IN THE COURT OF APPEAL OF BELIZE A D 2020

CIVIL APPEAL NO 10 of 2018

PUBLIC UTILITIES COMMISSION Appellant

v

CONSOLIDATED WATER (BELIZE) LIMITED Respondent

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BEFORE

The Hon Sir Manuel Sosa	President
The Hon Madam Justice Minnet Hafiz Bertram	Justice of Appeal
The Hon Mr Justice Lennox Campbell	Justice of Appeal

F Lumor SC along with S Pitts for the appellant.
R Williams SC along with A Waight for the respondent.

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12 June 2019 and 26 October 2020

SIR MANUEL SOSA P

[1] The present appeal should, in my opinion, be allowed. I have read, in draft, the judgment of Campbell JA and concur in the reasons for judgment given, and the orders proposed, therein.

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SIR MANUEL SOSA P

HAFIZ BERTRAM JA

[2] I had the opportunity of reading the draft judgment of my brother, Campbell JA, and I agree that the decision of the court below should be set aside for the reasons stated in the judgment.

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HAFIZ BERTRAM JA

CAMPBELL JA

Introduction

[3] The Respondent (the Claimant below), Consolidated Water Belize Limited, ('Consolidated') of 37 Regent Street, Belize City, Belize, is a private company incorporated pursuant to the Laws of Belize. It produces desalinated water at its treatment plant located in San Pedro on Ambergris Caye which it sells to Belize Water Services Ltd ('BWS') under a written contract. The Respondent is the exclusive supplier of water. The respondent is not licensed in accordance with sections 15 and 16 of the Act.

[4] The Appellant, the Public Utilities Commission, ('PUC') is a regulatory body established pursuant to provisions of the *Public Utilities Commission Act, Cap 233* ('PUCA'). Its functions are provided under PUCA and the *Water Industry Act* ('WIA'), and is responsible for *inter alia*, regulating the water industry and sewerage services. Its primary duty is to ensure that services rendered by the public utility providers are satisfactory and the charges imposed in respect of those services are reasonable. The PUC fixes rates and the Quality Service Standards for the public utility providers.

[5] In 2000 the Government of Belize ('GOB') privatized the production and supply of potable water, the provision of sewage services along with telecommunications and

electricity services. *The Water and Sewage Act* was repealed and replaced by the WIA. In 2001, BWS was incorporated under the *Companies Act*. The assets, liabilities and business and undertaking of the Water and Sewage Authority were vested in BWS.

[6] The water produced by Consolidated is sold to BWSL for distribution to the consumers in San Pedro under a written contract between the parties dated 17 September 2003. The contract fixes the required daily quantity of water and the guaranteed quality that Consolidated is obliged to deliver. These values are respectively. (i) The Guaranteed **Daily** Quantity of 290,000 US Gallons, from 1 March 2011; and (ii) The Guaranteed Quality of the Water is also set in the Contract being the standards set out in Schedule E to the Contract, and in The Drinking Water Guidelines 2nd set forth by the World Health Organization (WHO).

The Background

[7] In a letter dated 10 September 2010, the San Pedro Business Association (SPBA) requested that the PUC investigates the matter of a violation of section 17 of PUCA, and complained that Ambergris Caye had not been provided with water of adequate quality and security. The letter read as follows:

> "The San Pedro Business Association (SPBA) hereby makes a formal complaint to the Public Utilities Company (PUC), pursuant to Section 18 of the PUC Act, that the public utility providers in the water sector on Ambergris Caye, in violation of Section 17 of the PUC Act, have over the past several months not been providing the public on Ambergris Caye, service of and adequate quality and security.
>
> The SPBA hereby request of the PUC, that it investigate this matter pursuant to Section 22 of the PUC Act, and that it initiates a formal hearing of this complaint in the manner provided for in PART VI of the PUC Act"

[8] On the 1 November 2010, the PUC gave Consolidated notice of the complaint made by the SPBA and notified Consolidated, that it was required to satisfy or answer the complaints on or before the 8 November 2010.

[9] On the 5 November 2010, counsel for Consolidated, wrote to the PUC requesting particulars of the complaint. On the 11 November 2010, the PUC responded by extending the deadline for Consolidated to respond to the 22 November 2010. Mr Courtenay SC, on behalf of Consolidated, on the 16 November 2010, renewed his request for further particulars of the complaint.

[10] On the 14 December 2010, the PUC held a hearing in respect of the complaint made by SPBA.

[11] On the 21 December 2010, PUC again wrote to Consolidated making a final request for information by the 29 December 2010.

[12] The SPBA was not represented at the hearing. The Respondent alleges that SPBA non-attendance meant that there was no evidence adduced by the complainant

[13] On the 29 July 2011, as a result of the investigation, PUC made an Order in respect of the complaint and found the following:

"a) BWS has consistently failed to meet the quality standards set by the Ministry of Health for supply of potable water to the public on Ambergris Caye;

b) CWBL has consistently failed to meet the quality standards set by the agreement for supply of treated water to BWS;

c) The water quality standards included in the agreement between BWS and CWBL are similar to those set by the Ministry of Health for supply of potable water to the public on Ambergis Caye and therefore are not necessarily the optimal standards for supply to BWS;

d) There is not enough evidence to conclude that any third party is responsible for substandard quality of water supply from CWBL or any deterioration of such supply;

e) Deterioration of water supply by CWBL to BWS coincided with a substantial reduction in the frequency of the replacement of membranes at the CWBL treatment facility".

Administrative law challenge to PUC's decision

[14] On the 27 October 2011, Consolidated launched a challenge to the PUC decision by filing a Fixed Date Claim Form seeking declarations against the PUC, pursuant to *Rule 56 of the Supreme Court (Civil Procedure) Rules*. The main reliefs sought were:

"(1) A Declaration that the decision by the Defendant to initiate and hold a hearing pursuant to Section 17 of the PUC Act in respect of a complaint dated the 10 September 2010 and purportedly made by the 2nd Interested Party was unlawful, null and void and of no effect:

(2) A Declaration that the Order made by the Defendant in respect of a complaint dated the 10th September 2010 and purportedly made by the San Pedro Business Association against Belize Water Services Limited and Consolidated Water Belize Limited and dated the 29th July 2011 ('the Order'') is unlawful, null and void and of no effect."

[15] Consolidated contended in the first affidavit of Peter Caliz, dated 27 October 2011, filed in support of the application at paragraph 5 (c), that:

"The complaint from San Pedro Business Association did not constitute a complaint within the meaning of Section 24 of the PUC Act.

Therefore the Defendant had no jurisdiction to entertain the said complaint, and any and all proceedings taken by the Defendant pursuant to the said complaint were taken without jurisdiction and are null and void and of no effect."

The Chief Justice's Order

[16] The trial was on the 30 October 2012 and 29 November 2012. The learned Chief Justice heard counsel for the parties and their witnesses and accepted the main submissions of Mr. Courtenay and upheld Consolidated challenge to the PUC's decision. The Order dated the 30 January 2018, stated:

> "(1) The decision of the Defendant to initiate and hold the hearing in respect of the complaint dated the 10 day of September 2010 in the name of San Pedro Business Association was unlawful null and void and of no effect:
>
> (2) The Order dated the 29th day of July, 2011 by the Defendant in respect of the Complaint is unlawful, null and void and of no effect.
>
> AND IT IS HEREBY ORDERED that:
>
> (3) The Defendant be prohibited from taking any steps or proceedings or making any further Order in respect of the said Order; and
>
> (4) The Claimant is entitled to its costs which shall be assessed unless otherwise agreed."

The Appeal

[17] On the 29 February 2018, PUC filed a notice of Appeal against the decision of the Honourable Chief Justice, Mr. Kenneth Benjamin, pronounced on the 8 day of December, 2017 and drawn up in the Order dated the 30 day of January 2018. The grounds of appeal are:

> "(i) The learned Chief Justice erred in law and misdirected himself by deciding that the PUC acted ultra vires and in breach of the rules of natural justice by initiating and holding a hearing in respect of the complaint of the San Pedro Business Association .
>
> (ii) The Learned Trial Judge failed to ascertain or properly determine the jurisdiction or the statutory code including the procedure which informs the powers of the PUC under the provisions of the Water Industry Act, Cap. 222 and the Public Utilities Commission Act. Cap 22

(iii) Learned Trial Judge misdirected himself and erred by:

(a) deciding that the complaint lodged by San Pedro Business Association was vague and unfair to the Respondent; and

(b) therefore that the PUC lacked jurisdiction to conduct a hearing; the complaint lacking specificity or "particulars as to the nature of the complaint being levelled against it".

(iv) The Learned Trial Judge erred in law and misdirected himself by holding in paragraph [25] of the decision that:

(a) the PUC was not in a position to determine in accordance with the provisions of section 10 of the Water Industry Act, Cap. 222, whether the complaint was frivolous or not; and

(b) the complaint was not genuinely and sincerely made; and

(c) the PUC went on a frolic of its own.

(v) The Learned Trial Judge erred in law and misdirected himself -

(a) by declaring that the decision of the PUC to initiate and hold the hearing based on the complaint of San Pedro Business Association dated 10th September, 2010 is unlawful, null and void and of no effect.

(b) by declaring that the order made by the PUC dated 29th July, 2011on the complaint of the San Pedro Business Association is unlawful, null and void and of no effect.

(vi) The Learned Trial Judge erred in law by making the order which prohibited the PUC from taking steps or proceedings or making any further order in respect of the said order thereby depriving the PUC of its authority to regulate the Respondent in respect of the complaint.

(vii) The Learned Trial Judge erred in awarding costs against the PUC.

The PUC will seek an order that the decision, subject of the appeal, be set aside and the Appellant be allowed the costs of the appeal and the costs of the court below."

[18] Concern for the quality and quantity of water services, produced by Consolidated generated a series of correspondence. These include correspondence between the utility providers, Consolidated and BWSL, and correspondence amongst those utility providers and PUC [Record of Appeal p.101 -120]. The Appellant argues that this series of correspondence is important, because it fixes Consolidated with the knowledge of the concerns of the consumer of water services on Ambergris Caye and the period that those concerns existed.

The Appellant's Submission.

[19] Mr Lumor's written submission highlighted the procedural requirements that PUC is obliged to undertake from the receipt of a complaint through its investigation to the making of an Order based on the complaint. The PUC is required to follow the procedures set out in section 15(1) and (2) of the PUC Act. Any person in Belize is entitled to make a complaint to the PUC. The public utility provider bears the burden of proof as provided in sections 16 and 18(2) of the PUC Act.

[20] The PUC is required to hold a hearing in respect of the complaint, if it considers that the service, the subject of the complaint is "unjust or unreasonable or contrary to law". The Commission shall determine the fair and reasonable service.

[21] All "hearings" are required to be in public and the parties are entitled to be heard in person or by Counsel (section 27). Hearing means an "oral or a written hearing". The "complaint" may be in writing.

[22] The complaint must be served on the provider with a notice from the PUC requiring it to "satisfy" or "answer" the complaint in writing within a time to be specified by the PUC.

[23] If the public utility provider does not satisfy the complaint, and it appears to the Commission that reasonable grounds exist for **investigating** such complaint, it shall be the duty of the Commission to fix a time and place for the hearing of the complaint.

[24] At the conclusion of the hearing, the PUC is required to make an **Order** which states the time within which the order is to be complied with. The PUC has the power to compel the production of books and records deemed necessary.

[25] The PUC is required to **"*manage and conduct***" hearings in a manner which "***affords interested persons***" a reasonable opportunity to be heard bearing in mind "***the need for an efficient and expeditious process to resolve the matter****"* before the PUC. The Act stipulates that the PUC is not bound by formal rule of evidence applicable to judicial proceedings.

The Respondents Submissions

[26] The submissions on behalf of Consolidated were focused on the validity of the SPBA's complaint of the 10 September 2010. Learned counsel for Consolidated submitted that the Complaint did not constitute a complaint under the PUC Act. Therefore, all proceedings taken by the PUC pursuant to the Complaint are null and void and of no effect. Further, that Consolidated was deprived of its entitlement to receive particulars of the Complaint in accordance with the rules of natural justice. This position was made clear in the case of *R v Commissioner for Racial Equality ex p Hillingdom London Borough Council*.

[27] Consolidated argued that the provisions of Section 24(1) of the PUC Act, were not met. That the Complaint contained no particulars of "*any act, or thing done, or omitted to be done by any public utility provider in breach, or alleged breach, of any law which the Commission has jurisdiction to administer or of any Regulation or Order of Commission*". Consolidated contended that there was no particularity of any law or regulation that was administered by the PUC. Further, that there was no specific allegation of breach, whether by omission or commission by Consolidated. Also, that

there were no particulars of the alleged failure to provide the public on Ambergris Caye, service of and adequate quality and security.

[28] Consolidated argued that there were no specified instances of failure to provide service of adequate water, no evidence of the quality of water being complained of, and it is unclear what is meant by security. During the proceedings before the Supreme Court, Consolidated and BWSL were aware of the dredging issue, but the PUC failed to provide evidence to show that this matter was the matter being referred to in the Complaint by SPBA.

Discussion

[29] The main contention of Consolidated on its application in the Supreme Court and before this Court is that SPBA's complaint is not a valid complaint, in that it has failed to meet the statutory definition as provided by *section 24(1) of PUCA.* This failure, according to Consolidated, has resulted in Consolidated being unable to answer the complaint, because of a lack of specificity in the complaint. The gravamen of the submission is that Consolidated does not have sufficient information, to properly answer the complaint. Further, it was argued that the lack of specificity constituted a denial of fairness and the principles of natural justice. As a result, the hearing of the complaint was unfair and flawed.

[30] In his closing address at trial, senior counsel submitted that the complaint was frivolous, and argued that the PUC, attempted to trample on the Minister's statutory jurisdiction, in dealing with pollution. He urged on the Court that the non-attendance of the complainant made the hearing a charade. In his written submissions before this court, Counsel highlighted the Chief Justice's ruling on the issue of lack of specificity at para [29] of his judgment, where Benjamin CJ stated:

> "To this day, no one knows what the specific complaint of the 2nd Interested Party was or indeed whether it had made a genuine complaint. To conclude otherwise would be to invite speculation or to make unsupported assumption as the PUC did."

[31] Counsel bolstered his submission before this court with the learned Chief Justice's comments at paragraph (25) of his judgment as follows:

> "The Claimant submitted that bereft of particulars, the PUC was not in a position to determine whether the Complaint was frivolous as it is required to do by section 10 of lithe Water Industry Act . I wholly agree and wish to add that even more fundamental is a concern as to whether the Complaint was indeed genuinely and sincerely made. I have no doubt that the PUC went off on its own frolic based on an assumption that it was not entitled to make or which was brought to its attention and ignored."

[32] For the Appellant, Mr Lumor SC, submitted that the SPBA is not a complainant in adversarial proceedings or the complainant in a criminal prosecution. There was no "*lis"* or dispute between **Consolidated** and the San Pedro Business Association. See *Public Disclosure Commission v Isaacs [1989] 1 All ER 137* per Lord Bridge at p. 142 PC; See *section 24(1) of the PUC Act*. He submitted that the learned trial judge erred in finding that the lack of specificity was a matter of fact which led to manifest unfairness.

[33] What constitutes fairness, in the circumstance of PUC holding a hearing, on the complaint of SPBA? Was Consolidated treated unfairly in the circumstances of this case? Natural justice is fair play in action and it evokes a sense that justice has been served. It is not a rigid set of rules, but is marked for its flexibility and its ability to change "chameleon like". The statutory regime in which the decision maker functions and the purpose of the statutes are factors of importance in determining the scope of natural justice that the courts will imply if it is not expressly provided for in the legislation. When the courts deem necessary, it may be implied in a range that may extend from a full blown trial to virtually nothingness.

[34] Mr. Lumor relied on the High Court of Australia decision of *Kioa and Others v Minister for Immigration and Ethnic Affairs and Another (1985) 62 ALR 321*,
(Gibbs CJ Mason Wilson Brennan and Deanne JJ) delivered on the 18 December 1985. The applicant, a Tongan citizen overstayed visa extensions in Australia and he was

removed from his known address and a deportation order was made against himself and his wife who had joined him in Australia. The couple had a child that was born in Australia. They sought review of the decision to deport them. They claimed there was a failure to observe the rules of natural justice in that the husband was not allowed a fair opportunity to correct or contradict some statement prejudicial to their rights.

[35] In considering the relationship between the judicial construction of statutory powers and the common law presumption of procedural fairness Brennan J, said at page 369:

> "*The principles of natural justice have a flexible quality which, chameleon-like, evokes a different response from the repository-of a statutory power according to the circumstances in which the repository is to exercise the power*."

And Mason J, at p 347 stated:

> "*Where the decision in question is one for which provision is made by statute, the application and content of the doctrine of natural justice or the duty to act fairly depends to a large extent on the construction of the statute. In Mobil Oil Aust Pty Ltd v FC of T (1963) 113 CLR 475, Kitto J (pointed out (at pp 503-504) that the obligation to give an opportunity to parties in controversy to correct or contradict statements prejudicial to their view depends on 'the particular statutory framework'. What is appropriate in terms of natural justice depends on the particular circumstances of the case and they will include inter alia, the nature of the inquiry, the subject-matter, and the rules under which the decision-maker is acting - R v Commonwealth Conciliation and Arbitration Ex parte Angliss Group (1969) 122 CLR 546.at 552-3. National Companies and Securities Commission v News Corps Ltd (1984). 58 ALJR308 at 311, 318, 52 ALR 417 at 427-8 stated:*
>
> "*In this respect the expression "procedural fairness" more aptly conveys the notion of' a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case*. ***The statutory power must***

be exercised fairly. That is, in accordance with procedures that are fair to the individual considered fair in the light of statutory requirements, the interest of the individual and the interest and purposes, whether public or private which the statute seeks to advance or 'protect or permits to be taken into account as legitimate considerations."

[36] The main task of this Court is to determine the response the principles of natural justice will evoke from its sources of power, **PUCA** and **WIT**, in the circumstances of this case. The Respondent has statutory obligations in terms of the delivery of a safe adequate and efficient water service. The PUC has an absolute duty in respect of regulating the water industry and dealing with the complaints of consumers of water. There was no contention with Mr Lumor's submission that the PUC is required to hold a hearing in respect of the complaint, if the PUC considers that the service that is complained of is "unjust or unreasonable or contrary to law." The Commission shall determine what constitutes fair and reasonable service.

[37] In *R v Secretary of State for the Home Department, ex p. Doody [1993] UKHL 8 (24 June 1993)*, the House of Lords (Lord Keith of Kinkel, Lord Lane, Lord Templeman, Lord Browne-Wilkinson and Lord Mustill), in the conjoined appeal of four applicants who had received the mandatory life imprisonment following their separate convictions for murder, the Secretary of State consulted the Lord Chief Justice and the trial judge, as was the practice, before making a determination of the period of incarceration to be served, before each would be eligible for review of their sentence.

[38] The applicants sought judicial review to quash the Secretary of State's decision. They sought declarations, among other reliefs, that the Secretary of State should not make a determination in excess of what the Judiciary had recommended. That the Secretary of State, was obliged to tell the applicants the period recommended by the judiciary. If a sentence in excess of the Judiciary's recommendation was made, the applicants should be told the reason for the departure from the Judiciary's

recommendation and be given an opportunity to make representation before the Secretary made the final determination.

[39] The Divisional Court dismissed the applications in *Doody*. The applicant's appeal was granted in part by the Court of Appeal, to the extent, that the applicants should be informed of the period recommended by the judiciary and given an opportunity to make representation before the determination of the period. It was argued on behalf of the applicant that the courts have supplemented the procedure laid down in legislation where the statutory procedure was insufficient to achieve justice and *where the procedure so adopted would not frustrate the apparent purpose of the legislation*. The appeal by the Home Secretary to the House of Lords was dismissed.

[40] Lord Mustill, in his speech in *Doody*, with which their Lordships concurred, said of the essentials of natural justice:

> "What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. … … …
>
> **What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken**. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; **or after it is taken**, **with a view to procuring its modification**; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often **require that he is informed of the gist of the**

case which he has to answer." (emphasis added). See also *LLoyd and Others v McMahone [1987] A.C 625* dictum of Lord Bridge of Harwich at page 702.

What is the language and shape of the legal system within which the PUC acted? What is the interest whether public or private that the statutory framework seeks to advance or protect?

[41] In 2001, the Government of Belize privatized the water and sewerage services. Prior to that decision the supply of water services in Belize was regulated under an Authority established pursuant to the *Water and Sewerage Act*, which provides at section 10(1):

> *"In the … performance of its functions, powers … …, the Authority shall act in accordance with any special or general directions given to it by the Minister, … …, when exercising and performing its functions, powers and duties, be subject to the control or direction of no other person or authority."*

The WIA repealed and replaced the *Water and Sewerage Act* and provided at section 3 for the cessation of the Authority's functions.

[42] The main purpose of the legislation is to secure all reasonable demands for water and sewerage services and to satisfy and protect the interest of the consumers. The duty to protect the public from dangers arising from the supply of water and sewerage is provided for at section 8(1) (d) of the WIA. This is recognition by the legislature of the disadvantage that the consumer may be placed in, *vis a vis* the utility provider. The average consumer is unlikely to be aware of the World Health Organization's standards for water or of the utility provider's obligations in the license and agreements provisioned for their protection. The legislature therefore casts an absolute duty on the PUC to protect the public.

[43] In *Kioa and others v Minister for Immigration and Ethnic Affairs & Another (supra)* the High Court of Australia stated that the legislature's intention was a key factor

in determining whether the principle of natural justice would apply. Per Brennan JA, p 366

> "*At base, the jurisdiction of a court judicially to review a decision made in the exercise of a statutory power on the ground that the decision-maker has not observed the principles of natural justice depends upon the legislature's intention that observance of the principles of natural justice is a condition of the valid exercise of the power. That is clear enough when the condition is expressed; it is seen more dimly when the condition is implied, for then the condition is attributed by judicial construction of the statute. In either case, the statute determines whether the exercise of the power is conditioned on the observance of the principles of natural justice. The statute is construed, as all statutes are construed against a background of common law notions of justice and fairness and, when the statute does not expressly require that the principles of natural justice be observed, the court construes the statute on the footing that "the justice of the common law will supply the omission of the legislature*."

[44] Section 8(1) (c) mandates the PUC to function in a manner that is best calculated to protect the interest of the consumer of water services supplied by licenses. Section 16 of PUCA provides that the burden of proof in respect of any matter brought under section 15 lies on the utility provider. Consolidated as a utility provider has a statutory obligation pursuant to section 17 and section 47 (1) of PUCA to provide a service *to the public in all respect which is safe, adequate, efficient and reasonable* in addition to the terms of the Agreement with BWSL to maintain certain standards.

[45] The language of section 8(1) of PUCA is mandatory and imposes an absolute duty on the PUC to protect the interest of the consumer of water services. Mandamus will lie at the discretion of the court to compel the performance of a statutory duty of a public kind. PUC has a duty to exercise its functions assigned or transferred to it under the WIA in a manner that is best calculated, to secure that all reasonable demands for water are satisfied. The PUC also has a duty "to protect the interest of consumer of the services supplied under the licence (section 8 (1). Pursuant to section 47(1) of PUCA, relevant contractual agreements are reviewable by the PUC.

[46] Any person in Belize may make a complaint to the PUC. That entity is mandated pursuant to section 10 of PUCA to investigate any matter which relates to water and sewerage services and is the subject of representation to PUC, except the matters that the PUC are of the view are frivolous or that the person who submits the complaint or on whose behalf it is submitted has no interest in the matter. If the complaint satisfies these preliminary conditions, then the PUC is mandated to investigate the complaint. The PUC cannot refuse to investigate a complaint that is not barred by the statutory preconditions unless they form a view that it is not in the public interest to do so. Section 129 of the WIA provides for complaints in respect of water services from *any person* in Belize to be dealt with pursuant to PUCA.

[47] The PUC has an absolute duty to ensure that the services rendered by the utility providers are satisfactory. To secure that end, the PUC in accordance with section 22(1) of PUCA, may enquire into the nature of the utility services to determine in accordance with PUCA, WIA and other legislation 'the standards that should be maintained. Consolidated does not operate, pursuant to a license, but by way of an agreement with BWSL.

[48] Public law issues of fairness cannot be applied identically in every situation. Cases need to be approached on their own peculiar facts. What is the legislative architecture of PUCA and WIA and to what extent they achieve fairness and the observance of the required principles of natural justice.

[49] The PUC does not function like a court of law. The PUC is empowered to structure its own procedure. The tribunals are not concerned with private law issues, but address issues that concern the public at large. PUCA and the WIA are regulatory and are provisioned to protect the health and economic viability of users of the services. The legislation is designed to ensure that the financial and technical assets of the utility providers are maintained for the delivery of safe adequate and efficient services to the public.

[50] At the trial counsel submitted that the non-attendance of SPBA as complainants, at the hearing had the dual effect of making SPBA's complaint frivolous and causing the hearing on the complaint to be devoid of evidence, thereby rendering it

unfair, null and void. The learned Chief Justice accepted Mr. Courtenay's submission and opined "that in civil proceedings, the matter would be struck out."

[51] I respectfully differ from the Learned Chief Justice's conclusion, which I think was misguided. Mr. Lumor SC relied on *Russel v Duke of Norfolk* to support his submission of the distinction between a hearing by the PUC and the ordinary courts of law. [See para 19-25 above]. Counsel in *Russel* complained before the United Kingdom Court of Appeal, as was argued before this Court, of the divergence in the procedures of the steward's enquiry from the ordinary court of law.

Lord Asquith admonitions to counsel are apposite to the submissions of counsel in this Court in respect of the PUC's hearings.

> "… … … . The only other matter complained of is that it was not until after the stewards had conferred together and come to a decision as to the course which they proposed to take that the plaintiff was, in terms, asked whether he had any further evidence to offer. Throughout this inquiry he was, at every stage, it seems to me, given an opportunity of presenting his case and of asking any questions which he desired to ask. It is true that he was not in terms asked: 'Have you got any witnesses? Do you want an adjournment?' A layman at an inquiry of this kind is, of course, at a grave disadvantage compared with a trained advocate, but that is a necessary result of these domestic tribunals which proceed in a somewhat informal manner. Counsel for the plaintiff, in the course of his forceful argument on this point, again and again said: 'What would be said of local justices who acted in this way?' **With all due respect, the position is totally different. This matter is not to be judged by the standards applicable to local justices. Domestic tribunals of this kind are entitled to act in a way which would not be permissible on the part of local justices sitting as a court of law.** The conclusion I have reached on this aspect of the case is that there was no material on which a jury could have arrived at a conclusion that this inquiry was conducted in a way contrary to the principles of natural justice. If, as I think is the better view, it really was a matter of law for the decision of the judge, I should unhesitatingly hold that there was nothing here which was contrary to

the principles of natural justice as laid down in the various authorities which have been brought to our notice. … … …" (emphasis added)

[52] I accept Mr Lumor's S.C submission that the procedure outlined in the PUCA for dealing with complaints in accordance to section 15 does not require an adversarial trial. I cannot accept Mr. Courtenay's submission that the rules of natural justice require the attendance of the complainant at the enquiry failing which the hearing is null and void. The hearings may be oral or in writing. Section 27 of PUCA provides that the parties are entitled to be heard in person or by Counsel. There is no express requirement for any complainant or party to attend. The complaint that the consumer makes is to the regulator. Consolidated is not named in SPBA'S complaint. The consumer may not be aware of the utility provider that bears responsibility for the issues that give him concern.

[53] The PUC is not bound by the rules of evidence and it is permissible for the Commission to follow its own procedure. The PUC does not function as a court of law. The PUC is mandated to enquire into all complaints that it receives, except those which are exempted because they are vexatious or the complainant has no interest in the matter. They constitute claims in public law and the decision affects the public generally.

[54] The Appellant has argued that the issue at the centre of BWSL's complaint, was one with which Consolidated was very familiar. In the Appellant's written submissions a list of correspondence is enumerated between Consolidated and BSW for the most part and amongst both utility providers and the regulator. [Record of Appeal, pp 101 - 120].

Exchange of correspondence on water service issues

[55] Starting with a letter to Consolidated from BWSL, on the 18 June 2010, concerning serious shortfalls in the quality of water supplied to BWSL - These shortfalls were demonstrated in an attachment which was copied to PUC. Consolidated

responded three days later claiming “operational difficulty” caused by a third party and made reference to “agreed waivers” of certain water quality requirements.

[56] There were further letters dated 6 July, 31 July and the 30 August 2010, from BWSL to Consolidated complaining of water failing to meet specifications and to meet the actual quantity of water required. Another letter seeking proposals to resolve “quality failures” and denying any agreed waiver. Yet another demanding expeditious resolution of current production quality and quantity problem. Consolidated responded on 12 July and again on the 7 September 2010 stating that, “This dredging has affected the quantity and …quality of water produced by their plant.

[57] On the 8 September 2010, PUC wrote to Consolidated and BWSL, setting the following day as the deadline for remedying the concerns in the delivery of potable water. On the 9 September, PUC wrote to the Consolidated and BWSL, asking the parties to cooperate with each other and indicating they should be getting involved with a view of bringing about short and long term solutions. On the 11 September 2010, a team from PUC visited consolidated water treatment plant. On the 15 September, there was a meeting of PUC with Consolidated and BWSL. The discussions focused on obtaining of membranes for the water treatment plant.

[58] On the 17 September 2010, Consolidated was notified of SPBA’s complaint of the 10 September 2010. In response, on the 23 September, Counsel for Consolidated wrote to the PUC stating that the parties are using their best endeavors to improve the water issues in San Pedro in order to avoid any disruption in the water supply. It was stated that “the action agreed taken by BWSL and Consolidated also rendered the proposed action of the PUC unnecessary.

[59] In a letter dated 21 December 2010, the PUC referred to issues that were raised by Consolidated since being notified of SPBA’s complaint. It was noted that the quality of the water supply by Consolidated to BWSL, was a source of concern as was the dispute between Consolidated and BWSL. Reference was also made to the meeting with Consolidated in which it was made clear that PUC was quite concerned about the quality of the water being supplied on Ambergris Caye during 2010 also the security of supply, as a result of Consolidated reducing its output to BWSL.

[60] I have dealt with the correspondence amongst the utility providers and PUC at some length to demonstrate that the location, duration, nature and severity of the problem had been identified and communicated to Consolidated. What is clear is that those concerns would have consequences for the consumer on Ambergis Caye, where SPBA, the complainant was located. Counsel has not denied that Consolidated was aware of the problem. I understand his contention to be that there was nothing to show that the issues raised in SPBA's complaint had any connection with the dredging issue which was the source of concerns in the correspondence between the parties.

[61] Such a submission is inconsistent with responses elicited in the cross-examination of Mr. Jerryband, Chief Executive Officer of Consolidated at trial. Mr. Jerryband testified that there was an ongoing issue with dredging in the lagoon which caused the plant in San Pedro to not perform in its normal manner. He also admitted that there was ongoing correspondence between Consolidated and BWSL. The issues of membranes discussed Mr. Jerryband admitted that the issues of water quality and quantity produced by Consolidated were discussed at great length. He ventured that there were ongoing discussions between the parties before the meeting of 16 September 2010 on the quality of water in their plant. As a result, BWSL and Consolidated entered into a contract between themselves on the quality of water that should be delivered from the treatment plant. He said that after the public meeting at San Pedro, the PUC sent him a bundle of data and admitted that the company was invited to participate in the process.

[62] Consolidated bears the burden of proving that in the circumstances SPBA's complaint was vague resulting in unfairness and a breach of the principles of natural justice. Lord Mustil's comments, in *ex p Doody* are apt, where at pg 25 he says:

> *"… . Conversely, the respondents acknowledge that it is not enough for them to persuade the court that some procedure other than the one adopted by the decision-maker would be better or more fair. Rather, they must show that the procedure is actually unfair. The court must constantly bear in mind that it is to the decision maker, not the court, that Parliament has entrusted not only the making of the decision but also the choice as to how the decision is made."*

[63] I cannot agree that Consolidated was treated unfairly and contrary to the principles of natural justice. The thrust of the submission is that Consolidated was not presented with more or sufficient particulars of the complaint to afford it to mount a response. There is however no denying that Consolidated was aware that it was the exclusive producer of water to BWSL which was the sole supplier of water on Ambergris Caye, where the complainant, SPBA is located. The complaint identified the duration of the violation as taking place "over the past several months", that is, prior to the date of the complaint. BWSL's first letter to Consolidated concerning shortfalls in the water quality was on the 18 June 2010 and those concerns continued unabated until December 2010. The period complained of by BWSL was consistent with the period that Consolidated was informed of a shortfall in water quality and quantity.

[64] Section 24 (1) of PUCA provides a definition of a complaint for the purposes of the regulation by the PUC. Counsel submitted at trial that Consolidated could not conclude what really was the nature of the complaint. He further submitted that it is unfair as a matter of law to call upon a public utility provider to respond to a complaint that is absolutely bereft of any particulars.

[65] Mr. Lumor SC relied on *Russel v Duke of Norfolk & Ors [1949] 1 All ER 109* at 118, The English Court of Appeal, (Tucker, Asquith and Denning LLJ) delivered on the 8 December 1948. The plaintiff, a horse trainer had his licence revoked when his horse won and tested positive for a banned substance. The plaintiff complained that the subsequent enquiry that was held fell below the standards of natural justice because he had insufficient information about the charge and that he had no analysts' report before the enquiry. He also complained that he was not granted an adjournment to peruse the report and only part of the report was read out. The applicant also complained that he was not given sufficient opportunity to present his case or call his witnesses.

[66] Lord Asquith in addressing those submissions concerning insufficient information as to the charge, said at p 118:

> "*As to the specific complaints that were made, it is clear from the*

letter I have already read, and from the evidence, that the plaintiff, who has been in racing circles for 40 years, ***knew perfectly well what was the nature of the matter that was going to be inquired into****. Complaint is made that only part of the analyst's certificate was read to him. It is clear that that is so, but I find it impossible to say that the mere fact that they omitted that part which dealt with the particular drug, viz, whether it was morphine or heroin, is sufficient for any tribunal to say that this inquiry was not conducted according to the principles of natural justice, and was, therefore, void. … … …..”* (emphasis added)

[67] I find that SPBA's complaint constitutes a valid complaint. The gist of the complaint is that the public utility failed to deliver for several months prior to the complaint water of adequate quality. The word "adequate" ordinary meaning would include, acceptable, suitable and appropriate. The utility provider has a mandatory duty to deliver to the public of Ambergis Caye water that is " acceptable and suitable", quality standards (section 17 of PUCA). Those standards are potable water appropriate for household use and water for commercial, industrial and agricultural use (See section 2 of the WIA). I cannot accept Senior counsel's submission, as I understand it, that more particulars or more specificity than what is expressed in section 24(1) is required to ensure fairness in these circumstances. I am of the view that the complaint satisfies the prescriptions of section 24(1).

[68] The PUC may dismiss any complaint without a hearing, if it considers that it is unnecessary in the public interest. The Commission was correct in proceeding to hear the complaint. The formal rules of evidence do not bind the PUC. The PUC extended to consolidated ample opportunities to attend the hearing which would be oral and held in public. Consolidated could be represented in person or by an attorney at law and had

the right of cross examination. All the information recorded at the Hearing was made available to Consolidated and it could have availed itself of the provisions of Section 32 of PUCA.

[69] Section 32 of PUCA allows anyone who is aggrieved by an order to ask PUC to alter, suspend or vary the impugned Order. The PUC would be under a statutory obligation to conduct another public hearing with a view to alter, suspend or vary the impugned Order. The rehearing would have to follow the same format as the first hearing, that is, public, oral and open to cross examination. The PUC's supplications and entreaties failed to cause Consolidated to engage the procedures provided for in PUCA. Consolidated has not discharged the burden on it by showing what Lord Mustil said, "that that the procedure was actually unfair." (See para 66 above).

[70] **C**ounsel for Consolidated contended that *Russell v Duke of Norfolk (supra)* should not be relied on because the plaintiff in that case had the benefit of three items of information prior to the meeting, which Consolidated did not have before its meeting and therefore rendered *Russell's* case distinguishable from the instant case. According to Counsel these factors were (i) the date of the event complained of (ii) the place where the event took place and (iii) the subject of the complaint and (iv), the report of the analyst.

[71] It appears to me that those items are clearly expressed in the instant case. The time of the event complained was not a single event, such as a race day, as in *Russel,* but in respect of a water service spread over an extended period. In the circumstances, it was stated as "the past several months" that is prior to, the date of the complaint on the 10 September 2010.

[72] The second factor the "place where the event took place" is expressly stated in the complaint "as affecting the public on Ambergris Caye".

[73] The third item of Counsel's submission, "the subject matter of the complaint" is spelled out in the complaint as, "the inadequacy of the water quality and quantity that was affecting the public on Ambergris Caye."

[74] Senior counsel contended that In *Russell*, the person who was the subject of the inquiry was provided with sufficient particulars to allow him to know what case he was required to answer. With respect, that was a strange submission because In *Russel* the applicant was not shown any report until he had arrived at the hearing, and then not in its entirety, and was not allowed an adjournment to study it. Lord Asquith found that the plaintiff's experience in the racing industry would cause him to *know perfectly well* what was the nature of the matter that was to be enquired into.

[75] The Court imputed knowledge of the charge to the plaintiff based on his 40 years of experience in horse racing , despite his not having been given any particulars of the charge against him before the hearing. At the hearing he was given only a partial disclosure of the charge against him. It was contended on behalf of the trainer that the omission to state the particular drug made the process unfair and contrary to the rules of natural justice. Lord Asquith was of the view that no jury would for those reasons say that the enquiry was unfair and breached the principles of natural justice. Despite the paucity of information from the Stewards, Russel unlike Consolidated participated in the subsequent hearing. This Court had no assistance from either side of an applicant who sought redress having not participated in the proceedings.

[76] In this case the utility providers had been operating under the present contract since 2003, had since June of 2010, been involved in ongoing meeting, exchange of letters concerning the delivery of water services to the sole supplier of the complainants location [Record , p.101-120]. I respectfully adopt the reasoning of Lord Asquith , I find that Consolidated '*perfectly well knew'* of the ongoing concerns about the water quality and quantity in Ambergris Caye that had endured for several months before and after Consolidated was notified of SPBA complaint. (56-60).

[77] To bolster his submission of the need for specificity in the complaint when an adverse charge has been raised against a person, Senior counsel relied on the House of Lords decision in *R v Commission for Racial Equality v Hillingdon Borough Council* (Lord Diplock, Lord Fraser of Tullebutton, Lord Scarman, Lord Roskill and Lord Brightman) delivered on the December 1982 which unanimously affirmed the decision

of the Court of Appeal (Lord Denning M.R., Griffiths L.J. and Waterhouse JJA) delivered on 16 July 1981**.**

[78] The case arose from newspaper accounts contrasting the disparity in treatment of an Asian family from Kenya and a white family from Rhodesia. Both families arrived at Heathrow Airport. The Hillingdon Borough Council (Council) was obliged to arrange accommodations for these families. The news media reported that the Asian family spent the night of their arrival in the lounge at the airport and was thereafter transported to and left at the Office of the Foreign Service. In stark contrast the white family was immediately granted permanent housing. The Commission after holding a preliminary enquiry, drew up a lengthy Terms of Reference and some sixteen charges, involving migrant families in addition to the Asian and Kenyan families and officials of the Council. The Commission advised the Council that they would be embarking on a preliminary investigation, based on their belief that the Council agents and servants had acted unlawfully. The Commission drew up some 16 charges and a correspondingly wide term of reference. Woolf J at trial quashed the order made by the Commission to embark upon the wide ranging terms of reference.

[79] The Commission's appeal was dismissed. The Court of Appeal was of the view that the Terms of Reference was too wide, and there had to be grounds for suspicion in the terms of reference. Further the matter having had its start in the investigation of the two families, it was unreasonable to extend it beyond that. Lord Denning M.R , was of the view that the Commission's determination was flawed as it was based on their belief that the actions of the Council in transporting the Asian family to the doors of the Foreign Ministry was discriminatory, whereas that action was explicable on the grounds that staff of the Council was indicating that it was the Ministries' responsibility and not the Council's to secure accommodations for these families. The Court of Appeal noted Woolf J reserved judgment which was affirmed and approved his comments on the scope of the information to be given to a person named for investigation and stated at page 522:

"… *the commission's obligation was to be fair and that they fulfilled that obligation if they put before the named person sufficient information to enable him to make meaningful representations and consider any representations made*; … ….

… ."

[80] Their Lordships considered Woolf J's narrow view of the terms of reference and noted as follows at page 522:.

"… …. …. *the terms of reference were required to be confined, with reasonable precision, to the same period, scope and persons as the material, on which the commission based their belief, related; and that the council were justified in complaining because they were at risk of being subjected to a much more onerous investigation than the circumstances justified and that they, and their officers objected to being represented in the media as requiring investigation in respect of unlawful acts which there were no grounds for believing they might have committed. Accordingly it was ordered that the motion be allowed to the extent that the decision of the commission to embark upon a formal investigation under section 48 of the Act of 1976 in the terms of the letter of November 13, 1979, be quashed*."

[81] Chief Justice Benjamin, at paragraph 26 of his judgment referred with approval to Lord Diplock's speech in *Hillingdon* and applied the following principle enunciated therein:

"*The right of a person to be heard in support of his objection to a proposal to embark upon an investigation of his activities cannot be exercised effectively unless that person is informed with reasonable specificity what are the kinds of acts to which the proposed investigation is to be directed and confined*".

[82] The Learned Chief Justice at paragraph 26 , opined that the lack of specificity in the Complaint is a matter of fact upon which the Court concludes that the PUC was not entitled to proceed as it ultimately resulted in manifest injustice .The learned Chief Justice rejected Mr. Lumor's submission which, quite correctly , invited the court to look at the nature of the enquiry .The Learned Chief Justice treated what he regarded

as a lack of specificity in the complaint as a *preliminary procedural faux pax* , that had fatal consequences, for the PUC'S proceedings. I accept Mr Lumor's submission that the procedure in section 32 of PUCA ensured that a new hearing could be instituted to suspend, vary or alter the PUC's Order. Even if there were a lack of specificity, in the complaint, which resulted in unfairness to Consolidated, and I find there was none, the statutory framework afforded a procedure to modify and alter the impugned decision. At that hearing Consolidated would have had the benefit of all the information of the first hearing.

[83] I respectfully disagree with the learned Chief Justice's conclusion that there was a lack of specificity in the complaint that had serious consequences for the validity of the hearing. There are fundamental differences in the language and shape of the legal system and administration of the *United Kingdom 's Race Relations Act 1976*, within which the Commission in *ex parte Hillingdon London Borough Council* functions and the regulatory framework of **PUCA** and **WIA**, within which PUC operates.

[84] Importantly, *section 49 (1) of the Race Relations Act* provides that, "The **commission shall not embark on a formal investigation unless the requirements of this section have been complied with ..."** One of the relevant requirements of the section is for the Commission to inform a person named , of (1) the Commission's belief and of the Commission's proposal to investigate and (2) offer an opportunity to make oral or written representations to that person (section 49.4) (emphasis added) .

[85] The procedure pursuant to the *Race Relations Act*, requires that the Commission, which is to undertake the "belief investigation" should have a reasonable belief itself of the unlawful nature of the activities of the person to be served with the charges. Section 49(1) raises a preliminary procedure that prohibits the Commission from embarking on an investigation in the absence of the Commission fulfilling certain statutory requirements. There is no such prohibition in **PUCA** or **WIA** for the PUC to have a reasonable belief that Consolidated has committed activity that is unlawful before it proceeds with the investigation. Neither is there a statutory requirement barring the PUC from embarking on an investigation unless the utility provider is informed in

accordance with the statutory requirements. The mandatory requirements allowed the Council to object to being represented in the media as requiring investigation for activities amounting to unlawful acts for which no grounds existed for believing they had committed.

[86] Lord Diplock's reference to a right to object to an investigation embarked on by the Commission is the statutory right of the Council to object to the Commission's acting in breach of section 49(1). Neither PUCA nor WIA contains a statutory prohibition as in section 49(1) of the *Race Relations Act 1976*. On the contrary, in keeping with the purpose of PUCA, the PUC is mandated to investigate any complaint which is not expressly excluded by the statute.

[87] The learned Chief Justice fell into error , by treating the complaint required pursuant PUCA as if the language and shape of its legal system and administration contained a preliminary condition to be satisfied similar to S.49(1) of UK Race Relations Act There was no preliminary procedural faux pax committed by PUC, which made further examination otiose , as the Chief Justice found. The authorities indicate that where the procedure is at an investigative stage and the affected person is provided a hearing at a later stage, as in PUCA, then the courts will not imply that the rules of natural justice are required at the preliminary stage. *Furnell v Whangael High Schools Board [1973] A.C 660* and *Wiseman and Ors v Borneman and Ors [1971] A.C 297*.

[88] In protecting the interest of the consumer, the PUC's investigatory power ought not to be so confined that those powers are emasculated. In *Hillingdon ,* The House of Lords , was unanimous in their approval of Griffiths L.J. comments in the Court of Appeal, that the investigators may during the investigation , broaden its scope - per Lord Diplock , at p. 302, "that Woolf J. put the scope of the permitted terms of reference too narrowly when he said that they were "to be confined, with reasonable precision, to the same period, scope and persons as [those to which] the material, on which the commission base their belief, relates." **So to confine the terms of reference would emasculate the commission's investigatory powers. If they are of opinion that from individual acts which raise a suspicion that they may have been influenced**

by racial discrimination an inference can be drawn that the persons doing those acts were also following a more general policy of racial discrimination, the commission are entitled to draw up terms of reference wide enough to enable them to ascertain whether such inference is justified or not." (emphasis added)

It appears to me that the investigation to be undertaken by the PUC is similarly not to be hamstrung and restricted by too confined a reading of the complaint that launches it. I respectfully adopt the reasoning of Lord Diplock that during the course of an investigation the PUC may be able to conclude that a widened scope is necessary.

[89] I find that the Learned Trial Judge failed to ascertain or properly determine the jurisdiction or the statutory code including the procedure which informs the powers of the PUC under the provisions of the Water Industry Act, Cap.222 and the Public Utilities Commission Act.

Application to strike out Appeal

[90] By way of a Notice of Motion dated 13 April 2018, Consolidated applied for an order that the Notice of Appeal dated 20 February 2018 be struck out and an Order that costs of the application be borne by the Applicant. The grounds were that the application has no prospect of success and was an abuse of court. I am of the view, that the reasons in the substantive appeal and the disposition of the appeal answers Consolidated summary application.

[91] The Respondent however argued that the effect of a successful appeal would be purely academic.

[92] The First affidavit of Ramjeet Jerymandban dated the 11 April 2018, in which it was deponed:

> "The PUC Order required that certain things be done within a specific time frame. An Order was made requiring that BWSL and Consolidated, make submissions to the Minister, in relation to the lagoon which serves as a source of untreated water be reserved as a forest reserve or natural park.

The Respondent should within ninety days submit to the Appellant along with its operation plan, an operation manual and a renegotiated supply agreement with BWSL. The time period for compliance elapsed since 2011, over six years ago."

[93] In the written submissions by Consolidated, it was urged that the Appeal is not realistically arguable. Firstly, because it has no merit and secondly, because the hearing of the appeal would constitute an academic exercise - *R (on the application of nine Nepalese asylum seekers) v Immigration Appeal Tribunal [2004] 1All ER 94*.

[94] The crux of the submissions is that the dates stipulated in the Order for corrective measures to be taken have passed. That the main complaints have been addressed by the parties and resolved. Counsel referred the Court to the judgment of Benjamin CJ, where at para 24 he says:

> *"[24] There is no demur from any of the parties before the Court that prior to and at the time of the Complaint, the Claimant was selling water to the 1st Interested Party for distribution on Ambergris Caye. There was a problem of siltation affecting the quality of the water and a second problem as to the amount of water that the Claimant was contractually obligated to supply based on demand. Both the Claimant and the 1st Interested Party acknowledged that the problems were directly linked to dredging operations in the vicinity and were temporary*."

[95] I cannot accept senior counsel's submission that the dates for compliance of the PUC Orders having passed and the matter has become academic. When an appellate court is presented with a matter which had incurred inordinate delay in the delivery of the judgment, the authorities indicate that the court should proceed to ensure that the losing party does not suffer a justice as a result of the delay.

[96] In *Cobham v Joseph Frett (British Virgin Islands) 2000 UKPC 49 (19 December 2000)*, where the Privy Council , then the apex court for this jurisdiction, on appeal from the Court of Appeal of the British Virgin Islands on the question of judicial delay, Lord Scott of Foscott at paragraph 34, advises:

"a very careful perusal of the judge's findings of fact and of his reasons for his conclusions in order to ensure **that the delay has not caused injustice to the losing party."** (emphasis added)

[97] This Court is bound by this guidance. However, senior counsel seeks to strike out the Appellant's matter because of a delay for which the Appellant cannot in any measure be responsible. I reject the submission.

[98] The delay in the delivery of judgment in this matter, exceeds 5 years. I am constrained to indicate that the expedited procedure and the time lines required by Part 56, is geared to ensure that the delegated business of government, is not unduly delayed thereby inhibiting the administrative arm of government. The rules are designed to remove the uncertainty in which public authorities may be left as to whether they can proceed with administrative action when proceedings are embarked on. The Respondent had applied to the Court and was granted injunctive relief against the PUC which has remained in place for the last five years. Such restrictions that have been in place cannot have been in the best interest of the public.

[99] From the oft-cited quotations concerning the shifting out of busybodies, the authorities are clear that delay measured in months is not to be countenanced in these matters. In *O' Reilly v Mackman [1983] 2 AC 237***,** per Lord Diplock at 280H:

"The 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."

[100] This Court has a responsibility to ensure that there are standards to effect the timely delivery of the Courts decisions, particularly in matters of Judicial review of

administrative decisions . The standard to be adhered to was a decision within days of a judicial review matter being heard. Lord Diplock in 1983 in *O' Reilly v Mackman* at 281B said:

> *"[Judicial Review provides] a very speedy means, available in urgent cases within a matter of days rather than months, for determining whether a disputed decision was valid in law or not*."

[101] The process is sometimes enhanced with the special sitting of the English Court of Appeal on a Saturday. See *Gouriet v Union of Post Office Workers [1978] 435, 473F-474E*. The House of Lords in several cases, ahead of a written judgment, gave an indication of the outcome with reasons to follow later. See *Durayappah v Fernando [1967]2All ER 337, 354E, Secretary of State for Education and Science v Tmeside MBC [1977] AC1014,1044B-C&1045H.*

[102] This Court in a recent decision in *Caleb Orozco* considered its earlier decision in *Barry Bowen*, and examined *Attorney General of Trinidad and Tobago v Trinidad and Tobago Civil Rights Association et al Civil Appeal 149 of 2005* to determine whether a Judicial Review Bill, which had lapsed before the declaratory order sought came up for hearing contained live issues. This Court quoted with approval the views of Warner JA, on the issue of whether the matter before the Trinidad Court of Appeal contained live issues or was academic.

[103] Warner JA, adopted the approach of the Courts in the United States and Canada, where the issue is dealt with under the rubric of "the doctrine of mootness", and relied on the support of the Canadian case *of Borowski v Attorney General 1988 Can Lll 123* where the Supreme Court said:

> "An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called

upon to reach a decision. The general policy is enforced in most cases unless the court exercises its discretion to depart from it."

[104] In my view, the question of whether the complaint as drafted is valid is a live issue. Whether the notification of the complaint is a preliminary procedure, departure from which constitutes a preliminary procedural "faux pas", which renders the procedures invalid is also a live issue. The question of cost, here and below is a live issue. Both sides accept that in matters of public law, the discretion of the court will be exercised in the public interest.

[105] In any event, the general rule that the courts will not ordinarily entertain academic appeals is not an absolute rule. The judgment of the CCJ in *Ya'axche Conservation Trust, (*which was followed by this Court in *Caleb Orozco*) notes at paragraph 4, as follows:

> *"Several Caribbean courts have accepted that an academic appeal may be heard if it raises an issue of public interest involving a distinct or discrete point of statutory interpretation which has arisen in the past and may rise again in the future ., …..we agree that the court should be cautious in the exercise of its discretion to entertain an academic appeal and should in principle* ***only do so where the question is one of public law (as distinct from private law rights disputes between parties) and where there are good reasons in the public interest to hear such an appeal.*** *We agree with Lord Slynn of Hadley who, in delivering the judgment of the House in* ***ex parte Salem****, stated an appropriate circumstance for hearing an academic appeal may* ***be where the appeal raises a discrete point of statutory interpretation of the powers of a public authority without need for detailed consideration of the factual situation****, especially where the issue is likely to arise again for resolution in the future*."

[106] For those reasons, I would propose that the application of Consolidated to strike out the appeal, be refused.

[107] I would therefore propose that the order of the learned Chief Justice, be set aside and the appellant be allowed the costs of this appeal and the costs of the court below.

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CAMPBELL JA