

IN THE COURT OF APPEAL OF BELIZE, A.D. 2022
CIVIL APPEAL NO 10 OF 2020

IN THE MATTER of an Application for Administrative Orders
Under Part 56 of the *Supreme Court (Civil Procedure) Rules, 2005*

IN THE MATTER of s. 110E and s. 95 of the *Belize Constitution*

THE BAR ASSOCIATION OF BELIZE

Appellant

v

**THE CHIEF JUSTICE OF BELIZE, as
Member and Chairman of the Judicial
And Legal Services Commission**

1st Respondent

**THE SOLICITOR GENERAL, as member of
The Judicial and Legal Services Commission**

2nd Respondent

**THE CHAIRPERSON OF THE PUBLIC SERVICES
COMMISSION, as member of the Judicial and
Legal Services Commission**

3rd Respondent

THE ATTORNEY GENERAL

4th Respondent

BEFORE:

The Hon Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon Madam Justice Minott-Phillips	-	Justice of Appeal
The Hon Mr Justice Foster	-	Justice of Appeal

E Andrew Marshalleck SC for the appellant
Samantha Matute for the respondents.

15 March 2022 and 6 June 2022

REASONS FOR JUDGMENT

WOODSTOCK-RILEY, JA

[1] I concur in the reasons given by Minott-Phillips JA for our decision given on the 15th March.

WOODSTOCK-RILEY, JA

MINOTT-PHILLIPS, JA

[2] The Appellant, The Bar Association of Belize (“**the Bar Association**”), was the Claimant in the court below. It was appealing the dismissal by the court below of its application for administrative orders under Part 56 of the Supreme Court (Civil Procedure) Rules, 2005, seeking various declarations from the court inclusive of a declaration that certain members of the Judicial and Legal Services Commission (“**the Commission**”) breached the Bar Association’s constitutional right to have its President appointed a member of the Commission.

[3] The entitlement of all members of the Commission to be appointed arose *ex officio* pursuant to section 110E of the Constitution of Belize. Those *ex officio* members of the Commission against whom the Bar Association sought the declaration (being Respondents/Defendants 1, 2 and 3), were:

- a) The Chief Justice of Belize (the Commission’s Chairman);
- b) The Solicitor General; and
- c) The Chairperson of the Public Services Commission.

[4] The 4th Respondent/Defendant was the Attorney General of Belize (also joined as a Defendant/Respondent *ex-officio*, but in her capacity as the person in whose name legal proceedings against the state are taken and because the matters complained of involve the Governor General). Although the Governor General of Belize is referred to as the 4th Defendant in the heading of the judgment of the Hon Madam Justice Arana, Acting Chief Justice (as she then was), the reference appears to be an error as all other court documents refer to 4th Defendants only, being the 4 identified in this and the preceding paragraph. The heading of her judgment also referred to the Attorney General as the 5th Defendant. That too was an error as the Attorney General was, in fact, the 4th Defendant.

[5] The relevant parts of section 110E of the Belize Constitution state:

- (1) There shall be established for Belize a Judicial and Legal Services Commission;
- (2) The members of the Judicial and Legal Services Commission shall be appointed by the Governor-General and shall consist of:
 - a. The Chief Justice, who shall be a member and Chairman;
 - b. The Chairman of the Public Services Commission;
 - c. The Solicitor General; and
 - d. The President of the Bar Association of Belize.
- (3) Subject to subsection (2), no person shall be qualified to be appointed as a member of the Judicial and Legal Services Commission if he is a member of the National Assembly, or if he holds or is acting in any public office.

[6] The Bar Association's application was for relief under the Constitution and was made by way of Fixed Date Claim Form filed on 22 October 2019. It was supported by the first and second affidavits of Cheryl-Lyn Vidal, SC, then the duly elected President of the Bar Association and also Belize's Director of Public Prosecutions ("**DPP**") sworn to on 22 October 2019 and 21 January 2020, respectively.

[7] The evidence of the Defendants was given by the Hon Mr. Justice Kenneth Benjamin, Chief Justice of Belize (as he then was), being the 1st Respondent/Defendant and Chairman of the Commission, by affidavit sworn to on 7 January 2020.

[8] The evidence before the court below shows that Cheryl-Lyn Vidal, SC (“Mrs Vidal”) was appointed the DPP of Belize on 4 June 2010. It also established her election as President of the Bar Association on 21 February 2018 for a 1-year term and, again, on 8 February 2019 for a second, and consecutive, 1-year term.

[9] On 23 March 2018, having established that she was the duly appointed President of the Bar Association, Mrs. Vidal was invited to a scheduled meeting of the Commission. She had been provided with the agenda and papers for the meeting and she attended the place of the meeting at the scheduled time. This was the first meeting of the Commission with Mrs. Vidal as the newly elected and appointed President of the Bar Association, and the Oath of the Commission was prepared by the Office of the Chief Justice for her to take at the meeting.

[10] That did not happen. The Chairman of the Commission, the then Chief Justice of Belize, the Hon Mr. Justice Kenneth Benjamin, testified that, at the meeting, it was raised by the Secretary to the Commission that Mrs. Vidal could not sit in the meeting as the President of the Bar Association as the post of DPP is a public office under the Constitution of Belize. He further testified that, as a consequence of that point being raised, he *“then advised Mrs. Cheryl-Lyn Vidal that since she is the DPP and the post of DPP is a public office, she did not qualify to be appointed to sit as a member on the Commission, as the Constitution is explicit that no person can qualify to be appointed on the Commission once he holds a public office.”* He stated that his decision was supported by the other Commission members present (being the 2nd and 3rd Respondents/Defendants).

[11] As was noted by the Acting Chief Justice in her written reasons, Mrs. Vidal *“was required by the Chairman of the Judicial and Legal Services Commission and the other members to withdraw from the meeting and has thereafter never been informed of or invited to attend any further meetings of the Commission”*.

[12] Not surprisingly, the Bar Association objected to the exclusion of its President from the Commission’s meeting and, by letter dated 3 April 2018, wrote to the Commission expressing its disapproval of the actions taken by the Commission. In response, by letter dated 18 May 2018,

the Commission shared with the Bar Association a legal opinion it obtained from the Solicitor General (being one of the Commission's members who the Chairman of the Commission attested supported his decision requiring Mrs. Vidal to withdraw from the meeting of the 23 March 2018). According to the Commission's Chairman that opinion "*confirmed that based on the language of the Constitution, the Constitution is explicit that the DPP is disqualified from sitting as a member of the Commission*".

[13] By memorandum dated 22 March 2018 (the day before the scheduled meeting of the Commission at which the President of the Bar Association was to be sworn in as a member), the Secretary of the Commission requested the Solicitor General's opinion on whether the DPP, as President of the Bar Association, is disqualified from sitting as a member of the Commission. That was the opinion the Commission shared with the Bar Association enclosed in its letter to them dated 18 May 2018. As the opinion is dated 7 May 2018 it cannot have been the basis for the Commission requiring the President of the Bar Association to withdraw from its meeting on 23 March 2018.

[14] In the events established at trial, that opinion was wrong. Mrs. Vidal was qualified to be a member of the Commission.

[15] The 18 May 2018 letter from the Commission asked the Bar Association to seek an independent legal opinion if not satisfied with the opinion of the Solicitor General and to furnish it to the Commission by 15 June 2018.

[16] On 31 October 2018 a letter was sent by the Bar Association to the Commission acknowledging receipt of the latter's 18 May 2018 letter and informing it that the Bar Association had consulted with Senior Counsel nationally and internationally, the result of which was widespread disagreement with the opinion of the Solicitor General.

[17] On 14 November 2018 and 6 March 2019 the Commission wrote the Bar Association requesting copies of the legal opinion referred to in the Bar Association's letter of 31 October 2018.

[18] On 22 October 2019 (a year after informing the Commission of its disagreement with the opinion of the Solicitor General) the Bar Association filed the lawsuit subject of this appeal seeking the following relief:

- (1) A declaration that Mrs. Vidal, as the duly elected and appointed President of the Bar Association must be appointed as a member of the Commission pursuant to section 110E(2) of the Belize Constitution effective from the date of her election and appointment as President of the Bar Association and lasting for the duration of her term(s) as President of the Bar Association;
- (2) A declaration that Mrs Vidal, for so long as she remains President of the Bar Association, is entitled to attend and participate in all meetings and decisions of the Commission;
- (3) A Declaration that the decision and actions of the Chairman of the Commission and/or the Commission requiring the withdrawal of Mrs. Vidal from the duly convened meeting of the Commission on 23 March 2018, and thereafter treating Mrs. Vidal as disqualified from being a member of the Commission and participating at its meetings and decisions because she holds the public office of DPP, were and are unlawful and in breach of sections 110E(2) and (3) of the Belize Constitution;
- (4) A Declaration that all decisions of the Commission purportedly made during the period Mrs. Vidal was unlawfully excluded from participating in meetings of the Commission are unconstitutional and without effect having been made by an unlawfully constituted Commission in breach of Section 110E of the Belize Constitution;

(5) An order that the Fifth Defendant [sic.] duly complete and forward to the First Defendant and the Commission any required evidence of the appointment of Mrs Vidal as a member of the Commission effective from the date of her first election and appointment as President of the Bar Association and continuing for the duration of her term(s) as President of the Bar Association;

(6) An injunction restraining the Defendants, whether by themselves or by their servants or agents or howsoever, from in any way unlawfully interfering with Mrs Vidal from participating [sic.] in meetings and decisions of the Commission at any time for so long as she remains President of the Bar Association; and

(7) Costs.

[19] The Bar Association's claim came on for hearing before the Acting Chief Justice on 10 June 2020. In those proceedings, the Acting Chief Justice identified the following as being the issues before her;

(i) Whether on a proper construction and interpretation of Section 110E of the Constitution of Belize, the President of the Bar Association must be appointed to the Commission, regardless of whether the person elected as President of the Bar Association holds a public office.

(ii) Whether the Claimant acted with unreasonable delay in bringing the instant claim.

(iii) Whether the decision to proceed with the Commission in the absence of the Claimant's representative invalidated the decisions taken by the Commission.

[20] In spite of determining the first issue in favour of the Bar Association, the Acting Chief Justice nevertheless went on to dismiss its claim because, in determining the second issue, she found the Bar Association had acted with unreasonable delay in bringing the claim. She also found, in respect of the third issue, that the decision to proceed with the Commission in the absence of the Claimant's representative did not invalidate the decisions taken by the Commission. Each party was ordered to bear its own costs.

[21] By the time the appeal was filed on 8 October 2020, the Appellant was seeking to have granted only the following declarations (as the others had been overreached by the passage of time):

- a) A declaration that the decision and actions of the Chairman of the Commission and/or the Commission requiring the withdrawal of Mrs. Vidal from the duly convened meeting of the Commission on the 23rd March, 2018, and thereafter treating Mrs. Vidal as disqualified from being a member of the Commission and participating in meetings and decisions because she holds the public office of Director of Public Prosecutions, were and are unlawful and in breach of sections 110E(2) and (3) of the Belize Constitution.
- b) A declaration that all decisions of the Commission purportedly made during the period Mrs. Cheryl Vidal was unlawfully excluded from participating in meetings of the Commission are unconstitutional and without effect having been made by an unlawfully constituted Commission in breach of section 110E of the Belize Constitution.

[22] Following our hearing of the appeal on 15 March 2022 we ordered that:

- (i) The appeal is allowed in part.
- (ii) The order of the court below that the claim be dismissed is set aside.
- (iii) A declaration is granted that the decision and actions of the Chairman of the Commission and/or of the Commission requiring the withdrawal of Mrs. Vidal from the duly convened meeting of the Commission on the 23rd March, 2018, and thereafter treating Mrs. Vidal as disqualified from being a member of the Commission and participating at its meetings and decisions because she holds the public office of Director of Public Prosecutions, were unlawful and in breach of sections 110E (2) and (3) of the Belize Constitution.
- (iv) Costs of the appeal are awarded to the Appellant as against the 4th Respondent and are to be taxed if not agreed.

[23] We promised then to put our reasons in writing and do so now.

[24] In my view there can be no doubt of the correctness of the Acting Chief Justice's determination of the first issue. I agree with her interpretation of section 110E(3) as being subordinate to section 110E(2), and with her finding that that the words of the sections are clear and unambiguous. The words, "*subject to subsection (2)*" at the start of section 110E(3) of the Constitution, are capable of no meaning other than that the disqualification from appointment to the Commission for reasons set out in subsection (3) does not apply to the members of the Commission appointed pursuant to subsection (2). The President of the Bar Association was entitled to be appointed a member of the Commission pursuant to subsection (2). As the disqualifying subsection (3) did not apply to her appointment, it was of no moment that she also held the public office position of DPP. The Acting Chief Justice was, therefore, correct when she said,

"Applying a literal reading to the words of the sections it is mandated that the President of the Bar must be appointed as a member of the Judicial and Legal Services Commission."

[25] Having made that determination I am of the view that the Acting Chief Justice ought to have gone on to grant the declaration sought at paragraph 3 of the Fixed Date Claim Form and that, in exercising her discretion not to do so, she erred. Although the grant or refusal of a declaration is within the discretion of the trial judge, that discretion must be judicially exercised. The infringement of the Appellant's constitutional right to have its President appointed a member of the Commission during both her terms of office was a serious one that denied the Bar Association its say in the momentous decisions of the Commission (inclusive of judicial appointments) over a period of close to two years. I agree with the Acting Chief Justice that, in infringing the Bar Association's right, the Commission showed "*blatant disrespect*" to its President when she arrived at its meeting on 23 March 2018 to be sworn in as a member.

[26] The Commission's evidence, given through its Chairman, was,

"At the said meeting held on the 23rd day of March 2018, being that it was the first meeting with Mrs. Cheryl-Lynn Vidal as President of the Bar Association, the Oath

of the Commission was prepared by the Office of the Chief Justice for her to take at the said meeting.”

The following evidence of Mrs. Vidal is to be viewed against that background,

“I was on the 23rd March, 2019, after having provided proof of my election as President of the Bar, and after having been invited to a scheduled meeting of the Judicial and Legal Services Commission set for that date and provided the agenda and papers for the meeting, and after having attended the place of the meeting of the Commission at the scheduled time of the meeting, was required by the First Defendant in the presence and with the approval and/or acquiescence of the Second and Third Defendants as members of the Commission, to withdraw from the meeting and has thereafter never been informed of or invited to attend any further meetings of the Commission.”

[27] Not only was the requirement that Mrs. Vidal withdraw from the meeting unlawful for being unconstitutional, the wrong was exacerbated by the failure to swear her in as a member of the Commission in keeping with section 110E(11) of the Constitution which states,

A member of the Judicial and Legal Services Commission shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and office.

Failing to swear her in at the meeting as the Commission originally intended prevented Mrs. Vidal from entering upon the duties of her office as a lawful member of the Commission. It also raised the question, having not been sworn in, whether what occurred amounted to her removal from office. If so (and it is arguable that it did) that too was a constitutional breach as section 110 E(6) of the Constitution provides,

*A member of the Judicial and Legal Services Commission may be removed from office **only for inability to perform the functions of his office** (whether arising from infirmity of mind or body or from any other cause) **or for misbehaviour**,...*

There was no evidence, or even claim, that either circumstance applied to Mrs. Vidal and yet she was unceremoniously prevented from entering upon her duties and/or removed from office as a member of the Commission.

[28] It was the Commission's evidence that the question of the lawfulness of Mrs. Vidal's exclusion from the Commission would become moot upon the expiry of her second term of office as President of the Bar Association in February 2020 as the position had a term limit of 2 terms.

[29] An inference of her dismissal of the Bar Association's claim in its entirety is that the Acting Chief Justice accepted that evidence. I am of the view that, in doing so, she erred.

[30] The question whether the Bar Association's constitutional right to representation on the Commission through its duly appointed President was infringed is not rendered moot by the expiry of the term of office of the particular President holding the post. I accept the submission of Mr. Marshalleck, SC for the Appellant, in respect of the declaration sought at paragraph 3 of the Fixed Date Claim Form, that the issue remained a live one for the Bar Association even after Mrs. Vidal demitted office as its President because the Bar Association and its membership required clarification on the constitutional effect of electing persons who hold public office as its president. The grant of the declaration requested would have resolved that difficulty with which the Bar Association was faced.

[31] It follows then that, on that point, I do not agree with Ms. Matute, Assistant Solicitor General, who submitted on behalf of the Respondents, that the real difficulty faced by the Bar Association ceased to exist when Mrs. Vidal demitted office, and that the issue was resolved by the Court (presumably without need for a resultant declaration).

[32] The court below dismissed the Bar Association's request for a declaration that its constitutional right to membership of the Commission had been infringed. Having found merit in the application it is my view that the court ought, in the circumstances of this case, to have exercised its discretion to grant that declaration. This is not a case where the declaration of infringement of the Bar Association's constitutional right was purely academic or useless or

embarrassing. Nor was it a case where an alternative remedy to constitutional redress was available. Furthermore, the declaration was bound to serve the useful purpose of guiding those concerned with giving effect to section 110E of the Constitution.

[33] The circumstances of this case are distinguishable factually and legally from those in the decision of the UK Supreme Court in **Regina (Hunt) v North Somerset Council**¹ where the applicant did not seek declaratory relief. In that case the court below (being the Court of Appeal) had ruled on the facts that the public body had acted unlawfully but, since the claimant had not sought a declaration, the Supreme Court said it was unnecessary for the court of its own initiative to make a declaration in the form of an order to the same effect as its ruling. A material distinction is that, in this case, the Bar Association did seek declaratory relief from the outset. It was not trying in hindsight to have the court grant the declaration of its own motion. The following dicta of the UK Supreme Court expressed by Lord Toulson, JSC² in that decision commends itself to me,

*“I would reject the appellant’s complaint that the Court of Appeal was wrong not to make a declaration of its own initiative. The complaint is redolent of hindsight...The judgment of the Court of Appeal itself ruled that the respondent acted unlawfully, and the authority for the judgment would be no greater or less by making or not making a declaration in the form of the order to the same effect. However, **in circumstances where a public body has acted unlawfully but where it is not appropriate to make a mandatory, prohibitory or quashing order, it will usually be appropriate to make some form of declaratory order to reflect the court’s finding. In some cases it may be sufficient to make no order except as to costs; but simply to dismiss the claim when there has been a finding of illegality is likely to convey a misleading impression and to leave the claimant with an understandable sense of injustice.** That said, there is no “must” about making a declaratory order, and if a party who has the benefit of experienced legal*

¹ [2015] 1 WLR 3575

² At 3579 letters D-E

representation does not seek a declaratory order, the court is under no obligation to make or suggest it.” [my emphasis].

[34] Another material distinction could very well be that the **Regina (Hunt) v North Somerset Council** case was a judicial review. Unlike applications for redress for constitutional infringement, judicial review that does not involve the liberty of the subject is a discretionary remedy requiring the court’s permission before the claim can be filed. In that context the scope for the exercise of judicial discretion may well be wider than it is in cases seeking constitutional redress. Whether or not the scope of the exercise of judicial discretion is wider in judicial review than in constitutional cases, it is my view that, in this case, the failure to grant a declaration of the illegality of the conduct of the Commission showed a want of judicial exercise of the judge’s discretion. That failure to exercise her discretion judicially was an error. That error is one that is likely to convey a misleading impression that the court is prepared to excuse the Commission’s conduct, and it has definitely left the Bar Association with an understandable sense of injustice.

[35] The matter does not, however, end there. I agree with the court below that there was delay by the Bar Association in bringing this action. Even though the delay was not as great as the Acting Chief Justice thought, it was nevertheless significant. She refers more than once in her judgment to the Bar Association’s action having been brought in January of 2020 when, in fact, it was brought three months prior, in October 2019. The infringement of the Bar Association’s constitutional right to have its President be a member of the Commission commenced on 23 March 2018 and continued throughout the entire two terms of the Presidency of Mrs Vidal. In my view, knowing the business of the Commission was ongoing during that period, the Bar Association ought to have brought the action sooner and sought an expeditious hearing.

[36] Having waited one year and seven months to bring its action, the Bar Association could not but expect to encounter difficulty in having the court grant its request for all the decisions of the Commission made during that 19-month period to be declared unconstitutional and without effect. I agree with the Acting Chief Justice that to grant that relief on 10 June 2020 when the matter was being heard “*would be to create judicial chaos and to disrupt the administration of*

justice in Belize". The evidential basis for this conclusion was contained in the affidavit filed on behalf of the Commission.

[37] Ms. Matute on behalf of the Respondents was on good ground in submitting that Rule 56.5(1) of the Supreme Court (Civil Procedure) Rules, 2005 ("**the CPR**") empowers the court to deny relief where there has been unreasonable delay in initiating a claim, including constitutional claims. I unhesitatingly accept her submission that the court below correctly found that the Bar Association at the eleventh (even if it was really the tenth) hour "*launches this claim...seeking, inter alia, to upend all the decisions made by the Commission in the absence of the President*".

[38] CPR 56.5 states,

(1) In addition to any time limits imposed by any enactment, the judge may refuse permission to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.

(2) When considering whether to refuse permission or grant relief because of delay the judge must consider whether the granting of permission or relief would be likely to—

a. Cause substantial hardship to, or substantially prejudice, the rights of any person; or

b. Be detrimental to good administration.

[39] It is my view that the Acting Chief Justice correctly found that,

*"...the delay in bringing this action in these circumstances is highly unreasonable, and **it is on this basis that the relief sought by the Bar Association is denied.** I agree with the submissions on behalf of the Defendant, on this point, that to grant the relief sought by the Claimant would be to create judicial chaos and to disrupt the administration of justice in Belize."* [my emphasis].

[40] In my view CPR 56.5 (1) and (2) provided sufficient legal basis for that denial of the declaration sought by the Bar Association that the Commission's decisions taken during the period of Mrs. Vidal's exclusion were without effect.

[41] I agree with the Acting Chief Justice's reluctance to rely on section 47 of the Interpretation Act as her basis for refusing the declaration sought by the Bar Association impugning the decisions of the Commission made during the period it barred the Bar Association President from attending and participating in its meetings because:

- (a) There was no vacancy in the membership of the Commission;
- (b) There was no defect in the appointment or qualification of a person purporting to be a member of the Commission; and
- (c) The irregularity in convening the meetings of the Commission without Mrs. Vidal was not minor.

That section operates to render unaffected the powers exercised by the Commission in one or more of those circumstances only. None applied.

[42] As stated previously, the reason the Acting Chief Justice gave for her refusal of that declaration, namely that there was unreasonable delay by the Bar Association and that relief was detrimental to good administration, was a sufficient and good basis for that decision. In the light of that, and the Respondents' concession of the Appellant's point that the Privy Council reserved its position on the issue of a quorum in **Maharaj v Attorney General of Trinidad and Tobago**³, there is no need for us to examine the correctness of her additional reliance on that case as supporting her decision.

[43] I have quoted (at paragraph [39] above) that extract from the written reasons of the court below to emphasize the basis upon which the Acting Chief Justice refused the relief sought by the Bar Association in its application. In my view, in doing so, she was correct save in respect of

³ [2019] UKPC 6

the declaration sought by the Bar Association (at numbered paragraph 3 of its Fixed Date Claim Form) that the decisions and actions of the Commission requiring the withdrawal of Mrs. Vidal from the meeting, and thereafter treating her as disqualified from being a member on account of her also holding public office as the DPP, were unlawful and in breach of the Belize Constitution.

[44] The appeal before us was confined to those two declarations sought by the Bar Association.

[45] We found that the Acting Chief Justice was:

- (a) wrong not to have made the declaration sought at paragraph 3 of the Fixed Date Claim Form; and
- (b) correct not to have made the declaration sought at paragraph 4 of the Fixed Date Claim Form.

[46] It is for those reasons that, on 15 March 2022, having heard this appeal we pronounced the following order:

- (i) The appeal is allowed in part.
- (ii) The order of the court below that the claim be dismissed is set aside.
- (iii) A declaration is granted that the decision and actions of the Chairman of the Commission and/or of the Commission requiring the withdrawal of Mrs. Vidal from the duly convened meeting of the Commission on the 23rd March, 2018, and thereafter treating Mrs. Vidal as disqualified from being a member of the Commission and participating at its meetings and decisions because she holds the public office of Director of Public Prosecutions, were unlawful and in breach of sections 110E (2) and (3) of the Belize Constitution.
- (iv) Costs of the appeal are awarded to the Appellant as against the 4th Respondent and are to be taxed if not agreed.

[47] For the avoidance of doubt, it follows from our order above that the various declarations (other than that sought at paragraph 3 of the Fixed Date Claim Form) together with the applications for an order and injunction that were dismissed by the court below, are affirmed.

MINOTT-PHILLIPS, JA

FOSTER, JA

[48] I have had the opportunity to read the judgment of my sister Justice of Appeal Sandra Minott-Phillips and I concur with her reasons and the orders made.

FOSTER, JA