COMMONWEALTH OF THE BAHAMAS **2023/PUB/jrv/FP/00004**

IN THE SUPREME COURT

PUBLIC LAW DIVISION

BETWEEN

IN THE MATTER of the Gaming Board Act 2014 (Amended)

AND IN THE MATTER of an Application for leave to apply for Judicial Review pursuant to the Supreme Court Civil Procedure Rules 2022 PART 54-JUDICIAL REVIEW

BETWEEN

JAROL INVESTMENTS LIMITED (T/A CHANCES GAMES)

Intended Claimant

AND

THE HON. I CHESTER COOPER, DEPUTY PRIME MINISTER, MEMBER OF PARLIAMENT FOR THE EXUMAS AND RAGGED ISLAND, MINISTER OF TOURISM, INVESTMENTS AND AVIATION

(In his capacity as Minister responsible for The Gaming Board for The Bahamas)

Intended 1st Respondent

AND

MR. IAN TYNES

(In his capacity as Secretary of the Gaming Board for The Bahamas)

Intended 2nd Respondent

AND

DR. DANIEL JOHNSON

(In his capacity as Chairman of the Gaming Board for The Bahamas)

Intended 3rd Respondent

AND

THE ATTORNEY GENERAL

(In a representative capacity)

Before: **His Lordship Mr. Justice Andrew Forbes**

Appearances: **Mr. Carlson Shurland, KC, Counsel for the Intended Claimant**

Ms. Kenria Smith and Ms. Crystal Knowles, Counsel for the Intended Respondents

Dates: **16th June, 2023 and 16th August, 2023**

DECISION

Judicial Review-Application for Leave to Commence Judicial Review-Part 54.3 (1) of the Civil Procedure Rules 2022 ("CPR")-Test for Grant of Leave-Sufficient Interest-Arguable Grounds-Discretionary Bars-Alternative Remedy

Forbes. J.

Introduction

1. The Court heard legal arguments offered by Counsel for the Intended Claimant and Intended Defendants and indicated that it would provide a written decision and does so now.

2. The Intended Claimant filed its application for leave to apply for Judicial Review and the Affidavit of Raymond Culmer in support of the application on the 9th June, 2023. The Intended Claimant by letter dated the 11th June, 2023 requested a hearing date for the application and in addition to its numerous items for relief sought an Order for leave to amend the grounds for Judicial Review in its application. The Court on the 7th[th] July, 2023 granted the Intended Claimant leave to amend its application and the same was filed herein on the 14th July, 2023.

Background

3. The brief facts as provided by the Intended Claimant are that subject to the grant of its license pursuant to the Gaming House Act, 2014 ("the Act") and

the Gaming House Operators Regulations, 2014 ("the Regulations"), the Intended Claimant was given a copy of conditions of the said license to comply with during its operation. In particular, that the Intended Claimant was to use software of international standard and approved by the Gaming Board ("the Board"); to invest in a computer system properly configured so that the Board's Central Electronic Monitoring System ("CEMS") could have unrestricted access to the Intended Claimant's data including but not limited to a system with the ability for continuous online real-time recording, monitoring and control of such significant gaming transactions as determined by the Board. Further, that the Intended Claimant awaits the reconfiguration of its software system after the activation of the CEMS by the Board.

4. The Intended Claimant asserts however that the Board has failed to set up and maintain a CEMS in compliance with the Regulations. Further, it is alleged that the Board withdrew monies from the Intended Claimant's Investigative Deposit Accounts ("the account[s]") to pay Infrasoft Technologies Limited ("Infrasoft") for the development and implementation of a Central Monitoring System ("CMS") without any consultation with the Intended Claimant's management before withdrawing the funds. Additionally, that the Board has withdrawn a total sum of $947,918.51 ($780,452.00 to Infrasoft; $145,784.66 to Agent fees; $21,681.85 to MicroNet fees) from the Intended Claimant's accounts to finance the CMS contracted between the Board and Infrasoft. The Intended Claimant also alleges that the Board has failed to perform its duty, whether expressly or by implication, or is guilty of withdrawing funds from the accounts to pay Infrasoft for works not related to the recovery of investigation costs for the grant or renewal of a license; that it had a legitimate expectation of consultation with the Board before the Board decided to embark on a capital project that would involve using funds out of the accounts and the proper thing to do was to consult beforehand before departing from standard conduct and practice of withdrawing funds from the accounts to fund an asset for the Board which is outside of the Board's remit. Moreover, it is alleged that to date Infrasoft has not developed and implemented the CMS interface however, the Board continues to withdraw inordinate sums of

money from the Intended Claimant's accounts to pay for the balance of the contract.

5. The Intended Claimant states that by a letter dated the 9th March, 2020 by its Counsel and written to Mr. Ian Tynes, Secretary of the Board, Counsel for the Intended Claimant wrote about the concerns by the Intended Claimant of the deducted charges from the accounts and that such charges did not represent a legitimate contribution that requires Gaming House Operators to provide for the Infrasoft project. In response to its letter, Mr. Tynes by letter dated the 26th March, 2020 advised that Sections 18(1), 29(4) and 34 of the Act gave the Board the authority to recover from the Intended Claimant's accounts and all charges attributable to the installation of a CMS and that he also relied on Regulation 55(4) of the Regulations in support of the Board's position. It is further stated that by letter dated the 30th September, 2022 Counsel for the Intended Claimant wrote Mr. Tynes expressing concern about the Board's continuous withdrawal of funds from the accounts; that by another letter dated the 8th April, 2023 by Counsel for the Intended Claimant a demand request was sent to Mr. Tynes for full disclosure concerning all related activities, expenditures and scope of works of the installation of the CMS by Infrasoft and that by letter dated the 8th May, 2023 in response Mr. Tynes advised Counsel for the Intended Claimant that the Board was preparing a thorough update regarding the implementation of the Compliance and Central Monitoring systems including expenses associated with the same. The said letter advised that an update would be given within fourteen days of the letter's date however, at the time of filing the action the Board had yet to provide an update.

6. The Intended Claimant seeks:-
    a. A Declaration stating that the Board acted unlawfully (ultra vires) in withdrawing funds from the accounts to finance the Central Monitoring System they contracted with Infrasoft to develop and implement;

    b. A Declaration that the Board acted unreasonably (Wednesbury) by continuing to withdraw funds from the Intended Claimant's accounts

monthly for the implementation of the Central Monitoring System albeit the said project is on indefinite hold;

c. A Declaration that the Intended Claimant has a legitimate expectation that the funds in the accounts will be used exclusively for the recovery of investigation costs for the grant or renewal of licenses under section 29(4) of the Act, section 26(1) of the Regulations and section 55(4) of the Regulations;

d. A Declaration that the Secretary of the Board cause an accounting and related record that accurately represents the state of affairs and activities of the Board and explain the transactions between Infrasoft Technologies and the Board pursuant to Section 18 of the Act;

e. An Order that the Board cease withdrawing funds from the Intended Claimant's accounts until or unless the Court orders otherwise within a limited time;

f. An Order of mandamus compelling the Board to reimburse the Intended Claimant's accounts of all monies that were wrongfully withdrawn and used to pay Infrasoft for the implementation and development of the Central Monitoring System, agent fees and MicroNet fees to restore it to the financial position it occupies before the withdrawal of the funds;

g. An Order of certiorari to quash the decision of the Board to finance the Central Monitoring System using funds from the accounts to nullify the decision and prevent any further implementation of the Central Monitoring System until the unlawfulness of the withdrawal is determined;

h. Costs including interest on costs; and
i. Further or other remedies the Court deems appropriate.

The Application for Leave

7. The Intended Claimant makes its application for leave pursuant to Part 54.3 of the CPR.
8. Part 54.3 of the CPR provides:-

(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave shall be made without notice to a judge by filing in the Registry —

(a) a notice in Form JR1 containing a statement of —

(i) the name and description of the applicant;

(ii) the relief sought and the grounds upon which it is sought;

(iii) the name and address of the applicant's attorney, if any;

(iv) the applicant's address for service; and

(b) an affidavit which verifies the facts relied on.

(3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court provided that in no case shall leave be refused or granted on terms not sought in the application without giving the applicant a hearing.

(4) Where the application for leave in any criminal cause or matter is refused by the judge, or is granted on terms, the applicant may renew it by applying to the Court of Appeal.

(5) In order to renew his application for leave the applicant shall, within ten days of being served with notice of the judge's refusal, file in the Registry notice of his intention in Form JR2.

(6) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit provided that if the applicant shall fail to amend his statement within the time specified by the order of the court then such order shall cease to have effect unless the court orders otherwise.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then —

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

9. On an application for leave to apply for Judicial Review, the Applicant has an exceptionally low threshold to meet. However, the Applicant has to establish (i) that he/she has a sufficient interest in the matter to which the application relates; (ii) that the application was made promptly and in any event six months from the date when the grounds for the application first arose; and (iii) there is an arguable ground with a realistic prospect of success. The Court also has to consider whether the Applicant has an alternative remedy available that would lead the Court to refuse the leave.

The Law on Judicial Review

10. In general terms, for a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers', and that decision must affect the private rights of some person or deprive another of some benefit which he had been allowed to enjoy, and expected to enjoy in the future or which he has a legitimate expectation of acquiring or enjoying. **(Halsbury's Laws of England, 5th Edition, Volume 61A (2018) The Ambit of Judicial Review, Decisions with a Public Law Element).**

11. Noted in the case of **McHari Institute(aka Mchari International College and the Department of Public Service, The Attorney General of the Commonwealth of the Bahamas & D. Shane Gibson Former Minister of Labour and National Insurance (Minister with Responsibility for Public Service) 2012/PUB/jrv/00033** and the Judgement of Senior Justice Indra Charles(as she then was) at paragraphs 9 thru 12 a full discussion of the relevant law on judicial review occurred and she noted as follows, *"In Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374 at 410-411, Lord Diplock conveniently classified under three (3) heads the grounds upon which administrative action is subject to control by judicial review: (i) illegality, (ii) irrationality or "Wednesbury unreasonableness" and (iii) procedural impropriety with a caveat for further development on a case by case basis which may add further grounds such as the principle of "proportionality". That said, he explained the three (3) well-established heads in this way: "By "illegality, as a ground for judicial review I mean that*

the decisionmaker must understand correctly the law that regulates his decisionmaking power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable. By irrationality, I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture House Ltd v Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether the decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.... I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice." 6 [10] Judicial prudence dictates that the Court, in exercising this power must, however, be careful not to overstep its supervisory role. It must not interfere with a decision that a public authority has reached that was not irrational, illegal or procedurally unfair. [11] In Bethell v. Barnett and Others [2011] 1 BHS No. 30, a judicial review proceeding which involved a decision by the Judicial and Legal Services Commission, Isaacs Sr. J. (as he then was), described the court's role in judicial review proceedings as follows: (at para 85): "I must caution myself that this is a judicial review and not an appeal. Thus, the only questions I must answer are: was the decision of the JLSC to appoint the Applicant as the DLRRC irrational; and was the Applicant treated unfairly. I remind myself of the manner in which Gordon, JA put the position in Hugh Wildman v The Judicial and Legal Services Commission of the Eastern Caribbean States, Civil Appeal No. 9 of 2006 at paragraph 31. He opined: "I remind myself that the function of the court in judicial review is not to act as an appellate forum from the body whose decision is being challenged. If the process was fair and the decision not deviant, then the order sought under the judicial review must be refused." [12] In judicial review proceedings, the applicant has the onus to

prove that a ground for review exists and warrants a hearing by the Court. In Standard Commercial Property Securities Limited and others (Respondents) v. Glasgow City Council (Appellants) and others [2006] UKHL 50 at para [61], the House of Lords confirmed that the onus is on the claimant [Applicant] to establish a case, and in so doing, affirmed the approach taken by Lord Brightman in R v Birmingham City District Council Ex p O [1983] 1 AC 578: "The onus is on Standard (the claimant) to establish that, in deciding that an indemnity for their costs represented the best price or best terms that could reasonably be obtained, Glasgow reached a decision which was ultra vires or which no reasonable authority could have reached: R v Birmingham City District Council Ex p O [1983] 1 AC 578, 597C-D per Lord Brightman".

12. Further, as succinctly put by my Learned Brother Justice Klein in **Samuel Bankman-Fried v The Honourable Fredrick Audley Mitchell and the Attorney General of the Commonwealth of The Bahamas PUB/jrv/00015 of 2023** at paragraph 32 of his Ruling which is reproduced below:

> *"It is important to point out another cardinal principle of judicial review, which is that the role of the supervisory court is confined to scrutinizing the decision-making process to determine its lawfulness or overall fairness (Kemper Reinsurance Co. v Minister of Finance [1998] 3 WLR 630 at 638). The administrative judge is not concerned with the merits of a decision (i.e., whether it is right or wrong) or even with making definitive findings of fact. Thus, the grounds for judicial review are normally expressed in terms of a decision being: (i) illegal (e.g., exceeding statutory powers); (ii) irrational or 'Wednesbury' unreasonable (e.g., an outrageous decision that no sensible person considering all the material would have arrived at); (iii) procedurally improper (e.g., a decision arrived at by an unfair process), or (iv) in breach of a legitimate expectation (e.g., a decision that unfairly reneges on a practice or previous promise of a decision maker)."*

Sufficient Interest

13. The learned authors of Halsbury's 4th Edition on page 435 at paragraph 570 "Sufficient interest to apply for leave" states:

> *"...This requirement is fundamental to the whole machinery of application for judicial review, whether in civil or criminal proceedings. "Sufficient interest" is not defined, but it is clearly a broad, flexible*

concept, free from undesirable rigidity, and it allows the court to develop appropriate and applicable principles so as to embrace those whom it considers have and to exclude those whom it considers do not have the requisite sufficient interest...At the stage of the application for leave, however, the applicant need show only that he has a prima facie or arguable case or reasonable grounds for believing that there has been a breach of, or threatened breach, or a failure to perform, a public duty. At this stage, the court should not go into the matter in depth but should consider on a perusal of the material then available whether it discloses an arguable case for the grant of the relief claimed. In any event, at this stage, it is ordinarily undesirable, except in simple or clear cases, to determine the question whether the applicant has a sufficient interest or locus standi, as a preliminary issue..."

14. The Intended Claimant in its amended application for leave submits that it does have sufficient interest to warrant bringing the application and the Court summarizes its reasons below:-
    a. That the Intended Claimant is a licensee of the Board, operates under licenses granted by the Board and directly affected by the decisions or actions of the Board;
    b. That it contributes a percentage of its profits to various social initiatives aimed at assisting non-profit agencies, supporting social and recreational activities in the community and providing aid to underprivileged individuals and that any reduction in its profit margin such as the withdrawal from its Investigative Deposit Accounts by the Board directly affects the financial resources available for those social initiatives;
    c. That any profit decrease could result in downsizing which directly impacts all of its employees and some Bahamians quality of life; and
    d. That by its financial contributions and as a taxpayer it plays a crucial role in supporting government funding for social programs.

15. Counsel for the Intended Defendants in their written Skeleton Submissions did not address whether the Intended Claimant has sufficient interest to

bring its claim for judicial review. Therefore, as the Intended Defendants have not contested the Intended Claimant's sufficiency of interest the Court finds that the Intended Claimant has a sufficient interest to bring its application.

Time/Extension of Time

16. Part 54.4(1) of the CPR provides that an application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

17. The Respondents by their Skeleton Submissions makes the following submissions and assertions:-
    a. That the Intended Claimant has failed to comply with the strict time limits provided in Part 54 of the CPR;
    b. That the ground in the instant case, if any, arose as early as the 26th March, 2020 (the date of the letter from the Board to the Intended Claimant) and the time limit for bringing the action expired September, 2020;
    c. That the Intended Claimant failed to make its application within six months of the decision to which it purports to have reviewed;

18. The Intended Claimant by its Skeleton Submissions in response to the Respondent's submissions makes the following submissions and assertions:-
    a. That the time the decision was made two catastrophic events affected the court system in The Bahamas. These events were the landfall of Hurricane Dorian in 2019 which caused extensive damage to the island of Grand Bahama and the Court and the COVID-19 Pandemic in early 2020 which forced governments worldwide to implement stringent measures to control the spread of the virus in particular the suspension of normal Court functions for public safety reasons;
    b. That time began to run on the 8th May, 2023 following a letter of the same date by the Board to the Intended Claimant advising that it

would provide the Intended Claimant with an update regarding the CMS within fourteen days;

c. That the application for Leave to Apply for Judicial Review is completed on time as withdrawal has yet to be granted therefore there is no application to be made within the six months deadline;
d. That the Intended Claimant did not have the right to appeal because it did not yet have been granted the leave needed for the application therefore, there cannot be any delay.

19. The Intended Claimant has submitted that the Decision it now seeks leave to apply for Judicial Review is comprised in a letter dated the 26th March, 2020 addressed to the Intended Claimant by the Secretary of the Board. The said letter is found at page 183 of the Intended Claimant's Submissions for Leave, undated and also included in the Amended Application for leave and found at Tab 13, page 543. The Court notes that the letter produced is only the first page but appears to contain several pages which has not been included. However, the parties do not dispute that this letter and its contents is the Decision the Intended Claimant seeks to put under review.

20. An Applicant must bring his/her application for Judicial Review promptly and within six months from the date of the Decision. As the parties do not dispute that the said letter dated the 26th March, 2020 contained the Decision now intended to be under review, the Court accepts the submissions of the Intended Respondents that the time expired in September, 2020 and finds that the Intended Claimant is out of time.

21. The Intended Claimant has submitted that the destruction caused by Hurricane Dorian in September 2019 and the COVID-19 Pandemic in March 2020 is the cause for the delays in promptly bringing this action. However, while both events greatly impacted the operations of the Garnet Levarity Justice Centre in Freeport, Grand Bahama, save for the limited functionality of the Court operations, there were no real obstructions to parties submitting and filing documents. Further, several Practice Directions were promulgated by the Chief Justice following numerous Government

mandated lockdowns which allowed parties to submit and file documents at the Court Registry during stipulated times and allowed Counsel and parties to attend their hearing via zoom. The Intended Claimant filed this action on the 9th June, 2023, over three years following the letter of the Board.

22. In the circumstances, the Intended Claimant's submissions that these events created the delay is not accepted by the Court nor does the Court consider that these events are a good reason to extend the period beyond which the application ought to have been made. Therefore, the Court finds that the Intended Claimant is woefully out of time.

Second Decision?

23. The Intended Claimant in its Submissions in response to the Respondents Submissions also submits that there was a Decision of the Board by letter dated the 8th May, 2023 to the Intended Claimant advising that the Board would provide it with a definitive answer within 14 days. The Intended Claimant has submitted that this date (the 8th May, 2023) is the date on which time began to run and not the 26th March, 2020 letter. Further, that the Board has yet to provide them with the information within the time previously stipulated. Counsel for the Intended Respondents submitted that the Intended Claimant's assertion that the letter of the 8th May, 2023 constitutes a Decision of the Board is premature as the Board has not made a final decision and as such the application for leave and the action is premature.

24. The law is simple, an application for leave must be made promptly or within six months of when the Decision was made. From the Court's view it appears that the Intended Claimant now appears to submit that the Board's failure to provide the information within the time previously stipulated warrants the Court's intervention by way of Judicial Review. However, the Court is unable to assess where in the letter of the 8th May, 2023 a Decision from which this Court can review was made. Therefore, the Court is persuaded by the Intended Respondents submissions on this point and finds that the Intended Claimant's submission that the Board's failure to provide the information within the 14 days as stated in its 8th May, 2023 letter amounts

to a Decision to review and its submission that the letter is subject to judicial review is premature.

Arguable Case/Arguable Ground(s) With Realistic Prospect of Success

25. On an application for leave to commence Judicial Review proceedings after considering whether the application made promptly the Court although not concerned with the merits of the Decision is to consider whether the applicant has disclosed an arguable case with realistic prospects of success. However, as the Court has found that the Intended Claimant's application is woefully out of time in the filing of its application, the Court need not consider the other intended grounds.

Alternative Remedy

26. It is a well settled principle that an applicant should firstly exhaust any right of appeal or other means provided before challenging a Decision by way of judicial review **(See Charles, J. at paragraph 22 in Bertram Bain v The Commissioner of Police 2017/PUB/law/00023)**.

27. The Intended Defendants submit that the Intended Claimant has an alternative remedy under Section 84 of the Gaming Act to appeal a decision made by the Board to the Minister before being made to the Supreme Court. Further, that the Intended Claimant has failed to avail itself of the adequate alternative remedy provided by the Statute and the attempt to bring this action by way of Judicial Review is an abuse of the process of court. Additionally, that judicial review is not granted where an alternative remedy is available and that there are no exceptional circumstances in this matter. Counsel refers the Court to **R v. Birmingham City Council ex p Ferrero [1993] 1 All ER 530; R v Secretary of State for the Home Department ex p Swati [1986] 1 WLR 477; Bertram Bain v The Commissioner of Police (supra)**.

28. The Intended Claimant submits in summary that when it became aware of the withdrawal of funds from the accounts by the Board it made an inquiry to the Board; that the answers given were not satisfactory as it did not meet

the necessary standard of understanding the decision; that there was a request that they would give further information about the particulars of the contract but were never met and that time was given to the Board to provide the information and as such the dispute is reasonable given the extenuating circumstances of Hurricane Dorian and the COVID-19 Pandemic where monies were still deducted from the accounts.

29. In summary, the Intended Claimant in its prayer for relief ultimately seeks to be reimbursed for the funds withdraw from the accounts and to be provided with the details of the contact between the Board and Infrasoft, a third party.

30. Counsel for the Intended Defendants have submitted that the Intended Claimant has a remedy of appeal pursuant to Section 84(1) of the Act.

31. Section 84(1) of the Act provides *"Any person aggrieved by a decision of the Board or the Minister, may appeal the decision to the Supreme Court in accordance with rules of court within thirty days after the later of the making of the decision or the issuing of the reasons for the decision."* The Court notes that Counsel for the Intended Defendants submitted that the appeals process is to the Minister and then the Supreme Court, however, the statute is clear that the appeal of the decision may be made to the Supreme Court.

32. As previously stated, it is not disputed by the parties that the Decision "under review" is comprised in the 26th March, 2020 letter. Therefore, the Intended Claimant had thirty days from the 26th March, 2020 to appeal to the Supreme Court. Counsel for the Intended Claimant submitted previously that the impact of Hurricane Dorian and the COVID 19 Pandemic are exceptional circumstances for the Court to consider and accept its delay in making its application for judicial review. However as stated in paragraph 20 above, while these events greatly impacted the Courts functionality, provisions were made to allow parties and persons to commence and continue their actions. Moreover, the Intended Claimant has not adduced any evidence to this Court that it has exhausted all alternative remedies available. Further, as

the Board by its letter dated the 8th May, 2023 has advised that it is in the process of preparing a status update to be provided, the Intended Claimant still has a remedy following the receipt of that information if not satisfied.

Conclusion

33. Having considered all of the parties filed documents and submissions, the Court dismisses the Intended Claimant's application for leave to commence judicial review proceedings for the reasons stated above.

Costs

34. Accordingly, the Court having dismissed the Judicial Review Proceedings, the Respondents are entitled to their costs to be taxed if not agreed.

35. Court grants leave to Appeal.

Dated this 13th day of October, 2023

Justice Andrew Forbes