IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 689 of 2022

BETWEEN:

[1] MICHAEL BELGRAVE

Applicant

and

[1] JUDICIAL AND LEGAL SERVICES COMMISSION
[2] MINISTER OF PUBLIC SERVICE, CONSTITUTIONAL & POLITICAL REFORM & RELIGIOUS AFFAIRS
[3] ATTORNEY GENERAL OF BELIZE

Respondents

Appearances:

Sharryn S. Dawson for the Applicant
Samantha Matute and Alea Gomez for the Respondents

2023: April 24

September 6

DECISION ON APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW

[1] **CHABOT, J**: The applicant, Mr. Michael Belgrave, applies for permission to apply for the judicial review of a decision of the Judicial and Legal Services Commission (the "Commission") not to refer his complaint against then Justice Lisa Shoman to the Belize Advisory Council pursuant to section 98(4) of the Belize Constitution. The applicant also applies to strike out the respondents' affidavit in response to the application because it was filed late and does not comply with Part 10 of the Supreme Court (Civil Procedure) Rules, 2005 ("CPR").

[2] For the reasons outlined in this decision, I dismiss both applications with costs to the respondents.

Background

[3] On May 8th, 2022, then Justice Lisa Shoman rendered a decision in a probate matter involving Mr. Belgrave.[1] In her decision, Shoman J. denied Mr. Belgrave's application for an interim order and freezing injunction, struck out Mr. Belgrave's affidavit in support of the fixed date claim form, and struck out a portion of his claim. The matter was stayed until the defendant provided certain documents to Mr. Belgrave. Mr. Belgrave was ordered to pay costs to the defendant.

[4] Mr. Belgrave was dissatisfied with the decision and with Shoman J.'s conduct in the hearing. Mr. Belgrave alleges that the decision "was littered with many contradicting paragraphs, disregarded sworn evidence and the said Judge also decided to determine several critical points in dispute ahead of a pre-trial review or trial contrary to my human rights".[2] Mr. Belgrave also alleges that Shoman J.'s conduct in court "endanger[ed] the rule of law and represent[ed] a high degree of neglect of duty; raise[d] serious concerns of procedural fairness, apparent bias and infringement of [his] constitutional right to have matters tried before a competent tribunal under the constitution of Belize".[3]

[5] On or around July 1st, 2022, Mr. Belgrave's attorney filed a complaint with the Commission. Mr. Belgrave's attorney sought to move the Commission to invoke its powers under section 98(4) of the Belize Constitution to recommend to the Belize Advisory Council to investigate the question of the removal of Shoman J. for misbehavior, misconduct, and inability to conduct the affairs of the Judiciary in accordance with the Belize Constitution.

[6] On or around October 4th, 2022, Mr. Rolando Zetina, secretary of the Commission, responded to Mr. Belgrave's attorney indicating that the Commission had determined that the question of Shoman J.'s removal "is not susceptible to matters for the Commission but may well be amenable to the appellant process".

[1] Michael Ellismere Belgrave v Douglas Thompson, Claim No. 678 of 2020.
[2] Affidavit of Michael Ellismere Belgrave dated November 17th, 2022 at para. 2.
[3] Affidavit of Michael Ellismere Belgrave dated November 17th, 2022 at para. 4.

[7] On or around January 31st, 2023, Shoman J. resigned from her position as justice of the High Court of Belize.

The applications for permission to apply for judicial review and to strike out the respondents' affidavit in response

[8] On November 30th, 2022, Mr. Belgrave applied for permission to apply for the judicial review of the Commission's decision. Mr. Belgrave seeks the following orders and declarations:

1. Leave be granted to the Applicant to apply for judicial review of the decision made by the 1st respondent that the matter of a request under section 98(4) of the Belize Constitution for the removal of the Honourable Madam Justice Lisa Shoman from the Judiciary of Belize for misbehavior and inability to perform the function of the office 'is not susceptible to matters for the Commission' and to seek in relation to those proceedings the following orders and declarations, namely:

    a. An order of Certiorari quashing the decision of the 1st respondent that the question of the removal of a Justice in particular, Madam Lisa Shoman 'is not susceptible to matters for the Commission';

    b. A declaration that the 1st respondent has a public duty to consider all complaints against any and all judicial officers who are alleged to have acted in a manner to suggest misbehavior or inability to hold judicial office and/or has breached judicial oath, or acted corruptly;

    c. An order of Mandamus directing the 1st respondent to perform its public duty to consider and conduct an investigation of allegations against Madam Justice Lisa Shoman made on or around 30 June 2022 in which the question of the sitting Justice's removal was put in writing pursuant to section 98(4) of the Belize Constitution claiming in summary that the said Justice had:

        i. Breached her judicial oath;

        ii. Made several unlawful orders;

        iii. Repeatedly acted contrary to the Constitution, Laws, and Civil Procedure Rules in Belize;

        iv. Contravened the Human Rights of the applicant; and

    d. A declaration that the 2nd respondent has a public duty to ensure that the 1st respondent performs its duties competently and efficiently when called upon to do so regardless of political affiliations.

2. The 1st and 2nd respondents be made to indicate the date on which the alleged decision of the Commission was made that the matter of a request under section 98(4) of the Belize Constitution

for the removal of Madam Justice Shoman from the Judiciary of Belize for misbehavior and inability to perform the function of the office 'is not susceptible to matters for the Commission' and to provide a copy thereof to the Court and the Applicant;

3. The Applicant be granted an extension of time, if necessary, for the making of this application for leave to apply for judicial review;

4. Costs to be costs in the application; and

5. Any other further relief the Honourable court deems fit.

[9] This matter was called up for a direction hearing on January 31st, 2023. At the hearing, I made various orders for the orderly disposition of the application, including an order that the respondents file an affidavit in response on or before February 20th, 2023. The respondents uploaded their affidavit in response on the e-filing system on February 21st, 2023. The affidavit in response was marked as filed on February 22nd, 2023. The respondents did not apply for an extension of time to file the affidavit in response.

[10] On March 15th, 2023, the applicant filed an application to strike out the affidavit in response for failure to comply with the court order. The applicant also argues that the affidavit in response does not comply with the requirements of Part 10 of the CPR.

[11] The direction hearing coincided with Shoman J.'s last day in office. At the direction hearing, I raised the issue of mootness and requested to be addressed on the issue at the hearing of the application.

Issues for determination

[12] The following issues must be determined:

1. Whether the affidavit in response should be struck out for failure to comply with the court order and/or the CPR;

2. Whether the matter has been rendered moot or academic by the resignation of Shoman J.;

3. If the matter is not moot, whether leave to apply for judicial review should be granted.

Analysis

Whether the affidavit in response should be struck out for failure to comply with the court order and/or the CPR

[13] The applicant seeks to strike out the respondents' affidavit in response on two grounds. First, the applicant argues that the affidavit in response should be struck out as having been filed in breach of the court order. Second, the applicant argues that the affidavit in response does not comply with Part 10 of the CPR as it does not respond to each and every allegation in the application for permission to apply for judicial review, and does not exhibit or attach the documents relied on by the respondents.

[14] The respondents' affidavit in response was filed two days after the date set by court order. The respondents did not obtain consent from the applicant to extend the time for filing the affidavit in response, nor did they apply to the court for an extension of time. The respondents' counsel admitted to the breach of the court order, but argued that no sanction applies because Part 26 of the CPR dealing with the case management powers of the court is inapplicable before a substantive claim has been filed.

[15] The respondents' counsel relied on two precedents in support of her position. I do not find **A-G v Matthews**[4] to be relevant to the resolution of the issue at hand. **Matthews** deals with the issue of sanctions applicable for a failure to file a defence to a claim in accordance with the rules of the CPR. **Matthews** does not deal with the exercise of the court's case management powers before a substantive claim is filed.

[16] In **Golding & The Attorney General of Jamaica v Miller**,[5] the Jamaican Court of Appeal considered whether the trial judge had the power to grant an extension of time to apply for judicial review consequent to an order giving the applicant 14 days to do so pursuant to rule 56.4(12) of the Jamaican CPR (which is equivalent to CPR rule 56.4(11) in Belize). The applicant contended that Part 11 of the Jamaican CPR dealing with applications for court orders gave the trial judge the power to vary the conditions set in the order. The Court of Appeal disagreed, holding that Part 11 of the Jamaican CPR provides general rules in relation to applications for court orders which are superseded by the specific rules in Part 56. The Court of Appeal noted that "where it is intended that these special rules are to be

[4] [2011] UKPC 38 ("Matthews").
[5] Supreme Court Civil Appeal No. 3/08 ("Golding").

affected by other rules it is so stated".[6] Rule 56.4(12) of the Jamaican CPR made leave conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave with no provision for the granting of an extension of time.

[17] In **Golding**, the Court of Appeal also considered whether the court could invoke its general case management powers under Part 26 of the Jamaican CPR to enlarge the time within which the respondent could file the claim. It is in that context that Smith JA stated as follows:

> In my judgment, the provisions of rule 56.13 which expressly make the provisions of rule 26 applicable at the first hearing stage, limit the circumstances in which the court may exercise its general powers under the latter in applications for administrative orders.
>
> Unless a particular rule so provides, the court may not exercise its general powers of case management at any stage before the substantive proceedings have commenced. And proceedings are properly started by the filing of the claim form within fourteen (14) days of the granting of leave. One such particular rule is rule 56.6(2) which empowers the court to extend the time for making the application for leave. There is no special provision permitting the extension of time for filing the claim pursuant to rule 56.4(12). This is why, of course, the respondent seeks to pray in aid the general provisions of rule 26.1(2)(c). But these provisions cannot avail the respondent because the rules provide otherwise.[7]

[18] In my view, **Golding** simply applies the fundamental rule of statutory construction that a specific rule trumps a general rule. Part 56 of the Jamaican CPR (and its Belizean equivalent) contains specific rules for the filing of an application for judicial review after permission to do so has been granted. While Part 56 incorporates by reference the general case management powers of the court set out in Part 26, the court is not at liberty to use these general powers to supplement specific rules in Part 56, unless so provided by these specific rules. In **Golding**, the Court of Appeal found that rule 56.4(12) of the Jamaican CPR governs the timeframe for the filing of an application for judicial review after permission has been granted, and as such that it could not be supplemented by the general case management powers set out in Part 26.

[19] Contrary to **Golding**, this matter is still at the application for permission stage. Pursuant to CPR 56.3(1), "a person wishing to apply for judicial review must first obtain permission". CPR 56.3(2) provides that an application for permission may be made without notice. CPR 56.3(3) lists a series of matters that must obligatorily be stated in the application for permission. CPR 56.3(4) states that the application

[6] Golding at para. 10.
[7] Golding at 22-23.

must be verified by evidence on affidavit. CPR 56.4 contains the rules applicable to the hearing of an application for permission to apply for judicial review, as well as the parameters for the granting of permission by the judge. Nowhere in Part 56 do the rules provide for an opportunity for the respondent to respond to an application for permission to apply for judicial review, or for the applicant to reply to the respondent's response. Part 56 also does not provide either party with an opportunity to file written submissions. Yet, that these opportunities must be given to the parties cannot reasonably be contested. The court's general case management powers must, by necessity, apply to fill this gap. Left unfilled, this gap would create unfairness and deprive the court of the opportunity to be presented with the evidence and the submissions needed to decide the application justly. As a result, I find that Rule 26 applies to this application insofar as the setting out of timelines for the filing of the respondents' response and the applicant's reply is concerned. The court order dated January 31st, 2023 was made in pursuance of this court's general case management powers.

[20] CPR 26.3(1)(a) empowers this court to strike out a statement of case if it appears to the court that there has been a failure to comply with "an order or direction given by the court in the proceedings". The court, however, does have the discretion to put matters right, with or without an application by a party. Indeed, the January 31st, 2023 order does not set out the consequence for a failure to comply with the order. CPR 26.9 applies in these circumstances:

> 26.9 (1) This Rule applies only where the consequence of failure to comply with a Rule, practice direction or court order has not been specified by any Rule, practice direction or court order.
>
> (2) An error of procedure or failure to comply with a Rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.
>
> (3) Where there has been an error of procedure or failure to comply with a Rule, practice direction, court order or direction, the court may make an order to put matters right.
>
> (4) The court may make such an order on or without an application by a party.

[21] I decide to exercise my case management powers under CPR 26.9 to make an order to put matters right. I grant the respondents an extension of time until February 22nd, 2023 for the filing of the affidavit in response. The following factors ground my decision. First, the delay is short. The affidavit in response was submitted one day late on February 21st, 2023, and was marked as filed the following day. Second, the applicant had sufficient time to prepare his reply, even accounting for the delay. The applicant had

been given until March 6th, 2023 to file his reply. He filed his reply early on March 3rd, 2023, thus suggesting that he was not impacted by the delay. Third, beyond noting the breach of the order, the applicant made no submission in respect of any prejudice that would flow from the granting of an extension of time. Both parties subsequently filed their skeleton arguments on the dates set out in the order, and the hearing of the application proceeded as planned on April 24th, 2023. I find that where, as here, the delay is minimal and no prejudice would flow from the extension of time, it would be disproportionate to strike out the respondents' affidavit in response. It is in the interest of the administration of justice, and in keeping with the overriding objective of the CPR to deal with cases justly, that this court be provided with the evidence and submissions needed to resolve this application which raises issues of public interest.

[22] As for the applicant's submission that the affidavit in response does not comply with Part 10 of the CPR, I find that Part 10 does not apply to an affidavit in response to an application for permission to apply for judicial review. CPR 56.10 deals with affidavits filed in answer to a *claim* for an administrative order, not to affidavits filed in response to an application for permission to file such a claim. CPR 56.4 makes it plain that a claim for judicial review is premised on permission being first granted. Permission is granted on an application.

[23] Part 10 does not apply to affidavits filed in response to an application for permission to apply for judicial review. Part 56 makes no such provision. CPR 10.1 states that "the Rules in this Part set out the procedure for disputing the whole or part of a claim". CPR 2.4 defines a "claim" as "to be construed in accordance with Part 8". Part 8 is entitled "How to start proceedings". CPR 8.1(1) states that "a claimant starts proceedings by filing in the court office the original and one copy (for sealing) of – (a) the claim form; and […] the statement of claim; or where any Rule or practice direction so requires, an affidavit or other document".

[24] An application for permission to apply for judicial review is not a claim as defined in the CPR. It is an application made under Part 56 of the CPR. Part 56 of the CPR is silent as to what a response to an application for permission to apply for judicial review must contain. Similarly, Part 11 dealing with applications for court orders generally does not provide for any specific content for the response to an application.

[25] A response to an application for permission to apply for judicial review is made by filing an affidavit. Affidavits are governed by Part 30 of the CPR. CPR 30.3 states that the affidavit must contain facts within the own knowledge of the deponent, or statements of information and belief. Part 30 does not further regulate the content of an affidavit. CPR 30.4 states that "any document to be used in conjunction with an affidavit must be exhibited to it". A document that is referred to, but not exhibited to an affidavit cannot be used by the court. The consequence of not exhibiting a document referred to in an affidavit is not to strike out the affidavit, but for the document not to be used by the court.

[26] The application to strike the affidavit in response is dismissed.

Whether the matter has been rendered moot or academic by the resignation of Shoman J.

[27] The applicant seeks permission to apply for the judicial review of the Commission's decision not to exercise its powers under section 98(4) of the Belize Constitution. Under section 98(4), the Commission may recommend in writing to the Belize Advisory Council that the question of the removal of a justice of the Supreme Court (now High Court) be investigated. Section 98(4) provides as follows:

> (4) A justice of the Supreme Court may be removed from office if the question of his removal from office for inability to perform the functions of his office, for persistently not writing decisions, for failing to give decisions and reasons for the decisions within such time as may be prescribed by the National Assembly or for misbehaviour, has been referred to the Judicial and Legal Services Commission in writing and the Judicial and Legal Services Commission, after considering the matter, recommends in writing to the Belize Advisory Council that the question of removal ought to be investigated.

[28] The applicant seeks relief in the form of an order of certiorari to quash the Commission's decision and an order of mandamus directing the Commission to perform its duty to consider and conduct an investigation into the applicant's allegations against Shoman J. The applicant also seeks declarations in relation to the Commission's public duty to consider complaints against judicial officers and to perform its duty competently and efficiently.

[29] As noted above, Shoman J. resigned from her position as justice of the High Court of Belize and left office on January 31st, 2023. In the circumstances, the court raised the issue of mootness and asked to be addressed on the issue.

[30] The applicant argues that the application centers on the conduct of the Commission in respect of its failure to perform its statutory duties under the Belize Constitution. Notwithstanding Shoman J.'s resignation, the issue of the Commission's constitutional breach is justiciable. The Commission has misunderstood its role and jurisdiction. The issue is alive and speaks to an 'unacceptable and unlawful practice by the Commission, which harms the Belizean legal system and infringes on the rights of Belizeans'. The applicant relies on **City of Mesquite v Aladdin's Castle Inc.**[8] in which the court opined that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice'. The applicant submits that Shoman J.'s actions after the issuance of the section 98(4) complaint do not make the matter moot. The deprivation of the applicant's rights under the Belize Constitution and the Human Rights Act remains to be considered by the Commission. At the hearing, the applicant's counsel emphasized that the applicant is no longer expecting the outcome of the judicial review to be the removal of the justice. However, the applicant seeks an order of mandamus to compel the Commission to consider his complaint. In addition, the applicant seeks guidance and clarity as to the Commission's duties and functions going forward.

[31] The respondents argue that granting the reliefs sought by the applicant, in particular the order of mandamus, would be futile or serve no useful purpose. The applicant has not shown that there exist exceptional circumstances for granting the reliefs. In **Ainsworth v Criminal Justice Commission**,[9] the court held that declaratory relief must be directed to the determination of legal controversies, and not answering abstract or hypothetical questions. The person seeking relief must have a real interest, and relief will not be granted if the question is purely hypothetical, if relief is claimed in relation to circumstances that have not occurred and might never happen, or if the court's declaration will produce no foreseeable consequence for the parties. The reliefs being sought would serve no useful purpose because the judge has resigned, a determination of her removal for misconduct would be irrational, and the issue of the process for removal of a judge has been determined by the Caribbean Court of Justice in **Dean Boyce et al v The Judicial and Legal Services Commission**.[10]

[32] I find that this matter has been rendered moot and academic by virtue of Shoman J.'s resignation from office. The applicant seeks an order of certiorari to quash the Commission's decision, and an order of

[8] (1982) 455 US 283 ("City of Mesquite").
[9] (1992) 175 CLR 564.
[10] [2018] CCJ 23 ("Boyce").

mandamus to compel the Commission to consider his complaint. Although the removal of the justice from office is no longer available, the applicant still seeks to have the Commission consider his complaint as it is duty-bound to do under section 98(4) of the Belize Constitution. I find that there would be no purpose in granting these orders. Absent exceptional circumstances, courts will refrain from considering disputes which are academic between the parties, "unless there is a good reason in the public interest for doing so". This fundamental principle was restated by the learned Lords in **Regina v Secretary of State for the Home Department, Ex parte Salem**:[11]

> My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. […] The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future […] [emphasis added].

[33] Courts will dismiss judicial review matters where there is no longer a live issue between the parties, even where a matter raises important issues of public law. In **Edison Chenfil James v The Speaker of the House of Assembly of the Commonwealth of Dominica et al.**,[12] Stephenson-Brooks J. dismissed as moot and academic a judicial review matter in which the claimants sought various reliefs in relation to an election and a by-election which they claimed were illegal, unconstitutional, null, and void. The issue, as framed by the claimants, was whether the Speaker of the House acted lawfully when she declared that the claimants' seats had been vacated. Despite counsel's submission that the issue was a matter "of great public importance with great potential for injurious repetition unless clarified and resolved by the court", Stephenson-Brooks J. declined to consider the matter:

> [106] In my judgment the answer to the question of whether the issue before the court given the factual situation of the Claimants having contested the by-election successfully and them having taken up their seats in Parliament has become moot is simply this, the facts as they exist to my mind have virtually removed the "bedrock" of the Claim, I find that indeed the

[11] [1999] 1 AC 450.
[12] Claims No. DOMHCV 2010/199 and DOMHCV 2010/200.

> matters before the court are not (*sic*) academic in nature and I fail to see any legally justifiable reason for the court to involve itself in the merit of the elements of this case.
>
> [107] Therefore, even though I have found that the Speaker is a proper Defendant in this matter and that there is a cause of action pleaded by the Claimants as it regards whether or not there are breaches of Sections 35 and 8(8) of the Constitution. I find that the whole issue is moot given that there was a by-election that the Claimants took part in and regained their seats [emphasis added].

[34] There is no longer a dispute to be decided between the parties to this application. To use Stephenson-Brooks J.'s language, the "bedrock" of the application has been removed. The applicant sought to have Shoman J. removed from office. As she no longer occupies the office of justice of the High Court, the question of her removal no longer needs to be decided. I do not accept Counsel's suggestion that the Commission should still be compelled to make a decision – any decision – on his complaint because it is duty-bound to do so. The Commission's powers under section 98(4) of the Belize Constitution do not exist in a vacuum; they exist in tandem with the Belize Advisory Council's power to investigate the question of removal of a justice of the High Court. The Commission can no longer recommend to the Belize Advisory Council to investigate the question of the removal of Shoman J. from office. There is no purpose in compelling the Commission to exercise its power of consideration and recommendation where it can make no recommendation.

[35] I also find that there are no exceptional circumstances justifying this court to grant the orders of certiorari and mandamus sought. Since Shoman J. no longer occupies the office of justice of the High Court, the alleged conduct complained of by the applicant does not pose a threat to the applicant or the public. The decision in **City of Mesquite** is of no help to the applicant in the present circumstances. **City of Mesquite** deals with a change in language in an ordinance between the institution of a legal challenge and its consideration by the court. While the court indeed stated in the decision that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice", it also held that the cessation was but one of the factors a court must consider in deciding whether to exercise its discretion to hear a matter. In **City of Mesquite**, the court decided to hear the matter because "the city's repeal of the objectionable language would not preclude it from reenacting precisely the same provision if the District Court's judgment were vacated". There was a threat of reoccurrence, and therefore a public purpose in determining the matter. Since Shoman J. has resigned from the office of justice of the High Court, there is no threat of reoccurrence of the behavior complained of in this matter.

[36] In addition, this matter does not raise any issue of constitutional or statutory construction. The Commission's duty to consider and recommend to the Belize Advisory Council the question of removal of a justice of the High Court is clearly laid out in the Belize Constitution. There is no evidence that the issue complained of by the applicant, namely the Commission's failure to consider his complaint, is a frequent issue which is anticipated to reoccur in the future. The circumstances do not justify this court expending resources to consider the applicant's application for orders of certiorari and mandamus against the Commission.

[37] The applicant also seeks declarations in relation to the role and functions of the Commission. The applicant asks this court to declare that the Commission has a public duty to consider all complaints made to the Commission against judicial officers, and that the Minister of Public Service, Constitutional and Political Reform and Religious Affairs has a public duty to ensure that the Commission performs its duties competently and efficiently, regardless of political affiliations.

[38] As noted by Lord Diplock in **Gouriet v Union of Post Office Workers**,[13] "the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else". The applicant is asking this court to declare the law generally. The Commission's duty to consider complaints against judicial officers is constitutionally enshrined. To declare that the Commission must perform "its duty competently and efficiently when called upon to do so regardless of political affiliations" is not only the law, but it would have no purpose as it would not be declaring any contested legal rights of the applicant. Thus, even if this matter had not been rendered moot and academic by the resignation of Shoman J., the declarations sought by the applicant would have been denied as they are crafted in general terms which do not attract the exercise of this court's jurisdiction.

[39] In any event, I agree with the respondents that the functions of the Commission have been interpreted and clarified by the Caribbean Court of Justice in **Boyce**. I refer to the following passage which is particularly relevant in light of the declarations sought by the applicant:

> [37] The authorities discussed are all *ad idem* as to the role and function of the Commission. Once a complaint is lodged with the Commission, its consideration process must be triggered. Put differently, once it receives a complaint, the JLSC must consider and assess whether the grievances outlined are of such gravity and are sufficiently established on the

[13] [1978] AC 435 at 501.

> facts before it, that a referral for investigation is warranted so that the Council can then evaluate whether there actually is sufficient evidence to justify taking the matter further. The Commission is not a mere channel for transmitting complaints to the Council; it has an independent discretion to exercise. However, whereas there is a discretion as to whether the question of removal should be referred to the BAC for investigation; there is none as it relates to the requirement for proper consideration.[14]

[40] As there is no controversy as to the functions of the Commission and how these functions must be exercised, and in the absence of a live dispute between the parties, there would be no utility in granting the orders and declarations sought by the applicant. This matter is moot and academic, and must be dismissed.

IT IS HEREBY ORDERED THAT

(1) The respondents are granted an extension until February 22nd, 2023 for the filing of the affidavit in response.

(2) The application to strike out the affidavit in response is denied.

(3) The application for permission to apply for judicial review is denied.

(4) The applicant shall pay the respondents costs in an amount to be agreed or assessed.

Geneviève Chabot
High Court Judge

[14] Boyce at para. 37.