

**IN THE SUPREME COURT OF BELIZE, A.D. 2018**

**CLAIM NO: 656 OF 2018**

**BETWEEN**

**CPL 189 VIDAL CAJUN**

**1<sup>st</sup> APPLICANT**

**CPL 550 PEDRO COY**

**2<sup>nd</sup> APPLICANT**

**PC 332 JOSUE ITZAB**

**3<sup>rd</sup> APPLICANT**

**AND**

**THE COMMISSIONER OF POLICE**

**1<sup>st</sup> RESPONDENT**

**THE ATTORNEY GENERAL**

**2<sup>nd</sup> RESPONDENT**

**Keywords:** Judicial Review; Part 56.3 of the Supreme Court Rules 2005; Part 56.5 of CPR 2005; Civil Proceedings in relation to judicial review;

Police Act Chapter 138 Laws of Belize;

Police Regulations Chapter 138.

**Before the Honourable:** Mr. Justice Courtney A. Abel

**Hearing Dates:** 01<sup>st</sup> November, 2018  
08<sup>th</sup> November, 2018.

**Appearances:**

Mr. Anthony Sylvestre for the Applicants.

Mrs. Samantha Matute-Tucker for the Respondents.

## WRITTEN JUDGMENT

Orally Delivered on the 8<sup>th</sup> day of November, 2018

### Introduction

- [1] This is an application by two Corporals and a police officer of the Belize Police Department for permission to apply for judicial review. It is brought under Part 56.3 of the Supreme Court Rules 2005.
- [2] The application is in respect of decisions taken around the 8<sup>th</sup> October, 2018 by the Commissioner of Police of immediately transferring the Applicants from their placement at the Orange Walk Police Formation to the Eastern Division which it is alleged by the Applicants, given the circumstances of the transfers, can be challenged, reviewed and quashed by this Court on the bases that all:
- (a) contravene Departmental Orders,
  - (b) breach Public Services Regulations,
  - (c) breach statutory powers,
  - (d) breach natural justice,
  - (e) are unlawful, unreasonable and irrational, and
  - (f) are disruptive to the lives of the Applicants.
- [3] But first, in order for a full challenge to be mounted, this Court must first be satisfied that there is, made out in relation to the present application, in accordance with rules of Court, an arguable case having a reasonable prospect of substantively succeeding.

### The Law

#### The Police Act

- [4] By and under Section 7(a) and (e) of the Police Act<sup>1</sup> the Commissioner of Police is empowered, subject to the approval of the Minister, to make such rules and regulations as he thinks expedient for members of the Police

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<sup>1</sup> Chapter 138 Revised Edition 2000 Laws of Belize

Department, including for the general government of members of the Police Department, their distribution and inspection, the service required of them, and their conduct in the performance thereof.

[5] Police Regulations<sup>2</sup> were purportedly made under the Police Act. Under Regulation 10(1) thereof the Commissioner of Police was further empowered to make such departmental orders as he considered necessary for the good management and control of the Police Department provided the same was not inconsistent with any rule or regulation made by the Minister or with the provisions of any Act. Such orders were to be termed either 'Standing Orders' or 'Routine Orders'<sup>3</sup> with the former being of a permanent nature<sup>4</sup> and the latter being a regular monthly publication covering the domestic affairs of the Department and instructions from the Commissioner which are of a temporary nature<sup>5</sup>.

[6] Departmental Orders dated 14<sup>th</sup> January 2013<sup>6</sup>, which appears to be Standing Orders, dealt principally with '**Career Management and Transfer Policy**', the key objectives of which were stated to be as follows:

*A. To promote a workforce with enhanced skills, knowledge, experience and flexibility.*

*B. To manage the movement of police officers to ensure an equitable distribution of Human Resource with the necessary skills and experience throughout the Belize Police Department (BPD).*

*C. To provide an interesting and varied career for both existing and potential BPD officers so that people of high caliber are attracted to and are retained within the Organization."*

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<sup>2</sup> Police Regulations Chapter 138, Revised Edition 2003.

<sup>3</sup> Regulation 10(2) of the Police Regulations.

<sup>4</sup> Regulation 10(3) of the Police Regulations.

<sup>5</sup> Regulation 10(4) of the Police Regulations.

<sup>6</sup> Reference Gen/Con/56/01/13(01)

[7] Departmental Orders No. 16 of 2013<sup>7</sup> at Paragraph 13 dealt with the 'Guiding Principles' of the 'objectives' in relation to 'Career Management and Transfer Policy' as follows:

*Guiding Principles*

*These objectives are pursued upon the following principles:*

- A. Divisional street patrol duty is the fundamental element of policing to which all should be committed and all should make a direct contribution.*
- B. The quality of policing services will be enhanced if officers spend time in a variety of different types of duty during their police career.*
- C. It is desirable for officers to serve at more than one Police Station/District Formation during their career."*

[8] The "Points to be Considered Prior to Transfer", in relation, it seems to the 'Career Management and Transfer Policy' were stated, at Order 3 of the Departmental Orders, to include the following:

- "A. The operational effectiveness of the BPD<sup>8</sup> remains the paramount consideration.*
- B. Although the needs of the Department, the needs and preferences of individual officers must ALWAYS be taken into consideration.*
- C. This policy will NOT be used to address matters of discipline or serious under performance."*

[9] The Departmental Orders, at Order 5, also made provision for 'Transfer outside of policy' which states as follows:

*"Occasionally circumstances may arise when an immediate transfer will be necessary.*

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<sup>7</sup> Was apparently promulgated by the Commissioner of Police on the 18th April, 2013.

<sup>8</sup> Belize Police Department.

*Example:*

- (a) Urgent Welfare need*
- (b) Family Safety consideration*
- (c) Protection of officers*
- (d) In the best interest of the Department”*

[10] Order 13 of the Departmental Orders also made provision for the ‘Participation of officers’. It is to be noted that this appears to be in relation to ‘the Annual Appraisal System’ which is in place in relation to the ‘Career Management and Transfer Policy’.

[11] The Orders also make provision for decision making as part of a ‘Career Management’ and provides as follows:

***“6. Participation of officers***

*The annual Appraisal System will make provision for every officer due for transfer in accordance with this Policy to state in writing their future employment preferences during their formal appraisal interview with their Supervisor. This is an important part of the Appraisal process and will allow every officer an opportunity to influence their transfer to broaden their experience in a different policing environment including the most challenging ones.*

*However, officers need to be realistic in their expectations, as, while every effort will be made to accommodate their wishes, this will not always be possible. It is therefore important that officers provide 2<sup>nd</sup> and 3<sup>rd</sup> choice preferences when completing their Career Development/Transfer Forms. All officers are reminded that when they joined the BPD they elected to serve at any Formation or Branch. After their formal probationary period, consideration will be given to the timing of transfer as part of Career Management to make allowances for accommodation and schooling arrangements.*

*The Department accepts the need for officers to be given reasonable advance notice of impending transfers to enable them to make necessary arrangements to settle their family. Thus, notice will be given during the months of January to March for transfers to take effect in July and August in that same calendar year.”*

[12] Again this latter Order appears to be in relation to the stated ‘Career Management and Transfer Policy’.

[13] Finally, again in relation to the ‘Career Management and Transfer Policy’, at Order 7 under the heading of “Transparency” the following process is stipulated:

*“When an officer is being considered for a career management transfer his/her supervisor shall:*

- 1. Assist the officer in completing a Career Management Transfer Form.*
- 2. Forward completed form to Formation/Branch Commander for comments.*
- 3. Formation/Branch Commander to conduct interview with the applicant.*
- 4. Keep that officer informed of what is happening.”*

The Law relating to applications for permission to apply for judicial review.

[14] A claim for judicial review includes a claim to review the lawfulness of a decision of a Commissioner of Police being a person performing public duties or functions (including the unlawful exercise of a public power or unlawful failures to perform public, including statutory, duties or departmental orders). In the case of *R v Panel on Take-overs and Mergers, Ex p Datafin PLC*<sup>9</sup> it has been observed by Lloyd LJ in relation to the question what power is amenable to judicial review, that “*if the*

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<sup>9</sup> [1987] QB 815.

*source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review,”*<sup>10</sup>.

[15] Thus, such a ground for judicial review may be found to have been established, and therefore would lie, where the claim is made that the Commissioner of Police may have made an error in law in exercising his powers or in performing his duties under Departmental Orders. Or where it is claimed that there has been a breach of natural justice or procedural fairness (such as a fair hearing in relation to career management and transfer policy) before a decision is taken.

[16] The Court is also concerned to ensure that a Commissioner of Police does not abuse his powers i.e. by ensuring that he exercises his powers in order to further the statutory purpose(s) for which the powers were conferred and that he does not act for an improper or ulterior purpose.

[17] Such abuse of power may arise particularly where the Commissioner of Police has adopted Departmental Orders or general policies governing the way in which he will exercise his discretion such as where he has made an unqualified representation that he will act in a particular way and a police officer has relied on such representation to their detriment (provided that the exercise of their discretion is not fettered and there is no overriding public interest justifying the decision to resile from the representation).

Part 56(3) of the Rules of the Supreme Court – Applications for Permission to Apply for Judicial Review.

[18] Under Part 2.2(2) of the Civil Procedure Rules “Civil Proceedings” is defined to include “applications for judicial review”.

[19] Under Part 56(3) of the Rules of the Supreme Court:

(a) Permission must first be obtained to apply for judicial review.<sup>11</sup>

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<sup>10</sup> cited at para 20 in *Jeewan Mohit v DPP UKPC [2006] 20*

<sup>11</sup> Part 56.3(1) of the Supreme Court Rules.

- (b) *“An application for permission to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made”*<sup>12</sup>.
- (c) The application must state whether any time limit for making the application has been exceeded and if so why<sup>13</sup>.
- (d) The judge may grant permission on such conditions or terms as he considers just<sup>14</sup>.
- (e) Where the application is for an order (or writ) of prohibition or certiorari the judge must direct whether or not the grant of permission operates as a stay of the proceedings to which the application relates<sup>15</sup>.
- (f) The judge may grant such interim relief as appears just<sup>16</sup>.
- (g) On granting permission, the judge must direct when the first hearing or, in the case of urgency, the full hearing of the claim for a judicial review should take place<sup>17</sup>.
- (h) Permission must be conditional on the applicant making a claim for judicial review within 14 days of the receipt of the order granting permission<sup>18</sup>.

[20] The Court in considering whether to grant permission to apply for judicial review, is primarily concerned with and is required to perform a ‘gate-keeping function’ to eliminate at an early stage, claims which are hopeless, frivolous or vexatious and to ensure that a claim only proceed to

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<sup>12</sup> Part 56.5(3) of the Supreme Court Rules.

<sup>13</sup> Part 56.3(3)(g) of the Supreme Court Rules

<sup>14</sup> Part 56.4(7) of the Supreme Court Rules.

<sup>15</sup> Part 56.4(8) of the Supreme Court Rules.

<sup>16</sup> Part 56.4(9) of the Supreme Court Rules.

<sup>17</sup> Part 56.4(10) of the Supreme Court Rules.

<sup>18</sup> Part 56.4(11) of the Supreme Court Rules.



a substantive hearing if the Court is satisfied that there is a case fit for further consideration.

[21] In exercising its gate-keeping function, it is clear that the Court has to exercise its discretion, and therefore may refuse permission to argue certain grounds because a particular ground or challenge does not raise an arguable case for judicial review with any realistic prospect of success. This is a mixed question of law and fact and involves a consideration of the merits of the application and the prospect of an applicant succeeding on his claim if allowed to proceed to make an application for judicial review.

[22] As such, the Court will grant permission, only if satisfied that the case is both arguable and also has a reasonable prospect of succeeding which requires that there exists a ground or grounds for seeking judicial review which merits full investigation at a full oral hearing involving the applicant and a consideration of possible relevant evidence.

[23] But as judicial review is not primarily concerned, not with the merit of a decision by a public authority, in this case the Commissioner of Police, but with the lawfulness of the decision making process itself, at the point of considering an application for permission to apply for judicial review, the Court will essentially be concerned with identifying whether or not one or more grounds of judicial review may be established at any later hearing.

## **The Facts**

### Vidal Cajun

[24] Corporal 189 Vidal Cajun (VC) has been a member of the Belize Police Department since the 1<sup>st</sup> day of September, 1995 (some 23 years). He was posted at the Orange Walk Formation of the Belize Police Department since the 8<sup>th</sup> August, 2017.

[25] VC had 4 previous postings during his career: (a) Precinct No. 2, Eastern Division Region from 2012 to August, 2017, (b) Independence Southern

Formation, (c) Corozal Police Formation (2006), and (d) the Orange Walk Police Formation (2008).

[26] On the 8<sup>th</sup> day of October, 2018 VC received a correspondence from the Commander of Personnel of the Department, Sr. Superintendent Lincoln Hemsley, (for the Commissioner of Police) informing him that he had been transferred from the Orange Walk Police Formation with effect from the 8<sup>th</sup> October, 2018 (the same day of notice) to the Officer Commanding Eastern Police Division Region Three (Ladyville Sub-Station).

[27] The terms of the correspondence is as follows:

*TRANSFER*

*This letter serves to inform you that you are hereby transferred from Orange Walk Police Formation to Officer Commanding Eastern Police Division Region Three (Ladyville Sub-Station) with effect from 8<sup>th</sup> October 2018.*

*It is anticipated that you will take up this new challenge with firmness, dedication, honesty and good judgment and that you will apply your knowledge, principles and expertise for the success of the Precinct.*

*Your salary and housing allowance will remain the same.*

*By virtue of this letter Finance Officer, Eastern Division is hereby authorized to make the necessary adjustment and cost center changes*

*Regards*

*(Lincoln Hemsley, Sr. Sup, L.S.M M.S.M D.S.M)*

*Commander Personal*

*For: Commissioner of Police”*

[28] Upon receipt of the said correspondence VC sent a letter to the 1<sup>st</sup> Respondent, through the Officer Commanding Orange Walk Police Formation, requesting a deferment of his immediate transfer on the following grounds:

(a) There was no explanation for the immediate transfer.

- (b) He had only been transferred there since August 2018 on health grounds.
- (c) He is in the last year of his career which, according to Departmental Orders, ought to have been considered his final posting prior to retirement.

[29] VC's family home is in Orange Walk and as his letter of deferment explains, he had requested a transfer specifically to Orange Walk so that he could be close to his family due to his health condition.

[30] On the 11<sup>th</sup> October, 2018, VC consulted his attorneys who replied to the correspondence informing that his immediate transfer was in breach of rules 4, 6, 7 and 12 of Departmental Orders No. 16 of 2013. There has apparently been no response to this correspondence sent.

[31] VC is aware of a newspaper article<sup>19</sup> in which there is some suggestion, allegedly from the Deputy Commissioner of Police, Chester Williams, who is quoted as saying as follows:

*"We have tasked Mr. Cocom [the new Commander of the Orange Walk Formation] to provide a list of officers who they believe are compromised and that list has been provided to us and so we are looking at those officers now with a view of transferring them out of Orange Walk and bringing in new officers."*

[32] This article has caused VC to speculate that this is the reason why he and one of the officers have been transferred, namely that there is a "belief" being held by the Department High Command as expressed by Deputy Commissioner of Police Chester Williams, that VC may be among officers who may be 'compromised'.

### Pedro Coy

[33] Corporal 550 Pedro Coy (PC) has been a member of the Belize Police Department since the 9<sup>th</sup> day of February, 2003 (in excess of 15 years).

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<sup>19</sup> Sunday 14th October, 2018 titled "Do Purged Cops Have Narco-Connections?"

Since passing out of training school he has been posted within the Belize Police Department at the Orange Walk Formation.

[34] On the 8<sup>th</sup> October, 2018 PC received a similar correspondence as VC but with such adjustments as befitted his rank including that he was being transferred to Regional Commander, Eastern Police Division, with Patrol Allowance of \$100.00.

[35] Upon receipt of the said correspondence PC likewise sent a letter to the 1<sup>st</sup> Respondent, through the Officer Commanding Orange Walk Police Formation, requesting a deferment of his immediate transfer on the following grounds:

(a) He is in a common law union and has a 9 year old child attending a local primary school which will result in him commuting daily for which he is not reimbursed and there is no indication of whether he would be granted a transfer grant or any assistance.

(b) He has a loan with Belize Bank in Orange Walk which would pose certain challenges.

(c) He likewise objects based on certain statutory procedural and constitutional bases.

(d) He would like his transfer to be deferred for one year.

[36] On the 11<sup>th</sup> October, 2018, PC consulted his attorneys who replied to the correspondence informing that his immediate transfer was in breach of rules 4, 6, 7 and 12 of Departmental Orders No. 16 of 2013. There has apparently been no response to the correspondence sent.

[37] PC likewise relies on the newspaper article referred to in relation to VC in support of his application.

#### Josue Itzab

[38] Police Constable 332 Josue Itzab (JI) has been a member of the Belize Police Department since the 13<sup>th</sup> day of October, 2002 (in excess of 16 years). Since passing out of training school he has been posted within the Belize Police Department at the Orange Walk Formation.

- [39] On the 8<sup>th</sup> October, 2018 JI received a similar correspondence as VC and PC but with such adjustments as befitted his rank including that he was being transferred to Eastern Division Region Three (Hattieville Sub-Station), with Patrol Allowance of \$100.00.
- [40] JI did not write a letter nor was one written on his behalf but he requests a deferment of his immediate transfer on the following grounds:
- (a) He has a child attending a primary school in Orange Walk which will result in him commuting daily for which he is not reimbursed and there is no indication of whether he would be granted a transfer grant or any assistance.
  - (b) He likewise objects based on certain statutory procedural and constitutional bases.

Letters dated 25<sup>th</sup> October, 2018 to VC, PC and JI

- [41] There is a letter from the Belize Police Department dated 25<sup>th</sup> October, 2018 which was apparently never sent nor received by the Applicants, but which was served on their Counsel during the present proceedings on the 1<sup>st</sup> November, 2018. In an endeavour to expedite the hearing of the present application this letter was, by consent, admitted into evidence as setting out the basis of the transfer of the Applicants.
- [42] Reference to and reliance upon this letter of the 8<sup>th</sup> October, 2018 is therefore made as providing the basis of transferring the present Applicants/officers from the Orange Walk Police Formation. In this letter it is stated as follows:

*“Your transfer is by no means a punitive measure, but is necessary due to the exigencies of the service hence it is outside the normal transfer period.*

*In the months prior to your transfer, there was a spike in crimes in the Orange Walk Formation. These included murders, robberies, and drug trafficking. This resulted in a deterioration of public confidence in police in that Formation.*

*In an effort to restore law and order within the Formation and rebuild public confidence major personnel changes had to be made. These included the change in Commander and Deputy Commander of the Formation. Your transfer is therefore only part of the department's effort to rebuild public confidence and maintain law and order.*

*It is anticipated that you will take the experience you gained to your new posting. All other conditions of our PF/189/2018 (168) remain the same."*

### The Application

[43] The present application for permission to apply for judicial review was filed on the 22<sup>nd</sup> October, 2018 and included applications for the following orders:

1. Permission to apply for Judicial Review by way of a writ of certiorari to quash the decision of the 1<sup>st</sup> Respondent transferring the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants with effect from the 8<sup>th</sup> October, 2018 from the Orange Walk Police Formation, respectively to Region 3 namely: (a) the Eastern Police Division Region Three (Ladyville Sub-station) Belize Police Department, (b) Regional Commander, Eastern Police Division, Belize Police Department, and (c) Eastern Division Region Three (Hattievilke Sub-Station), Belize Police Department.
2. Declaration that the 1<sup>st</sup> Respondent's said decision is unlawful, unreasonable and irrational.
3. An Injunction staying the 1<sup>st</sup> Respondent's decision transferring the Applicants to their respective new placements in Region Three.

[44] The grounds of the application are as follows:

1. The Applicants are all members of the Belize Police Department.
2. By correspondences all dated the 8<sup>th</sup> October, 2018 the 1<sup>st</sup> Respondent purported to transfer the Applicants from Orange Walk

Police Formation respectively to Region 3 in their respective stations as with immediate effect (the 8<sup>th</sup> October, 2018).

3. By Rule 6 of the Belize Police Departmental Orders No. 16 of 2013 (made by the Commissioner pursuant to powers under rule 10 of the Police Rules, made under section 7 of the Police Act), notice of transfer must be given during the months of January to March for transfers to take effect in July and August in that same calendar year. Additionally, an officer is to be given “reasonable advance notice of impending transfers to enable them to make necessary arrangements to settle their family.”
4. The notices that were given on the 8<sup>th</sup> October, 2018 to the Applicants for their transfers to respectively take effect on the 8<sup>th</sup> October, 2018 are therefore in contravention of Rule 6 of Departmental Orders No. 16 of 2013.
5. The transfers of the Applicants are further in contravention of Rule 7 Departmental Orders No. 16 of 2013 which provides that when an officer is being considered for a career management transfer, his supervisor shall:
  - (1.) Assist the officer in completing a Career Management Transfer Form;
  - (2.) Forward completed form to Formation/Branch Commander for comments;
  - (3.) Formation/Branch Commander to conduct interview with applicant; and
  - (4.) Keep that officer informed of what is happening.
6. None of the procedures/mechanism in Rule 7 was adhered to.
7. Additionally, by Memorandum POL/GEN/12/01/12(8) dated 29<sup>th</sup> June, 2012 by the Chief Executive Officer of the Ministry of National Security in relation to transfers of “NCOs and Constables”, the transfer policy of the Ministry is as laid down in the Public Services Regulation, and “*no transfer is to be made outside the stipulated*

*transfer period unless it is for emergency of service or the individual has requested a transfer that the Department supports.”*

8. The 1<sup>st</sup> Respondent has a duty, in the exercise of his statutory powers to act fairly and follow the time hallowed principles of natural justice.
9. The decision of the 1<sup>st</sup> Respondent is unlawful, unreasonable and irrational.
10. The Applicants are all affected by the decision of the Respondent as the decision will cause a disruption to the lives of the Applicants’ families.

[45] The application was assigned to me on the 25<sup>th</sup> October, 2018 and was, as required<sup>20</sup>, immediately considered but because the application included a claim for an injunction (a claim for immediate interim relief<sup>21</sup>) and it appeared to me to be desirable in the interest of justice for there to be an open court hearing<sup>22</sup>, I fixed such a hearing for the 1<sup>st</sup> November, 2018. Such an early hearing I felt was desirable but may have put the parties in some difficulty in preparing for the hearing.

### **Issues**

[46] The legal question for determination involves interpreting the provisions of the Departmental Orders with a view to establishing whether there are two transfer regimes in existence namely (a) one within ‘the career management and transfer policy’ which would ordinarily or even necessarily involve consultation with officers who may be subject to be transferred or (b) one outside of such policy which would not involve consultation with officers who may be subject to be transferred?

[47] The central factual issue for determination is whether there were circumstances which had arisen within the Orange Walk Police Formation requiring and/or necessitating, in all the circumstances of the case and in

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<sup>20</sup> Part 56.4(1) of the Supreme Court Rules.

<sup>21</sup> Part 56.4(3) (b) of the Supreme Court Rules.

<sup>22</sup> Part 56.4(3) (b) of the Supreme Court Rules.



relation to each of the Applicants, an immediate transfer from this formation or whether the Commissioner of Police was too hasty and/or high-handed by immediately so transferring the Applicants?

**Whether the Departmental Orders Contain Two Transfer Regimes (one within ‘the career management and transfer policy’ & one outside of such a policy)?**

- [48] I have no hesitation in summarily determining that the Applicants are directly affected by the 1st Respondent’s decision to transfer them.
- [49] I am also prepared to summarily determine that there may be no alternative form of redress available to the Applicants as the 1<sup>st</sup> Respondent’s decision to transfer is a command which the Applicants, subject to the present applications, ought to obey, and therefore the Applicants may find themselves in difficulty but for the present challenge to the 1<sup>st</sup> Respondent’s decisions.
- [50] There has been no suggestion by Counsel for the Respondents that the Applicants are not within the “*as early as possible as and in any case not later than three months*” time limit for an application for permission for Judicial Review of the decision of the 1<sup>st</sup> Respondent and therefore I have no hesitation in finding, again summarily, that the Applicants are within the time limit for making the present application for permission to apply for judicial review.
- [51] Based on no objection being raised by Counsel for the Respondents, I am also prepared to consider, that Belize Police Departmental Orders No. 16 of 2013 were made pursuant to powers of the Commissioner of Police under rule 10 of the Police Rules, which themselves were made pursuant to section 7 of the Police Act.
- [52] From a careful reading of all of the relevant Departmental Orders, it would appear that within the various Orders there does appear to be drawn a clear distinction between those transfers which relate to and would fall within the ‘Career Management and Transfer Policy’ and those transfers which would fall outside of this policy.

- [53] In relation to the transfers which fall within the ‘Career Management and Transfer Policy’ a process involving clear ‘objectives’ ‘guiding principles’ and ‘considerations’ have been stated as being applicable. These seek to assist in regulating the balancing exercise which the Department would have to undertake in catering to the needs of the officer, who may be the subject of the transfer, and the needs of the Belize Police Department as a whole, while at the same time paying attention to the human resource management issues which may arise in the process of managing the whole exercise.
- [54] In relation to transfers which fall outside the ‘Career Management and Transfer Policy’ ‘objectives’ ‘guiding principles’ and ‘considerations’ have not been stated as being applicable and nor is a process stated. Instead, it is simply stated that “*occasionally circumstances may arise when an immediate transfer will be necessary*” and 4 examples of such situation are provided which include three (3) that pertain to the needs of the officer and the fourth relating to “*the best interest of the Department*”.
- [55] The question arises who determines what is in the best interest of the Department. Clearly the answer must be the Commissioner of Police.
- [56] The question then arises whether this discretion is unfettered as to when and how such a discretion should be exercised. Clearly the answer is that it is not totally unfettered and that the Commissioner must be operating lawfully and not unreasonably.

#### Submissions by Counsel for the Parties

- [57] I now come to the alleged breaches of rules 4, 6, 7 and 12 of Departmental Orders No. 16 of 2013 as set out and explained in the correspondence of the Applicant’s attorneys and in their arguments.
- [58] In particular, it was pointed out by Counsel for VC that contrary to the Departmental Orders (and by implication the ‘Career Management and Transfer Policy’):
- (a) he has not served the minimum two years tenure at the Orange Walk Formation;

- (b) the notice to give effect to the purported transfer was not within the stipulated months of January to March and in any event could not amount to reasonable advance notice;
- (c) VC's input was not inquired into about his impending transfer as allegedly required by the rules and that in light of the fact that VC was near to the age of retirement, there was a presumption, in accordance with rule 12, against his transfer.

[59] It was submitted by Counsel for the Applicants that Departmental Orders No. 16 of 2013 expressly prohibited "transfers" of officers to be used as a mechanism to "address matters of discipline or serious under performance" and that the transfers of the Applicants appears to have been done for this purpose.

[60] It was also submitted by Counsel for the Applicants that under the Belize Police Department's policy, even before the promulgation of Departmental Orders No. 16 of 2013, transfers of officers were not to be used as a mechanism to discipline, but instead was only to be utilised to "*promote a workforce with enhanced skills, knowledge experience and flexibility.*" That this is borne out by the fact that prior to the present Departmental Orders No. 16 of 2013 coming into force, the Department followed the transfer policy laid out in the Public Service Regulations.

[61] It was submitted by Counsel for the Applicants that as a public authority, the Commissioner of Police's decision to transfer them is subject to judicial review and that involves a review of the assessment of the factors that led to the decision to transfer the Applicants contrary to the 'Career Management and Transfer Policy'.

[62] It was also submitted by Counsel for the Applicants that the Commissioner of Police, as a public authority, has a duty, in the exercise of his powers to transfer to act fairly and to follow whatever rules and guidelines that are established such as the Police Rules or Departmental Orders made thereunder.

- [63] Finally, it was submitted by Counsel for the Applicants that the decision of the Commissioner of Police to transfer the Applicants is unlawful, or alternatively unreasonable and irrational and contrary to the Departmental Orders of the Belize Police Department on transfers, specifically in relation to the 'Career Management and Transfer Policy" and the provisions relating to such transfers of public officers in the Public Service Regulations.
- [64] Counsel for the Respondents simply retorts that the submissions of Counsel for the Applicants is wholly misconceived and misconstrues the provisions contained in the Departmental Orders. Specifically that the transfers, the subject of the present applications, was wholly outside of the 'Career Management and Transfer Policy" and that the process that are stipulated in relation to such transfers are inapplicable.
- [65] Counsel for the Respondents argue that the balancing exercise which the Department would have to undertake in catering to the needs of the officer, who may be the subject of the transfer within the policy, does not apply and that instead the only criteria that is applicable in the present case and that has to be applied are the needs and/or 'the best interest' of the Belize Police Department as a whole.
- [66] As a result of such misconstruction and misinterpretation of the Departmental Regulations, Counsel for the Respondents appeared to have been submitting, that the present application has not raised and litigated the relevant considerations which may arise in relation to the transfers of the Applicants.

#### Determination

- [67] Having carefully considered the submissions of Counsel for the parties, I must state that I am in full agreement with the submissions of Counsel for the Respondents.
- [68] I have concluded that Counsel for the Applicants has indeed wholly misconceived and misconstrues the provisions contained in the Departmental Orders. Specifically, I have found that the transfers, the

subject of the present applications, was wholly outside of the ‘Career Management and Transfer Policy’ and that the process relating to the transfers, upon which Counsel for the Applicants have relied, as stipulated in relation the Departmental Orders, are inapplicable.

- [69] I have also concluded that the balancing exercise which the Department would have to undertake in catering to the needs of the officer, who may be the subject of the transfer within the policy, does not apply to the present case which involves transfers outside of the ‘Career Management and Transfer Policy’; and that instead the only criteria that is applicable in the present case and that has to be applied are the needs and/or ‘the best interest’ of the Belize Police Department as a whole.
- [70] As a result of such misconstruction and misinterpretation of the Departmental Regulations, I have concluded that the present application has not raised and litigated the relevant considerations which may arise in relation to the transfers of the Applicants.
- [71] I have therefore determined that given the nature of facts and circumstances of the case as presented to me that the balancing exercise which the Department would have to undertake in catering to the needs of the officers, the subject of the transfers, and the needs of the Belize Police Department as a whole, and the human resource management issues which may arise in the process of managing the whole exercise, does not arise in the present case.
- [72] I must say that it is unfortunate that the letter dated the 8<sup>th</sup> October 2018 to the Applicants did not sufficiently set out the basis upon which the Applicants were being transferred, which left the Applicants to speculate about such basis, and ultimately led them down the wrong path with them arriving at the wrong conclusion.
- [73] A more full or detailed letter setting out the bases of the transfer, would also have been an effective way of removing any taint which the Applicants may have felt about the transfers and away from the conclusion that they were part of a ‘purge’ of the Orange Walk Formation.

- [74] If anything, these proceeding may have served at least a useful purpose of disabusing the Applicants and the public of any notion that the transfers were part of a 'punitive measure' against the Applicants, as has been made clear from the letters dated 25<sup>th</sup> October, 2018 to the Applicants.
- [75] Also, I have concluded that the Applicants were hampered in the present application by the failure of the Commissioner of Police to respond to the letters which were written by the Attorneys on behalf of the Applicants. Such a response from or on behalf of the Commissioner of Police would have provided further opportunity for clarification of the reasons for the transfers of the Applicants. The Applicants were therefore put at a disadvantage in receiving advice in relation to the present application resulting in them having to move erroneously to make the present application. As a result, this Court is not of the view that the present application was made unreasonably. This will certainly have costs implications.
- [76] As a result of my determinations, I have found that the Commissioner of Police in deciding to transfer the Applicants did not;
- (a) contravene Departmental orders,
  - (b) breach Public Services Regulations,
  - (c) breach statutory powers,
  - (d) breach natural justice, nor
  - (e) acted in a way which improperly and was unlawfully disruptive to the lives of the Applicants.
- [77] I have therefore concluded that I will not grant permission to apply for judicial review in relation to the just mentioned reliefs as the same are hopelessly flawed and ought not to proceed to a substantive hearing as I am satisfied that there is not a case in relation to them which is fit for further consideration.
- [78] As such, I am not satisfied that the case is either arguable or has a reasonable prospect of succeeding as the above grounds for seeking

judicial review does not merit full investigation at a full hearing involving the applicant and a consideration of possible relevant evidence.

**Whether circumstances had arisen within the Orange Walk Police Formation requiring and/or necessitating an immediate transfer from this formation?**

- [79] The question now arises, in determining whether the Commissioner of Police acted unlawfully by transferring the Applicants outside of the 'Career Management and Transfer Policy'.
- [80] I accept that the Commissioner of Police, as a public authority in the exercise of his powers to immediately transfer any officer, has a duty to act fairly, reasonably and lawfully, including by following whatever rules and guidelines that have been established such as are contained in the Police Rules or Departmental Orders (specifically relating to transfers outside of the 'Career Management and Transfer Policy').
- [81] Because the Applicants and their Counsel wholly misconceived the bases on which they were transferred and therefore misapplied the Departmental Orders, the correct factual basis of this issue was never properly explored, and indeed it was not ventilated at all. As a result, this Court is unable to say whether the Commissioner acted fairly, reasonably or lawfully in transferring the Applicants outside of the 'Career Management and Transfer Policy'.
- [82] By way of an aside, this Court considers that the position of VC certainly seems very different to PC and JI. Given the peculiar medical, family and career situation of PC, this Court, certainly considers that some form of consultation might have been desirable, reasonable, and appropriate with VC prior to any transfer, even if such a transfer is necessary and in the best interest of the Police Department and not unlawful (upon which this Court makes no determination).
- [83] Also by way of an aside, this Court also considers that the position of PC, although not as seemingly meritorious as VC, certainly appears different to JI. Again, given the peculiar family situation of PC this Court certainly

considers that some form of consultation might have been desirable with PC prior to any transfer, even if such a transfer is necessary and in the best interest of the Police Department.

- [84] A Commissioner of Police, being a person performing public duties or functions, may certainly be exercising his discretion unlawfully, and be subject to judicial review if he can be shown to have exercised his discretion or statutory power unreasonably or unlawfully or that he fails to perform such public or statutory duties (including those contained in a departmental orders) in an unreasonable or unlawful manner.
- [85] This court is therefore unable to conclude that the transfers, outside of the 'Career Management and Transfer Policy' are unlawful, unreasonable and irrational.

### **Costs**

- [86] As the Applicants have not succeeded ordinarily, they would not be entitled to their costs but because of the determination which this Court has made about the nature and conduct of the Respondents in providing information to the Applicants. It considers that the Applicants should obtain half of their cost which this Court has assessed to be the sum of \$2,000.00.

### **Disposition**

- [87] This Court will therefore:
- (1) Refuse permission to the Applicants to apply for Judicial Review by way of a writ of certiorari to quash the decision of the 1<sup>st</sup> Respondent transferring the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Applicants with effect from the 8<sup>th</sup> October, 2018 from the Orange Walk Police Formation, respectively to Region 3 namely: (a) the Eastern Police Division Region Three (Ladyville Sub-station) Belize Police Department, (b) Regional Commander, Eastern Police Division, Belize Police Department, and (c) Eastern Division Region Three (Hattieville Sub-Station), Belize Police Department.



- (2) Decline to grant a declaration to the Applicants that the 1<sup>st</sup> Respondent's said decisions are unlawful, unreasonable and irrational.
- (3) Refuse an Injunction staying the 1<sup>st</sup> Respondent's decision transferring the Applicants to their respective new placements in Region Three.
- (4) Will order that the Applicants should obtain half of their costs which this Court has assessed to be the sum of \$2000, 00.

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**The Hon. Mr. Justice Courtney A. Abel**

**22nd November, 2018**