IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV260 of 2023

BETWEEN:

DR. ALEIDA POTT

Applicant

and

MEDICAL COUNCIL OF BELIZE

Respondent

Appearances:

Mr. Dale Cayetano for the Applicant

Ms. Agassi Finnegan for the Respondent

2023 October 12:

November 28.

JUDGMENT

[1] **ALEXANDER, J.**: The applicant ("Dr. Pott") is a medical doctor in Belize. Dr. Pott filed an amended application for leave to apply for judicial review of the decision of the respondent ("the Council") conveyed in a letter dated 9th February 2023 in which Dr. Pott's practicing certificate was suspended for one year with effect from 1st February 2023. She seeks leave to move the decision of the Council into the High Court to get an order of certiorari to quash it. Dr. Pott also seeks an order that the Council be directed to provide a copy of her personnel file, together with the entire record of the disciplinary proceedings held by the Council, within three days from the grant of the order. I shall refer to the letter dated 9th February 2023 suspending Dr. Pott's practicing certificate as "the suspension letter".

[2] The amended application was filed on 14th July 2023. This followed a previous notice of application filed on 9th May 2023, supported by an undated affidavit naming different respondents but served on the Council (discussed below).

[3] Dr. Pott raises six grounds of objections to the impugned decision, with the last one only added in her amended application:

1. The Council exceeded its jurisdiction by commencing disciplinary proceedings against Dr. Pott when the nature of the complaint did not reach the threshold prescribed by section 13(4) of the Medical Practice Act, Cap 318 ("MP Act").
2. The Council acted *ultra vires* the Regulations in its failure to issue a "show cause" letter to Dr. Pott in accordance with section 13 (1) (2) of the MP Act.
3. The Council also violated the principles of natural justice and acted in breach of section 14(1)(a)(b) of the MP Act when it refused to inform and invite Dr. Pott to the disciplinary hearing and to afford her the right to defend herself and put her case to the Council.
4. The decision of the Council conveyed in the suspension letter is patently unfair, in that it contains no reasons for the Council's decision.
5. The decision of the Council to suspend Dr. Pott's practicing certificate was harsh and unjust.
6. There was apparent bias in the Council's decision.

[4] In response, the Council filed the first affidavit of Dr. John Waight dated 27th June 2023, objecting to the grant of leave ("the first Waight affidavit"). The Council detailed the factual circumstances that gave rise to its decision. Subsequent to the application being amended, the Council filed the second affidavit of Dr Waight on 28th July 2023 ("the second Waight affidavit"). Interestingly, the amended application was never served on the Council but the Council replied having discovered the filing on the Apex E-Filing Portal.

[5] The Council stated in response to the amended application that Dr. Pott has not presented any facts or evidence that discloses an arguable ground with a realistic

prospect of success. Her amended application is also subject to two discretionary bars, namely delay and the availability of an alternative remedy to resolve the issue. It must be dismissed.

[6] For the reasons set out in this judgment, I refuse leave to apply for judicial review. I find that Dr. Pott has not shown an arguable case having a realistic prospect of success and additionally fails to acknowledge and address the alternative statutory remedy. I do not accept that her silence about the existence of an alternative remedy means that it did not exist or was inappropriate in this case.

Background

[7] Dr. Pott earned her Doctor of Medicine on 6th August 2012 from the Central American Science University School of Medicine. On 19th April 2016, she was issued with a licence to practice medicine in Belize, which was renewed annually until the decision that is the subject of the present proceedings.

[8] On 5th June 2019, Dr. Pott was appointed to the post of Medical Officer II at the Ministry of Health and Wellness ("the Ministry") and has worked at various departments within the Ministry.

[9] During the COVID Pandemic, she was directed to do training in COVID vaccines and later was responsible for administering vaccines and swabbing patients for COVID.

[10] On 5th October 2022, Dr. Pott received a letter from the Registrar of the Council regarding a request by the Ministry for the Council to intervene in a matter of disciplinary proceedings. The letter notified that she had allegedly falsified medical records in connection with the administration of COVID vaccines. It also stated that the Council intended to proceed with the complaint in accordance with section 14(2) of the MP Act. Dr. Pott was asked to provide an explanation by 30th November 2022. Attached to the letter were documents provided by the Ministry, purportedly on the alleged offence.

[11] Dr. Pott did not respond to the complaint[1] as notified by the Registrar by letter dated 5th October 2022. I shall refer to the letter received by Dr. Pott on 5th October 2022 as "the Registrar's letter" or "the show cause letter".

[12] On 26th January 2023, the Council met and reviewed the complaint made against Dr. Pott. At the conclusion of its meeting, the decision was made to suspend Dr. Pott. This decision was conveyed in the suspension letter, which allegedly was hand delivered on 9th February 2023, the same date it was written.

[13] Dr. Pott claims that she received the suspension letter on 14th March 2023, advising that her practicing certificate was suspended for one year from 1st February 2023.

Judicial Review

[14] Rule 56 of the Supreme Court (Civil Procedure) Rules, 2005 ("CPR") governs the judicial review procedure. It requires that the court's permission be obtained before an applicant can proceed to the substantive claim. Under CPR 56.2(1), an applicant must have *sufficient interest* in the subject matter of the application. Dr. Pott has sufficient interest, as she is the person directly and adversely affected by the decision. It is not in dispute that she qualifies under CPR 56.2(2)(a) to seek leave to review the procedures used to arrive at the decision. As there is no contest about her *interest* to apply for judicial review, I turn to the relevant issues.

Issues

[15] The present application raises several issues, primary of which are:

1. What impact, if any, does the non-compliance with procedural rules have at this stage?
2. Whether Dr. Pott has an arguable case with a realistic prospect of success.
3. Whether the amended application is subject to any discretionary bar.

[1] Submissions of applicant filed on 29 September 2023 at paragraph 8

What impact, if any, does the non-compliance with procedural rules have at this stage?

[16] The Council has raised several preliminary issues, which essentially decried certain procedural failings in the amended application. The amended application names the Council as the only respondent but this conflicts with the affidavit in support, where several different respondents are named including "Dr. George Goff, Chairman Belize Medical Council" and "Belize Medical and Dental Association". The affidavit is the same as attached to the original application save that it is now dated 14th July 2023. Additionally, the body of the affidavit (and amended application) refers to the respondent as "Belize Medical of Belize", with a listed registered address in Belize City. Ms. Finnegan states that it is Belize Medical of Belize, therefore, and not the Council, against whom the claim must be maintained.

[17] Ms. Finnegan argues also that the wrongly named respondents in the title of the affidavit cannot lawfully be substituted or added as additional parties in this manner. Dr. Pott is precluded from inserting them by way of her affidavit or otherwise. Ms. Finnegan asks that the amended application be dismissed on this basis.

[18] Ms. Finnegan also points to the non-compliance with CPR 30.2(e). She states that the form of the affidavit is wrong, as it is not properly marked. She asks that the affidavit be struck. Without evidence in support as required under CPR 56.3(4), the application must be dismissed.

[19] Ms. Finnegan also states that the amended application should be dismissed because its affidavit lacks sufficient facts to support or verify the claims made against the Council, as acting outside its jurisdiction. Further, according to Ms. Finnegan, the order for disclosure is misplaced and constitutes a fishing exercise, as Dr. Pott does not seem to know the ambit of her case. Moreover, Dr. Pott has had ample opportunities to put right her application but failed to do so.

[20] Dr. Pott has not responded to the preliminary issues raised by the Council.

[21] Under CPR 30.2(e), each affidavit is mandated to be marked at the top right-hand corner with the party on whose behalf it is filed, the initials and surname of the deponent, and the number of the affidavit in relation to the deponent. Despite being given a previous opportunity to amend her application, there remains a continuing trend of non-compliance with the rules and of poor pleadings. She has named one respondent on her amended application who is not the same as the two named respondents on her affidavit in support. In the body of her application and affidavit she refers to a fourth respondent, Belize Medical of Belize.

[22] An applicant seeking review of a decision made against her must come knowing the ambit of her case, and not be on a fishing expedition to identify its contours. At the very least, Dr. Pott ought to have known the decision maker against whom she complains and against whose decision she seeks a review. She did not only fail to put her filings in order, she also did not serve the amended application. The lack of service alone is untenable and flouts the overriding objective of the rules. It is not the responsibility of the decision maker to go fishing for applications for review that have been made against its decisions. The rules require service as a fundamental step. Having not served the amended application, how is the supervisory function of the court to be triggered? Further, at this stage the court sits to determine if a respondent is a reviewable body but as drafted, the many respondents on the affidavit are now admitted to be incorrectly inserted. Moreover, the affidavit is thin on information in support of the claims made.

[23] Mr. Cayetano did not respond in his submissions to the procedural errors pointed out by Ms. Finnegan. He did not place an application to amend before me but operated as if these errors did not exist. At the hearing, Mr. Cayetano asked the court to place substance before form and not dismiss the application. He ignored the mandatory nature of the rules that are breached. The matter is at the leave stage and I am without the benefit of any application to amend. I am not minded to exercise, at this stage, any discretion to cure deficient pleadings where my intervention is not properly sought. I find that the procedural missteps are serious and the form of the application fails to satisfy the basic requirements of the rules. For example CPR 3.6(1) stipulates

the size of paper to be used for filing documents, which was not complied with. Parties must take care to follow the provisions of the rules. Nevertheless, the Council has responded (despite not being served with the amendment) and I will proceed to look at the leave application on its merits. I am required at this stage, to consider if Dr. Pott has met the threshold test to be granted leave.

Analysis

Whether Dr. Pott has an arguable case with a realistic prospect of success.

[24] The primary issue is whether there is an arguable case to grant the leave to review the Council's decision. If this is answered in the affirmative then I must consider if there are any discretionary bars to the grant of leave for judicial review.

[25] I bear in mind that the purpose of leave is to avoid wasting the court's time by busybodies, with trifling complaints of administrative errors whilst simultaneously removing the uncertainty in which public officers and authorities operate.[2]

[26] During this stage, I must act as a watchman to monitor and determine if an applicant can be granted access to file a substantive application. This is often described as "a gate-keeping function". The court's role at this stage was tidily summed up by Abel J in **Dr. Abigail McKay v the University of Belize et al**[3] at paragraph 38 as:

> [38] The court is primarily concerned with considering whether to grant permission to apply for judicial review and is required to perform a 'gate-keeping function' to eliminate at an early stage, claims which are hopeless, frivolous or vexatious and to ensure that a claim only proceed (sic) to a substantive hearing if the court is satisfied that there is a case fit for further consideration.

[2] Ramlochan et al v National Housing Authority HCA No. S1475 of 2003; or TT 2003 HC 107.
[3] Claim No. 689 of 2013.

The Test

[27] The test to determine if leave is to be granted or refused is set down in **Sharma v Brown-Antoine et al**:[4]

> The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy. … But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application.
> …
> It is not enough that a case is potentially arguable; an applicant cannot plead potential arguability to 'justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen.[5]

[28] The leave application is not a mere perfunctory exercise as "judges, regardless of the opinion of the litigants, are required to make an assessment of whether leave should be granted in light of the now stated approach".[6] Following **Sharma**, it is no longer acceptable to bandy about nice sounding legal expressions such as "*ultra vires*" "wrong in law" "null and void" or "unreasonable" without providing the requisite affidavit evidence to support these conclusions. It remains, however, a flexible test that does not seek to barricade access of applicants with legitimate grievances to the judicial review process.

[29] The flexibility of the test allows the court to look at all the evidence and submissions on arguability, and then determine if there is an arguable ground with a realistic prospect of success. A complaint built on a speculative ground, or on the hope that the interlocutory processes of the court may strengthen or raise the case to a good arguable threshold, will be refused leave to proceed. The test is not a potentially arguable case; it is an arguable case with evidence that points to some realistic prospect of success. In applying the test, the judge "cannot assume that the facts or allegations put forward by the applicant are true in order to decide".[7] The judge also

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[4] [2006] UKPC 57 at para. 4.
[5] Matalulu v Director of Public Prosecutions [2003] 4 LRC 712, 733.
[6] Regina v Industrial Disputes Tribunal (Ex parte J. Wray and Nephew Limited) Claim No. 2009 HCV04798 Supreme Court of Jamaica (delivered 23rd October 2009, unreported).
[7] Digicel (Jamaica) Ltd v The Office of Utilities Regulation (2012) JMSC Civ. 91.

cannot adopt a dismissive or "superficial approach" to the examination of the complaints raised by the applicant, but decide if there is need for a meritorious investigation of the complaint.

[30] In **Sharma**, the Board tied the arguability limb to being able to show that the allegations are serious, and the strength or quality of the evidence can prove the allegations on the balance of probabilities.[8]

[31] In **Leroy King v The Attorney General of Antigua and Barbuda et al**,[9] the Eastern Caribbean Supreme Court opines that the flexible arguability test in **Sharma**:

> … does not suggest that a judge adopts a superficial approach to the complaints in his examination of the matters which are put forward as giving rise to the complaint. Rather, he must satisfy himself as to whether a full investigation at a full trial is merited. A proper evaluative exercise must be carried out.

[32] I will look below at each complaint raised by Dr. Pott to assess if it raises an arguable ground having a realistic prospect of success, and is fit for further investigation at a substantive hearing, with all the parties and relevant evidence and arguments on the law. Dr. Pott has raised six bases on which the decision of the Council is challenged.

Exceeding Jurisdiction

[33] Dr. Pott contends that the Council exceeded its jurisdiction when it commenced disciplinary proceedings against her. The nature of the complaint did not reach the threshold prescribed by section 13(4) of the MP Act. It is convenient at this point to look at the section under which Dr. Pott makes her jurisdiction claim.

[34] Section 13 of the MP Act states:

> 13.–(1) The Registrar, in consultation with the Chairman of the Medical Council, shall at the expiration of every calendar year prepare a list in alphabetical order according to surnames, of all registered and recertified medical practitioners, together with the designation of the qualifications in respect of which they were

[8] R(N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468, para. 62.
[9] Claim No. 0011 of 2017 at paragraph 42.

registered or recertified, the date of registration, and the address of such persons, and the Registrar shall cause such list to be published in the Gazette, by January 30 of every calendar year.

(2) The Registrar shall also cause to be published in the Gazette, as soon as practicable after such registration, the names of any person registering as a medical practitioner after the 1st January in any year.

(3) The absence of the name of a person from the updated list published in the Gazette shall, unless the contrary is shown, be prima facie evidence that such person is not registered.

(4) The Registrar shall by the 1st January of each year cause a copy of the said list of registered and recertified medical practitioners to be forwarded to the Director of Health Services or some other officer in the Ministry designated for that purpose by the Minister.

[35] I do not understand why Dr. Pott would allege that the Council exceeded its jurisdiction under section 13(4) or that it commenced disciplinary proceedings under that section. There is no prescribed statutory regime stipulated for making complaints against medical practitioners in section 13. Section 13(4) deals with the responsibilities and/or obligations of the Registrar to provide the Director of Health or some other designated officer in the Ministry with a copy of the list of registered and recertified medical practitioners. It also provides the timeline by which this act must be done, which is the 1st January of each year.

[36] Section 13(4) does not deal with disciplinary procedures or the process for receiving and treating with complaints against medical practitioners. It does not specify any threshold conditions to be crossed by Dr. Pott to enable a complaint against her to be proceeded with under the MP Act.

[37] Further, Dr. Pott relies on an affidavit that is starved of evidence. She provides no facts or evidence to support her allegations that the nature of the complaint did not reach the statutory threshold under section 13(4). I have no explanation as to why Dr. Pott would come under an inapplicable section to claim that the Council exceeded its jurisdiction. In my judgment, section 13(4) is inapplicable, as it does not deal with complaints that trigger disciplinary proceedings. If it was a typographical error, it

ought to have been raised at the hearing by Mr. Dale Cayetano, counsel for Dr. Pott. Mr. Cayetano's failure to do so leaves the court questioning the pleadings.

[38] Dr. Pott's allegation on jurisdiction under section 13(4) is not properly grounded in the statutory regime for receiving and dealing with complaints. The allegation is misconceived.

Show Cause Letter

[39] Dr. Pott claims that she did not receive a "show cause letter" under section 13(1) & (2) so the Council acted *ultra vires* the regulation. According to Mr. Cayetano, the Council also acted *ultra vires* by receiving and acting on a complaint that did not come by way of an affidavit, as required by the MP Act section 14(4). This claim was made only in Mr. Cayetano's submissions, who stated that the Council did not receive any such affidavit to enable it to open disciplinary proceedings. Mr. Cayetano points to the first Waight affidavit whose evidence is that the complaint against Dr. Pott came by way of memorandum dated 18th July 2022. I will deal with the second alleged *ultra vires* act first then the show cause letter.

[40] The relevant parts of section 14 state:

> 14.–(1) The Medical Council shall–
>
> (a) if a person makes a complaint to the Medical Council alleging professional misconduct against a medical practitioner; or
>
> (b) if it, without receiving a complaint, has reasonable suspicion that a medical practitioner may have committed professional misconduct,
>
> cause an investigation to be made in the matter.
>
> (2) The Secretary shall, before causing an investigation to be made under sub-section (1), **notify the medical practitioner** against whom the allegations of misconduct are made **in writing** of–
>
> (a) the nature and substance of the allegations;
>
> (b) the person making the allegations, where applicable; and
>
> (c) any other information in the possession of the Medical Council relating to the allegations,
>
> and **call on the medical practitioner to answer the allegations**, whether personally, or in the company of an attorney, or to provide an explanation or

representation he may wish to make before a specified date determined by the Medical Council.

(3) The Medical Council shall consider the answer, representation or explanation referred to in sub-section (2) and may thereafter –

(a) determine that no investigation of professional misconduct shall be made; or
(b) conduct an investigation of professional misconduct into the matter.

(4) **A complaint referred to in sub-section (1) shall be made by affidavit**.

…

(6) For the purposes of this section, "professional misconduct" includes but is not limited to any of the following–

(a) …

…

(j) knowingly giving a false certificate respecting birth, death, notice of disease, state of health, vaccination or disinfection or respecting any matter relating to life, health or accident insurance. [My emphasis].

[41] Mr. Cayetano's submission is correct that a formal complaint on disciplinary misconduct must come by way of an affidavit. He neglects to point out though that section 14(1)(b) authorizes the Council to cause an investigation to be made where, "if it, without receiving a complaint, has reasonable suspicion that a medical practitioner may have committed professional misconduct." There is no requirement here for the investigation to be open only on receipt of a complaint by affidavit. An investigation can be opened based on "reasonable suspicion" of professional misconduct. The legislature clearly intended to give the Council enough flexibility to conduct investigations rather than to stymie the disciplinary investigative process where it might be warranted.

[42] The evidence of Dr. Waight is that the Ministry's records show that Dr. Pott had falsified two patient records, by using her assigned Belize Health Information System ("BHIS") account and computer to enter false vaccination information of two named persons. These two persons were given vaccination certificates, which allegedly bore the forged signatures of two nurses and contained biodata and vaccine administration dates that did not match the information entered by Dr. Pott on the BHIS. I do not agree that the opening of the investigation was outside the powers of the Council. I

also do not agree with Mr. Cayetano that the Council must wait until an applicant responds to an affidavit before it decides if "an investigation is necessary or not." This position puts the Council at the behest of medical practitioners who may choose (as did Dr. Pott) to ignore communications of professional misconduct, with the result that no investigation can ever be commenced. This could not be the intention of the legislature in setting up the statutory regime to investigate professional misconduct by medical practitioners. Mr. Cayetano's arguments are misconceived.

[43] I turn now to the show cause letter. Section 13(1) & (2), as set out at paragraph [34] above, does not impose any obligation on the Council to issue show cause letters. It deals with the register of medical practitioners, not disciplinary proceedings. The Council is, therefore, not empowered to issue any show cause letter under section 13(1) & (2), and rightly did not. This argument that the Council acted *ultra vires* is fragile and unsustainable as launched. I do not find an arguable case having a realistic prospect of success on this basis, and it fails.

[44] For clarification for medical practitioners in Belize, I state further that there is no statutory requirement for a show cause letter to be labelled as such. It is the contents notifying of the complaint and requiring an answer to same, within a stipulated timeframe, that designate it as a show cause letter that invites compliance with the disciplinary proceedings. Further, and I reiterate, it is section 14, not section 13, that provides the mechanism for triggering an investigation of complaints and commencement of disciplinary proceedings.

[45] In the above regard, I note the arguments of the Council that a show cause letter was given to Dr. Pott as mandated under section 14. Dr. Pott admits to receiving it on the date it was issued (i.e. 5th October 2022). She also exhibits the show cause letter to her affidavit. She did not respond to it. She then claims that she did not get any show cause letter and uses this as the basis to allege that the Council has acted *ultra vires* the regulation. I will set out the show cause letter, which answers the *ultra vires* allegation.

[46] The letter dated 5th October 2022 reads:

> Dear Dr. Pott,
>
> I write on behalf of the Medical Council of Belize and in regard to the complaint which the Council has received from the Ministry of Health and Wellness concerning the alleged falsification by yourself of medical records in connection with the administration of vaccinations. Copies of all correspondence from the Ministry are enclosed for ease of reference.
>
> Since it has received a written complaint, the Council is proceeding in accordance with the below stated Section 14 Subsection 2 of the Medical Practice Act, 2013:
>
> "The Secretary shall, before causing an investigation to be made under subsection (1), notify the medical practitioner against whom the allegations of misconduct are made in writing of–
>
> (a) the nature and substance of the allegations
> (b) the person making the allegations (where applicable) and
> (c) any other information in the possession of the Medical Council relating to the allegations,
>
> and call on the medical practitioner to answer the allegations, whether personally, or in the company of an attorney, or to provide an explanation or representation he may wish to make before a specified date determined by the Medical Council".
>
> The Council requests a response from you in writing by 30th November, 2022.
>
> Regards
> John Waight F.R.C.S.Ed.
> Registrar
> Medical Council of Belize

[47] This is the show cause letter that Dr. Pott states that she received. It was ignored. It is a replica of the requirements of the MP Act for such a letter. It includes the nature of the allegations, identifies the person who made the allegation and invites a response by a specified date. The fact that it is not labelled as "Show Cause Letter" does not mean it is not and, in any event, the Council is not mandated to give a label to this letter. It was issued by the Registrar and/or Secretary to the Council so is in compliance with the MP Act which defines the Secretary as "the person for the time

being performing the functions of the Secretary to the Council." By this show cause letter, Dr. Pott was also provided with all necessary documents in the possession of the Council on the alleged offence. She was empowered with the necessary information to answer the alleged complaint against her. The fact that she did not avail herself of the opportunity to respond is no fault of the Council. Given that Dr. Pott has exhibited this show cause letter to her affidavit, I am unsure of what other letter she seeks or thinks is statutorily required. The evidence shows that the Council did bring the complaint to Dr. Pott's attention and the nature of it. I am unable to find an arguable case based on fault with the show cause letter, which communicated all the necessary information that the body taxed with the responsibility for conduct of the disciplinary proceedings is required to give. Having received it and, later, the suspension letter, there is no excuse for not knowing the decision maker. Her claim as to not receiving it, and that consequently the Council's actions are *ultra vires*, cannot be maintained.

Natural Justice

[48] Dr. Pott claims that the Council violated the principles of natural justice and acted in breach of section 14(1)(a)(b) of the MP Act. She alleges that the Council refused to inform and invite her to the disciplinary hearing and/or to afford her the right to defend herself and put her case to the Council. I disagree. Section 14(1)(a)(b) is set out above at paragraph [40].

[49] Section 14(1)(a)(b) provides no such requirements as alleged by Dr. Pott. In any event, Dr. Pott was served with a show cause letter, extending her an opportunity to address the allegations before the Council. She ignored the complaint, turned her back on the opportunity to respond to the allegations and now cries violation of her natural justice rights and/or a denial of her statutory right to respond. Mr. Cayetano submits that the Council acted in breach of the rules of natural justice and, by extension, committed a gross violation of her right to protection of the law under the Constitution. Counsel stated that Dr. Pott's "failure to respond only meant that the Council could decide whether further investigation is necessary or not. The Council

still had the statutory obligation to hear the Applicant and her witnesses." Mr. Cayetano seems to be maintaining a position that the investigative process depended on a response by Dr. Pott, and if none was ever forthcoming then no investigation could ever be conducted into any allegations of professional misconduct against Dr. Pott. In effect, Dr. Pott could stymie the investigation by her failure to respond. By proceeding with its investigation and coming to conclusions, she "was not afforded a hearing much less a fair one". I disagree.

[50] This is not a case that satisfies breach of the principles of natural justice or breach of the constitutional right to protection of the law. Dr. Pott, by her own admission and evidence, was given an opportunity to be heard. There is no breach of natural justice rights if she refuses to make use of such an opportunity. Written representations satisfy the requirements of a fair hearing.

[51] There is decisive authority that an oral hearing is not necessary and what is required is a chance to reasonably make a reply.[10] In **Rees v Crane**, the Board stated:

> ... their Lordships are satisfied that in all the circumstances the respondent was not treated unfairly. He ought to have been told of the allegations made to the commission and **given a chance to deal with them–not necessarily by oral hearing, but in whatever way was necessary for him reasonably to make his reply**. [My emphasis].

[52] It is clear that the word "hearing" does not necessarily in all circumstances mean an oral hearing.[11] A formal hearing has been held to be "unnecessary if by that is meant an oral hearing in every case": see **Chief Constable of North Wales v Evans**.[12]

[53] Dr. Pott brushes aside the opportunity to make representations or a response by 30th November 2022 and contends that the decision made in her absence breaches her natural justice rights. She cannot seriously be maintaining that she was not given an opportunity to reply to the allegations against her. She fails on this issue too, as she has no arguable ground having a realistic prospect of success.

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[10] Rees v Crane [1994] 1 AER 833, 848-849.
[11] Commonwealth Caribbean Administrative Law, Professor Eddy Ventose, at pages 331-332.
[12] [1982] 3 AER 141, 144.

Was Decision Unfair and with No Reasons?

[54] Dr. Pott contends that the decision to suspend her was unfair as she was given no reasons for it. She attaches the suspension letter containing the purported "unfair decision". The suspension letter itself answers her claim.

[55] The suspension letter refers to receipt of the complaint, the absence of a response to the notification, and points to the section under which the Council proceeded with the hearing, section 14 sub-section 9. It quotes the relevant part of section 14, containing the governing criteria for conducting the professional misconduct hearing. The Council then sets out section 14(9)(b), containing the options available to and used by it to deal with the professional misconduct. The section 14(9)(b) option is, "an order suspending, limiting or restricting the medical practitioner's practising certificate in such manner as the Medical Council may determine, including limiting the practise of the medical practitioner to or by the exclusion of one or more specified activities of medicine, or by stipulating periodic Medical Council reviews". The Council then clearly informs of its decision.

[56] The Council did not provide a bare suspension decision but one that contains justification and an explanation as to how it was arrived at. Dr. Waight in his first affidavit states that the complaint was accompanied by "a preponderance of evidence establishing that the Applicant had falsified vaccination records for two named individuals". The complaint was accompanied by documentation and there was no counter position raised by Dr. Pott. The affiant states further that the issue of service of the complaint on Dr. Pott was confirmed in the meeting held on 10th November 2022. As she was required to respond by 30th November 2022, the Council deferred the substantive issue for a response to the meeting on 8th December 2022 and then to 26th January 2023. It is in this context of waiting for a response from Dr. Pott, with none forthcoming, and of deferring the issue on more than one occasion that the issue was finally tabled and a decision taken. Dr. Pott's disagreement with it, the fact that she had refrained from putting her case before the Council and the fact that the

reasons are not drawn up like a court judgment do not render the decision automatically unfair. An applicant's dislike of the formulation of reasons is not a justification for invalidating its contents. The form of the reasons are not fixed in statute or otherwise nor is its drafting restricted to a formalized structure. It suffices if the thinking of the decision maker is clear and sets out to the applicant and/or court how the decision was arrived at.

[57] This issue was addressed by Arana J in the case **of Andrea Lord v The Belize Advisory Council**,[13] which cites with approval the dictum of Legall J in **Melanie Gladden v The Attorney General et al**[14]:

> **"A public authority is not required to give its reasons in a form similar to a judgment of a court. In giving its reasons for a decision, a brief statement of the facts, and a concise statement of the way in which it arrived at its decision are enough:** see Exparte Cunningham above. **The point to be borne in mind is to give the claimant, and resulting possibly along the process, to the court, a brief idea of the thinking of the authority in arriving at its decision in the matter before it. The giving of reasons for decisions by public authorities affecting the right to work of officials is not only fair and just, but goes to some extent to prevent notions of arbitrary and discriminatory or abusive or a biased exercise of power by the authority concerned, which in turn engenders public confidence in the system of administrative justice."** [Emphasis original]

[58] There exists no realistic prospect of success by Dr. Pott on this ground. It fails.

Was Decision Harsh and Unjust?

[59] Dr. Pott claims that the decision in the suspension letter was harsh and unjust. She provides no evidence to substantiate this assertion. As stated above, the raising and waving before the court of nice sounding legalese do not go towards showing a good arguable case with a realistic prospect of success. She fails on this limb too.

[60] Section 14(9) lists a range of penalties that the Council is authorized to impose for professional misconduct. The Council is vested with a wide discretion to select from

[13] Claim No. 842 of 2010.
[14] Claim No. 692 of 2010.

this list. I have no evidence before me that the selected penalty is harsh, unjust or outside the power of the Council to grant. Of the range of available penalties, the Council decided to allow Dr. Pott to resume her practice after the suspension period. The evidence of Dr. Waight in his first affidavit was that the professional misconduct occurred during the COVID-19 pandemic. It was a serious allegation, involving vaccinations to secure the public welfare. The affiant stated that the dissemination of vaccination cards was a requirement for travel, in keeping with the global mandate of limiting exposure. Falsification of vaccination cards had the potential for serious consequences and was contrary to the global health mandate. Ms. Finnegan, counsel for the Council, advanced that the penalty, when juxtaposed with the others, was not at the higher end of the penalty spectrum. I am minded to agree with Ms. Finnegan's argument. In any event, I have not a scintilla of evidence from Dr. Pott to enable me to assess the harshness of the penalty. Dr. Pott does not convince me that she has a realistic prospect of success on this ground. It too must fail.

Bias

[61] Bias was only alleged in the amended application. Dr. Pott stated simply that in coming to its conclusion, the Council was biased. She provided no evidence in her affidavit of bias. She could not as the affidavit was unchanged from the one used in her original application where bias was not alleged. Mr. Cayetano submitted, however, that the Director of Health Services ("director") is an ex-officio non-voting member of the Council under the MP Act and should not have participated in, but needed to withdraw from, the meeting that suspended Dr. Pott: see section 3(1). Mr. Cayetano submitted that the director brought the complaint, and executed the sanction by participating in the meeting that suspended Dr. Pott. Dr. Pott was denied the right to a fair trial and the court ought to review the lawfulness of the procedure. I was not swayed by Mr. Cayetano's arguments, especially given the dearth of evidence to bolster this claim.

[62] To determine apparent bias, the court must look at all the circumstances as they appear from the materials before it and "not just the facts known to the objectors or

available to the hypothetical observer at the time of the decision": see **The Rt. Honourable Dean Barrow v Edmund Marshalleck et al**.[15] In **The Rt. Honourable Dean Barrow**, Shoman J identifies the question that the court must ask itself as, "whether those circumstances would lead a fair minded and informed observer to conclude there was a real possibility that the tribunal was biased."[16]

[63] In the present case, Dr. Pott did not provide any evidence to support an allegation of bias. She only pleaded this ground in her amended application and the affidavit in support was the same one attached to the original application. It was merely a bare allegation. The allegation remains unfounded and cannot be maintained. Her counsel also argued bias, based on the alleged involvement at the suspension meeting of the director who was a non-voting member. There was no evidence of interference or participation by the director in the conclusion of the Council. Dr. Waight stated in his affidavit that the decision to suspend Dr. Pott was made by four of the five voting members present at the meeting (not the director), and provided the minutes of the meeting of 26th January 2023. This ground too must fail.

Whether the amended application is subject to any discretionary bar.

[64] After an assessment of the evidence before me, I find that there is no arguable case with a realistic prospect of success. Having not found in the affirmative, I am not required to look at the discretionary bars of delay and alternative redress. In any event, Dr. Pott, who simply stated that there is no alternative remedy, neglected to acknowledge the statutory remedy under section 23(1)(b) that provides a route to question the Council's decision on disciplinary proceedings against her, within three months of the decision. It allows her to approach the court under CPR 61 to have the Council state a case for determination of the High Court. There is no evidence that the statutory remedy is unsuitable or is incapable of fully and directly resolving the issue in a sensible manner.[17]

[15] Claim No. 33 of 2022.
[16] Ibid.
[17] The Queen on the application of the Wetherspoon plc. v Guildford Borough Council [2006] EWHC 815 para. 90.

[65] I will dismiss the application for leave.

Costs

[66] Ms. Finnegan requests costs of the leave application on the basis that apart from the failure to secure leave to proceed to judicial review, the state of the pleadings was abysmal. Assumedly, she was required to do more work at deciphering the case against the Council than was necessary. If the Council was successful then it would have been because of the extensive work done to resist the application. In my view, Dr. Pott was entitled to seek leave to apply for judicial review. The fact that she was found not to have an arguable case does not make her application unreasonable. I will not award costs.

Disposition

[67] It is ordered as follows:

1. The application for leave is refused.
2. Each party is to bear their own costs of the application.

Martha Lynette Alexander
High Court Judge