IN THE COURT OF APPEAL OF BELIZE, A.D. 2012

CIVIL APPEAL NO 32 OF 2011

FROYLAN GILHARRY SR dba
GILHARRY'S BUS LINE **Appellant**

AND

TRANSPORT BOARD
CHIEF TRANSPORT OFFICER
MINISTER OF TRANSPORT
THE ATTORNEY GENERAL **Respondents**

BEFORE:

The Hon Mr Justice Sosa	**-**	**President**
The Hon Mr Justice Morrison	**-**	**Justice of Appeal**
The Hon Mr Justice Mendes	**-**	**Justice of Appeal**

Fred Lumor SC for the appellant
Nigel Hawke and Herbert Panton for the respondents

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26 March, 20 July 2012

SOSA P

[1] On 26 March 2012 the Court allowed the appeal of the appellant and ordered that (a) the order of Legall J be set aside, (b) the appellant's application for judicial review be proceeded with by accelerated hearing and (c) the appellant have his costs, to be taxed, if not agreed. I concur in the reasons for judgment given in the judgment of Morrison JA, which I have read in draft.

MORRISON JA

Introduction

[2] This appeal raises an important question of law and procedure: does section 3(1) of the Public Authorities Protection Act ('the PAP Act'), which requires service of notice of intended proceedings on a public authority at least one month before commencement of the proceedings, apply to applications for judicial review, pursuant to Part 56 of the Supreme Court (Civil Procedure) Rules 2005 ('the CPR')?

[3] By his order made on 9 August 2011, on a preliminary point taken by the respondents to this appeal, Legall J held that the section applied, with the result that the appellant's application for judicial review of a decision by the respondents to revoke certain Road Service Permits ('the permits') previously issued to the him was dismissed with costs.

[4] The appeal from this decision was heard on 26 March 2012, at the end of which the court announced that the appeal would be allowed, for reasons to be given at a later date, and the learned judge's order set aside. The court ordered that the appellant's application for judicial review should be proceeded with in the Supreme Court by way of an accelerated hearing. The court also ordered that the appellant should have the costs of the appeal, to be agreed or taxed. These are my reasons for concurring in that decision.

The parties

[5] The appellant is the operator of a number of public passenger omnibuses, under permits issued by the first named respondent, pursuant to the Motor Vehicles and Road Traffic Regulations.

[6] The first named respondent ('the Board') is an autonomous body, established under the provisions of the Motor Vehicles and Road Traffic Act, Cap. 230, as amended by Act No. 41 of 2002, with statutory responsibility for the general administration of the transport sector in Belize. In particular, the Board sanctions the

issue of road service permits and bus schedules to operators of buses on the highways of Belize.

[7] The second named respondent is the secretary of the Board and has specific responsibility for the administration and management of motor vehicles and road traffic regulations within Belize.

[8] The third named respondent is the minister of government statutorily authorised to set up the Board, with responsibility to formulate the policies to be implemented by the Board and for the development of regulations relating to public road transport.

[9] The fourth named respondent is the representative of the Government of Belize, and was joined in these proceedings pursuant to the provisions of section 42(5) of the Constitution of Belize ('the Constitution').

The background

[10] In the light of the fact that the application for judicial review is still to be heard, no more than an outline of the facts is necessary. The appellant is a resident of Corozal Town. He has operated bus services between Santa Elena Border to Belize City, via Corozal Town ('the main route'), under permit from the Board, for many years. The appellant has also operated bus services between Corozal Town and Santa Elena Border and points in between ('the village runs'), again under permit, for many years. For these purposes, the appellant employs approximately 54 persons and owns and operates 18 omnibuses (on the main route) and 10 vans (on the village runs).

[11] The permits issued by the Board to the appellant have from time to time been renewed, the most recent renewal for the main route having been in 2006 and, for the village runs, in 2007. The permits in respect of both routes expired in 2008, but the appellant continued to operate the routes under the existing terms and conditions.

[12] In or around 2008, the Board decided to formulate a new policy for the regulation of the public passenger transport system. The Board indicated that this was a response to a number of accidents on the nation's highways and complaints received about the roadworthiness of some buses. The new policy did not meet with the universal approval of existing bus operators and this resulted in litigation against the Board on behalf of some operators (Claim No 728 of 2008). On December 2008, the Board was in fact restrained by interlocutory injunction from taking any steps to alter the status quo, pending the outcome of the litigation. Matters remained in abeyance until 27 January 2011, when the Supreme Court dismissed the action and discharged the injunction.

[13] Shortly thereafter, the Board renewed its efforts to alter the existing system and its proposals were again met with protests from bus operators, including the appellant. Despite high level meetings between the parties, there was no resolution to the impasse, which attracted national attention, including at one point the intervention of the Honourable Prime Minister of Belize. On 15 June 2011, the appellant was advised, by way of a telephone call from an official of the Board, of the "new schedules or routes that have been given to Gilharry Bus Line", with effect from 19 June 2011.

[14] The appellant contends that this decision effectively (a) revoked his permits for the village runs; and (b) revoked his permits in respect of the main route and sought to replace them with new routes or schedules which are off peak and not remunerative. The Board maintains that it acted within its statutory mandate and that, in any event, it could not and did not revoke any of the appellant's permits, since those permits had already expired and were therefore no longer in existence.

The judicial review proceedings

[15] On 20 June 2011, the appellant applied for permission to make a claim for judicial review of the Board's decision. On 21 June 2011, after an inter partes hearing before Legall J, an order was made (by consent), granting permission to the appellant as prayed. The appellant was ordered to file and serve the application on or before 30 June 2011 and the matter was set for hearing on 21 July 2011.

[16] By fixed date claim form dated 30 June 2011, the appellant claimed the following reliefs:

> "1. A declaration that the Defendants acted ultra vires when they made the decision on 15th May, 2011 to revoke the Road Service Permits issued to the Claimant instead of reviewing the Claimant's existing Road Service Permits. The decision is therefore void and a nullity.
>
> 2. A declaration that the Defendant [sic] abused their powers when they purported to make the decision not to renew the existing road service permits of the Claimant and instead sought to impose arbitrarily and illegally new road service permits on the Claimant. The decision is therefore void and a nullity.
>
> 3. A declaration that the Defendants breached or frustrated the legitimate expectation of the Claimant unlawfully by reneging on the representations made to the Claimant by the Transport Board to continue to operate on the existing road service permits until the Transport Board was in a position to renew the permits. The decision is therefore void and a nullity.
>
> 4. An order that the decision made on the 15th of June, 2011 is unfair and contrary to the basis [sic] rules of natural justice and therefore void and a nullity.
>
> 5. An order of certiorari to remove into the Supreme Court for purposes of being quashed the decision made by the Defendants on 15th June, 2011 whereby the Defendants sought to revoke and not renew the Motor Vehicles and Road Traffic Road Service Permits issued to the Claimants in 2006.
>
> 6. Damages.
>
> 7. Costs.
>
> 8. Such further or other orders as may be just."

[17] Affidavits having been filed on both sides, the matter duly came on for hearing, again before Legall J, on 21 July 2011. On that date, the respondents, by way of a preliminary point taken in limine, objected to the hearing of the judicial review application, on the ground that the appellant had not given one month's notice in writing to the respondents of his intention to make the application, contrary to section 3(1) of the PAP Act, which provides as follows:

> "3.-(1) No writ shall be sued out against, nor a copy of any process be served upon any public authority or anything done in the exercise of his office, until one month after notice in writing has been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process, or by his attorney or agent, in which notice shall be clearly and explicitly contained the cause of the action, the name and place of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent.
>
> (2) No evidence of any cause of action shall be produced except of such as is contained in such notice, and no verdict shall be given for the plaintiff unless he proves on the trial that such notice was given, and in default of such proof the defendant shall receive in such action a verdict and costs."

[18] As already indicated, on 9 August 2011 Legall J upheld the preliminary objection and dismissed the application for judicial review. In his written judgment dated 10 August 2011, the learned judge, after referring to section 3 of the PAP Act, observed that there was no dispute that the appellant had not complied with the section. Neither was it in dispute that the respondents were "a public authority, and the subject of the claim was done in the exercise of their office" (para. 3).

[19] The judge was particularly influenced by the decisions of the Supreme Court in **Eurocaribe Shipping Services Ltd, dba Michael Colin Gallery Duty Free Shop v The Attorney General, Minister of Natural Resources, Belize Port Authority and Belize City Council** (Claim No. 287/2009, judgment delivered on 15 May 2009) and **National Transport Service Ltd et al v The Transport Board and the Chief Transport Officer** (Claim No. 728 of 2008, judgment delivered 27 January 2011); as well as by the decision of this court in **Castillo v Corozal Town Board and another (1983) 37 WIR 86**. Based on these authorities, Legall J concluded as follows:

> "14. Section 3 of the Act is a procedural section requiring the procedure of a notice in writing to be delivered to a public authority prior to the issuing of a writ against a public authority.

At the time when the section was enacted in 1984 [sic], the writ, or action, as it was called, was a procedure to commence civil proceedings in the Supreme Court. Since the making of the Supreme Court (Civil Procedure) Rule 2005 [sic] (the Rules), the writ has been replaced by the claim and fixed date claim. Part 72(2) of the Rules states that the Rules apply to all proceedings commenced on or after the commencement date of the Rules, namely, 4th April, 2005. Therefore the word writ in section 3 of the Act has to be read or interpreted as including a claim and fixed date claim.

15. Rule 56.7 (1) of the Rules states that an application for an administrative order, has to be made by fixed date claim, identifying whether the application is for judicial review or for a declaration. The claimant, in this case, made an application for declarations and judicial review by fixed date claim. Therefore it seems to me that since the word writ in section 3 has to be interpreted as including a claim and a fixed date claim, by which the claimant initiated these proceedings, the claimant is bound to comply with the procedure enacted in section 3 of the Act and deliver notice in writing to the defendants prior to issuing the fixed date claim in this matter. I think the decision in **Castillo**, which is binding on me, is in support of my conclusion that notice is required under section 3 of the Act in this matter. I have therefore no discretion in the matter, but to dismiss the claim and award costs to the defendants."

The appeal

[20] By notice of appeal dated 6 September 2011, the appellant appealed from the decision of Legall J, on the following grounds:

"(1) The Learned Trial Judge erred in law when he decided that judicial review proceeding [sic] is an "action" and therefore notice

required under the provision of section 3 of the Public Authorities Protection Act, Cap. 31 ought to be given before the commencement of judicial review proceedings.

(2) The Learned Trial Judge erred when he decided that the Appellant "made an application for declaration and judicial review by a fixed date claim"; and "the word writ in section 3 had to be interpreted as including a claim, and a fixed date claim" and therefore the Appellant was bound to comply with section 3 of the Public Protection Authorities Act [sic], Cap. 31.

(3) The Learned Trial Judge erred in law when he dismissed "the fixed date claim" filed by the Appellant."

The argument

[21] Central to Mr Lumor SC's submissions on behalf of the appellant is the proposition that proceedings for judicial review are, and have always been, *sui generis*. In judicial review proceedings, which are concerned with matters of public law, there is no *lis inter partes* and there is therefore no 'dispute' between the parties in any proper sense of the word. This can be seen from the origins of modern judicial review in the prerogative orders, justiciable on the 'Crown side' of the Queen's Bench Division in England. Crown side proceedings were not ordinarily regarded as civil proceedings. The separate nature of such proceedings is maintained by Part 56 of the CPR, which governs "applications" for judicial review. The PAP Act on the other hand, when construed as a whole, governs civil suits between parties in dispute over a cause of action, which is the true *lis* between a plaintiff and a defendant in a private law action. Accordingly, Mr Lumor submitted, the provisions of section 3 of the PAP Act do not apply to Crown side proceedings in public law, which address the conduct of public authorities and are not ordinary adversarial litigation between private parties.

[22] In support of these submissions, Mr Lumor referred to, for the purpose of distinguishing them, the three cases upon which Legall J had principally relied, in

addition to a number of other authorities, to which I shall shortly come. In addition, we were taken in detail through the provisions of the PAP Act, as well as other relevant statutory provisions and the rules of court from time to time in force, naturally not least of all, the CPR itself.

[23] Mr Hawke for the respondents directed our attention at the outset to the definition of 'civil proceedings' in the CPR, which expressly embraces "applications for judicial review" (rule 2.2(2)(a)). The contrary definition of 'civil proceedings' in section 2(1) of the Crown Proceedings Act (see para. [27] below) has been repealed by implication by the CPR. Thus, it was submitted, the CPR has brought about "a new dispensation", pursuant to which judicial review now comes under the general heading of 'civil proceedings' and the old thinking (of which the notion of 'Crown side' proceedings was a part) no longer applies. Part 59 of the CPR, which governs 'Proceedings by and against the Crown', expressly states that the PAP Act "applies to proceedings under this Part" (rule 59.1(4)). The PAP Act therefore falls to be construed as always speaking and as such applicable to judicial review proceedings, especially in the light of the language of section 3, which is sufficiently wide in its ambit to include such proceedings.

[24] As the learned judge had done, Mr Hawke placed great reliance on the trio of Belizean decisions referred to in paragraph [18] above.

The PAP Act

[25] I have already set out the full text of section 3 of this Act (see para. [16] above). The imperative one month notice before the issuance of any writ is required by section 3(1) to contain clearly and explicitly "the cause of action". So too, section 3(2) prohibits the giving of evidence of any "cause of action" without service of the requisite notice. Similarly, section 5 addresses the consequence of a successful application to strike out a statement of claim for not disclosing "a reasonable cause of action", as does section 7. Section 6 provides as follows:

> "Where a public authority, acting *bona fide* in the execution of his duty, commits any act which may then be, or subsequently prove, to be

illegal, and a verdict is obtained against him, the judge or court, before whom the cause is tried, may certify, if such judge or court thinks fit, that there was reasonable and probable cause to warrant the public authority in having acted or assumed to act in the manner he did, and in that case the verdict shall be reduced to ten cents, and the plaintiff shall not receive any damages or costs."

The Supreme Court of Judicature Act ('the SCJ Act')

[26] Section 18(1) of the SCJ Act, which was enacted in 1925, vests in the Supreme Court of Belize the power to exercise within Belize, "all the jurisdictions, powers and authorities whatever possessed and vested in the High Court of Justice in England…". Section 18(2) provides that, subject to rules of court, "the jurisdictions, powers and authorities hereby vested in the [Supreme] Court shall be exercised as nearly as possible in accordance with the laws, practice and procedure for the time being in force in the High Court of Justice in England".

[27] Section 27 (4) – (8) provides as follows:

> "(4) The prerogative writs of *mandamus*, prohibition and *certiorari* shall no longer be issued by the Court.
>
> (5) In any case where the Court would, but for subsection (4), have had jurisdiction to order the issue of a writ of *mandamus* requiring any act to be done, or a writ of prohibition prohibiting any proceedings or matter, or a writ of *certiorari* removing any proceedings or matter into the Court for any purpose, the Court may make an order requiring the act to be done or prohibiting or removing the proceedings or matter, as the case may be.
>
> (6) The said orders shall be called respectively an order of *mandamus*, an order of prohibition and an order of *certiorari*.
>
> (7) No return shall be made to any such order and no pleadings in prohibition shall be allowed, but the order shall be final, subject to any right of appeal therefrom.
>
> (8) In any enactment, references to any writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order and references to the issue or award of any such

> writ shall be construed as references to the making of the corresponding order."

[28] The generic title of the remedies of *mandamus*, prohibition and *certiorari* was therefore changed from writs to orders, but the jurisdiction which they described was expressly preserved.

The Crown Proceedings Act ('the CP Act')

[29] Section 3(1) of the CP Act, which was enacted on 9 May 1953, extended to any person having a claim against the Crown a right to commence proceedings against the Crown in accordance with the Act. Section 12(1) requires that "all civil proceedings by or against the Crown in the Supreme Court shall be instituted in accordance with rules of court and not otherwise". For the purposes of the Act, 'civil proceedings' are defined as follows (section 2(10):

> "'civil proceedings' includes proceedings in the Supreme Court or a district court for the recovery of fines or penalties, but does not include proceedings such as are brought on the Crown's side of the Queen's Bench Division of the High Court of Justice in England." (Emphasis supplied).

[30] This is further confirmed by section 22, which lists the kinds of proceedings to which the label "civil proceedings against the Crown" applies (and does not include in this list prerogative proceedings) and section 23, which expressly excepts "proceedings brought by the Attorney General on the relation of some other person" from the ambit of the phrase (section 23(a)).

The Rules

Pre 2005

[31] The Supreme Court Rules in force up to 2005 were originally made by the Chief Justice and approved by the Governor in Council under section 61 of the Supreme Court Ordinance, Cap. 153 of the 1924 Revised Edition of the Laws of

British Honduras. Order 3, rule 1 provided that every action should be commenced "by filing a writ of summons…indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action". Order 77, rule 1 defined 'action' as "any civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court"; and 'cause' to include "any action, suit or other original proceeding between a plaintiff and a defendant…". Order 78, rule 1 provides that, where no other provision is made by any law or by the rules, "the procedure and practice then in force in the Supreme Court of Judicature (England) shall, as near as may be, apply".

The CPR

[32] Part 56 of the CPR deals with the remedies of certiorari, prohibition and mandamus, under the broad rubric of judicial review. An application for judicial review is itself part of a wider genre, referred to compendiously in the rules as "applications for administrative orders" (rule 56.1(21)).

[33] An application for judicial review may be made by any person who has a sufficient interest in the subject matter of the application (rule 56.2(1)). As a first step, the applicant is required to obtain permission from a judge of the Supreme Court (rule 56.3(1)); the application may be made without notice (rule 56.3(2)); the judge may give permission without hearing the applicant (rule 56.4(2)); a direction may be given that notice should be given to the respondent or the Attorney General (rule 56.4(4)); permission may be granted on such conditions or terms that the judge may think just (rule 56.4(7)); on an application for prohibition or *certiorari,* the judge must direct whether the grant of permission is to operate as a stay of the proceedings to which the application relates (rule 56.4(8)); the judge may grant such interim relief as appears just (rule 56.4(9)); on granting permission, the judge must direct when the first hearing or , in case of urgency, the full hearing of the judicial review claim should take place (rule 56.4(10)); and the grant of permission must be conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting permission.

[34] The judge hearing the application for permission may refuse permission in any case in which he considers that there has been unreasonable delay before making

the application (rule 56.5(1)), and applications should be made promptly and, in any event, within three months of the date when grounds for the application first arose, unless the court extends the period for making the application (rule 56.5(3)). In considering whether or not to grant permission, the judge must take into account whether the grant of permission would be likely to (a) cause substantial hardship to or substantially prejudice the rights of any person; or (b) be detrimental to good administration (rule 56.5(2)). Where a claimant issues a claim for damages or other relief, other than an administrative order, but the facts supporting the claim are such that the only or main relief is an administrative order, the court may direct that the claim is to proceed by way of an application for an administrative order under this Part (rule 56.6(1) and (2)). In such a case, if the appropriate order is for judicial review, the court may give permission for the matter to proceed as if an application had been made under rule 56.3 (rule 56.6(1)).

[35] Once permission has been granted, the applicant must then make an application for judicial review by fixed date claim form, supported by evidence on affidavit stating the facts and identifying the nature of any relief sought and the ground on which such relief is sought (rule 56.7(1) – (4)). Once the claim form is issued, the court's office must fix the date for a first hearing which must be endorsed on the claim form (rule 56.7(7)) and the general rule is that the first hearing must take place no later than four weeks after the date of issue of the claim (rule 56.7(8)), subject to the right of any party to apply to a judge in chambers for that date to be brought forward or for an early date to be fixed for the hearing of the application (rule 56.7(9)). As regards the question of costs, rule 56.13(4) provides that the judge hearing an application for an administrative order may make such orders as to costs as appear to be just, including an order for wasted costs. However, the general rule is that no order for costs may be made against an applicant for an administrative order "unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application" (rule 56.13(6)).

[36] Part 59 deals with "Proceedings by and against the Crown" and rule 59.1(4) states that "The Public Authorities Protection Act applies to proceedings under this Part".

Some relevant authorities

[37] Mr Lumor relied heavily on the well known decision of the House of Lords in **M v Home Office** [1994] 1 AC 377, in which the court was primarily concerned with the availability of injunctive relief against ministers of the Crown. However, Lord Woolf's magisterial judgment in that case also covered ground that is of direct relevance to the instant case in at least two respects.

[38] Firstly, Lord Woolf reiterated the well-known fact that, prior to the introduction of what is now described as judicial review, the principal remedies which were available against the Crown were by way of prerogative proceedings for certiorari, mandamus, prohibition and habeas corpus. The result of issuing the writ of certiorari was "to require proceedings of inferior bodies to be brought before the courts of chancery and common law so that they could be supervised by those courts and if necessary quashed" (page 415). And secondly, as regards the impact of the Crown Proceedings Act 1947 (which is substantially similar in all material respects to the CP Act), Lord Woolf observed that, so far as civil proceedings were concerned, the position as to the Crown's previous immunity from suit in respect of torts committed by its servants or agents "was transformed by the Act of 1947" (page 410). However, he was careful to point out (at page 412) that Part II of the 1947 Act (Part III of the CP Act), which deals with civil proceedings against the Crown, "does not apply to all proceedings which can take place in the High Court…it does not apply to the proceedings which at that time would have been brought for prerogative orders". Such proceedings "were brought on the Crown side".

[39] In the earlier decision of the Court of Appeal in **R v Licensing Authority, ex parte Smith Kline & French Laboratories Ltd (Generics) (UK) Ltd and another intervening (No 2)** [1989] 2 All ER 113, 127, to which Lord Woolf, then Woolf LJ, had also made an important contribution, Taylor LJ, as he then was, had also stated without qualification that "the 1947 Act does not apply to judicial review". Reference might also be made in this context to **Re Fong Thin Choo** [1962] LRC 988, 994, a decision of the High Court of Singapore, in which Chan Sek Keong J observed that "[t]he Crown side of the Queen's Bench Division is concerned with judicial review proceedings and not civil proceedings". Accordingly, it was held that section 27 of

the Government Proceedings Act, which prohibited relief by way of injunction against the government in civil proceedings, was not intended to affect the court's jurisdiction in judicial review proceedings.

[40] Conteh CJ picked up on this theme in **R v Minister of Budget Management, Investment and Public Utilities, ex parte Belize Telecommunications Ltd** (Action No. 47 of 2002, judgment delivered 12 February 2002). In this case, an application for judicial review of a statutory instrument made by the Minister was met by a preliminary objection that, this being civil proceedings against the State, the Attorney General was the proper respondent to the proceedings, pursuant to section 42(5) of the Constitution, which provides that "Legal proceedings for or against the State shall be taken in the case of civil proceedings, in the name of the Attorney General and, in the case of criminal proceedings, in the name of the Crown". In response to this objection, counsel for the applicant submitted that the phrase "civil proceedings" in section 42(5) should be construed in accordance with the definition in section 2(1) of the CP Act, thereby excluding proceedings on the Crown side. Judicial review proceedings were Crown side proceedings, in which there is no *lis inter partes*, as such.

[41] Accepting the submission made on behalf of the applicant, Conteh CJ directed attention to the provision in section 18(1) of the SCJ Act that "the jurisdictions, powers and authorities hereby vested in the Court shall be exercised as nearly as possible in accordance with the law, practice and procedure for the time being in force in the High Court of Justice in England". Thus, the learned judge observed (at para. 24) –

> "… liberal use is often made in this Court to [sic] the applicable rules of the English High Court in these matters. In England legal proceedings concerning these matters are taken in what is referred to as the ***Crown Side of the Queen's Bench Division***, because of the historical origins and evolution of those remedies. Legal proceedings in the Crown side are those means by which the Queen's Bench Division came to exercise the ancient jurisdiction of supervising the inferior courts, commanding magistrates and others such as public authorities to do

what their duty requires in every case where there is no specific remedy (or no equally convenient and effective method of appeal) and protecting the liberty of the subject by speedy and summary interposition" (emphasis in the original).

[42] Conteh CJ also referred to the decision of the Privy Council (on appeal from the Court of Appeal of Jamaica) in **Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd and Another** [1992] LRC 720. That was also a judicial review case, in which the responsible minister of government had been named as respondent and in which objection had been taken that the Attorney General ought to have been so named. The Board upheld the unanimous decision of the Court of Appeal that the Attorney General was neither a necessary nor a proper party to the action, Lord Oliver of Aylmerton observing (at page 747) that the Board entertained "no doubt whatever that the Court of Appeal was correct in concluding that the proceedings were not 'civil proceedings' as defined by the Crown Proceedings Act, and that the appellant and not the Attorney General was the proper party to proceedings initiated for the purpose of reviewing the exercise of his statutory powers".

[43] In this case, the erudite judgments in the Court of Appeal of Rowe P and Carey JA, both distinguished former members of this court, repay careful study, particularly as regards the history and origins of the prerogative remedies in England. Rowe P specifically referred to the "sharp distinction between Crown side proceedings on the one hand and civil proceedings on the other hand" (page 729), while Carey JA, referring to the exclusion from the definition of 'civil proceedings' in the Crown Proceedings Act of Crown side proceedings, observed that "proceedings for prerogative orders…would not come within the ambit of the provision" (page 738).

[44] Conteh CJ accordingly found that the Attorney General was not a necessary party and dismissed the preliminary objection. In conclusion, he observed (at para. 34), that "because judicial review proceedings involve public law issues, there is therefore, I think, no true ***lis inter partes***" (emphasis in the original). (A few years earlier, Ackner LJ, as he then was, had expressed the same view in **R v Stratford-on-Avon District Council and Another, Ex parte Jackson** [1985] 1 WLR 1319,

1323**,** remarking that, in judicial review proceedings, "there is no true lis inter partes or suit by one person against another".)

[45] In **Belize Water Services Ltd v Attorney-General of Belize** (Civil Appeal No 2 of 2005, judgment delivered 18 October 2005), this court was concerned with the correctness of the grant of an interlocutory injunction, at the suit of the Attorney-General, restraining the taking of any step in arbitration proceedings. Carey JA considered (at para. 9) that the legal issues in arbitration and judicial review were "altogether different…arbitration relates to private law, the law of contract while judicial review operates in the area of public law". The learned judge went on to say (at para. 10) that "[i]t was not possible to conceive how an application for judicial review could qualify as a dispute". In my own brief contribution to the decision of the court, I made reference (at para. 12) to "the fundamental difference between judicial review and a private law action, whether commenced in court or by arbitration".

[46] During the course of the hearing of this appeal, the industry of my learned brother Mendes JA brought to attention and counsel were directed to two older cases dealing specifically (albeit peripherally) with the relationship of the PAP Act to prerogative proceedings.

[47] The first is **R v Kensington Income Tax Commissioners** [1913] 3 KB 870, in which an application was made by a taxpayer for a writ of prohibition to prevent the taxing authorities from proceeding on certain assessments to tax. In opposition to the rule nisi, it was submitted on behalf of the tax commissioners that the requirements of the Public Authorities Protection Act had not been complied with and that the Act was therefore a bar to the proceedings, they being persons acting in pursuance or execution of their public duty or authority. As it turned out, it was not necessary to determine this objection, since the court considered that the commissioners had acted within their jurisdiction and the application therefore failed on its merits. But Avory J nevertheless said this (at page 896):

> "There is one other matter which I think requires notice…It is the point under the Public Authorities Protection Act, 1893. It is not necessary to decide that point, but I wish to say that I entertain considerable doubt

> whether the [tax Commissioners]…come within the Act, and, further, whether prohibition is a proceeding within the meaning of the Act."

[48] In the second case, **R v Port of London Authority, Ex parte Kynoch Ltd** [1919] 1 KB 176, 186, which was an application for a writ of mandamus, Bankes LJ expressed a similar view, again in response to an objection from the public authority:

> "As to the effect of the Public Authorities Protection Act, 1893, I express no confident opinion without further considering the dicta cited, but my present impression is that the language of that Act does not extend to proceedings of this class. The essence of the prerogative writ of mandamus is a command to a tribunal to do something which it has omitted or refused to do, and an application for the writ is not an action, prosecution, or other proceeding for any act done in pursuance or execution or intended execution, nor, as I think, for any neglect or default in the execution, of any Act of Parliament or public duty or authority. But apart from that, the Act seems to contemplate something which results, if successful, in the payment of damages or in enforcing some penalty, and the words 'action, prosecution or other proceeding' were not intended to include a prerogative writ calling upon a public authority to perform a public duty."

(See further, **Roberts v Metropolitan Borough of Battersea** (1914) LT 566, 568, per Buckley LJ – "Certiorari is not an action within the Public Authorities Protection act 1893"; **R v Hertford Union, Ex parte Pollard** (1914) 111 LT 716, 718, per Avory J – "The inclination of my opinion is that the statute does not apply to the prerogative writ of mandamus"; and cf. **R v Marshland Smeeth and Fen District Commissioners** [1920] 1 KB 155, 172, where McCardie J distinguished **R v Port of London Authority** (above), on the basis that "the present proceedings are an amalgamation of mandamus process with an action on the case…I hold that that Act is applicable to a claim for damages".)

[49] Against this extended backdrop, I come now to the trio of Belizean decisions which, Mr Hawke submits, provide authoritative support for Legall J's decision. The

first is **Castillo**. This was a case in which the appellant, a member of the public, filed action against the respondent, a public authority, for damages for negligence arising out of a motor vehicle collision. The vehicle involved was the property of the respondent and was driven at the material time by its employee (who was also sued) acting in the course of his employment. At the trial, at the conclusion of the case for the appellant, counsel for the respondent applied for the dismissal of the action against his client, in reliance on section 3 of the Public Authorities Protection Ordinance, no notice having been given as required by the section. The trial judge acceded to the application and dismissed the action against the respondent accordingly, but continued the case against the driver alone, ultimately finding against him on liability and awarding damages to the appellant.

[50] The appellant's subsequent appeal from the dismissal of the claim against the respondent was also dismissed. Sir John Summerfield P (with whom Sir James Smith JA and Staine JA agreed) considered that section 3(1) provided for "a mandatory condition precedent to the institution of a suit against a public authority (as defined), namely the delivery of the notice in writing in the terms stipulated". This measure was, the learned judge went on to observe (at page 898), "obviously designed to protect the public interest".

[51] The decision in **Castillo** was subsequently approved by this court in **Belize City Council v Gordon** (1997) 3 Bz LR 363. However, in that case, it was held, applying English authority of long standing (**Milford Docks Company v Milford Haven Urban District Council** (1901) 65 JP 483, that the PAP Act did not apply to actions for breach of contract.

[52] **Castillo** was, if I may say so with respect, a wholly unexceptionable application of section 3 of the PAP Act. But I think that it is of considerable importance to note that, although the respondent was a public authority, the case was not a public law case in the accepted sense of that description: rather, it was an ordinary private law action for negligence in which, as it happened, one of the defendants, the respondent (who was sued in the action on the basis of the principle of vicarious liability), was a public authority.

[53] In **Eurocaribe**, the claimant brought proceedings against the defendants who were, as Conteh CJ observed at the outset of his judgment (para. 2), "without doubt, public authorities". The claim against them was for declarations that (i) they had abused their powers when they allowed the illegal erection of a concrete wall on the boundary of the claimant's property on the existing broadwalk along the north bank of the Haulover Creek in the Fort George area of Belize City; and (ii) that the decision made by them between 18 June 2008 and 16 January 2009, permitting the erection of the concrete wall, was "unlawful void and a nullity.". The claimant also asked for, consequentially, an order directing the removal of the concrete wall, damages and costs.

[54] The defendants took the preliminary objection that, although they were public authorities, they had not been served with notice of the claim, as required by section 3 of the PAP Act. Referring to **Castillo**, Conteh CJ observed (at para. 8) that section 3 had "over the years, been interpreted by the Courts in Belize as mandatory and… if an action is commenced against a public authority without the requisite notice…it may be fatal to the progress and possibly, even the outcome of such an application". Conteh CJ considered (at para. 11) that section 3 was "conducive to good administration and protection of the public, considerations which should find favour with the courts" and, having pointed out that there was no evidence of compliance with the mandatory statutory provision, said this (at para. 13):

> "It does not matter, in my view, that the claimant is seeking administrative orders in the claim for declarations and an order directing the defendants to remove the concrete wall on the boardwalk erected by the interested party along the north bank of the Haulover Creek in the Fort George Area of Belize City on the common boundary of the Fort Street Tourism Village. The requirements of section 3 of the Public Authorities Protection Act are mandatory to include the relief the claimant seeks.
>
> 14. Although the words "writ" and "copy of process" are used in section 3 of the Act, we no longer have writs since 2005, but instead "Claim Forms" and "Fixed Date Claims", there can, of

course, be no doubt that the process by which the present claim was commenced is within the provisions of section 3 of the Act.

15. Therefore, absent the statutory notice and proof of its service on the defendants, the claim must be struck out."

[55] Despite the superficial appearance generated by the reference in particular to 'illegality', it is important to note that, as Mr Lumor was careful to point out, **Eurocaribe** was not a judicial review case. It was in fact an application under rule 56.7(1)(c) for a declaration, which is a species of administrative order specifically made available by rule 56.1(1)(c) on a free-standing basis. Like **Castillo**, **Eurocaribe** is therefore not an authority on the applicability of the PAP Act to judicial review proceedings.

[56] In **National Transport Service**, however, Awich CJ (Ag) (as he then was) was required to confront directly the question whether section 3 of the PAP Act applied to judicial review proceedings. In that case, faced with an objection in judicial review proceedings that the appropriate notice under section 3 had not been given, the claimants submitted that they had in fact given sufficient notice and, alternatively, that notice under the PAP Act was not required in a judicial review or constitutional claim. In respect of the latter contention, it was submitted to the learned judge that a writ, which is the originating process referred to in section 3, issues only in an action (now a general claim), not in a Crown side proceeding, and fell to be contrasted with the fixed date claim form (formerly an originating summons).

[57] As regards the claim for judicial review, Awich CJ (Ag) rejected this submission, saying this (at paras. 16 – 17):

"The short answer is that s: 3 mentions *writ* and *any process*. A court process is any document by which a judicial process is instituted; an original process is a court document that compels the appearance of the defendant. So by stating that, *"no writ shall be sued, nor a copy of any process be served"*, section 3

includes a claim that may be commenced by a fixed date claim. A constitutional claim may be excluded from the requirement for notice not because of the court process by which it is commenced. There is a difference between a constitutional claim and a judicial review claim.

17. In the **Eurocaribe** case learned Chief Justice Conteh held that notice under s: 3 of the Public Authorities Protection Act was required in claims including judicial review claims. I agree."

[58] In dismissing the application, the learned judge relied on **Castillo** and **Eurocaribe**, considering that the matter had been "decided conclusively" by **Castillo**. On this point, the learned judge was, in my respectful view, obviously in error, since, as I have attempted to demonstrate, neither **Castillo** nor **Eurocaribe** was judicial review case. Further, it is not correct to say, as Awich CJ (Ag) thought to be the case, that Conteh CJ had held in **Eurocaribe** that notice under section 3 of the PAP Act was required in judicial review claims: given the actual nature of the claim in that case, the matter simply did not arise.

[59] Mr Hawke also brought to our attention the decision of Wilkinson J at first instance in the Eastern Caribbean Supreme Court (in the High Court of Justice of St Lucia), in **Fire Services Association and Shane Felix v Public Service Commission, Chief Fire Officer and the Attorney General** (Claim No. SLUHCV 2009/0762, judgment delivered 15 March 2010). In that case, the applicant challenged the decision of the first defendant to appoint a particular member of the Fire Service to be a sub-officer. Objection was taken to the proceedings on the ground that notice of the proceedings had not been served on the second and third defendants, as required by Article 28 of the Code of Civil Procedure, which provided that no public officer "can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any judgment be given against him unless notice of such suit has been given him at least one month before the issue of the writ of summons". In answer to this objection, it was submitted on behalf of the applicant that Article 28 was applicable only to private law cases and not to public law cases, which this one was.

[60] Wilkinson J rejected this submission, in reliance on a previous decision of Edwards J, also at first instance in the High Court of St Lucia, in **B-Line Car Rentals v Comptroller of Customs and the Attorney General** (SLUHCV 2006/0725). In that case, Edwards J referred to **Castillo**, describing the PAP Act as "similar" to Article 28, and held that an application for an injunction, which fell within Article 28, was subject to the "mandatory condition precedent" of prior service, as this court had held in **Castillo**. Accordingly, Wilkinson J felt similarly obliged to uphold the objection in the matter before her and to dismiss the claim for judicial review against the second and third defendants.

[61] While I would ordinarily be happy to treat a decision of the Eastern Caribbean Supreme Court as highly persuasive, I regret that I cannot, with the greatest of respect to the learned judge, regard this as a satisfactory decision, in at least two respects. In the first place, it is clear that neither Wilkinson J nor Edwards J gave any consideration at all to the crucial distinction that emerges from the fact that **Castillo** was not a judicial review case. Thus, and this is the second point, since Wilkinson J regarded the matter as having been foreclosed by the earlier decision of Edwards J, the judge did not find it necessary to consider counsel for the applicant's thoughtful invitation to the court to distinguish between private and public law cases for the purposes of applying Article 28 (the wording of which appears in any event to be markedly different from that of section 3 of the PAP Act).

[62] A different result was reached in **Public Service Commission v Davis** (1984) 33 WIR 112, decision of the Court of Appeal of the Eastern Caribbean States. In this case, which was an appeal from Antigua and Barbuda, the court declined to apply the Public Authorities Protection Act to a decision of the Public Service Commission, which it found to have acted in breach of a condition precedent to its assumption of jurisdiction (the completion of criminal proceedings arising out of the same circumstances as disciplinary proceedings) and, having improperly and/or prematurely assumed jurisdiction, it failed to follow its own procedure and completely ignored the rules of natural justice. In short, as Robotham JA (as he then was) pithily observed (at page 120), "it did nothing right". In these circumstances, the Court of Appeal decided, in agreement with the judge at first instance, that the proceedings before the Commission were a nullity and, as such, "can create no

sanction nor can it give rise to any privileges or immunities". The Commission was therefore not entitled to the protection of the Act.

[63] A similar disinclination to apply the Public Authorities Protection Act to every circumstance in which it is invoked by the public authority was demonstrated in **Whitfield v Attorney General** (1989) 44 WIR 1, a decision of the Court of Appeal of The Bahamas. In that case, it was held, following the previous unreported decision of the Court of Appeal in **Ryan v Attorney General**, that the Public Authorities Protection Act had no relevance to proceedings in which an applicant is seeking to enforce rights enshrined in the Constitution.

[64] Several authorities of long standing evince considerable solicitude for the preservation of access to the courts for the purpose of judicial review. As long ago as 1901, in **Smith v Northleach Rural District Council** [1902] 1 Ch 197, 202 (a mere eight years after the passage of the Public Authorities Protection Act 1893), Farwell J had expressed the view that the privileged position given by the Act to a public authority "cannot be extended beyond the express words of the statute". Half a century later, in **R v Medical Appeals Tribunal, Ex parte Gilmore** [1957] 1 QB 574, 583, Denning LJ, as he then was, said that "the remedy of certiorari is never to be taken away by any statute except by clear and explicit words" (see also **Ex parte Waldron** [1986] QB 824, 845, per Ackner LJ).

[65] Albeit in the context of constitutional proceedings, similar language is to be found in the judgment of Lord Nicholls of Birkenhead in **Durity v Attorney General of Trinidad and Tobago** [2002] UKPC 20, 3 WLR 955, in which the Privy Council held that the Public Authorities Protection Act of Trinidad and Tobago did not apply to constitutional proceedings (as a result of which the decision of Ventour J in **Smith v Commissioner of Police** (1997) 51 WIR 409, which was cited by Mr Hawke to the opposite effect, can no longer be regarded as representative of the law of Trinidad and Tobago). Lord Nicholls described the UK Public Authorities Protection Act 1893 (at para. 20) as having led "a somewhat inglorious life", until its eventual repeal by the Law Reform (Limitation of Actions) Act 1954. Because of dissatisfaction with the way in which it operated, "the Act was always construed restrictively, lest 'what was intended as a reasonable protection for a public authority would become an engine

of oppression'" (quoting Lord President Clyde in **Burmah Oil Co (Burma Trading) Ltd v Lord Advocate** 1963 SC 410, 448). Thus, Lord Nicholls observed (at para. 30), the "clearest language" would be needed for a court to conclude that the initiation of constitutional proceedings is subject to a "rigid and short time bar", such as that contained in the Public Authorities Protection Act of Trinidad and Tobago, which "lacks the clarity of intent necessary for this purpose".

Discussion

[66] There can be no question that, as the cases all indicate, there is no *lis* between the parties in judicial review proceedings. Such proceedings are directed "at the decision itself rather than the parties who made it" (per Neill LJ in **Ex parte Waldron**, at page 848). What is vulnerable in such proceedings is the decision and not the decision maker. It is in this sense, it seems to me, that Carey JA took the view in **Belize Water Services** that an application for judicial review is not a 'dispute', in the way in which the disagreement between contracting parties requiring submission to arbitration in that case was plainly a dispute, amenable to resolution by the mechanisms of private law. Judicial review, on the other hand, "describes the process by which the courts exercise a supervisory jurisdiction over the activities of public authorities in the field of public law" (Clive Lewis QC, 'Judicial Remedies in Public Law', 4th edn, para 2-001).

[67] Historically, applications for the prerogative remedies of certiorari, prohibition, mandamus and habeas corpus were made on the Crown side of the Queen's Bench Division in England and did not fall to be considered as 'civil proceedings' in the ordinary – or statutory – signification of that phrase. That this was also the case in Belize is surely confirmed by the specific exclusion of such proceedings from the definition of 'civil proceedings' in the CP Act. This is particularly so, in my view, when it is kept in mind that, before and after the passing of the CP Act in 1953, indeed right up to the promulgation of the CPR in 2005, in default of any specific procedure prescribed in the Supreme Court Rules for judicial review proceedings, such proceedings were governed by the practice and procedure in the High Court of Justice in England.

[68] This position remains unaffected, it seems to me, by the inclusion of judicial review under the rubric 'civil proceedings' in the CPR. The framers of the CPR were concerned to make specific provision in the rules for the first time for judicial review. In these circumstances, it is hardly surprising that, in a code designed to regulate "all civil proceedings in the civil division of the Supreme Court" (rule 2.2(1)), it should have been felt necessary to state specifically that 'civil proceedings' for the purposes of that code should include applications for judicial review. But to the extent that the CPR is subsidiary legislation, it is clear that, on general and well established principle, nothing in it can override a clear statutory provision, in this case, section 2(1) of the CP Act.

[69] But in any event, as the rules themselves demonstrate (see paras [32] – [36] above), judicial review applications possess entirely distinctive features. Thus, permission is required before an application for judicial review can be made (unlike in the ordinary claims process), a measure intended to filter out "groundless or unmeritorious claims" (per Lord Diplock in **O'Reilly v Mackman** [1982] 3 All ER 1124, 1131); applicants are required to show a "sufficient interest" in the subject matter of the application (rule 56.2(1)); there is a short time limit for making applications for judicial review (ordinarily three months) (unlike the usual limitation periods which apply in ordinary litigation); the procedure for hearing applications for judicial review is intended to be speedy and the application for permission must be considered "forthwith" by a judge of the Supreme Court (rule 56.4(1)) and, if permission is given, it must be conditioned on the claim for judicial review being filed within 14 days of the grant of permission (unlike ordinary litigation, in which, although under the CPR tight time limits now apply, the entire process may still be – notoriously – protracted); disclosure and cross-examination of witnesses is not automatic, but requires permission (rule 56.11(1)); and the general rule is that no order for costs will ordinarily be made against an applicant for an administrative order, including judicial review, save in the case of unreasonable behaviour on the part of the applicant in the making or conduct of the application (which is the opposite of the general rule applicable to ordinary claims that once the court decides to make an order as to costs, costs should follow the event (rule 63.6(1)).

[70] Several of the restrictive aspects of the judicial review procedure under Part 56 are in fact designed to safeguard the public interest. Thus, as regards the requirement of expedition, Lord Diplock observed in **O'Reilly v Mackman** (at page 1131), that "[t]he public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision" (see also Lewis, para 3-006, where the learned author refers to the "specific provisions incorporated into the judicial review procedure for the benefit of public authorities"). The decision of the House of Lords in **O'Reilly v Mackman** that, in the light of the greatly improved features of the judicial review process (then governed by RSC Ord 53, r 1(1), introduced in 1977), a person seeking judicial review of the decision of a public authority should, as a general rule, proceed by way of an application for judicial review, rather than by way of ordinary action, was in fact specifically motivated by a desire to prevent evasion of the provisions of the rules for the protection of public authorities (see the judgment of Lord Diplock, at page 1133). (However, the rule in **O'Reilly v Mackman** is itself now subject to various exceptions and qualifications, the clear tendency of which has been to mitigate its rigour and to allow more ready access to judicial review processes in proper cases – see Lewis, paras 3-003 – 3-045.) To the extent that the PAP Act was designed to protect the public interest, as Sir John Summerfield P stated in **Castillo** and Conteh CJ accepted in **Eurocaribe**, that protection is, it seems to me, amply achieved by the carefully drawn provisions of Part 56 of the CPR.

Resolution

[71] Against this background, I accordingly think that Mr Lumor was plainly correct at the outset of the appeal to characterise judicial review proceedings as *sui generis*. The question whether section 3 of the PAP Act applies to such proceedings is at the end of the day essentially one of construction, taking into account all relevant factors, such as context, history, previous authority and the salutary caution that the right of access to the courts for the purposes of judicial review can only be abrogated by clarity of intent and of language.

[72] In my judgment, there is nothing in the language of the PAP Act to compel an affirmative answer to this question and, indeed, there are several indicia to the contrary. In the first place, the actual language of section 3(1) and (2) ("No writ shall be sued against"; "the cause of action"; "no verdict shall be given for the plaintiff") is plainly more appropriate to an action between disputing parties to enforce private rights than to an application to the court to review the conduct of a public body. The same point can be made about section 5 ("if the plaintiff becomes non-suited or discontinues the action, or if upon a verdict or an application to strike out the plaintiff's statement of claim on the ground that it discloses no reasonable cause of action judgment is given against the plaintiff"); and section 7 ("if the Court or jury… shall give a verdict for the defendant…"; the "defendant may by leave of the court, at any time before issue joined, pay money into court as in other actions").

[73] Section 6 invites special attention in this context. The various references to a "verdict" being obtained against the public authority, the "cause" being "tried" and to "damages", which was certainly not a remedy available on applications for prerogative orders in 1884 when the PAP Act was first enacted, are all additional indicia that the Act was not intended to apply to applications for such orders. Perhaps most significantly, section 6 gives the power to the court, even where it considers that the public authority acted illegally, to certify that "there was reasonable and probable cause to warrant the public authority in having acted or assumed to act in the manner [it] did", and to award a purely nominal sum in lieu of damages. It is difficult to see how, in public law, such a power, in effect, to excuse illegal conduct on the part of the public authority, can possibly be consonant with the principle which lies at the heart of judicial review, which is that "[i]f a public body acts in a way that is not permitted, or exceeds the powers that the courts recognise the body as possessing – whatever the source of the power – the courts will regard the body as acting ultra vires in the sense of going beyond its legal powers" (Lewis, para 5-003).

[74] So, textually, a close reading of the PAP Act does not compel the conclusion that it was intended to apply to prerogative proceedings, the precursor to judicial review in the modern law. Nor does the provision in rule 59.1(4) that the PAP Act "applies to proceedings under this Part" alter the position: it is clear from Part 59 that

it is intended to govern private law actions to which the Crown is a party, whether as claimant or as defendant. Its true focus can be seen from rule 59.3(1), for instance, which requires that, where a claim is made against the Crown, "the claim form or statement of claim must contain reasonable information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the Government Department and officers of the Crown involved".

[75] From the standpoint of authority, the dicta to which I have referred (see paras [47] and [48] above) all point the same way. In Belize, neither **Castillo** nor **Eurocaribe** is authority to the contrary, since neither of them was a case of judicial review. To the extent, therefore that in **National Transport Service** Awich CJ (Ag) considered the question to be conclusively covered by those cases, I think that he was, with the greatest of respect, plainly in error. I cannot therefore regard as soundly based his conclusion in that case that the PAP Act applies to judicial review proceedings and, in my respectful view, that decision ought not to be followed on this point. In the instant case, Legall J referred to and gave effect to all three cases, concluding that **Castillo**, which was binding on him, supported the view that notice was required under section 3 of the PAP Act in this matter. For all the reasons I have stated, I consider that he too was led into error.

Conclusion

[76] I would therefore conclude that, in my judgment, the PAP Act does not apply, either on principle or on authority, to applications for judicial review. These are my reasons for concurring in the order made allowing this appeal, with costs to the appellant to be agreed or taxed, at the conclusion of the hearing on 26 March 2012.

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MORRISON JA

MENDES JA

[77] I have read, with admiration, the draft judgment of Morrison JA in this appeal. It deals with and resolves an area of law which seems to have troubled the judiciary across the region for some time now. It removes what was thought by some to be an additional obstacle to the pursuit in judicial review proceedings of challenges to unlawful administrative action. I agree with the reasons given by him for disposing of this appeal and have nothing which I can usefully add.

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MENDES JA