

**IN THE HIGH COURT OF BELIZE. A.D. 2023**

**Claim No. 394 of 2022**

**BETWEEN**

**ATTORNEY GENERAL OF BELIZE                      APPLICANT**

**AND**

**PUBLIC SERVICE COMMISSION                      RESPONDENT**

**Hearing by Written Submissions**

**Appearances:**

Ms. Samantha Matute, Asst. Sol. Gen. and Mr. Jorge Matus, for the Applicant

Mr. Anthony Sylvester, for the Respondent

**Decision on Permission for Judicial Review**

**Introduction:**

[1] The Attorney General of Belize (AG) has applied for permission to commence Judicial Review proceedings against the Public Service Commission (Commission). The AG claims the Commission prematurely and summarily dismissed the disciplinary action against Ms. Lavette Nunez, the Court Administrator for the Magistracy Department, for alleged major misconduct committed by her in her role as Court Administrator. The decision to dismiss the disciplinary action was made as no “show cause letter” was issued to the Court Administrator. The AG has sought judicial review as she argues that she has no other remedy open to her to challenge the Commission’s decision.

[2] The Commission opposes the application on principle by arguing that the public law remedy of Judicial Review is not open to the Crown. If I disagree, the Commission argues that the AG has not met the requirements for Judicial Review.

[3] I find Judicial Review is not appropriate in this case. A review of the *Belize Constitution (Public Service) Regulations, 2014*<sup>1</sup> (*Public Service Regulations*) clearly states that the AG has a right to appeal. The availability of alternative remedy is a well-established bar to judicial review.<sup>2</sup> That the *Public Service Regulations* only reference a specific appeal mechanism for the public officer who is subject to disciplinary proceedings does not defeat the AG's right to appeal. The Court of Appeal has jurisdiction to hear the AG's appeal.

### **Factual Background:**

[4] The Office of the Auditor General conducted desk audits of purchases made by government entities in the Smart Stream system which included a review of purchases made by the Magistrate's Court in Belize City. On or about the 12<sup>th</sup> day of October 2021, the AG received the Auditor General's report concerning financial irregularities at the Magistrate's Court.

[5] The report made allegations of misconduct against certain persons employed at the Magistracy Department including the Magistrate's Court Administrator. The allegations are considered to be major misconduct under the *Public Service Regulations*.

[6] By a letter from the Solicitor General dated the 16<sup>th</sup> of November 2021, the Court Administrator was informed of the allegations and put on administrative leave for five working days in accordance with the *Public Service Regulations*.

[7] On the 22<sup>nd</sup> of November 2021, the Solicitor General submitted a case of alleged misconduct against the Court Administrator to the Commission with the recommendation to commence disciplinary action against the Court Administrator.

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<sup>1</sup> Statutory Instrument No. 59 of 2014 [*Public Service Regulations*].

<sup>2</sup> *Vaccaro v Public Service Commission; Waight v Public Service Commission*, Sup. Ct. Claim Nos. 730 and 731 of 2022 at para 18 [*Vaccaro*].

[8] On the 8<sup>th</sup> of December 2021, the Commission sent notice to the Solicitor General and Court Administrator informing them that they intended to hold a disciplinary hearing on Tuesday the 5<sup>th</sup> day of April 2022.

[9] At the start of the hearing, the Court Administrator raised a preliminary objection. She alleged that she was not properly before the Commission because she had not received a show cause letter. After a brief adjournment, the parties returned, and the Chairperson stated that the Commission had no record of the show cause letter being served on the Court Administrator and asked the Ministry whether a signed copy of the show cause letter was on file. The Ministry could not answer. The Ministry had copies of the unsigned show cause letter, the suspension letter, and the notice letter informing the Court Administrator of the hearing scheduled for that day in their files.

[10] The Ministry asked for time to confirm if the signed copy of the show cause letter was on the personal file of the Court Administrator. The Commission refused the request and dismissed the disciplinary action on the basis that there was no proof of a signed copy of the show cause letter.

[11] In the Application for Judicial Review of the Commission's decision, the AG seeks several orders, declarations, *certiorari*, and *mandamus*. The parties agreed that I would hear and decide this Claim based on written submissions alone. They also agreed to present arguments on the permission for Judicial Review and the substantive Claim in the event I granted the AG's application.

## **Analysis**

[12] In *Vaccaro v Public Service Commission; Waight v Public Service Commission*,<sup>3</sup> Chabot J. sets out that Judicial Review is only available where the Court is satisfied that:

1. there is an arguable ground for Judicial Review;
2. there is a realistic prospect of success; and
3. the application is not subject to a discretion bar such as delay or an alternative remedy.

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<sup>3</sup> *Vaccaro* at para 17.

The criteria are cumulative, which dispenses with the need to consider the remaining factors if one of the criteria is not satisfied. Where there is an alternative remedy permission for Judicial Review will not be granted.

[13] I find that an alternative remedy exists. The *Public Service Regulations* explicitly guarantee a right of an appeal, in addition to the right to be heard and to unbiased decision-making to “all parties”.<sup>4</sup> The AG brought the application for discipline to the Commission in her capacity as the Chief Executive Officer of the AG’s Ministry. Subsection 81(2) and section 84 of *The Public Service Regulations* outline that the Chief Executive Officer initiates discipline for major misconduct of a public officer and is a party at any hearing of the Commission. The AG is clearly a party.

[14] I am not persuaded by the AG’s submission that there is, nonetheless, no alternative remedy as *Public Service Regulations* and the *Belize Advisory Council Rules*<sup>5</sup> only reference an appeal mechanism for the public officer aggrieved by a decision of the Commission. Sections 90 and 91 of the *Public Service Regulations* outline:

90. The Commission shall, as soon as possible, inform the public officer in writing of its findings, the penalty imposed, and his right to appeal the determination of the Commission to the Belize Advisory Council and of the time required for making such application.

91.(1) Where the public officer lodges an appeal with the Belize Advisory Council within the specified period time, the penalty shall take effect pending the determination of the appeal by the Belize Advisory Council.

(2) The post occupied by a public officer, who has filed an appeal to the Belize Advisory Council against the decision of a Commission, shall not be substantively filled while the appeal is in progress.

[15] The public officer’s right to appeal, however, is not dependent on the *Public Service Regulations*. This right is guaranteed in section 111 of the *Belize Constitution Act*:<sup>6</sup>

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<sup>4</sup> *Public Service Regulations* at ss.81(4)(e), (g) and (h).

<sup>5</sup> A copy of these rules was not provided to the Court, but this point was not contested by the Commission.

<sup>6</sup> Cap. 4 The Substantive Laws of Belize, Rev. Ed. 2020 [*Constitution*].

111.-(1) This section applies to,

[...]

(b) any decision of any person to whom powers are delegated under section 110F (4) or section 106 (5) or section 110D (5) of this Constitution to remove a public officer from office or to exercise disciplinary control over a public officer (not being a decision which is subject to appeal to or confirmation by the Judicial and Legal Services Commission or the Public Services Commission or the Security Services Commission).

(2) Subject to the provisions of this section, an appeal shall lie to the Belize Advisory Council from any decision to which this section applies at the instance of the public officer in respect of whom the decision is made.

(3) Upon an appeal under this section the Belize Advisory Council may affirm or set aside the decision appealed against or may make any other decision which the authority or person from whom the appeal lies could have made. [emphasis added]

[...]

Section 90 of the *Public Service Regulations* merely ensures that the public officer has notice of their constitutional right to appeal to the Belize Advisory Council. Section 91 ensures that the public officer has the right to a meaningful remedy if they ~~are~~ successful on the appeal. That equivalent provisions do not exist for the AG is not surprising and cannot be interpreted as denying the AG the right to an appeal. The Crown is assumed to be fully aware of the contents of the *Constitution* and any other laws of Belize. No notice is required.

[16] Unlike public officers, the AG's right of appeal is dependent on the right to appeal guaranteed in the *Public Service Regulations* because of the principle of Crown Immunity. Much has been written about the nature of the Crown in the UK and in the Commonwealth jurisdictions who tie the origins of their systems of government to the inherited Westminster Parliamentary traditions.<sup>7</sup> Although there remains debate over what is meant by the "Crown" in law, there is no dispute that in jurisdictions like Belize with a written constitution that contains a supremacy clause, the *Constitution* is central to understanding the relationship between the State and

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<sup>7</sup> See e.g. M. Sunkin and S. Payne, eds. *The Nature of the Crown: A Legal and Political Analysis* (Clarendon Press, 1999).

the people. There is also agreement that at Common Law, the Crown enjoys immunity from liability. The consequence of these two undisputable facts is that provided the Crown's actions do not violate the *Constitution*, the Crown will only be liable where they have agreed to liability.<sup>8</sup>

[17] The Commission is a public body established under section 105 of the *Constitution*. Subsection 81 (4) (h) of the *Public Service Regulations* has expressly allowed its disciplinary decisions to be appealed thereby not violating the principle of Crown Immunity. As mentioned, the mechanism for the disciplined public officer to appeal is through the Belize Advisory Council. Subsection 100 (1) of the *Constitution* provides the AG, or any other entity engaged in discipline or dismissal of a public officer, with an appeal mechanism:

100(1) The Court of Appeal shall have such jurisdiction and powers to hear and determine appeals in civil and criminal matters as may be conferred on it by this constitution or any other law. [emphasis added]

The *Public Service Regulations* are regulations made pursuant to the *Constitution*.

[18] The AG's right to appeal the Commission's decisions to the Court of Appeal reflects the public's interest in ensuring that public officers are appropriately disciplined when they engage in misconduct. The public interest, therefore, extends to guaranteeing the AG, or any other person charged with disciplining or dismissing public officers under the *Public Service Regulations*, a remedy where they have been denied a fair hearing or where the Commission has made a mistake of law.

[19] As a consequence of finding that a viable, alternative remedy exists, the AG's application for Judicial Review is dismissed. The larger question of whether the AG ought to be permitted to apply for Judicial Review need not be answered but warrants a few comments.

[20] Judicial Review emerged as a safeguard against tyranny by defending the rule of law. Judicial Review protects the public from abuse, irrationality, and arbitrariness at the hands of the State by subjecting those wielding authority to requirements of natural justice and adherence to the law. To recast the remedy in the way proposed by the AG, specifically when considered in concert with the principle of Crown Immunity, would likely require evidence of an unequivocal decision by the Crown to

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<sup>8</sup> See e.g. *The Crown Proceedings Act*, Cap. 167, The Substantive Laws of Belize, Rev. Ed. 2020.

do so. My review of Part 56 of the *Supreme Court (Civil Procedure) Rules, 2005* has found no evidence of such a decision.

**Disposition**

[21] It is hereby ordered that:

1. Permission to file an application for Judicial Review is denied.

**Dated 9 August 2023**

Patricia Farnese  
Justice of the High Court