IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

PUBLIC LAW DIVISION

2024/PUB/jrv/ 00024

B E T W E E N:

THE WORLD FAMOUS VALLEY BOYS JUNKANOO GROUP

(A non-profit organisation established under the Non-Profit Organisations Act, 2019)

1st Claimant

And

THE VALLEY BOYS JUNKANOO CLUB LTD.

(A company established under the Companies Act, 1992)

2nd Claimant

And

THE REGISTRAR GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

1st Defendant

And

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

2nd Defendant

And

THE VALLEY BOYS JUNKANOO GROUP

(A non-profit organisation established under the Non-Profit Organisations Act, 2019)

3rd Defendant

Before: The Honourable Justice Darron D. Ellis

Appearances: Christina Galanos with Kristina Saunders for the Claimants

Antoine Thompson with Kayla Green-Smith of the Office of the Attorney General for the 1st and 2nd Defendants

Krystal Rolle with Bjorn Ferguson and Darron Cash for 3rd Defendant

Hearing Dates: 18 September, 10 October, 11, 29 November and 24 Jan 2025

DECISION

Public Law-Judicial Review-Registrar General of the Commonwealth of The Bahamas-Non-Profit Organisation Registration–Decision to cancel and remove from the registry-Statutory Appeal –Threshold for leave to apply for Judicial Review and Interim Injunction–Breach of the rules of natural justice-Discretionary Bar-Alternative remedy-Remedy of last resort–Exceptions.

> The Claimants seek leave to commence judicial review proceedings against the 1st Defendant in relation to her decision to register the 3rd Defendant as a non-profit organisation and to remove the 1st Claimant from the non-profit organisation registry. They also seek an interim injunction restraining the 1st Defendant from removing the 1st Claimant from the registry. The injunction was granted on 18 September 2024. The 1st Claimant contends that it has an arguable case with a realistic prospect of success on the grounds that the 1st Defendant's decision was unlawful, unreasonable, and procedurally improper. The Defendants submit that leave should not be granted and that the injunction should be discharged, as the Claimants' case lacks merit and an adequate alternative remedy is available to the 1st Claimant, which should be exhausted before judicial review proceedings are pursued.

HELD: The application for leave to commence judicial review proceedings is denied and the interim injunction discharged.

1. When considering an application for leave to commence judicial review proceedings, the Court must determine whether the applicant has an arguable case with a realistic prospect of success. If so, the Court must then consider whether the claim is subject to a discretionary bar, such as undue delay or the availability of an alternative remedy. **Inland Revenue Commissioners v National Federation of Self Employed and Small Business Ltd [1981] A.C. 617; The Queen and another v Dwight Armbrister [2021] 1 BHS J. No. 2; Sharma v Browne-Antoine (2006) 69 WIR 379; UKPC 57; [2007] 1 WLR 780 AT 787; Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374 at 410-411; Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223; British Coal Corporation v. The King [1935] AC 500; Gillick v West Norfolk and Wisbech Area Health Authority [1986]** referred to.

2. Applying the principles established in **The Queen and another v Dwight Armbrister [2021] 1 BHS J. No. 2; Sharma v Browne-Antoine (2006) 69 WIR 379; UKPC 57; [2007] 1 WLR 780 AT 787; Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374 at 410-411; Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223; The Central Bank of Trinidad and Tobago v Maritime Life Ltd** [2022] UKPC 37; **British Coal Corporation v. The King [1935] AC 500**; In **Re Mc Aleenon [2024] 3 WLR 803; Howard-Simpson et al v. Harbour-Island-District-Council 2018/PUB/jvr/00031; Attorney General of Trinidad and Tobago v Ayers-Caesar [2019] UKPC 44**; the proposed judicial review lacks an arguable ground with a realistic prospect of success. Furthermore, the 1st Claimant has an adequate alternative remedy available, and no exceptional circumstances have been identified to justify bypassing it. Accordingly, the Court refuses leave.

Ellis J

Introduction

[1.] This is an application by the 1st Claimant, a non-profit organisation, seeking leave to apply for judicial review of the 1st Defendant's decisions to register the 3rd Defendant as a non-profit organisation and to remove the 1st Claimant from the register of non-profit organisations ("the decisions"). The 1st Claimant contends that these decisions were unlawful, unreasonable, and procedurally improper.

[2.] The 1st Claimant and the 3rd Defendant together were one of the pre-eminent junkanoo groups in the Bahamas. Before their separation, they had operated as a single entity under the name "The Valley Boys" and its variations since 1958.

[3.] The 2nd Claimant is a company incorporated under the laws of the Commonwealth of The Bahamas. The 1st Defendant is the Registrar General of the Commonwealth of The Bahamas. The 3rd Defendant is a non-profit organisation.

[4.] On 18 September 2024, the Claimants filed an urgent application for leave to apply for judicial review of the decisions, along with an application for an interim injunction pursuant to *Rule 54.3* of the *Supreme Court Civil Procedure Rules 2022* (CPR). The injunction sought to restrain the 1st Defendant, whether directly or through her agents, appointees, or employees, from removing the 1st Claimant from the register of non-profit organisations.

[5.] The material facts are largely undisputed. To the extent that any deviation appears, the stated facts are derived from the affidavits and documentary evidence submitted to the Court. The Court notes that no affiants have been cross-examined; accordingly, greater weight is given to contemporaneous documentary evidence.

[6.] At some point in 2024, two factions of "The Valley Boys" emerged due to disputes over its management. The 1st Claimant represented one faction, while the 3rd Defendant represented the other.

[7.] On 6 September 2023, before "The Valley Boys" divergence, agents of the 3rd Defendant registered "The Valley Boys Junkanoo Group" as a non-profit organisation. On 17 January 2024, the 1st Claimant registered "The World Famous Valley Boys Junkanoo Group" as a non-profit organisation.

[8.] On 10 April 2024, the 3rd Defendant submitted a letter of protest to the office of the 1st Defendant, objecting to the 1st Claimant's registration of the name "The World Famous Valley Boys" as a non-profit organisation. The 3rd Defendant asserted that the 1st Claimant's registration was intended to deceive or confuse the public.

[9.] The 1st Defendant conducted an investigation and concluded that the 1st Claimant's name closely resembled that of the 3rd Defendant, creating a risk of confusion or deception. The 1st Defendant then invited the 1st Claimant to submit an alternative name under which its non-profit organisation could be registered. The 1st Claimant was given 30 days to propose a new name that

did not include the words "Valley Boys", failing which it would be removed from the register. Additionally, the 1st Defendant allowed the 3rd Defendant to remain registered as a non-profit organisation ("the decisions").

[10.] Aggrieved by the decisions, the Claimants filed an application for leave to apply for judicial review and sought an injunction restraining the 1st Defendant from removing the 1st Claimant from the register. The injunction application was heard ex-parte on 18 September 2024 and granted by this Court. On 11 November 2024, the 3rd Defendant applied for joinder, and the application was granted. The Defendants subsequently applied to discharge the injunction on 29 November 2024, but the application was denied.

[11.] The 1st Claimant filed an application to amend its leave application. The Defendants did not oppose, and the Court subsequently granted the amendment. The parties further agreed that the Court would determine the leave application on the papers. The Court's decision follows below.

The Issues

[12.] The issues for consideration are:

1) Whether the 1st Claimant has satisfied the threshold for leave to apply for judicial review.
2) Whether any bar exists to the granting of leave for judicial review.

Issue 1: Whether the 1st Claimant has met the threshold for the grant of leave.

[13.] According to *Rule 54.3* of the CPR, no application for judicial review can be made unless leave of the Court is first obtained. The 1st Claimant must establish the following grounds as outlined in *Rule 54* of the CPR to qualify for leave to commence judicial review proceedings:

- That the 1st Claimant has sufficient interest in the matter to which the application relates;
- That the application was made promptly and, in any event, within six months of the date when the grounds first arose;
- That there is an arguable ground with a realistic prospect of success;
- That the 1st Claimant has no alternative remedy.

Sufficient Interest

[14.] The 1st Claimant's interest in this case is clear and undisputed by the Defendants. At its core, this dispute concerns the name of two non-profit organisations, arising from the separation of members of a Junkanoo group. The 1st Claimant and the 3rd Defendant are competing for the name "The Valley Boys." It is acknowledged that both entities originated from the same Junkanoo group and are represented by individuals long associated with "The Valley Boys." This Court's decision will have significant implications for both parties,

particularly in relation to sponsorship, group membership, and national goodwill. Accordingly, the 1st Claimant has a substantial interest in this matter. Aside from the 3rd Defendant, no other entity has a more direct or vested interest than the 1st Claimant.

Promptness of the Application

[15.] The second requirement concerns the timeliness of the application and whether it was filed within six months of the decisions in question. On 14 August 2024, the 1st Defendant notified the 1st Claimant of her decisions by letter. The application for leave to commence judicial review was filed approximately five weeks later. None of the Defendants alleged that the 1st Claimant failed to act promptly in bringing the application.

Arguable Ground with a Realistic Prospect of Success

[16.] The general principle is that leave is granted where the applicant presents an arguable case with a realistic prospect of success. In assessing this requirement, the Court focuses on the decision-making process rather than the merits of the decision. The Court's primary concern is whether the decision is lawful, procedurally proper, and rational, rather than conducting a detailed examination of the applicant's case.

[17.] In determining whether the 1st Claimant has an arguable ground with a realistic prospect of success, I consider the leading Privy Council case of Attorney General of Trinidad and Tobago v Ayers-Caesar [2019] UKPC 44 at paragraph 2:

> **The Board is concerned only to examine whether the respondent has an arguable ground for judicial review which has a realistic prospect of success: see governing principle (4) identified in Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14. Wider questions of the public interest may have some bearing on whether leave should be granted, but the Board considers that if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage.**

[18.] In **The Queen and another v Dwight Armbrister** [2021] 1 BHS J. No. 2 *Charles J* as she then was stated:

> 15 Generally-speaking, there are three well-established heads upon which judicial review may be brought…….. In the landmark case of Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374 at 410-411, the House of Lords has confirmed that powers derived from the prerogative are public law powers and their exercise amenable to the judicial review jurisdiction. Lord Diplock conveniently classifies under three heads the grounds upon which administrative action is subject to control by judicial review as illegality, irrationality or "Wednesbury unreasonableness" and procedural impropriety. He explained the three well-established heads in this fashion:
>
> > "By "illegality, as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making 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........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."

[19.] Counsel for the Claimants submits that leave should be granted on the grounds that the 1st Defendant's decisions were unlawful, unreasonable, and procedurally unfair in the circumstances because:

- The decision to direct the 1st Claimant to within 30 days change the name of the non-profit organisation and submit a new name deemed suitable without the words "Valley Boys" in it, was in breach of the 1st Defendant's duties;
- The 1st Defendant did not exercise due diligence in registering the 3rd Defendant as a non-profit organisation;
- The 1st Defendant exercised her discretion improperly in determining that the 1st Claimant's name "so nearly resembles the name of the existing non-profit organisation" of the 3rd Defendant "so as to be calculated to deceive or confuse."
- The 1st Defendant failed to hear the 1st Claimant before making her decisions.

Unreasonableness

[20.] The test for unreasonableness assesses whether a public authority's decision is so irrational that no reasonable authority could have made it. This principle, known as **Wednesbury unreasonableness**, originates from **Associated Provincial Picture Houses Ltd v Wednesbury Corporation** [1948] 1 KB 223. In that case, Lord Greene MR stated that a decision is unreasonable if it is *"so absurd that no sensible person could ever dream that it lay within the powers of the authority."*

[21.] Counsel for the 1st Claimant argues that the 1st Defendant failed to consider that "The Valley Boys" had existed as an entity since 1958. Consequently, the 1st Defendant should not have registered the 3rd Defendant without first determining whether its agents had the authority or consent of "The Valley Boys" to do so. The 1st Claimant submits that the 1st Defendant failed to conduct proper due diligence and should have determined that the representatives of the 3rd Defendant were not members of "The Valley Boys" and, therefore, lacked the authority to register the 3rd Defendant. It follows that the 1st Defendant's decision to register the 3rd Defendant and to remove the 1st Claimant from the registry was unreasonable.

[22.] The Defendants argue that the 1st Claimant's intended challenge, when properly construed, is wholly misconceived in law and, consequently, has no prospect of success. Counsel for the Defendants submits that the 1st Defendant's decisions were neither unlawful, irrational, nor procedurally improper.

[23.] The Defendants submit that the *Non-Profit Organisation Act* (the Act) does not oblige the 1st Defendant to investigate potential applicants to the extent submitted by the 1st Claimant. The Defendants add that even if there was such an obligation on the 1st Defendant, any due diligence would have shown that the agents of the 3rd Defendant were members of "The Valley Boys" who just wanted to create a non-profit organisation. It follows that the 1st Defendant was free to register the 3rd Defendant.

[24.] The Defendants further argue that while it was unfortunate that both parties were registered under similar names, the 1st Defendant's decisions were correct and justified in the circumstances. Given the similarity between the names of both non-profit organisations and the potential for public confusion or deception, the 1st Defendant was justified in requiring the 1st Claimant to change its name. Counsel for the 3rd Defendant contends that its agents were simply proactive in registering the name first and were members of "The Valley Boys" at the time of registration and therefore entitled to register the 3rd Defendant. In any event, the Defendants submit that the 1st Defendant's decisions, even at their worst, do not meet the threshold of *Wednesbury Unreasonableness.*

[25.] I agree with Counsel for the Defendants. To borrow the words of Lord Diplock, I do not consider the 1st Defendant's decisions to be **"so outrageous in [their] defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at [them]."** The 1st Defendant made a logical decision, and the agents of the 3rd Defendant were proactive in registering the name before the 1st Claimant. Several months later, the 1st Claimant registered a strikingly similar name. Upon receiving the 3rd Defendant's complaint, the 1st Defendant conducted an investigation, consulted both parties in June 2024, and ultimately rendered her decision in August 2024. The 3rd Defendant, represented by members of "The Valley Boys," registered the name first. The 1st Defendant's decisions were not unreasonable.

Illegality

[26.] In summary, the test for illegality in judicial review assesses whether the decision-maker has acted within its legal authority, correctly interpreted the law, and exercised its powers for their intended purpose. A decision is unlawful if the decision-maker exceeds its powers, misinterprets the law, or exercises its powers for an improper purpose.

[27.] Counsel for the 1st Claimant argues that the 1st Defendant's decisions were tainted by illegality. The 1st Claimant reiterates that only representatives of "The Valley Boys" and the 2nd Claimant were legally entitled to register a non-profit organisation under that name. Counsel further contends that "The Valley Boys" has operated as a non-profit organisation since 1958 and, therefore, the 1st Defendant ought to have known that the 3rd Defendant was

not a legitimate representative of "The Valley Boys". Consequently, the 1st Defendant should not have registered the 3rd Defendant, rendering its registration unlawful.

[28.] The Defendants counter that the 1st Defendant is empowered by the Act and exercises discretionary authority when registering non-profit organisations. Counsel for the Defendants argues that the 1st Defendant is not required to determine the actual representatives of a non-profit organisation during the registration process. Furthermore, even if the Act mandated that only representatives of "The Valley Boys" could register a non-profit organisation in that name, the representatives of the 3rd Defendant were, in fact, members of "The Valley Boys" at the time of its registration. Additionally, the Defendants assert that the 1st Defendant has the authority to remove a non-profit organisation from the register if its name so closely resembles another that it may cause public confusion or deception. It follows that the 1st Defendant's actions were not unlawful.

[29.] I prefer the arguments of the Defendants for several reasons. The 1st Claimant appears to argue that the members of the 3rd Defendant were not actual members of "The Valley Boys." I do not accept that contention. The evidence before the Court clearly establishes that the members of the 3rd Defendant were members of "The Valley Boys" at the time of its registration. Furthermore, the 1st Claimant's argument seems to rely on the assumption that the Act requires the 1st Defendant to investigate applicants and determine whether they are the rightful representatives of the prospective non-profit organisation. On what basis does the 1st Claimant expect the 1st Defendant to conduct such an investigation, particularly in the absence of any evidence that the 1st Defendant was aware of internal disputes between the two factions of "The Valley Boys."

[30.] The fundamental flaw in the 1st Claimant's argument is that the Act does not impose any obligation on the 1st Defendant to determine who qualifies as a member of a proposed non-profit organisation before registration. Moreover, the Act permits any person to register a non-profit organisation. *Section 7(4)* of the Act states as follows:

> *In considering an application for registration, the Registrar shall have regard to — (a) the declared purposes of the non-profit organisation; (b) the identity of* ***the controller*** *and* ***other members*** *of the non-profit organisation; (c) copies or particulars of the organisational documents; and (d) evidence of the board structure.*

Section 2 further provides guidance as to who can register a non-profit organisation, it states:

> *2. In this Act — "controller" means —*
> *(a) a trustee of a trust, where the non-profit organisation is established as a trust;*
> *(b) a director of a company, where the non-profit organisation is established as a company;*
> *(c) a general partner of a partnership, where the non-profit organisation is established as a partnership;*
> *(d) a person or slate of officers or trustees responsible for all aspects of management and administration of an unincorporated association, where the non-profit organisation is established as an unincorporated association;*

(e) a member of a corporation, where the non-profit organisation is established as an entity incorporated by statute;
(f) a founder of a foundation, where the non-profit organisation is established as a foundation;
(g) ***or any person not specified in paragraphs (a), (b), (c), (d), (e) or (f) where the non-profit organisation is established by that person;***

[31.] According to section (g), any individual can establish a non-profit organization. There is no explicit mandate or restriction preventing the 1st Defendant from engaging with a specific group of people, as alleged by the 1st Claimant. It is also evident that one of the powers conferred on the 1st Defendant is the authority to register a non-profit organization. Furthermore, under *sections 10, 11 and 12* of the Act, the 1st Defendant is empowered to cancel, suspend or remove from the non-profit register any non-profit organisation that is registered under the Act. *Section 10, 11 and 12* states:

Section 10 **"No non-profit organisation shall be registered under this Act under a name that is identical with the name of an existing non-profit organisation, company or other entity or a name that so nearly resembles the name of an existing non-profit organisation, company or other entity so as to be calculated to deceive or confuse.**"

Section 11 (1) **The Registrar shall cancel or suspend the registration** of a non-profit organisation if, after an investigation, it is proven that the non-profit organisation — (a) engaged in or is engaging in an activity that is an identified risk;..................................

Section 12 (1) The Registrar shall remove from the register a non-profit organization—

(a) that fails to conduct its affairs in accordance with its objects; ….

(d) **that refuses to comply with any request or direction given by the Registrar pursuant to this Act;**

[32.] The Court finds that the decisions in dispute were neither illegal nor beyond the 1st Defendant's authority. Furthermore, these decisions did not involve any misinterpretation of the law, nor were the 1st Defendant's powers exercised improperly. The 1st Defendant is authorized by the Act to register non-profit organisations and to remove any non-profit organisation from the registry if its name closely resembles that of another non-profit organisation.

Right to be Heard/ Procedural Impropriety

[33.] The 1st Claimant contends that the 1st Defendant has violated the principles of natural justice by failing to provide the 1st Claimant with an opportunity to be heard before making her decisions. The 1st Claimant argues that procedural fairness is a cornerstone of administrative law and that where a decision affects the rights, interests, or legitimate expectations of an individual or entity, there is an implied duty to afford that party a reasonable opportunity to present their case. It is submitted that, in the absence of such an

opportunity, the decision-making process is inherently flawed and legally deficient. In support of this argument, counsel for the 1st Claimant references *section 11(5)* of the Act, which states as follows:

> *"Before exercising his powers to cancel or suspend under this section, the Registrar shall give a non-profit organisation an opportunity to show cause, in writing, why its registration should not be cancelled or suspended."*

[34.] The Defendants reject this argument and submit that the Act does not impose any obligation on the 1st Defendant to consult with or grant an applicant an opportunity to be heard prior to making her decision. They contend that the legislative framework governing the registration and removal of non-profit organisations does not prescribe any procedural requirement for prior consultation in such circumstances. Moreover, the Defendants argue that the absence of an express statutory duty to afford a hearing before making the decision suggests that Parliament did not intend for such an obligation to arise. They further maintain that, even if procedural fairness were engaged, the circumstances of this case do not warrant a finding that the 1st Defendant was required to invite representations from the Claimants before reaching her decision. Accordingly, they assert that the 1st Defendant acted within the scope of her statutory authority and in accordance with the provisions of the Act.

[35.] I do not accept the Defendants' argument. *Sections 11(4) and 11(5)* of the Act require the 1st Defendant to notify the 1st Claimant and afford it an opportunity to explain, in writing, why its registration should not be canceled or suspended. Accordingly, the 1st Defendant is obligated to provide the 1st Claimant with a meaningful opportunity to present its case before taking any adverse action.

[36.] However, in this context, the 1st Defendant did not violate the principles of natural justice. The evidence before the Court demonstrates that the 1st Defendant provided the 1st Claimant with an opportunity to be heard. According to the 1st Claimant's own evidence, the Claimants were informed in June 2024 of the 1st Defendant's position regarding the complaint filed by the 3rd Defendant. In the first affidavit of Brian Adderley ("BA"), filed on 18 September 2024, BA—who is the chairman of the 1st Claimant—acknowledges that he was aware of the 3rd Defendant's protest concerning the name. Additionally, BA states that he wrote a letter to the 1st Defendant outlining the 1st Claimant's position and requesting the revocation of the 3rd Defendant's registration. BA further indicates that the 1st Defendant contacted him by telephone to discuss the complaint. Subsequently, in August 2024, the 1st Defendant issued a letter to the 1st Claimant setting out her decisions.

[37.] In my opinion, the Claimants had an opportunity to be heard—and were, in fact, heard—by the 1st Defendant between June and September 2024. The Act mandates that notice be given before cancellation and that the affected party be afforded an opportunity to present its case. The evidence establishes that the 1st Defendant complied with these statutory requirements, as the 1st Claimant had multiple opportunities to make representations. Accordingly, there was no breach of natural justice by the 1st Defendant.

Issue 2: Whether there is any bar to the granting of leave for judicial review.

[38.] The 1st and 2nd Defendants assert that, even if the 1st Claimant were to satisfy the substantive requirements for leave—an assertion the Defendants strongly contest—the Court should nonetheless exercise its discretion to refuse leave. They argue that a clear and sufficient alternative remedy exists under the Act, which the Claimants have failed to pursue. Counsel for the 1st and 2nd Defendants emphasizes that the 1st Claimant neglected to avail itself of the opportunity to appeal the 1st Defendant's decision, instead opting for judicial review without first exhausting the statutory appeal process. The Defendants contend that this failure demonstrates a lack of effort on the part of the 1st Claimant to resolve the matter through the appropriate legal channels. Accordingly, they submit that the availability of an alternative remedy precludes the grant of leave for judicial review.

[39.] The Defendants relied upon the case of **Howard-Simpson et al v. Harbour-Island-District-Council** 2018/PUB/jvr/00031 at paragraph 16 where it was stated:

> "***Judicial review is ultimately the Applicant's remedy of last resort, unless adequate alternative remedy can be found and is available to the Applicant. Where adequate alternative can be found, the court will usually refuse permission to apply for judicial review unless there are exceptional circumstances justifying the claim proceeding. The availability of an adequate alternative remedy is a matter that is relevant to the exercise of the courts discretion to grant permission to apply for judicial review; it does not go to the court's jurisdiction to entertain a claim for judicial review.***

[40.] The 1st and 2nd Defendants contend that the 1st Claimant has an available statutory remedy in the form of an appeal to the Supreme Court under *section 28(b)* of the Act. This provision grants an aggrieved party the right to challenge the 1st Defendant's decision to cancel or suspend its registration. The Defendants further argue that, unlike judicial review, which is confined to assessing the legality of the decision-making process, an appeal under Section 28 allows the Court to examine the merits of the decision itself. They emphasize that the appellate process provides a broader scope of review, enabling the Court to substitute its own judgment where appropriate. Accordingly, the Defendants submit that the existence of this alternative remedy militates against the grant of leave for judicial review.

[41.] The 1st Claimant argues that *section 28* of the Act is inapplicable to its case. It contends that *section 28(b)* specifically provides for appeals against the 1st Defendant's decision to *cancel* or *suspend* the registration of a non-profit organisation. By contrast, the 1st Defendant's letter and subsequent decisions pertain to the *removal* of the 1st Claimant from the register, a matter not explicitly covered by *section 28(b)*. Accordingly, the 1st Claimant maintains that it has no statutory right of appeal and that judicial review is the appropriate recourse.

[42.] There appears to be a fundamental misunderstanding regarding the distinction between the cancellation of registration and removal from the register. It is undisputed that the 1st Defendant has the authority to register non-profit organisations and to suspend, cancel, or remove them from the register. However, Counsel for the 1st Claimant argues

that the statutory right of appeal under *section 28* applies exclusively to cancellation and suspension, as explicitly stated in the provision. She contends that the decision to remove an organisation from the register is a separate and distinct action that does not fall within the scope of cancellation or suspension. Accordingly, she submits that *removal* is not subject to appeal under *section 28*. It follows that, in the 1st Claimant's view, no alternative remedy was available, and judicial review remains the only appropriate recourse.

[43.] The 1st and 2nd Defendants submit that *removal* from the register inherently includes *cancellation* and, therefore, the 1st Claimant should have exercised its statutory right of appeal rather than pursuing judicial review. They argue that cancellation falls within the broader concept of removal and that to interpret the Act otherwise would lead to an absurd result, contrary to legislative intent. Accordingly, the Defendants maintain that the appropriate course of action was for the 1st Claimant to pursue the appeal process provided for under *section 28 of the Act.*

[44.] The Court recognizes that the interpretation of statutory provisions must be guided by established principles of statutory construction. This requires that legislation be read holistically, considering both its text and underlying purpose. In this regard, statutory provisions should not be interpreted in isolation but rather within the broader legislative framework to ensure coherence and consistency. Furthermore, the legal maxim expressio unius est exclusio alterius (the express mention of one thing excludes another) is not to be applied rigidly, particularly where such an interpretation would lead to an absurd, impractical, or unintended result. Instead, statutory interpretation must be purposive, ensuring that the legislative intent is properly effectuated while avoiding undue formalism that may distort the true meaning of the provision.

[45.] The Court is of the view that *removal* from the register inherently includes *cancellation*. When an entity is removed, it ceases to exist as a registered non-profit organisation in the eyes of the law, effectively nullifying its legal status. The Court finds that a narrow interpretation distinguishing between removal and cancellation, as advanced by the Claimants, would undermine the legislative intent to ensure that decisions affecting an organisation's legal status remain subject to appellate oversight.

[46.] In **British Coal Corporation v The King** [1935] AC 500, the Privy Council recognized that constitutional statutes, including those conferring jurisdictional or appellate rights, must be interpreted using a broad and purposive approach. The judgment emphasized that such statutes should be construed expansively to ensure that their remedial objectives are fully realized. The Privy Council further held that statutory provisions granting rights of appeal should be interpreted in a manner that maximizes their intended remedial effect. This approach ensures that appellate mechanisms function as intended, preventing unduly restrictive interpretations that could undermine access to justice or procedural fairness.

[47.] Adopting a purposive approach to statutory interpretation, I conclude that removal under the Act encompasses cancellation. Consequently, the 1st Claimant had a statutory right of appeal against the 1st Defendant's decision and should have pursued that remedy instead of seeking judicial review.

[48.] It is well established that judicial review is a remedy of last resort. When an alternative statutory remedy is available, an applicant must exhaust that remedy before pursuing judicial review, unless there are exceptional circumstances. The Claimants have not presented any argument regarding public interest or exceptional circumstances that would allow the court to bypass the alternative remedy requirement, as established in **Howard Simpson Supra**. Judicial review focuses on evaluating the legality, rationality, and procedural correctness of decisions, and it is not the court's role to introduce grounds that were not raised by the parties. In the absence of any arguments regarding exceptional circumstances, I will not consider this issue further.

[49.] The statutory appeal process provides a clear and appropriate avenue for challenging the 1st Defendant's decision, and there is no evidence to suggest that it is inadequate or incapable of addressing the 1st Claimant's concerns. Moreover, the various declarations and remedies sought by the 1st Claimant may exceed the inherent limitations of judicial review, which is confined to assessing the legality, rationality, and procedural propriety of decisions. It is well established that judicial review does not assess the merits of a decision. In this regard, the statutory appeal process would have been the more appropriate recourse, as it allows for a fuller examination of the underlying issues. The 1st Claimant's failure to pursue the available statutory appeal renders this application both premature and procedurally inappropriate. Permitting judicial review in these circumstances would circumvent the established statutory framework and undermine the legislature's intent in creating a structured appellate process.

[50.] The 3rd Defendant adopts the arguments advanced by the 1st and 2nd Defendants but introduces a distinct perspective on the alternative remedy principle. It contends that the 1st Claimant's application for leave should be denied because the 1st Claimant has the option to pursue civil proceedings against the 3rd Defendant as an alternative remedy. Counsel for the 3rd Defendant argues that the 1st Claimant's assertion—that the 3rd Defendant lacked the authority to register as a non-profit company—should not be litigated through judicial review or framed as a challenge to the 1st Defendant's limited administrative determination regarding similar names. Instead, the 3rd Defendant submits that this issue constitutes a private law dispute between the parties, which should be adjudicated in civil proceedings rather than through judicial review. Accordingly, it asserts that the declaratory relief sought by the 1st Claimant properly falls within the domain of private law litigation.

[51.] The Court does not fully accept Counsel for the 3rd Defendant's argument. While a private law action remains an available option for resolving disputes between the 1st Claimant and the 3rd Defendant, it does not comprehensively address the entirety of the 1st Claimant's grievance. A central issue in this matter concerns the 1st Defendant's exercise of her public law powers, which falls squarely within the domain of judicial review. The private dispute resolution suggested by the 3rd Defendant would exclude the 1st Defendant from the process, thereby failing to account for the public law dimensions of the case. The Court is of the view that the claims raised necessitate the 1st Defendant's participation, as they involve an assessment of her statutory authority and the legality of her decision-making process. A private lawsuit between the 1st Claimant and the 3rd Defendant alone does not

constitute a sufficient alternative remedy that would preclude these proceedings. In this context, the Court refers to **In Re McAleenon** [2024] 3 WLR 803, where it was held at paragraph 49 that:

> "However, in our judgment, this was not the relevant comparison. Ms. McAleenon brought a judicial review claim against the defendant regulators in order to compel them to fulfil the public law duties to which she maintained they were subject, for which claim the judicial review procedure was well adapted and appropriate. The fact that she could have brought other proceedings, of a different nature (a nuisance claim or a private prosecution), directed against another party (Alpha), in which different issues would arise and in light of which different procedures would have been required to be followed to resolve those issues did not show that she had a suitable alternative remedy with regard to the claim she did wish to bring, which was to challenge the conduct of the defendant regulators."

Conclusion

[52.] In making my decision, I cite the guidance provided by Lord Stephens in the Privy Council case of **The Central Bank of Trinidad and Tobago v Maritime Life Ltd** [2022] UKPC 37 where it was stated at paragraph 2:

> "It is well settled that the threshold for the grant of leave to apply for judicial review is low. The Court is concerned only to examine whether the applicant has an arguable ground for judicial review **that has a realistic prospect of success and is not subject to a discretionary bar such as delay or an alternative remedy**: see governing principle (4) identified in Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14. **The low threshold would usually not be met "if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed**": see Attorney General v Ayers-Caesar [2019] UKPC 44 at para 2."

[53.] To borrow the words of Lord Stephens, the Court is confident at this stage that the legal position of the parties is clear and that the claim could not have succeeded. Having carefully considered the 1st Claimant's case, I find that none of the grounds advanced disclose an arguable case for judicial review with a realistic prospect of success. The applicant has failed to establish any illegality, irrationality, or procedural impropriety in the challenged decisions.

[54.] The Court further finds that, even if the 1st Claimant had presented an arguable case with a reasonable prospect of success, leave would still have been denied due to the availability of a statutory remedy. Judicial review is a remedy of last resort, and where Parliament has provided an alternative legal avenue, an applicant must demonstrate a valid justification for bypassing it and establish why the alternative remedy is inadequate or ineffective. In this instance, the 1st Claimant has failed to provide such justification.

[55.] For completeness, however, and in accordance with the overriding objectives of the CPR, and with the legal position of the parties being clear and based on the preponderance of the evidence before the Court, if I had considered this matter on appeal, I would not have allowed it on the merits. In my opinion, the 1st Defendant made the most logical decision in

the circumstances. The agents of the 3rd Defendant were members of the original "Valley Boys" and acted before the 1st Claimant in registering their name. I see no error that would have warranted the Court overturning the decisions had the Claimants appealed.

[56.] Accordingly, given the absence of a sustainable basis for judicial review and the existence of a statutory remedy, I decline to quash the 1st Defendant's decisions. Exercising judicial prudence, I dismiss the application for leave. In reaching this conclusion, I rely also on the judgment of Charles J (as she then was) in **The Queen and another v Dwight Armbrister** (Supra), where she stated at paragraph 16:

> **"Judicial prudence also 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".**

[57.] For the reasons given above, I make the following orders (which counsel are invited to transpose into a draft minute of order):

(i) The application for leave to apply for judicial review is **dismissed;**
(ii) The interim injunction is discharged and the 1st Defendant is free to conduct her statutory functions according to law;
(iii) I order costs to the Defendants to be summarily assessed if not agreed, I thank counsel for their assistance.

Dated this day 18th of March 2025

Darron D. Ellis

Justice