[2025] JMSC Civ. 9

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO.SU2024CV 03897

BETWEEN	**NORMAN BROWN**	**APPLICANT**
AND	**THE INTEGRITY COMMISSION**	**1st RESPONDENT**
AND	**KEVON STEPHENSON**	**2nd RESPONDENT**

Mrs Symone Mayhew KC and Mr Neco Pagan instructed by Mayhew Law for the applicant

Mr Kevin Powell, Mr Sundiata Gibbs and Ms Annay Wheatle instructed by Hylton Powell for the respondents

Heard: December 11, 2024, and January 14, 2025

Judicial Review - Leave for judicial review - whether threshold test for leave met - Whether impugned passages from Investigation Report amenable to judicial review- Whether declarations require leave for judicial review – Whether injunctions require leave for judicial review - The Integrity Commission Act – Civil Procedure Rule 56

IN CHAMBERS

CORAM: JARRETT, J

Introduction

[1] This is the second application seeking leave to bring a judicial review claim in respect of the: "**Investigation Report into the Statutory Declarations submitted by the Most Honourable Mr. Andrew Holness, Prime Minister for the years 2019-2022, in respect of concerns that he owns assets disproportionate to his lawful earnings, and that he made false statements in his Statutory Declarations, by way of omissions, contrary to law**", dated August 30, 2024 (the Investigation Report), prepared by the 2nd respondent Kevon Stephenson. The first application was heard and determined in **Andrew Holness & Ors. v Craig Beresford, Kevon Stephenson and Integrity Commission [2024] JMSC Civ 154.** The application currently before the court was filed on October 4, 2024. In it, Norman Brown (the applicant) impugns paragraphs 5.8.103; 5.8.106 to 5.8.109; 6.1.6 6.2.4; 5.9.6; 6.1.5; and 6.2.2 of the Investigation Report and requests the court's leave to bring a judicial review claim for an order of certiorari to quash them.

[2] Leave is also being sought to include in the judicial review claim, declaratory remedies and a mandatory injunction. In **Andrew Holness,** I stated that the court's leave is not required to bring a claim for public law declarations or an injunction. King's Counsel Mrs Symone Mayhew citing the Privy Council decision in **Attorney General of Antigua and Barbuda and Anor v Isaac [2018]UKPC 11**, argues on behalf of the applicant that notwithstanding my decision in **Andew Holness** and the decisions of D Fraser J in **OUR v Contractor General [2016] JMSC Civ 27** and **Audrey Bernard - Kilbourne v Board of Management of Maldon Primary School [2015] JMSC Civ 170,** on which I relied, the declaratory remedies and the mandatory injunction the applicant seeks, require the court's leave. Consequently, in addition, to considering whether leave should be granted in relation to the orders of certiorari being sought, I will carefully examine the Board's decision in **Attorney General of Antigua and Barbuda v Isaac**.

[3] The applicant is the chairman of the Urban Development Corporation (UDC) and the Housing Agency of Jamaica (HAJ). He is also a director and shareholder of Estatebridge Holding Limited. Both the UDC and HAJ are statutory bodies falling

within the ministerial responsibility of the Minister of Economic Growth and Job Creation, The Most Honourable Dr Andrew Holness, Prime Minister (the PM). The 1st respondent is the Integrity Commission (IC), a body corporate established under the Integrity Commission Act (ICA). The 2nd respondent, Kevon Stephenson is the Director of Investigations (DI) at the IC. It is the DI who prepared the Investigation Report.

The application

[4] The following are the remedies sought by the applicant: -

> "1. Leave be granted to apply for judicial review to claim the following administrative orders: -
>
> > (i) An order of Certiorari quashing paragraphs 5.8.103, 5.8.106 to 5.8.109, 6.1.6 and paragraph 6.2.4 of the Investigation Report (containing observations, remarks and comments in some cases, findings and recommendations in others, but all leading to the conclusion that there is significant conflict of interest concerns relative to the personal/business relationship of the applicant, Norman Brown and The Most Honourable Dr Andrew Holness, Prime Minister and that there be a referral to the Ethics Committee of Parliament for examination and determination).
> >
> > (ii) An order of Certiorari quashing paragraphs 5.9.6, 6.1.5, and paragraph 6.2.2 of the Investigation Report (containing observations, remarks and comments in some cases, findings and recommendations in others, but all leading to the conclusion that the conduct on the part of the principals of Estatebridge Development Limited (the applicant being one such principal) *prima facie* constitutes a fundamental undermining of the tax laws and particularly a breach of section 99(1) of the Income Tax Act and that there be a referral to the Commissioner General , Tax Administration

Jamaica for assessment and imposition of penalties and a referral to the Financial Investigations Divisions).

(iii) A declaration that the observations, remarks, comments, findings, conclusions and recommendations made in relation to the applicant Norman Brown by the Director of Investigation in the Investigation Report dated 30 August 2024 were made in breach of the principles of natural justice and procedural fairness and are therefore null and void.

(iv) A declaration that the process utilized by the Director of Investigation in conducting its investigation, which resulted in its observations, remarks, comments, findings, conclusions and recommendations made in relation to the applicant who was a mere witness, which are contained in the Investigation Report dated 30 August 2024, was unfair and in breach of the principles of natural justice, was ultra vires the Integrity Commission Act and in breach of the applicant's rights guaranteed by sections 13(3)(g),(h),(r) and 16(2) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011.

(v) A declaration that the applicant's legitimate expectation that the Integrity Commission and the Director of Investigation would have observed the principles of natural justice and procedural fairness, in conducting its investigation, which led to its observations, remarks, comments, findings, conclusions and recommendations made in relation to the applicant, which are contained in the Investigation Report dated 30 August 2024 was breached.

(vi) A declaration that the Integrity Commission and the Director of Investigation acted ultra vires and breached section 54 of the Integrity Commission Act in making, publishing and submitting to

Parliament for tabling the Investigation Report containing adverse observations, remarks, comments, findings, conclusions and recommendations against the applicant in circumstances where the Director of Investigation had no reasonable grounds for suspecting that the applicant had breached a code of conduct, committed an Act of Corruption and or breached the Integrity Commission Act.

(vii) A declaration that the Director of Investigation in making the findings and conclusions, as contained in the Investigation Report namely,

a. that there exists potential conflict of interest,

b. that the similarity in the functions of the HAJ and the UDC and the relationship between the applicant and the Prime Minister pose significant conflict of interest concerns,

c. that the appointment of the applicant, a business associate of the Prime Minister as Chairman of the UDC and HAJ poses significant conflict of interest,

committed an error of law and that the said findings and conclusions are unsupported by the factual circumstances, are unreasonable and irrational.

(viii) A mandatory injunction compelling the Integrity Commission and the Director of Investigation to remove all adverse findings, conclusions and /or recommendations made in relation to the applicant from the Investigation Report dated 30 August 2024.

(ix) A declaration that in submitting the report to Parliament for tabling and in publishing the report on its website containing the adverse findings, conclusions and/or recommendations in relation to the applicant the Integrity Commission breached the constitutional right

of the Applicant to privacy as guaranteed by sections 13(3)(j) [of] the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011.

2. Such consequential directions be given as may be deemed appropriate on the grant of leave to apply for judicial review.

3. The grant of leave to apply for judicial review is conditional upon the application making a claim for judicial review within 14 days of the date of receipt of the said Orders by the applicant's Attorneys-at-law.

4. Costs.

5. Such further and other relief as this Honourable Court deems fit".

[5] I have extracted the following eight grounds from the: " STATEMENT OF FACTS AND GROUNDS ON WHICH THE APPLICANT RELIES", which is contained in the application: -

" xi. The contents of the Investigation Report and the submission of the report to Parliament for tabling and other publication of the Investigation Report are in breach of section 54 of the ICA, the IC's data privacy policy, principles of fairness, natural justice and procedural propriety and are ultra vires.

xii. The DI made an error of law in his finding that there exists potential conflict of interest and his findings that the similarity in the functions of HAJ and the UDC and the relationship between Messrs Holness and Brown pose significant conflict of interest concerns. Additionally, that the appointment of [the] applicant, a business associate of the Prime Minister as Chairman of the UDC and HAJ poses significant conflict of interest.

xiii. The respondents acted ultra vires the ICA, in the submission of the report in its entirety to Parliament for tabling to include the references to the applicant and Estatebridge given the Director of Investigation had no reasonable grounds to suspect that the applicant had breached any code of conduct by a public official or parliamentarian or that an act of corruption or an offence under the Integrity Commission Act had been committed. Section 54 of the Integrity Commission Act has provisions relating to the findings of the Director of Investigation and the proper course to be adopted by the respondents in respect of the said findings and the circumstances and matters in respect of which the Investigation Report is to be submitted to Parliament for tabling.

xiv. The Director of Investigation, in the Investigation Report treated with the applicant as subjects(sic) of the investigation and a person under investigation in circumstances where the applicant was not advised that he was the subject of investigation and against whom adverse findings could have been made.

xv. The respondents did not provide the applicant with any notice or summons, or anything in writing from the IC or any of its agents regarding the proposed interview or that he was the subject of any investigation.

xvi. The respondents did not provide the applicant with an opportunity to be heard and to make any representation relative to contents of the Investigation Report and the submission of the report to Parliament for tabling and other publication of the Investigation Report, in so far as the contents of the said report concerned the applicant.

xvii. The applicant had a legitimate expectation that the respondents would have acted in keeping with the ICA, the IC's data privacy

policy, principles of fairness, natural justice and procedural proprieties. The contents and publication of the Investigation Report is in breach of the applicant's legitimate expectation.

xviii. The conduct of the respondents relative to the applicant as regards it's (sic) the investigation, the contents and the publication of the Investigation Report are in breach of the Constitution, specifically the applicant's constitutional rights which are protected by sections 13(3)(g), (h), (j), (r) and 16(2) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011."

The evidence in support of the application

Norman Brown

[6] The applicant's affidavit in support of the application was filed on October 4, 2024. In it he says that he is a businessman and minority shareholder in Estatebridge Development Limited, formerly Estatebridge Holding Limited. He is the Managing Director of Pembrooke Trucking Company Limited (PTC), a company he owns and operates with his wife. He serves on several public sector boards and is the chairman of the Urban Development Corporation (UDC) and the Housing Agency of Jamaica (HAJ). He is directly affected by the actions of the IC and the DI relative to the tabling in Parliament and the general publication of the Investigation Report.

[7] Exhibited to the applicant's affidavit is the Investigation Report. The following impugned paragraphs are reproduced in the affidavit, prefaced by paragraph 5.8.102: -

"5.8.102 With respect to the shareholders of Estatebridge, the DI's enquiries reveal Mr Norman Brown is the Board Chairman of both the Housing Agency of Jamaica (hereinafter referred to as HAJ), and Urban Development Corporation (hereinafter referred to as

UDC), and a Director of National Solid Waste Management Authority, Montego Bay Freeport, and Western Parks and Markets, among other entities. Sydjea Anderson and Mr Adam Holness are the sister and son of Mr Holness, respectively.

5.8.103 The DI highlights that both HAJ and UDC are agencies within the Ministry of Economic Growth and Job Creation (MEGJC), a Ministry which falls under the portfolio responsibility of Mr Holness. We will come to the issue of conflict-of-interest implications raised on these facts later.

Conflict of interest

5.8.106 Having regard to the conflict of interest concerns raised above, it is appropriate to say something, albeit briefly, on the issue in respect of the business relationship between Messrs. Holness and Brown and their public duties and functions. In the case of the former, his duties as Prime Minister and Minister of MEGJC, and in the case of the latter, his duties as Chairman of both HAJ and UDC.

5.8.107 In assessing the conflict of interest implications, the following definition of conflict of interest, as outlined in the Organization of Economic Cooperation and Development (OECD) toolkit, "Managing Conflict of Interest in the Public Sector" is highlighted:

> "**A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the**

official's private capacity interest could improperly influence the performance of their official duties and responsibilities"

5.8.108 The DI also considers it prudent to note hereunder section 17 of the **Public Bodies Management & Accountability Act**:

"17.- (1) Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-(a) act honestly and in good faith in the best interest of the public body; and

. . .

(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board – (a) shall disclose the nature of his interest at a board meeting; (b) shall not take part in any deliberation of the board with respect to that matter."

5.8.109 The DI notes that Estatebridge, a private company in which Mr Holness by virtue of his interest in Imperium and Mr Norman Brown who is a director and shareholder are both personally invested and HAJ and UDC, are all companies involved in, among other things, the business of real estate development. Further, the Ministerial responsibility for both the HAJ and the UDC falls to Mr Holness as Minister of Economic Growth and Job Creation. Both Messrs. Holness and

Brown are, therefore connected in a private business capacity and a professional capacity by virtue of their public functions (Minister and Chairman respectively). The similarity in the functions of HAJ and UDC, and the relationship between Messrs. Holness and Brown pose significant conflict of interest concerns. If this potential conflict of interest is not managed appropriately, it may be deleterious to the public interest. Notwithstanding the foregoing, no direct evidence was presented to suggest that there has been any impropriety occasioned by the referenced potential conflict of interest.

6.1.6 The DI concludes that the appointment of Mr Norman Brown, a business associate of Mr Holness as Chairman of the Urban Development Corporation and the Housing Agency of Jamaica, poses significant conflict of interest concerns. These concerns emanate from the fact that both entities fall under Mr Holness' portfolio as Minister of Economic Growth and Job Creation. As established above, Mr Brown who is a minority shareholder in Estatebridge, has made the single largest shareholder contribution (financial) to this company, since its incorporation. Notwithstanding the foregoing, there is no direct evidence to suggest that there were any

improprieties on the part of Messrs. Holness[1] and Brown.

6.2.4 Consequent on the finding that Mr Norman Brown , a business partner of Mr Holness, is the Chairman of two of Jamaica's large development corporations (the Urban Development Corporation and the Housing Agency of Jamaica) within Mr Holness' ministerial portfolio, the DI recommends that a copy of this report be referred to the Ethics Committee of Parliament to examine and determine the appropriateness of a Minister, directly or indirectly appointing a business associate or other personal connections to a public board which falls under the portfolio. The Committee should also, *inter alia*, consider whether there are significant safeguards in place to comprehensively deal with any conflict-of-interest situation which may arise as a result of the personal/ business relationship between the Minister and board appointee, with a view to ultimately protecting the public interest."[2]

[8] The remaining impugned paragraphs are **5.9.6, 6.1.5, 6.2.2:** -

"*Issue 3 – Tax Compliance Concerns*

[1] This paragraph formed part of the DI's conclusions
[2] This paragraph formed part of the DI's recommendations

5.9.6 In resolving Issue 3, the DI considered the following:

a) The financial statements provided by Mr Holness indicate that in 2021, Imperium earned at least $ 5,121,105.00 in dividend, exchange gains and interest. Notwithstanding the above, Imperium filed a nil tax return for 2021 and 2022.

b) Positive Media, Management Accounts, Statement of Comprehensive Income for 2021, submitted by Mr Holness indicates total income of $20,069,697.00. Notwithstanding, the foregoing, Positive Media filed a nil tax returns for 2021 and 2022, indicating that the business had not engaged in any revenue generating activity over the two (2) years of its existence.

c) Estatebridge's Management Accounts, Statement of Profit and Loss Account, Year Ended December 31, 2021, shows 'interest income' of $1,040,625.00. Notwithstanding the foregoing, Estatebridge filed a nil tax returns for 2021, which means that the business has not engaged in any revenue generating activity in that year.

d) Still on the point, but slightly separate, over the period March 2021, to May 2022, Greenemerald provided loans to Positive Media to the tune of $20,625,000.00 and appeared to be in operation during the referenced period.

Notwithstanding, Greenemerald filed nil tax returns for 2021 and tax returns declaring income of $ 355,100.00.

The DI finds, in all the circumstances of the foregoing, that there is sufficient basis on which to make a referral to the Commissioner General, TAJ and the Financial Investigation Division for a determination to be made as to the appropriateness of the filing of nil tax returns, and whether there is any financial impropriety on the part of the abovementioned companies. On a preliminary assessment, the tax returns filed by Greenemerald do not demonstrate that this company has the income generating capacity/has generated sufficient income to be in a position to provide loans to Positive Media of over $20,000,000.00 within the time frame it did.

6.1.5 The DI concludes that the filing of nil income tax returns for the years 2021 and 2022, on the part of Imperium, Estatebridge and Positive Media, in circumstances where those companies reported income and other business activities in their audited financial statements, poses significant tax compliance concerns. The DI further concludes that the filing of a nil income tax returns and income tax return with income of $355, 100.00, by Greenemerald in 2021 and 2022, respectively, in circumstances where this company had, over the referenced period,

provided short term loans to Positive Media of over $20,000,000.00, and more importantly, appeared to be in operation, also raises serious tax compliance concerns. It is accepted and understood, that a company, though operating at a loss, may well be in a position to offer loans. The live issue here, however, is whether the named companies had any income and expenses over the relevant period which were not disclosed in their returns to TAJ.

The DI further concludes that the foregoing conduct on the part of the principals of Imperium, Estatebridge, Positive Media and Greenemerald *prima face* constitutes a fundamental undermining of the tax laws , and more particularly a breach of section **99(1)** of the **Income Tax Act**.This breach deprived the government of the opportunity to make an assessment as to whether any taxes were due for the years 2021 and 2022, in respect of the named companies and, if so, the amount due and payable.

6.2.2 Respecting the tax compliance concerns around the filing of nil income tax returns on the part of Imperium, Estatebridge, Positive Media and Greenemerald, in circumstances where these entities appeared to be engaged in business activities, the DI recommends that a copy of this report be referred to the Commissioner General Tax Administration Jamaica for the necessary

assessment to be made and, where required, for the appropriate penalties to be imposed."

[9] According to the applicant, he is aggrieved by the failure of the IC and the DI to follow principles of procedural fairness, natural justice and the provisions of the ICA in making the abovementioned observations, findings and recommendations, which led to the conclusion that:

a) there are significant conflict of interest concerns in respect of the personal/business relationship between himself and the PM, and that a referral be made to the Ethics Committee of Parliament for examination and that;

b) the conduct of the principals of Estatebridge Development Limited, prima *facie* amounts to a fundamental undermining of the tax laws, particularly section 99(1) of the Income Tax Act.

[10] In November 2023, the applicant says he received a call from Stephanie Fiddler-Blake who identified herself as a Manager of Declarations and Financial Investigations at the IC. She wished to interview him in relation to information received concerning transactions between himself and the PM. On asking whether he would need legal representation, he was informed that that was not necessary as the IC wanted to confirm the accuracy of information about himself and the PM. The interview was held on December 4, 2023. Save for this call, he did not receive a summons nor any notice in writing from the IC or any of its agents in respect of the interview.

[11] The interview was conducted by Stephanie Fiddler- Blake who referred to the fact that he held shares in Estatebridge Development Limited. According to the applicant, he was asked several questions in respect of confirmation of those shares and the source of funds to purchase them. The information he provided was documented in a witness statement which he read and signed. He exhibits a copy of his witness statement and says that it is correct save for one inaccuracy.

That inaccuracy is that in his witness statement he incorrectly said that the project at Weycleff Close, Beverly Hills, comprises four (4), four (4) bedroom townhouses when in fact it consists of four (4) townhouse units each having four (4) habitable rooms.

[12] The applicant says that after the interview, he did not hear further from the IC, and he did not meet with or receive any correspondence from the DI. The Investigation Report was submitted to Parliament for tabling by letter dated September 5, 2024, from the IC's Executive Director, Mr Greg Christie. The conflict-of-interest concerns raised in the Investigation Report were never the subject of the interview. He was not informed or given a background in relation to the conflict-of-interest concerns, the potential conflict of interest or the tax law breaches. He was not asked about the types of business HAJ, UDC or his private entities engage in. He was also not asked whether any of his businesses have any contracts with any government entity, or about the tax affairs of Estatebridge Development Limited or any of his other companies. He therefore did not get the opportunity to respond or to defend himself. He was assured that he was a mere witness.

[13] Having regard to the provisions of the Public Bodies Management and Accountability Act, the applicant says that if, which he denies, there was any conflict of interest, as a director of a public body he has a duty to disclose any matter being dealt with by a public body board in relation to which he is directly or indirectly interested and he must not participate in the deliberations in relation to any such matter. He says that the DI has not mentioned in the Investigation Report, any matter or transaction before the HAJ or the UDC which he was directly or indirectly interested in, either personally or through Estatebridge Development Limited. Had he known he was under investigation, he would have advised the IC and the DI of the mandate of both the HAJ and the UDC and show why the business of Estatebridge Development Limited would not come into conflict with the business or remit of either of them. Estatebridge Development Limited has no contract with HAJ, the UDC or the MEGJC. In neither his personal capacity nor

through his company PTC, has he had any contract with the Government of Jamaica since 2008.

[14] He has always been compliant with Jamaica's tax laws and had he been given an opportunity; he would have been accompanied by his accountant to the interview to make representations and address any tax concerns the IC may have had. The IC breached its own privacy policy and the ICA by the publication of the Investigation Report. The impugned paragraphs have caused him embarrassment, distress, loss and serious reputational harm especially in his profession. He has seen media reports where the public have made comments which are an attack on his character and reputation, both personally and professionally. His household has fallen into depression, his wife and daughter have withdrawn from the public to avoid stares and whispers, and when they go out, he and wife feel awkward and uncomfortable.

Evidence in response

Kevon Stephenson

[15] Kevon Stephenson in an affidavit filed on December 3, 2024, he says he was appointed to the post of DI on May 18, 2020. He says the applicant was never a suspect or the subject of any investigation and that his role was solely that of a witness. Stephanie Fiddler- Blake informed him, and he believes that this was communicated to the applicant.

[16] In paragraph 4 of his affidavit, he says that: -

> "The concerns raised in my report regarding potential conflicts of interest should be considered in context, as the report clearly states that, despite such concerns, there was no evidence of impropriety on Mr Brown's part. Therefore, I found no basis to investigate Mr Brown, as my report affirms there was no evidence of wrongdoing on his part regarding the potential conflicts of interest I observed."

Seymour Panton

[17] Seymour Panton is the chairman of the IC and a retired President of the Court of Appeal. In his affidavit filed on December 3, 2024, he says that the Commissioners neither authored or participated in the findings, conclusions, comments or observations in the Investigation Report, however they supported the recommendations made in it.

Analysis and discussion

[18] The Supreme Court has a supervisory jurisdiction over public bodies and public authorities. Judicial review is the exercise of that jurisdiction. As was stated in **Andrew Holness**, judicial review is not an appeal of the decision of the public body or public authority, but rather the procedure by which the court determines whether the challenged decision is legal, and the process by which it was arrived at fair[3]. The court's permission or leave must however first be sought. The threshold test for leave to bring a judicial review claim is an arguable case with a realistic prospect of success, not subject to a discretionary bar such as delay or the existence of an alternative remedy[4]. In addressing the importance of the threshold test, Sykes J (as he then was) in **Regina v Industrial Disputes Tribunal (Ex parte J. Wray and Nephew Limited), unreported Supreme Court decision delivered on October 23, 2009**, said at paragraph 58, in respect of an application for leave that: -

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[3] **Andrew Holness** para 5
[4] **Sharma v Brown-Antoine (2006) 69 WIR 379**

> ". . . an application cannot simply be dressed up in the correct formulation and hope to get by. An applicant cannot cast about expressions such as 'ultra vires' 'null and void', 'erroneous in law', 'wrong in law', 'unreasonable' without adducing in the required affidavit, evidence making these conclusions arguable with a realistic prospect of success. These expressions are really conclusions."

[19] The purpose of leave is to filter out weak cases. It prevents the court's limited resources being utilized to hear complaints of administrative error which are misguided or trivial, and it spares the public body whose decision is being challenged, the uncertainty which it may harbour, while a misconceived judicial review claim proceeds through the court[5].

The respondents' non - objection

[20] The respondents do not challenge that aspect of the application by which the applicant seeks the court's leave to bring a judicial review claim against the DI for: *"**An order of Certiorari quashing paragraphs 5.9.6, 6.1.5, and paragraph 6.2.2 of the Investigation Report (containing observations, remarks and comments in some cases, findings and recommendations in others, but all leading to the conclusion that the conduct on the part of the principals of Estatebridge Development Limited (the applicant being one such principal) prima facie constitutes a fundamental undermining of the tax laws and particularly a breach of section 99(1) of the Income Tax Act and that there be a referral to the Commissioner General , Tax Administration Jamaica for assessment and imposition of penalties and a referral to the Financial Investigations Divisions)."*** They contend however, that while they do not concede that the applicant will ultimately succeed in obtaining the remedies he

[5] **Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Limited** [1981] 2 All E.R 93 per Lord Wilberforce

seeks on judicial review, they recognise the “relatively low threshold for the grant of permission to apply for leave for judicial review”, the importance of the matter, and the need for its early determination.

[21] Having examined these paragraphs, the evidence before me, and the grounds on which the applicant relies, I am satisfied that ***paragraphs 5.9.6, 6.1.5, and paragraph 6.2.2 of the Investigation Report*** are judicially reviewable and that the threshold test for leave has been met. I accordingly accept the respondents' non- objection. The paragraphs, read as a whole, adversely affect the rights of the principals of Estatebridge Development Limited, as it is their conduct the DI found to *prima facie* amount to a breach of the tax laws. This conclusion has the necessary element of finality to it and led the DI to recommend a referral of the Investigation Report to the Commissioner General, Tax Administration Jamaica, for the necessary assessment and imposition of appropriate penalties where required.

[22] In relation to the grounds for judicial review relied on by the applicant, I make the observation that his unchallenged evidence is that he was not advised that he was the subject of an investigation. He says he was not given the opportunity to be heard, to make representations or to defend himself with respect to the finding of the DI that the principals of Estatebridge Development Limited acted in a manner which resulted in a breach of the tax laws of Jamaica. In my view, it is therefore arguable with a realistic prospect of success that there was procedural impropriety in the process leading to this finding.

The orders for which there is objection

[23] I turn now to those aspects of the application which are contentious. The respondents object to leave being granted to bring a judicial review claim seeking the declarations and the injunction contained in the application, as they argue that no leave is not required for these remedies. Additionally, they object to leave being granted for orders of certiorari in respect of the IC, as they contend that the IC did

not make any of the comments, findings or recommendations in the impugned paragraphs. There is also a broad objection to leave being granted in relation to **paragraphs 5.8.103, 5.8.106 to 5.8.109, 6.1.6 and paragraph 6.2.4** of the Investigation Report, on the basis that these paragraphs are not amendable to judicial review as they neither amount to adverse findings against the applicant, nor adversely affect his reputation. I will start with the orders of certiorari in respect of the IC and the amenability to judicial review of the paragraphs in question. I will then go on to consider the declarations and the mandatory injunction. Before doing so however, I set out below the relevant provisions of the CPR.

[24] The provisions of the CPR pertinent to the issues before me are the following: -

"**Scope of this Part**

56.1 (1) This Part deals with applications –

(a) for judicial review;

(b) by way of originating motion or otherwise for relief under the Constitution;

(c) for a declaration or an interim declaration in which a party is the State, a court, a tribunal or any other public body; and

(d) where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.

(2) In this part such applications are referred to generally as "**applications for an administrative order**".

(3) "**Judicial Review**" includes the remedies (whether by way or writ or order) of –

(a) certiorari, for quashing unlawful acts;

(b) prohibition, for prohibiting unlawful acts; and

(c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.

(4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant –

(a) an injunction;

(b) restitution or damages; or

(c) an order for the return of any property, real or personal.

Judicial Review — application for leave

56.3 (1) A person wishing to apply for judicial review must first obtain leave.

(2) An application for leave may be made without notice.

(3) The application must state –

(a) the name, address and description of the applicant and respondent;

(b) the relief, including in particular details of any interim relief, sought.

(c) the grounds on which such relief is sought.

(d) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;

(e) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;

(f) whether any time limit for making the application has been exceeded and, if so, why;

(g) whether the applicant is personally or directly affected by the decision about which complaint is made; or

(h) where the applicant is not personally or directly affected, what public or other interest the applicant has in the matter;

(i) the name and address of the applicant's attorney-at-law (if applicable); and

(j) the applicant's address for service.

(4) The application must be verified by evidence on affidavit which must include a short statement of all the facts relied on."

How to make an application for administrative order

56.9 (1) An application for an administrative order must be made by a fixed date claim in form 2 identifying whether the application is for –

(a) judicial review;

(b) relief under the Constitution;

(c) a declaration; or

(d) some other administrative order (naming it),

and must identify the nature of any relief sought."

Orders of certiorari in respect of the IC

[25] The respondents object to leave being granted for the applicant to seek orders of certiorari against the IC, with respect of the impugned paragraphs in the Investigation Report. They argue that the IC made no comments, conclusions, findings or recommendations. According to Mr Powell, what the applicant wishes to quash, are statements made by the DI in the Investigation Report which the DI prepared. Mr Powell further argues that the statutory powers under the ICA to investigate and report to the IC are given to the DI. Under section 54(4), for example, it is the DI who must be satisfied that there has been the commission of an offence under the ICA or an act of corruption by a public official.

[26] The applicant contends however, that the Investigation Report was submitted to Parliament by Mr Greg Christie, the Executive Director of the IC, who did so on behalf of the IC. King's Counsel, Mrs Mayhew refers to a letter dated September 5, 2024, from Mr Christie, by which the Investigation Report was sent to Parliament. She argues that section 27 of the ICA allows the IC to delegate any of its functions, while section 30 states that the IC carries out its functions through divisions. Therefore, although the Investigation Report was authored by the DI, he was not acting on a frolic of his own, and the report represents the IC carrying out its functions through the DI. According to King's Counsel, while the DI authored the Investigation Report, it was the IC that sent it to Parliament for tabling. She submitted that judicial review can therefore lie in relation to both the IC and the DI in respect of the impugned paragraphs.

[27] Mrs Mayhew's submissions are at first blush, attractive, but on a close examination of the scheme of the ICA, I cannot agree with her. It is a basic but fundamental principle of judicial review that the proper party to a claim is the decision maker. As Lord Walker writing for the Board in **Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering Allied Workers Union and Ors [2011] UKPC 4,** put it at paragraph 35 of that decision: -

> "Judicial review is directed at official decision making and the official who took the relevant decision is the natural respondent to such proceedings."

[28] While it is that section 30 of the ICA, provides that the IC performs its functions through Divisions, directors are assigned specific statutory functions. Section 38, for example, gives the DI specific investigative functions and section 54(1) stipulates that on completion of an investigation, he: "shall prepare and submit to the Commissioner, through the Executive Director, a report of his findings and recommendations." As pointed out by Mr Powell, under section 54(4), it is the DI who must be satisfied that there has been the commission of an offence under the ICA or an act of corruption by a public official. The Investigation Report was prepared by the DI in the performance of his statutory functions. The impugned paragraphs contain his findings, his comments and his recommendations. I accordingly find that it is the DI, not the IC, who is undoubtedly the "natural respondent" to a judicial review claim seeking to quash by certiorari, these impugned paragraphs in the Investigation Report.

Amenability to judicial review of paragraphs 5.8.103, 5.8.106 to 5.8.109, 6.1.6 and 6.2.4 of the Investigation Report

[29] In **Andrew Holness,** no issue was raised whether any aspect of the Inspection Report, was amenable to judicial review. In the present case however, the question has been raised by the respondents, whether *paragraphs 5.8.103, 5.8.106 to 5.8.109, 6.1.6 and 6.2.*4 are amenable to judicial review at the instance of the present applicant. They argue that these paragraphs are not judicially reviewable, as they do not form part of an adverse decision against the applicant or adversely affect his reputation. The applicant in contrast says, that his reputation has been adversely affected by the DI's statements that significant conflict of interest concerns arise because of his business relationship with the PM in Estatebridge Development Limited, and the fact that HAJ and UDC are agencies within MEGJC, a ministry which falls under the portfolio responsibility of the PM. In support of her submission that these paragraphs are judicially reviewable, Mrs Mayhew cites the

Privy Council decision in **Coomaravel Pyaneandee v Paul Lamm Shang Leen and 6 Others [2024] UKPC 27**, a decision I will come back to later in this judgment.

[30] The DI's statements were obviously made in the context of an income and assets disclosure regime in which public officials are required to annually disclose their income and assets to the IC**.** Colin Nicholls QC, Tim Daniel, Alan Bacarese, James Maton and John Hatchard (2017), in **Corruption and Misuse of Public Office** (3rd Ed.) say at paragraph **15.39**, that managing conflict of interest in the public sector is an important governance measure. They also say that a conflict of interest is: "not in itself a corrupt practice and a public official may act fairly even though there is an actual or potential conflict of interest". At paragraph **15.41**, they refer to the Organization for Economic Co-operation and Development's **"Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service**" ("OECD Recommendation") and say this: -

> "**15.41** The [OECD Recommendation] identifies three situations where a conflict of interest may arise. First, an actual conflict of interest is where there is a 'conflict between the public duty and private interests of a public official in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities. Secondly, an apparent conflict of interest can be said to exist 'where it appears that a public officials' private interests could improperly influence the performance of their duties, but this is not in fact the case. Thirdly, a potential conflict arises where 'a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (that is, conflicting) official responsibilities in the future'".

[31] The DI has said that there are significant conflict of interest concerns arising from the business and personal relationships of the applicant and the PM, out of which he has found a potential conflict of interest, but no improprieties. He made no

finding of actual conflict of interest. To the extent therefore, that declaration (vii)(c)[6], being pursued by the applicant and, ground (xii)[7] on which he relies both suggest that the DI made a finding of a conflict of interest, they do not accurately depict the impugned statements. Read as a whole, I cannot see how the DI's statements can be said to either adversely affect the applicant's reputation or form part of an adverse decision affecting him. I understand from the impugned statements that the DI's concerns led him to conclude that a conflict of interest would arise, if the applicant were to become involved in the future, in official responsibilities which conflict with his private interests, but he found no actual conflict of interest between the public duties of the applicant and his private interests. I am encouraged in this view by the **OECD Recommendation** referred to earlier**.**

[32] Mrs Mayhew argues that it is significant that the DI said that there is no "direct evidence" of impropriety, but this could mean that there was "indirect evidence" of impropriety. The short answer to this, however, is that the DI did not say in the Investigation Report that any such evidence exists. This is underscored by his affidavit, in which he says he found no evidence of wrongdoing on the part of the applicant. The DI's ultimate recommendation (included in the impugned paragraphs), that a copy of the Investigation Report be sent to the Ethics Committee of Parliament for that committee to consider , a) the appropriateness of a minister appointing to public boards falling under the minister's responsibility , business associates or persons personally connected , and b) whether there are sufficient safeguards in place to deal with any conflicts of interests which may arise out of such relationships; can hardly be said to adversely affect the applicant's reputation or to be a decision adverse to him.

[33] The Board in **Coomaravel Pyaneandee,** had completely different factual circumstances to contend with. It had to decide, among other things, whether

[6] See paragraph 4 of this judgment
[7] See paragraph 5 of this judgment

impugned statements in a Commission of Inquiry Report were amenable to judicial review. Among the findings of the Commission of Inquiry was that the appellant, an attorney-at-law, was connected to illegal drug activities, and that his role as counsel to certain incarcerated persons was very suspect. The Commission of Inquiry also raised the question whether he was acting as a spy for more important drug dealers. It recommended that an in-depth enquiry be done to investigate the appellant's role as counsel, as it appeared he tried to pervert the course of justice and to shield drug traffickers. The Board found that the statements of the Commission of Inquiry alleged unethical and /or criminal conduct on the part of the appellant and were sufficiently substantial to lead a fair minded, detached observer to the view that an in-depth full inquiry was warranted. The statements were therefore judicially reviewable.

[34] Lady Simler, writing for the Board expressed its views this way: -

> "52…there is no strict rule that produces a dividing line as to amenability to judicial review between findings on the one hand, and observations, comments, or impressions on the other.
>
> 53. In the Board's view, the first question to be asked is whether a fair-minded, detached, and objective reader would conclude that passages in an inquiry report however they might be described (whether as findings, observations, comments, remarks, or recitals of evidence), either form a component part of an adverse decision affecting an individual or adversely affect an individual's reputation. If so, judicial review will be available as a remedy where the commission has acted without jurisdiction or otherwise irrationally, unlawfully, or unfairly in breach of the principles of natural justice. It is not appropriate to parse the impugned passages in a report sentence by sentence, as both parties sought to do in this case. Rather, the impugned passages should be read as a whole to see what is conveyed to the fair-minded reader.

[35] The media reports exhibited by the applicant essentially recount and, in some instances, summarise aspects of the Investigation Report, including the impugned paragraphs. Among the exhibits are four social media commentaries, and a cartoon, which, according to Mrs Mayhew, she does not understand, but it is: "not a positive cartoon". The cartoon quotes from the impugned paragraphs and has caricatures of the PM (wearing a vest with the letters "GOVT" on the back), the applicant (wearing a vest with the letters" HAJ" on the back), and a gentleman in a suit (with the letters "IC" on the back). Both the PM's caricature and the applicant's caricature are seemingly working together on a housing development; while the caricature of the IC stands close by, with a magnifying glass in hand and a thought bubble above his head with the question: "conflict of interest?!" While I agree that this cartoon is difficult to understand, I frankly see nothing in it which suggests that the impugned paragraphs in the Investigation Report have adversely affected the applicant's reputation. I hold the same view with respect to the media articles and the social media commentaries. One of these commentaries refers to sections of the Investigation Report (not the impugned paragraphs) and says the cartoonist: "gets in right…". Another suggests the PM ought to heed the call to resign. The third suggests the IC should know how boards are appointed in Jamaica, and it is therefore "muddling the water to gaslight many Jamaicans in order to save face". The fourth commentary says: "Oh what a tangled web we weave when first we practice to deceive?", without indicating to whom it is directed.

[36] In the final analysis, it seems to me that, a fair minded, detached and objective reader would not conclude that the DI's statements, read as a whole, either form a component part of an adverse decision affecting the applicant or adversely affect his reputation. I therefore find that paragraphs 5.8.103, 5.8.106 to 5.8.109, 6.1.6 and 6.24 of the Investigation Report are not amenable to judicial review at his instance.

The declarations

[37] The applicants in **Andrew Holness,** conceded that no leave was required to seek the declaratory remedies as contained in their application for leave to bring a judicial review claim. In accepting their concession as sensibly made, this is what I said at paragraph 51:

> "In short, no leave is required to seek a public law declaration. The court's leave is only required for orders of certiorari, mandamus and prohibition which were formerly known as 'prerogative' orders. They were so known because they are discretionary in nature. In England, they were rights or privileges used by the Crown to control public officials and public bodies. D Fraser J (as he then was) in **OUR v Contractor General [2016] JMSC Civ 27** and earlier in **Audrey Bernard – Kilbourne v Board of Management of Maldon Primary School [2015] JMSC Civ 170** had before him, the question whether in our jurisdiction, leave was required for a public law declaration. He determined in both cases that it was not".

[38] In **Audrey Bernard - Kilbourne v Board of Management of Maldon Primary School,** D Fraser J, made the point, after referring to the dicta of Lord Diplock in **O'Reilly v Mackman [1983] 2 AC 237**, that there is a marked difference between Order 53 (UK) and our CPR 56. He observed that under our rules, public law declarations are a separate administrative order, and it is not therein stated, that they need to fall under the: "aegis of judicial review."

[39] Mrs Mayhew submits however that her client is seeking declarations and a mandatory injunction as judicial review remedies and consequently he must get the court's leave to do so. She cites section 6(3)(a) of the ICA which states that the IC in the performance of its functions shall not be subject to the direction or control of any other person or authority other than the court by way of judicial

review. She relies heavily on the Board's decision in **Attorney General of Antigua and Barbuda and Anor v Isaac** in support of her proposition**.**

[40] **Attorney General of Antigua and Barbuda and Anor v Isaac** was an appeal by the Attorney General and the Minister of Education of Antigua and Barbuda, from a decision of the Eastern Caribbean Court of Appeal, in which one of the issues before the court was whether the respondent's claim was one for judicial review for which leave was required. The respondent, D. Gisele Isaac (Ms Isaac), was Executive Secretary of the Board of Education, appointed to the post by the Cabinet of Antigua and Barbuda pursuant to the Board of Education Act. She was suspended from work, but after her suspension ended, she was denied access to her office. Whereupon, she filed a fixed date claim form seeking against the Attorney General and the Minister of Education (the Minister), declaratory remedies, damages and costs. She claimed to have been constructively dismissed because she failed to follow the directive of the Minister who had no authority over her under the Education Act. She also complained about the investigation which led to her suspension. An application was made by the Attorney General and the Minister to strike out the claim on the basis that it was one for judicial review, but Ms Isaac had not first obtained the leave of the court to bring it. Ms Isaac contended that she was seeking an administrative order in the form of a declaration pursuant to rule 56.1 of the Eastern Caribbean Supreme Court Rules 2000 (CPR 2000) and not judicial review, and therefore she did not require leave. The Court of Appeal agreed with her.

[41] Blenman JA**,** writing for the Court of Appeal[8], distinguished the position in Antigua and Barbuda from that in England. The headnote, which accurately summarises the judgment of the Court of Appeal, reads in part as follows: -

[8] **The Hon. Attorney General and The Hon. Michael Brown v D. Gisele Isaac, ANUHAVAP 2015/0014**

"1. Under CPR 2000, applications for declarations are regarded as a distinct category from applications for judicial review even though they are both applications for administrative orders. In contrast to an application for judicial review where the leave of the court first has to be obtained, there is no requirement for a claimant who wishes to make an application for other types of administrative orders apart from judicial review to first seek the leave of the court. CPR 56.7(1) is clear in that regard. The rules do not stipulate that a claimant who wishes to obtain a declaration must first obtain the leave of the court. If the rule makers wished to require a claimant who seeks an administrative order in the nature of a declaration to first obtain the leave of the court they would have said so clearly.

2. In our jurisdiction, a court must look to CPR 2000 to ascertain the procedure a claimant must follow in order to obtain a declaration and not the English Civil Procedure Rules which are not in *pari materia* with CPR 2000 in so far as administrative orders are concerned. Part 56 of the English CPR provides that declarations may be sought by way of judicial review whilst, in CPR 2000, applications for declarations are regarded as a distinct category from applications for judicial review. In this case, due to the difference in the two sets of rules on the issue of declaratory orders, the rule in **O'Reilly v Mackman** which the Attorney General and the Minister relied on was not applicable."

[42] Writing for the Board, Lady Black in her judgment outlined the declaratory remedies which Ms Isaac sought in her claim. These were generally to the effect that, a) the decision to suspend her was arbitrary, wrong in law, without basis , void and of no effect; b) the Minister of Education had no legal authority to issue instructions to her ; c) The Minister had no legal basis to institute the investigation and; d) failing to give her the opportunity to be heard was contrary to natural justice. Lady Blake observed that there was little case law to assist the Board in determining whether the fixed date claim form was an application for judicial review. She however removed the decision in **O'Reilly v Mackman** from her

deliberations by acknowledging that: "the English position cannot be translated to Antigua and Barbuda because the two systems have followed very different paths…".

[43] Lady Black went on to make the point that rule 56.1(3) of CPR 2000, is the only guide as to what is an application for judicial review. This rule is almost identical to our CPR 56.1(3), save that the words: "The term" is absent from ours. It reads as follows:

> "The term "judicial review" includes the remedies (whether by way of writ or order) of –
> (a) certiorari, for quashing unlawful acts;
> (b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and
> (c) Prohibition, for prohibiting unlawful acts."

[44] Her Ladyship then said this at paragraphs 34, about rule 56.1(3) of CPR 2000:

> "34. It focuses on prerogative remedies, and there can be no doubt that the presence or absence of a claim for a prerogative remedy will always be an important and potentially determinative, consideration in deciding whether or not an application is for judicial review. But it is important to recognise that CPR 56.1(3) does not purport to be an exhaustive definition of judicial review. It does not say that the question whether an application is for judicial review can be definitively determined by simply looking to see whether one of the prerogative remedies there listed is sought. It only says that "the term 'judicial review' *includes"* (my emphasis) certiorari, mandamus and prohibition. As the Court of Appeal observed, remedies that are not on the list can be sought in a judicial review application. And allowance also has to be made for the possibility that an application

which says nothing at all about prerogative remedies is, in fact, an application for judicial review, although that will, of course depend on the particular circumstances of the case. Plainly, CPR 56 cannot be interpreted so narrowly as to permit a claimant to avoid the leave requirement in CPR 56.3 simply by formulating his or her claim for relief in declaratory terms, when the application is in fact for judicial review. The Board therefore accepts the appellants' argument that in some cases it may be necessary to look carefully at the substance of the application, rather than the form in which it is cast."

[45] Continuing at paragraph 35 Lady Black said: -

> **"**Having said that, the Court of Appeal must be right in saying that an in-depth analysis of the nature of the claim will not normally be necessary, because generally the nature of the remedies actually sought *will* identify whether the application is for judicial review. Furthermore, in those cases where more rigorous scrutiny is required, going behind the form of the application and probing its substance, an analysis of what remedies the claimant is, in reality, pursuing will play an important part in the exercise. The court will have to approach its task having firmly in mind the list set out in CPR 56.1(3), because that list of the principal judicial review remedies serves to indicate the shape of the concept of judicial review within CPR 56, and there is, in truth little else to assist in the quest."

[46] After ultimately finding that Ms Isaac was: "not asking for relief of the type listed in CPR 56.1(3) or even akin to it", in paragraph 44, Her Ladyship concluded: -

> "Accordingly, it cannot be said that Ms Isaac is, in reality, seeking remedies of a judicial review nature. And even looking more widely than the nature of the remedies sought, there is nothing about her application which dictates that it be treated as a judicial review application within CPR 56.1(1)(c) rather

than an application within CPR 56.1(1)(b). True it is that, as the appellants point out, her claim is concerned with the legality of events and the procedure by which decisions were reached in the public law sphere, but, given the structure of CPR 56, allowing as it does for the making of public law applications in four different ways, including merely by seeking declarations rather than judicial review, that is not sufficient to channel the application into CPR 56.1(1)(c) rather than 56.1(1)(b)."

[47] Our CPR 56 is in *pari materia* with rule 56 of CPR 2000. What I take from the Board's decision in **Attorney General of Antigua and Barbuda and Anor v Isaac,** is that in an appropriate case, an in - depth analysis of the remedies sought will be required to determine whether the leave of the court must first be obtained before bringing a claim. Like the declarations sought by Ms Isaac, none of the declarations being sought by the applicant requires the court's leave, as none of them is in substance asking for either certiorari, mandamus or prohibition. Mr Powell is right to argue that the applicant therefore does not need the leave of the court to pursue them. It seems then, that where the court has to look behind the form of relief sought to discover what an applicant is truly pursuing, having "firmly in mind" the old prerogative remedies, as they "shape the concept of judicial review" within CPR 56; the search, is to see if any of those old prerogative orders (for which the leave safeguard is crucial) , are embedded in the remedies sought.

[48] Having regard to the foregoing, I find that no leave is required for the applicant to pursue the declarations in his application. I continue to hold the views I held in **Andrew Holness,** that in our jurisdiction, public law declarations do not require the court's leave. I will only add the qualification, that there may be the *unusual case*, where, incorporated in the language of a declaratory remedy is one of the coercive remedies of certiorari, prohibition or mandamus, and in such cases, leave will obviously be required. I say "*unusual case*" because whether it be a private law declaration or a public law declaration, declarations are declaratory of rights. They are not executory remedies. Consequently, it would, in my respectful view, be the unconventional case in our jurisdiction, were coercive relief to be incorporated into

a declaratory judgment. I call to mind Harrison P's dicta in **Millicent Forbes v The Attorney General SCCA No 29/05, decided December 2006,** in which the learned President, in finding that the decision of a circuit court was not amenable to judicial review, said that a declaration could not be granted to quash a verdict or decision of any court as it has no coercive force. Interestingly, Harrison P held the view that under our CPR, the declaration is not subject to the procedure that governs judicial review, and that Jamaica does not have a corresponding statutory provision to section 31 of the Supreme Court Act (UK).

[49] What then is the effect of section 6(3)(a) of the ICA, which provides that it is only by way of judicial review that the IC can be directed or controlled? Does this mean that public law declarations, devoid of any judicial review relief, are not available against the IC? I express no views on these questions, as it would be inappropriate to do so since the court hearing the claim will ultimately have to decide them.

The injunction

[50] CPR 56.1(4) provides that the court may grant an injunction in addition to, or instead of an administrative order. CPR 56.2. explains that applications under CPR 56.1(1) are referred to as: "applications for an administrative order". Unlike judicial review and declarations, injunctions are not included in CPR 56.1(1). It seems pretty clear to me, that CPR 56, treats injunctions as private law remedies for which no leave is required. It follows therefore, that the **Attorney General of Antigua and Barbuda and Anor v Isaac** principle would not apply to them. Furthermore, I agree with Mr Powell, that the injunction being sought by the applicant, is not seeking to have either the IC or the DI perform any statutory duty under the ICA. Therefore, if the principle in **Attorney General of Antigua and Barbuda and Anor v Isaac**, were applicable, the result would be that no leave would be required to pursue this injunction, as it does not have in it, the elements of mandamus. In the end therefore, I find that no leave is required to pursue the mandatory injunction which the applicant seeks. It will of course be for the court hearing the claim, to

decide whether section 6(3)(a) of the ICA, prevents the applicant obtaining injunctive relief.

Summary of findings

[51] I accept the respondents' non-objection to leave being granted to the applicant for an order of certiorari against 2nd respondent, quashing paragraphs 5.9.6, 6.1.5, and paragraph 6.2.2 of the Investigation Report (containing observations, remarks and comments in some cases, findings and recommendations in others , but all leading to the conclusion that the conduct on the part of the principals of Estatebridge Development Limited (the applicant being one such principal) *prima facie* constitutes a fundamental undermining of the tax laws and particularly a breach of section 99(1) of the Income Tax Act and that there be a referral to the Commissioner General , Tax Administration Jamaica for assessment and imposition of penalties and a referral to the Financial Investigation Division), as I am of the view , and find, that the threshold test for leave has been met.

[52] A fundamental principle of judicial review is that the proper respondent is the maker of the impugned decision. It is the DI who authored the Investigation Report during the performance of his statutory duty under the ICA. It is therefore the DI and not the IC who is the natural respondent to a judicial review claim seeking certiorari in respect of the impugned paragraphs. Leave to bring a judicial claim against the IC in relation to the orders of certiorari sought against it must therefore be refused.

[53] I find that paragraphs 5.8.103, 5.8.106 to 5.8.109, 6.1.6 and paragraph 6.2.4 of the Investigation Report are not amenable to judicial review at the instance of the applicant. They do not either form part of an adverse decision against him, or adversely affect his reputation. The DI did not make a finding of actual conflict of interest or that there was wrongdoing on the part of the applicant. A fair minded, detached objective reader would not, in my view conclude that the applicant was involved in any wrongdoing or conflict of interest or that his reputation was

adversely affected by these impugned statements. Leave to bring a judicial review claim in relation to these paragraphs must therefore be refused.

[54] The declarations which the applicant seeks to pursue are all public law declarations for which the court's leave is not required. Applying the principle in **Attorney General of Antigua and Barbuda and Anor v Isaac,** none of them is in substance asking for certiorari, mandamus or prohibition. Whether section 6(3)(a) of the ICA permits such relief will be a matter for the court trying the claim to determine.

[55] On a careful examination of CPR 56, I hold the view that injunctions which the court may grant under this rule are not administrative orders, and no leave is required to seek them. In any event, the mandatory injunction being pursued is not requiring the DI or the IC to perform any statutory duty, and so even if the principle in **Attorney General of Antigua and Barbuda and Anor v Isaac**, were applicable, the result would be that no leave would be required to pursue this injunction, as it does not have in it the elements of mandamus. However, as it is with the declarations, whether section 6(3)(a) of the ICA permits the applicant to obtain an injunction against the IC is a matter the court hearing the claim will need to decide.

Orders

[56] Having regard to the foregoing, I make the following orders: -

i. Leave to bring a judicial review claim against the 2nd respondent for an order of certiorari quashing paragraphs 5.9.6, 6.1.5, and paragraph 6.2.2 of the Investigation Report (containing observations, remarks and comments in some cases, findings and recommendations in others , but all leading to the conclusion that the conduct on the part of the principals of Estatebridge Development Limited (the applicant being one such principal) *prima facie* constitutes a fundamental undermining of the tax laws and

particularly a breach of section 99(1) of the Income Tax Act and that there be a referral to the Commissioner General , Tax Administration Jamaica for assessment and imposition of penalties and a referral to the Financial Investigation Division), is granted.

ii. Leave to bring a judicial review claim against the 1st respondent for an order of certiorari quashing paragraphs 5.9.6, 6.1.5, and paragraph 6.2.2 of the Investigation Report (containing observations, remarks and comments in some cases, findings and recommendations in others , but all leading to the conclusion that the conduct on the part of the principals of Estatebridge Development Limited (the applicant being one such principal) *prima facie* constitutes a fundamental undermining of the tax laws and particularly a breach of section 99(1) of the Income Tax Act and that there be a referral to the Commissioner General , Tax Administration Jamaica for assessment and imposition of penalties and a referral to the Financial Investigation Division), is refused.

iii. Leave to bring a judicial review claim for an order of certiorari quashing paragraphs 5.8.103, 5.8.106 to 5.8.109, 6.1.6 and paragraph 6.2.4 of the Investigation Report (containing observations, remarks and comments in some cases, findings and recommendations in others, but all leading to the conclusion that there is significant conflict of interest concerns relative to the personal /business relationship of the applicant, Norman Brown and The Most Honourable Dr Andrew Holness, Prime Minister and that there be a referral to the Ethics Committee of Parliament for examination and determination) is refused.

iv. No leave is required to bring a claim for the declarations being pursued by the applicant.

v. No leave is required to bring a claim for the mandatory injunction being pursued by the applicant.

vi. The 1st hearing of the Fixed Date Claim Form will be February 25, 2025, at 10am for 2 hours.

vii. Costs are costs in the claim.

viii. The applicant's application for leave to appeal is refused.

A Jarrett
Puisne Judge