Application to be costs in the judicial review, as is determined by the Court.