

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 58 of 2023

BETWEEN:

LISA McKOY

Claimant

and

BELIZE ADVISORY COUNCIL

Defendant

Appearances:

Anthony Sylvestre for the Claimant

Imani Burgess and Alea Gomez for the Defendant

2023: June 19

November 21

JUDGMENT

[1] **CHABOT, J.:** Lisa McKoy was dismissed from her employment with the public service following disciplinary proceedings. In its decision, the Public Service Commission (“PSC”) concluded that Ms. McKoy violated the public service code of conduct in the Belize Constitution (Public Service) Regulations, 2014.¹ Ms. McKoy appealed the PSC’s decision to the Belize Advisory Council (“BAC”). Her appeal was dismissed by

¹ Statutory Instrument No. 59 of 2014 (“PSR”).

the BAC. Ms. McKoy now seeks the judicial review of the BAC's decision dismissing her appeal of the PSC's decision.

- [2] For the reasons set out in this judgment, the claim is granted. The PSC erred in its interpretation and application of the PSR. The PSC's decision to dismiss Ms. McKoy for a violation of the code of conduct exceeded the PSC's powers and was unlawful. Since the PSC's decision was unlawful, it follows that the BAC's decision upholding the PSC's decision is unlawful as well. An order of *certiorari* is issued quashing the BAC's decision. Ms. McKoy's appeal is granted, and she is reinstated in the public service with effect from 3rd December 2018, with all salaries and benefits accruing from then.

Background

- [3] Ms. McKoy was a First Class Clerk in the public service. On 12th October 2016, the Registrar of the Supreme Court wrote to Ms. McKoy alleging that she had committed major misconduct in the course of her duties as a public officer in contravention of Regulation 82(2)(b), (h), and (n), and Regulations 40(1) and (2), and 41(1) of the PSR. According to the information in the letter, in 2016 William Alexander Mason was found in possession of a birth certificate issued by the Vital Statistics Unit showing that he was a Belizean. However, other documentary evidence showed that Mr. Mason was in fact born in Guyana. The letter went on to allege that Ms. McKoy was involved in the unlawful issuance of one of two birth certificates issued to Mr. Mason in 2015. The Registrar advised Ms. McKoy that her alleged involvement in the matter constituted a criminal offence under section 51 of the Registration of Births and Deaths Act.²
- [4] On 20th October 2016, Ms. McKoy responded to the Registrar's letter, denying the allegations made against her. In her response, Ms. McKoy noted that in June 2015, she was a Second Class Clerk whose duties were that of a verifier in the application process for birth and marriage certificates. She explained that on 4th June 2015, she received an entry bearing the information "William Alexander Mason", which she

² Cap. 157 of the Substantive Laws of Belize.

verified against the electronic log and confirmed that all the information was accurate. There was therefore no need to have any corrections done, and no need to check the date of entry against the physical register. Ms. McKoy further explained that the allegation that she verified two birth certificates was inaccurate because she only verified one sample print out.

- [5] On 23rd November 2016, the PSC wrote to Ms. McKoy informing her that she was suspended from active duties for 60 days in accordance with Regulation 84(5) of the PSR. On 20th January 2017, the suspension was extended for another 30 days with effect from 22nd January 2017. On 23rd February 2017, Ms. McKoy was temporarily assigned to the Case Management Unit of the General Registry.
- [6] The PSC informed Ms. McKoy that it was contemplating disciplinary action by letter dated 6th January 2017. Ms. McKoy was given an opportunity to respond to the allegations against her. On 19th January 2017, the Public Service Union of Belize wrote to the PSC on behalf of Ms. McKoy, pointing out that disclosure was incomplete, and requesting additional time for Ms. McKoy to respond to the allegations given that the PSC's letter had been received only two days before the deadline to respond.
- [7] The disciplinary action commenced before the PSC on 17th August 2017. A hearing was conducted on 3rd April 2018. By letter dated 29th November 2018, the PSC informed Ms. McKoy that it concluded that she had acted in contravention of Regulations 40(1) and 40(2)(a) of the PSR by willfully omitting to properly perform her duties as a First Class Clerk in the Vital Statistic Unit. Ms. McKoy was dismissed from the public service with effect from 3rd December 2018.
- [8] Ms. McKoy appealed the decision to the BAC on 24th December 2018. On 10th January 2019, she filed a Notice of Grounds of Appeal and Skeleton Arguments. The grounds of Ms. McKoy's appeal were listed as being the following:
1. The Commission erred in fact and law when it ruled that they were satisfied that the Appellant failed to verify the requisite certificate against the electronic book and the register book.

2. The Commission erred in fact and law, when it failed to give the benefit of the doubt to the accused given the fact that no documentary evidence was produced on the contrary to indicate that the Appellant operated outside of the function of his (*sic*) office.
3. The Commission erred in fact and law when it determined that the Appellant did not act according to the unwritten policy of the department.

[9] On 29th May 2020, Ms. McKoy informed the BAC of a change of attorney. On 19th June 2020, the BAC forwarded the transcript of the proceedings before the PSC to Ms. McKoy's new attorney, Mr. Anthony Sylvestre, and requested their comments as soon as possible. On 29th July 2020, the Secretary of the BAC wrote to Mr. Sylvestre again requesting comments as soon as possible. Mr. Sylvestre filed a document titled "Submissions on behalf of Appellants" on 24th August 2020. In this document, Mr. Sylvestre raised the issue of whether the proceedings before the PSC was a nullity given the failure to complete the disciplinary process within 90 days. Mr. Sylvestre also argued that the PSC's decision was unreasonable and not supported by the evidence. The Solicitor General sent her comments to the BAC on 13th November 2020.

[10] The BAC dismissed Ms. McKoy's appeal on 19th October 2022 via correspondence she received on 6th December 2022. For ease of reference, the entirety of the BAC's decision is reproduced below:

The Belize Advisory Council met to consider the appeal for your client Ms. Lisa Mckoy, First Class Clerk.

By way of Notice of Appeal dated 10th January, 2019, the Appellant filed three (3) grounds of appeal for consideration and determination by the Council along with supporting submissions (hereinafter referred to as "the Appeal"). On 24th August, 2020, well outside the time for lodging her appeal and without any application to the Council, the Appellant filed what was misleadingly referred to as "Submissions on Behalf of the Appellant" (hereinafter referred to as "the Submissions"). The Submissions were not filed in support of the Appeal but, listed entirely new grounds and the arguments presented therein were in support of those new grounds. In accordance with Rules 3 and 4 of the Belize Advisory Council (Procedure) Rules, the new appeal guised as Submissions, having been filed out of time and without any application being made for an extension of time, could not and was not considered by the Council in arriving at its decision. Consequently, it was the considered view of the Belize Advisory Council that the Appeal is without merit and is hereby dismissed. The Council finds

that based on the evidence before it, the Commission was entitled to find that the Appellant breached Public Service Regulations 40(1)(a) and 40(2).

[11] On 26th January 2023, Ms. McKoy applied for permission to apply for the judicial review of the BAC's decision. Permission was granted on paper on 2nd February 2023. Ms. McKoy filed her fixed date claim form on 16th February 2023. Ms. McKoy seeks the following reliefs:

1. Declaration that the decision of the defendant contained in a letter dated 19th October 2022 and received 6th December 2022 dismissing the claimant's appeal and upholding the Public Service Commission's decision purporting to dismiss the claimant from the public service with effect 3rd December 2018 is unreasonable, irrational and erroneous in law.
2. An order of *certiorari* to remove into the High Court for the purposes of being quashed, the decision of the defendant contained in the letter dated 19th October 2022.
3. An order that the decision of the defendant is invalid or a nullity.
4. An order that the decision of the Public Service Commission in dismissing the claimant from the public service with effect 3rd December 2018 is overturned and the claimant's appeal of her dismissal is granted.
5. An order that the claimant be re-instated in the public service with effect 3rd December 2018 with all salaries and benefits accruing from then.
6. Such further or other orders or reliefs as may be just.
7. Costs.

[12] The BAC argues that its decision to uphold the PSC's decision was not unreasonable, irrational or erroneous in law. The PSC's failure to complete the disciplinary proceedings before the PSC within ninety days did not render the proceedings a nullity since Regulation 84(10) of the PSR provides for disciplinary proceedings to be conducted within that time only where practicable, and does not render the proceedings void where they are not conducted within the ninety days. In any event, the BAC argues that Ms. McKoy did not suffer any prejudice or injustice by the delay as she was reinstated and continued to receive her full salary until the disciplinary proceedings were concluded. The BAC further argues that the evidence buttressed the claim that Ms. McKoy willfully omitted to perform her duties as a First Class Clerk,

failed to comply with the requisite process that was a part of her duty as a First Class Clerk, and contravened Regulations 82(2), 40(1), and 40(2)(a) of the PSR. Therefore, the BAC's decision was neither unreasonable nor irrational.

[13] The BAC argues that the 24th August 2020 submissions raised new grounds of appeal which were not properly submitted to the BAC. Therefore, the BAC's decision not to consider those submissions and to dismiss the appeal on the basis that it was without merit was not unreasonable, irrational, or erroneous in law.

Issues for determination

[14] The following issues must be determined:

1. Whether the application for permission to apply for judicial review was made promptly or within three months.
2. Whether the BAC's decision was unreasonable, irrational, and erroneous in law.
3. What reliefs are available to Ms. McKoy?

Analysis

Whether the application for permission to apply for judicial review was made promptly or within three months

[15] Pursuant to rule 56.5 of the Supreme Court (Civil Procedure) Rules, 2005 ("CPR"), an application for permission to apply for judicial review must be made promptly, and in any event within three months from the date when the grounds for the application first arose. The court can extend this period if there is a good reason to do so. The court can refuse permission if there has been unreasonable delay before making an application.

[16] Because this court exercised its discretion under CPR 56.4(2) to grant Ms. McKoy permission to apply for judicial review without a hearing, the BAC is entitled to raise the issue of delay at this stage. The BAC argues that Ms. McKoy was informed of the BAC's decision to dismiss her appeal and uphold the decision of the PSC to dismiss her from the public service in a letter dated 19th October 2022. Ms. McKoy applied for

permission to apply for judicial review on 26th January 2023, some three months and seven days after the BAC's decision. As such, Ms. McKoy's application was not made promptly or within three months, and Ms. McKoy has not provided any explanation for the delay in making the application, nor was an application made to extend the time for making her claim. Although Ms. McKoy suggests that she only received the BAC's letter on 6th December 2022, her application lacked the promptitude necessary to apply for judicial review. According to the BAC, allowing the claim to proceed would be detrimental to good administration because "it may give the idea that applicants can sit on their rights and seek the aid of the court at their discretion".

[17] In response, Ms. McKoy points out that she provided uncontroverted evidence in her affidavit in support of the application for permission to apply for judicial review that she received the letter from the BAC on 6th December 2022 when she attended the BAC's office and obtained the letter from Ms. Aeshia McFadzean, the BAC's Secretary. There is no evidence from Ms. McFadzean or anyone else to controvert Ms. McKoy's evidence. Therefore, the BAC's challenge of the grant of permission to apply for judicial review is without merit.

[18] I agree with Ms. McKoy and dismiss the BAC's challenge to the grant of permission. Under CPR 56.5(3), an application for permission to apply for judicial review must be made promptly, and in any event within three months "from the date when grounds for the application first arose". In its letter dated 19th October 2022, the BAC wrote to Mr. Sylvestre that "the Belize Advisory Council met to consider the appeal for your client, Ms. Lisa McKoy, First Class Clerk". The date of the BAC's meeting is not indicated in the letter. However, in his first affidavit, Rene Villanueva Sr., the Chairman of the BAC from 24th April 2022 to 24th April 2023, stated that the BAC met on 14th October 2022 to consider Ms. McKoy's appeal. The 14th October 2022 date is the date when the grounds for the application first arose, and the starting point for the computation of the delay.

[19] Ms. McKoy's application for permission to apply for judicial review was made three months and twelve days later, outside of the three-month time limit provided for at

CPR56.5(3). The application was filed out of time. I must therefore consider whether there is a good reason for extending that time period.

[20] In **Maharaj v National Energy Corporation of Trinidad and Tobago (Trinidad and Tobago)**,³ the Privy Council explained that a court can take a variety of factors into account in making a decision to extend the statutory timeframe:

37. The obligation on an applicant is to bring proceedings promptly and in any event within three months of the grounds arising. The presence or absence of prejudice or detriment is likely to be a key consideration in determining whether an application has been made promptly or with undue or unreasonable delay. Thus, for example, in 1991 in *R v Independent Television Commission, Ex p TV Northern Ireland Ltd* reported [1996] JR 60 Lord Donaldson MR warned against the misapprehension that a judicial review is brought promptly if it is commenced within three months.

“In these matters people must act with the utmost promptitude because so many third parties are affected by the decision and are entitled to act on it unless they have clear and prompt notice that the decision is challenged.” (p 61)

Similarly, in *R v Chief Constable of Devon and Cornwall, Ex p Hay* [1996] 2 All ER 711, Sedley J observed (at p 732A):

“While I do not lose sight of the requirement of RSC Order 53 rule 4 for promptness, irrespective of the formal time limit, the practice of this court is to work on the basis of the three-month limit and to scale it down wherever the features of the particular case make that limit unfair to the respondent or to third parties.”

Indeed, when considering whether an application is sufficiently prompt, the presence or absence of prejudice or detriment is likely to be the predominant consideration. The obligation to issue proceedings promptly will often take on a concrete meaning in a particular case by reference to the prejudice or detriment that would be likely to be caused by delay.

38. In the same way, questions of prejudice or detriment will often be highly relevant when determining whether to grant an extension of time to

³ [2019] UKPC 5.

apply for judicial review. Here it is important to emphasise that the statutory test is not one of good reason for delay but the broader test of good reason for extending time. This will be likely to bring in many considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest.

[21] As I noted in **Dave Vaccaro; Rackel Waight v The Public Services Commission**,⁴ citing **R v Secretary of State for Transport ex p. Presvac Engineering Ltd.**,⁵ “while the question of when a claimant first learnt of the decision or action under challenge is irrelevant to the issue of whether the three month timeframe has been met, knowledge may be relevant to the question of whether an extension of time should be granted”.⁶ Ms. McKoy’s evidence that she received the letter from the BAC advising her of the BAC’s decision to dismiss her appeal on 6th December 2022 has not been challenged by the BAC. Considered from the time Ms. McKoy was made aware of the decision, the delay in filing her application for permission to apply for judicial review is of only one month and twenty days. This delay does not strike me as unreasonable, especially factoring in that time period straddled the Christmas and end-of-year holidays where most offices are closed.

[22] The BAC failed to establish any prejudice or detriment caused by the delay of twelve days outside of the three-month time limit provided for at CPR56.5(3). I reject the BAC’s submission that allowing the claim to proceed would be detrimental to good administration because “it may give the idea that applicants can sit on their rights and seek the aid of the court at their discretion”. In my view, it would be more detrimental to good administration to reward a decision-making body for sitting on a decision for more than a month and a half before informing the public officer that a decision concerning them has been made, by depriving that public officer of the opportunity to review that decision.

⁴ Consolidated Claims No. 730 and 731 of 2021 (“Vaccaro”).

⁵ (1991) 4 Admin L. Rep 121 at 133-134, cited in *Odean Grant v The Commissioner of Police & Anor*, [2017] JMSC Civ 78 at para. 28.

⁶ Vaccaro at para. 50.

[23] The BAC's objection to the grant of permission to apply for judicial review is dismissed.

Whether the BAC's decision was unreasonable, irrational, and erroneous in law

[24] Ms. McKoy seeks a declaration that the BAC's decision dismissing her appeal from the PSC's decision is unreasonable, irrational, and erroneous in law. Both parties filed extensive submissions in support of their respective positions that the PSC's decision was supported, or not, by the evidence, and by extension that the BAC's decision to confirm the PSC's decision was, or was not, unreasonable, irrational, and erroneous in law. As I find the PSC's decision to be unlawful, it follows that the BAC's decision dismissing Ms. McKoy's appeal is unlawful as well.

[25] It is not necessary to delve into the minutiae of the extensive evidence and submissions provided by the parties to the PSC and the BAC to determine this claim. In making the present decision, I adopted Arana J.'s (now JA) approach to the review of a decision of the BAC:

7. I must state that at this juncture that this Court is not interested in delving into the merits of the appeal heard by the BAC. That is not the purpose of judicial review. The Court is constrained to examine the letter issued by the PSC to the Applicant in order to determine firstly, whether that letter contained a decision of the PSC which was capable (in law) of being ratified and confirmed by the BAC and secondly, whether the BAC in ratifying this decision acted in a manner that was fair and reasonable and not arbitrary.⁷

[26] I find that the PSC's decision in this matter was not capable of being ratified and confirmed by the BAC because it was unlawful. The matter before the PSC proceeded on the basis of Ms. McKoy's alleged major misconduct under Regulation 82(2)(b), (h) and (n) of the PSR, and alleged violation of the general code of conduct as specified in Regulations 40(1) and (2), and 41(1) of the PSR. That these Regulations grounded the PSC's case against Ms. McKoy is evidenced by both the 12th October 2016 letter from the Registrar advising Ms. McKoy of the allegations against her, and the 6th January 2017 letter from the PSC advising Ms. McKoy of the PSC's intention to bring

⁷ Andrea Lord v Belize Advisory, Claim No. 842 of 2010 ("Lord").

disciplinary proceedings against her. These Regulations were also cited by the PSC's Chairman, Mr. Charles Gibson, at the outset of the disciplinary hearing.

[27] Regulation 82 of the PSR defines the term "misconduct" by setting out a list of behaviours which amount to minor or major misconduct, depending on the seriousness of the offending behaviour. The allegations against Ms. McKoy were grounded in Regulation 82(2)(b), (h) and (n) of the PSR, which provides as follows:

(2) A major misconduct is any of the following – [...]

(b) aids, abets or incites major misconduct by another public officer;

[...]

(h) fraud or dishonesty;

[...]

(n) making false declarations in the course of duty or public service;

[28] Part 7 of the PSR sets out a code of conduct for public officers. Ms. McKoy was alleged to have violated Regulations 40(1) and (2), and 41(1) of the code of conduct, which provide that a public officer "shall not conduct himself in any manner that would bring the public service into disrepute", must "demonstrate the highest level of professional conduct and personal integrity in the performance of their duties and shall not willfully refuse, or willfully omit, to perform those duties", and "shall not place himself in a position in which a conflict of interest may arise or a position which could compromise, or reasonably be said to compromise the job performance or office of that public officer".

[29] The PSC's decision is set out in its 29th November 2018 letter as follows:

Decision

After conducting the hearing and deliberating on the facts presented, the Commission concluded that, on the balance of probabilities, by failing to properly verify the Vital Statistics Unit database you acted in contravention of Regulation 40(1) and 40(2)(a) of the Belize Constitution (Public Service) Regulations, 2014 [...]

In that regard, the Commission approved that you be dismissed from the Public Service in accordance with Regulations 85(1)(g) of the Belize Constitution (Public Service) Regulations, 2014 with effect 3rd December, 2018.

[30] The letter goes on to detail the PSC's reasons for its decision. In essence, the PSC concluded, based on Ms. McKoy's evidence and that of the various witnesses called at the hearing of the matter, that Ms. McKoy "willfully omitted to properly perform [her] duties as First-Class Clerk at the Vital Statistics Unit, Attorney General's Ministry". This language mirrors that of Regulation 40(2)(a).

[31] Importantly, despite noting that the complaint against Ms. McKoy included allegations that she committed a major misconduct under Regulation 82(2)(b), (h), and (n) of the PSR, the letter of decision contains no decision by the PSC in respect of those allegations. The PSC did not find that Ms. McKoy committed a major misconduct, and must therefore be taken as having dismissed the allegations in relation to a violation of Regulation 82. The only finding made against Ms. McKoy was a finding of a violation of the code of conduct under Regulations 40(1) and 40(2)(a).

[32] The PSC's finding that Ms. McKoy violated the code of conduct under Regulations 40(1) and 40(2)(a) of the PSR could not, in law, ground the PSC's decision to dismiss Ms. McKoy from the public service in accordance with Regulation 85(1)(g) of the PSR. Regulation 85(1)(g) can only be triggered where the PSC finds that a public officer has engaged in misconduct:

85. (1) Where the Commission sees fit, having regard to the seriousness of the misconduct, the Commission may impose one of the following penalties or a combination thereof instead of the penalties specified in regulation 83(5)(b) or regulation 84(9) –

[...]

(g) dismissal.

[33] As noted above, the term "misconduct" is specifically defined at Regulation 82 of the PSR. A violation of the code of conduct may amount to a major misconduct under

Regulation 82(2)(r)(iv) of the PSR, but only where it is committed as a second offence and only where the PSC determines that the violation is of a major consequence:

(r) any of the following acts committed by a public officer as a second offence –

(iv) breach of public service code of conduct which the Commission determines are of major consequence;

[34] Regulation 82(2)(r)(iv) of the PSR was not invoked by the PSC, and not relied on in its decision. There is no evidence that this would have been Ms. McKoy's second offence for a violation of the code of conduct, and the PSC made no determination in regard to the consequence of the alleged violation. Regulation 82(2)(r)(iv) of the PSR does not apply.

[35] Because the PSC did not find that Ms. McKoy engaged in misconduct under the PSR, it was not open to the PSC to dismiss Ms. McKoy under Regulation 85(1)(g) of the PSR. The PSC erred in its interpretation and application of the PSR. Its decision to dismiss Ms. McKoy in those circumstances exceeded its powers and was unlawful. Since the PSC's decision was unlawful, it follows that the BAC's decision upholding the PSC's decision is unlawful as well. It was not open to the BAC to uphold a decision of the PSC that was unlawful.

[36] As noted by Lord Scarman in **Re Preston**,⁸ "judicial review is available where a decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached, or abuses its powers". Since I found that the PSC, and the BAC, exceeded their powers under the PSR by dismissing Ms. McKoy where the PSR does not allow dismissal, judicial review is available to Ms. McKoy.

[37] Before turning to the reliefs available to Ms. McKoy, I wish to comment on the parties' pleadings and submissions in the claim. It appears from the pleadings that both sides proceeded from the premise that the PSC, and the BAC, found that Ms. McKoy

⁸ [1985] AC 835 at 863. See also *R v IRC, ex p National Federation of Self Employed and Small Businesses*, [1982] AC 617 at 637.

committed major misconduct under Regulation 82(2) of the PSR. This is evidenced, on Ms. McKoy's part, by the grounds of her claim and, on the BAC's side, by the first affidavit of Rene Villanueva Sr. in which the former Chairman of the BAC stated that "the BAC concluded that the evidence buttressed the claim that the Claimant willfully omitted to perform her duties as a First-Class Clerk, failed to comply with the requisite process that was a part of her duty as First-Class Clerk and contravened Regulations 82(2), 40(1) and 40(2)(a) of the *Public Service Regulations 2014*." Having so pleaded, the parties went to great lengths in their submissions to show that the BAC's decision upholding the PSC's decision that Ms. McKoy committed major misconduct was supported, or not, by the evidence before the PSC. As noted above, neither the PSC's decision, nor the BAC's makes any mention of a decision made by either body under Regulation 82(2) of the PSR. Mr. Villanueva's evidence that the BAC concluded that the evidence buttressed the claim that Ms. McKoy contravened Regulation 82(2) is not reflected in the BAC's written decision, and is therefore not the decision of the BAC. The court must proceed on the basis of the decision as issued by the BAC. Because Regulation 82(2) is not referred to in either the PSC or the BAC's decision, the allegations under Regulation 82(2) must be taken as having been dismissed. It was therefore unnecessary to consider the parties' submissions on that ground.

[38] It was also unnecessary to consider the parties' submissions in regards to Ms. McKoy's alleged violation of the code of conduct, because whether Ms. McKoy breached the code of conduct or not, she could not have been dismissed from her employment with the public service on that ground.

What reliefs are available to Ms. McKoy?

[39] Since the PSC's decision to dismiss Ms. McKoy exceeded the PSC's powers and is unlawful, it follows that the BAC's decision upholding the PSC's decision is unlawful as well. The BAC's decision is quashed and Ms. McKoy's appeal of the PSC's decision is granted. It would serve no purpose for this court to remit the decision to the BAC for reconsideration since there is nothing for the BAC to reconsider. Since the PSC's

decision is unlawful, the only outcome is for Ms. McKoy's appeal to be granted. I will so order.

[40] Ms. McKoy seeks to be reinstated in the public service with effect from 3rd December 2018, with all salaries and benefits accruing from then. That order will be granted. As noted by the BAC in its submissions, remedy on judicial review is discretionary and depends on the circumstances of each case. The BAC opposes re-instatement on the basis that Ms. McKoy has been "out of employment of the Government of Belize for some time now and to reinstate the Claimant to her prior post will be detrimental to good administration and prejudicial to the person(s) who now hold the post". Any prejudice resulting from the delay in bringing this matter to its conclusion is of the BAC's making. Ever since her dismissal on 3rd December 2018, Ms. McKoy has dutifully pursued her legal remedies in accordance with the provisions of the law. She filed her appeal with the BAC on 24th December 2018, 21 days after the PSC's decision was communicated to her. The process before the BAC took approximately four years to complete. Two of these years were spent awaiting the BAC's decision after submissions. Ms. McKoy is not responsible for this delay, and should not be penalized for it.

[41] As for the BAC's argument that her reinstatement will be prejudicial to the person(s) who now hold the post, it is hypothetical and not supported by any evidence. I note that in **Lord**, Arana J. ordered the reinstatement of a public officer in her previous position after issuing an order of *certiorari* quashing a decision of the BAC upholding a decision of the PSC to transfer the public officer to another department. The same relief is available to Ms. McKoy. The court will make an order that Ms. McKoy is reinstated in the public service with effect from 3rd December 2018, with all salaries and benefits accruing from then.

IT IS HEREBY DECLARED AND ORDERED THAT

- (1) The claim is granted;
- (2) The decision of the Belize Advisory Council dated 14th October 2022 dismissing Ms. McKoy's appeal of the decision of the Public Service Commission dated 29th November 2018 to dismiss Ms. McKoy from the public service with effect from 3rd December 2018 exceeded the powers of the Belize Advisory Council and the Public Service Commission and is unlawful;
- (3) An order of *certiorari* is issued quashing the decision of the Belize Advisory Council dated 14th October 2022;
- (4) Ms. McKoy's appeal of the Public Service Commission's decision dated 29th November 2018 is granted;
- (5) Ms. McKoy is reinstated in the public service with effect from 3rd December 2018, with all salaries and benefits accruing from then;
- (6) Costs are awarded to Ms. McKoy.

Geneviève Chabot
High Court Judge