IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division 2022/PUB/jrv/00009

IN THE MATTER of an Application for Leave to Apply for Judicial Review Pursuant to Order 53 Rule 3(2) of the Rules of the Supreme Court

AND

IN THE MATTER OF THE Biological Resources and Traditional Knowledge Act 2021 AND The Companies Act 1992 and Anti-Doping Act in Sports 2009

AND

IN THE MATTER OF Articles 15, 21, 27, 48, 72 and the Preamble of the Constitution of The Bahamas

B E T W E E N:

SAMUEL BEVANS

1st Claimants

AND

EURIE INDUSTRIES INC.

2nd Claimant

AND

THE ATTORNEY GENERAL

1st Defendant

AND

THE DEPARTMENT OF ENVIRONMENTAL PLANNING AND PROTECTION

2nd Defendant

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Mr. Samuel Bevans appearing Pro Se
Mr. Antoine Thompson of Counsel for the 1st and 2nd Defendant

Hearing date: October 13, 2023

Application to strike out entire claim — Application for Leave for Judicial Review - Procedure - Applicability of The Supreme Court Civil Procedure Rules 2022, as amended- Court's power to strike out - Whether action is frivolous, vexatious, scandalous and an abuse of the process of the court - Whether the Claimants' application is premature - Whether an alternative remedy is available to the Claimants.

The Claimants instituted action to challenge the failure to grant a permit to conduct scientific research and a business license for engaging in research on biological resources within The Bahamas. The Defendants challenged the Claimants' application and applied to have it struck out.

HELD: *The CPR is the appropriate regime for an application for leave for judicial review where the matter had been filed before the Commencement day of the CPR, i.e. March 1, 2023 but not heard. The Claimants' Amended Originating Notice of Motion did not comply with Part 54 CPR. The Claimants' application for leave to pursue judicial review was filed before there was a decision by the Minister and was therefore premature. The Claimants had an alternative available remedy which they did not pursue.*

The Claimants' entire claim is struck out.

RULING

CARD-STUBBS J.

INTRODUCTION

[1.] This is the Defendants' ('Applicants') application to strike out the Claimant's action. The Court orally delivered its determination to the parties on August 1, 2025. What follows is the Court's determination and the reasons therefor.

[2.] For the reasons that follow, the Defendants' application is acceded to.

BACKGROUND

[3.] The Claimants' action primarily concerns the refusal of the Claimants' application for a permit to undertake scientific research and to operate a research facility under the provisions of The Bahamas and the Biological Resources and Traditional Knowledge Act, 2021. The Claimant purports to bring an action by way of judicial review.

The Action

[4.] On June 21, 2022, the Claimant filed an Originating Notice of Motion styled as "an Application for Leave to Apply for Judicial Review Pursuant to Order 53 Rule 3(2) of the Rules of the Supreme Court". The Originating Notice of Motion was served on the Applicants "in June A.D. 2022".

[5.] On April 25, 2023, the Claimant filed an Amended Originating Notice of Motion. The amendment was made without the leave of the court. The Amended Originating Notice of Motion was said to be made under the RSC and was served on the Applicants on April 25, 2023.

[6.] The Applicants were also served with an affidavit of Samuel Bevans filed on June 21, 2022 in support of the Originating Notice of Motion. The Affidavit is said to be in support of the Claimants' application "for an Order that the 2nd Respondent be mandated…to issue a permit to conduct scientific research and to operate a scientific research facility/laboratory in accordance with application reference number 571514 ("application #571514") submitted February 14, 2022."

[7.] The First Claimant is described as a research scientist and the beneficial owner of the Second Claimant. The Second Claimant is described in the Amended Notice of Motion as a foreign company under the Companies Act 1992.

[8.] By the June 21, 2022 affidavit, the First Claimant recounts that over a period of years, several applications made by him, including applications for research permits, for permission to open an environmental testing lab and coral farm and an application for a crown land, and seabed lease were denied.

[9.] By application (Application # 571514) dated February 14, 2022, the Claimants applied to the Department of Environmental Planning and Protection (DEPP) to conduct scientific research and to operate a scientific research facility/laboratory (paragraph 113, June 21, 2022 affidavit). The Claimants note that this application was based on a former application and was recrafted to answer concerns by the reviewing committee.

[10.] On March 17, 2022, the Claimants received a "letter of denial" from the Director of DEPP (paragraph 114, June 21, 2022 affidavit).

[11.] By affidavit filed August 17, 2023, the Claimants averred that an appeal of that decision was made by way of email on March 18, 2022. The Claimants wrote to Mr. Vaughn Miller, Minister, on March 18, 2022 asking him "as the Competent National Authority to grant an ABS (Access to Benefit Sharing) Permit for application to allow for bio-prospecting. The letter was said to be written pursuant to section 6(b)(h) and (i) of The Biological Resources and Traditional Knowledge Act, 2021.

[12.] The Claimants aver that not having heard from the Minister, they filed the Originating Notice of Motion on June 21, 2022 which was served on the Applicants.

[13.] On February 14, 2023, the Claimants were notified of a hearing date for the Originating Notice of Motion. Prior to the date of hearing, the Claimants filed an Amended Originating Notice of Motion and a supplemental affidavit of Samuel Bevans on April 25, 2023, which they served on the Applicants on the same date.

[14.] Both the Originating Notice of Motion and the Amended Originating Notice of Motion seek various declarations and orders. The Amended Originating Notice of Motion enlarged the Claimants' action to include several matters not raised in the Originating Notice of Motion. The Claimants also amended the headings of their pleadings to reflect an expanded claim.

[15.] The action is instituted under the The Biological Resources and Traditional Knowledge Act 2021 in respect of the nature of the application submitted (Application # 571514) dated February 14, 2022. The action is also instituted under The Companies Act because the Claimants submit that the 2nd Claimant is Bahamian with a right to work (paragraphs 133 to 136) and under The Constitution because the Claimants allege Constitutional breaches including the right to develop mineral resources for the benefit of the public and the right not to be discriminated against. The action is also said to be instituted under the Anti-Doping in Sports Act 2009 which appears to be a reference to the fitness of a decision-maker.

The Application to strike out

[16.] Having been served with both the Originating Notice of Motion and the Amended Originating Notice of Motion, the Applicants filed neither a Memorandum of Appearance (RSC) nor an Acknowledgment of Service (CPR) in this matter.

[17.] Having received notice of the hearing date of the Claimants' application for leave to apply for judicial review, the Defendants/Applicants filed a Notice of Application to Strike out the Claimant's Amended application for Leave for Judicial Review and "the entire claim" on June 20, 2023.

[18.] The Defendants' application is said to be made

> "…pursuant to Rule 54.1(1), 54.3,(2), 54.3,(6) & 54.4,(1), and Rule 26.3 (a), (b), & (c) of the Supreme Court Civil Procedure Rules 2022, and s.39 of the Biological Resources and Traditional Knowledge Act 2021, and further to the Court's inherent jurisdiction that the Claimant's Amended Application for Leave for Judicial Review, filed herein on the 25th day of April 2023, and their entire claim against the Defendants be struck out."

[19.] The grounds of the application are set out as:

> <u>Grounds Pursuant to Part 54 of The Supreme Court Civil Procedure Rules 2022</u>
>
> 1. The grounds for the Defendant's Application for Striking Out the Claimant's Amended Application for Leave For Judicial Review

are that the Claimants have not complied with Rule 54.1(1) of the Supreme Court Civil Procedure Rules 2022 in commencing the present Application for Leave for Judicial Review in accordance with the provisions of Part 54 of the Supreme Court Civil Procedure Rules 2022;

2. The Claimants have not complied with Rule 54.3(2) of the Supreme Court Civil Procedure Rules 2022 in commencing the present Application without filing the required notice FORM !, with an accompanying Affidavit verifying the facts relied on, as outlined by the Supreme Court Civil Procedure Rules 2022.
3. The Claimants have not complied with Rule 54.3,(6) of the Supreme Court Civil Procedure Rules 2022 in amending the grounds of the present Amended Application for Leave without first seeking leave of the Honourable Court .

4. The Claimants have not complied with Rule 54.4,(1) of the Supreme Court Civil Procedure Rules 2022 in commencing the present Application promptly within six months from the date when the date for the application arose.

Grounds Pursuant to Rule 26.(3) (a),(b),(c) of the Supreme Court Civil Procedure Rules 2022

5. The Claimants' Application ought to be struck out as there has been a complete overall failure on the part of the Claimants to comply with Part 54 of the Supreme Court Civil Procedure Rules 2022.
6. The Claimants' Application ought to be struck out as the grounds on which the Claimants rely on in the Amended Application and accompanying Affidavit do not disclose any reasonable grounds for bringing a Claim against the Defendants.
7. The Claimants' Application ought to be struck out as the Amended Application and the accompanying Affidavit filed herein are fraught with allegations against the Defendants, and others not directly associated with the Defendants, that are frivolous, vexatious, scandalous, and an abuse of the process of the Court.

Grounds Pursuant To s.39 of Biological Resources and Traditional Knowledge Act 2021,

8. The Claimants' Application for Leave for Judicial Review is also premature as they have not fully exhausted all alternative remedies available to them, specifically, as the present application was brought before the Claimants received the decision of the Honourable Minister in regard to their appeal of the decision of the ABS Committee. Further, the correct remedy would be an Appeal to the Supreme Court against the decision within sixty days upon receipt of the same.

[20.] The Defendants' application was supported by the Affidavit of Luana Ingraham also filed June 20, 2023.

[21.] In response, the Claimant filed the affidavit of Samuel Bevans on August 17, 2023.

Issue

[22.] The issue before me is whether the Court should exercise its discretion to strike out the Claimants' action on any of the following grounds:

a. that the Claimants have failed to comply with Part 54 CPR
b. that the Originating Notice of Motion and the Amended Notice of Motion do not disclose any reasonable ground for bringing a claim or, alternatively that the action is frivolous, vexatious, scandalous and an abuse of the process of the court;
c. that the Claimants' application is premature and that an alternative remedy was not utilized by the Claimants.

SUBMISSIONS OF THE NAMED-PARTIES

Defendants'/Applicants' submissions

[23.] The Applicants contend that the Claimants failed to comply with the procedural requirements outlined in Rule 54 of the Civil Procedure Rules ("CPR"), which they argue must be strictly observed. They further assert that the Claimants did not submit the prescribed Form JR1, which is necessary to initiate an application for leave for Judicial Review, nor did they file an affidavit verifying the factual basis of their claims.

[24.] The Applicants also argue that the Claimants failed to obtain leave prior to amending their application for Judicial Review. They maintain that the amendments are substantial in nature and amount to an entirely new application, distinct from the one originally filed.

[25.] The Applicants submit that the Claimants did not file their application for leave within the six-month time frame prescribed from the date the grounds for the application arose. Furthermore, they failed to exhaust available alternative remedies prior to initiating proceedings in the Supreme Court.

[26.] It is further submitted that the proceedings initiated by the Claimants disclose no reasonable cause of action. The Applicants contend that the affidavit filed in support includes allegations about individuals unrelated to the named Defendants, thereby rendering the claim frivolous, vexatious, and an abuse of the court's process.

[27.] The Applicants maintain that the test for granting leave for judicial review is whether there exists a good and arguable case with a reasonable prospect of success, and whether the application is free from statutory bars such as undue delay or the availability of alternative remedies. In support of this position, they rely on the authority of *Sharma v Browne-Antoine* (2006) 69 WIR 379.

[28.] The Applicants further argue that Judicial Review is a remedy of last resort, applicable only where no adequate alternative remedy exists. They note that the court will generally decline to grant leave unless there are exceptional circumstances warranting such proceedings.

[29.] Finally, the Applicants submit that the Claimants' action was premature as no final decision had been rendered by the Minister at the time that the Originating Notice of Motion was filed. The Applicants also argue that having subsequently received the Minister's decision, the Claimants failed to exhaust all recourse available and did not lodge an appeal against that decision as provided for in the Biological Resources and Traditional Knowledge Act, 2021.

Claimant's submissions

[30.] The Claimants do not deny that they failed to follow Part 54 CPR. It is the contention of the Claimants that the relevant regime is the Rules of the Supreme Court, 1978 (RSC) since the legal proceedings were commenced on June 21, 2022. The Claimants contend that the Civil Procedure Rules (CPR) do not apply to the present matter. Relying on Rule 2(1)(b)(iii) of the CPR, they argue that for the CPR to apply, one party must have sought an adjournment of the matter to allow it to fall under the CPR. The Claimants argue that by virtue of Rule 2(2)(b), the Defendants were obligated to apply for an adjournment and to schedule a hearing for the CPR to be applicable.

[31.] The Claimants also contend that the First Defendant improperly exercised its right to apply for an order to strike out under the CPR, given that an Amended Originating Notice of Motion had already been filed and served on the Defendant on April 25, 2023. They further argue, pursuant to Order 20, Rule 4(1) RSC, that the Defendants were required to file an application challenging the amendments within 14 days of service of the amended Notice of Motion, and that no such application was made within that period and that, therefore, the time to contest the amendments has expired. The Claimants further submit that the 1st Defendant cannot properly seek an order to vary or extend the timeframe for compliance with the applicable rules to avoid sanctions. This position is grounded in the authority of *Belgravia International Bank Trust Company Limited and Sigma Management*, SCCivApp No. 75 of 2021. The Claimants also assert that the Defendants' application to strike out should be denied on the basis that the filed copy of the application was electronically served under an inapplicable CPR regime.

[32.] The Claimants argue that the Defendants failed to file a Defence and that the Claimants reserve the right to apply to the Court for final judgment under Order 14, Rule 1 of the RSC. The Claimants submit that even if the CPR is to be applied to any future hearings, the Defendants would be precluded from filing a defence or affidavit, as the deadline for doing so has already passed. The Claimants point out that the Defendants failed to apply for an extension of time to file those documents, in contravention of Rule 10.3(1).

[33.] The Claimant also contends that due to the Defendants' non-compliance with both the RSC and CPR, it is necessary to petition the Court for an order granting the amended

notice and that this is supported by Order 31A, Rules 26(3) and 26(4) of the RSC, with Rule 26(4) specifically stating that no formal application is required for an order to be granted in the case of a procedural error.

[34.] The Claimants argue that since the Defendants failed to a defence under the CPR, they cannot file an affidavit in support of an application. Additionally, the Claimants assert that by CPR Rules 8.23(1)(a), 8.23(1)(b), and 8.23(2), the Defendants are prohibited from participating in the proceedings in the absence of an Acknowledgment of Service unless leave of the Court by way of a Court Order is first obtained.

[35.] The Claimants argue that where a legal right exists, there must also be a remedy, citing *Ashby v White 92 ER 126*. They submit that it is a legal principle that a presumption of damage arises where a legal right is violated. They submit that the constitution of The Bahamas ensures the protection of the law and guards against deprivation of property and that access to biological resources constitutes a right, which is further affirmed under the Act and recognizes every Bahamian's right to access the country's biological and genetic resources.

[36.] The Claimants submit that the Defendants' Application should be dismissed and ask the court to grant the following:

> a. A declaration that the defending parties were in breach of R.S.C. Order 20 rule 4 (1).as the time prescribed for applying to disallow amendments … have expired.
>
> b. A declaration that the defending parties are in Default of Defense pursuant to the RSC Order 19 rule 7. .
>
> c. A declaration that the "Amended Notice" be granted pursuant to the R.S.C. Order 53 rule 3(2)
>
> d. Final Judgment pursuant to R.S.C. Order 14 rule (1) and Order 31A rule 26(4).

LAW AND DISCUSSION

Preliminary Issue

Applicability of Rules

[37.] The Claimants have submitted that the Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') is not applicable in these proceedings. If they are correct, then the Defendants' application falls away. It is therefore necessary to determine, as a preliminary issue, whether the Rules of the Supreme Court, 1978, as amended (RSC) or The Supreme

Court Civil Procedure Rules, 2022, as amended, (CPR) applies OR whether both sets of rules apply to this application.

[38.] The CPR came into effect on March 1, 2023 (the Commencement date).

[39.] The section on Preliminary matters in the CPR provides:

> **PRELIMINARY**
>
> **1. Citation and commencement**.
>
> (1) These Rules may be cited as the Supreme Court Civil Procedure Rules, 2022.
>
> (2) These Rules shall come into operation on such date to be appointed by the Rules Committee by notice published in the Gazette.
>
> **2. Application of Rules.**
>
> (1) Subject to paragraph (4), these Rules shall —
>
> (a) apply to all civil proceedings commenced in the Court on or after the date of commencement of these Rules;
>
> (b) not apply to civil proceedings commenced in the Court prior to the date of commencement of these Rules except where —
>
> (i) a trial date has not been fixed for those proceedings; or
>
> (ii) a trial date has been fixed for those proceedings and that trial date has been adjourned.
>
> (2) In the case of civil proceedings -
>
> (a) referred to in paragraph (1)(b)(i), the claimant must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least twenty-eight days' notice of the conference; and
>
> (b) referred to in paragraph (1)(b)(ii), an application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard;
>
> (3) Where in proceedings commenced before the date of commencement of the Rules, the Court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular Part 1 and Part 25.
>
> (4) These Rules shall not apply to —
>
> (a) bankruptcy and insolvency proceedings, including winding up of companies;
>
> (b) family proceedings except proceedings under the Child Protection Act (Ch. 132);
>
> (c) probate proceedings except contentious probate proceedings as provided for in Part 63;
>
> (d) proceedings in which the Court is acting as a Prize Court;
>
> (e) any other proceedings in the Court instituted under any enactment,

in so far as rules made under that enactment regulate those proceedings.

3. Revocation.
The Rules of the Supreme Court (S.I. No. 48 of 1978) are hereby revoked.

4. Savings and transitional.
Notwithstanding rule 3, proceedings commenced in the Court prior to the commencement of these Rules, to which these Rules in accordance with rule 2(1)(b) do not apply, shall continue under the Rules of the Supreme Court (S.I. 48 of 1978).

[40.] The RSC was revoked by the CPR 2022: Preliminary Section 3, CPR. It is clear that the rules apply to all civil proceedings commenced on or after the Commencement Date, viz, March 1, 2023: Preliminary Section 2(1)(a), CPR. The question therefore is what is the status of those matters commenced prior to its commencement date.

[41.] Matters commenced prior to March 1, 2023 are addressed by a Savings clause which makes the RSC applicable where such matters had proceeded to a trial date AND kept that trial date. (Preliminary Section 4, CPR). That section provides that the RSC will apply to matters "to which these Rules in accordance with rule 2(1)(b) do not apply…". On review of rule 2(1)(b), it is apparent that the rules of CPR do NOT apply to matters commenced prior to March 1, 2023 which had a trial date fixed AND which have kept the trial date i.e. the trial date was not adjourned. Therefore, the RSC is only applicable to pre-March 1, 2023 matters that (1) had a trial date fixed prior to March 1, 2023 and (2) where the trial date was not adjourned. In other words, the RSC is only applicable to matters that proceed/proceeded to trial on a trial date that had been fixed before March 1, 2023.

[42.] Practice Direction 9 of 2023 provides clarification as to the application of CPR 2022. It provides:

1. Introduction
1.1 This practice direction clarifies the application of the Rules to proceedings which were commenced prior to the commencement date.
2. Civil proceedings commenced prior to the commencement date and a trial date has not been fixed for those proceedings
2.1 The Rules apply to proceedings commenced prior to the commencement date where a trial date has not been fixed for those proceedings.
2.2 Any new interlocutory application which has to be made or any new document which has to be filed, including the Defence, must comply with the Rules.
2.3 A party may apply to a Judge by Notice, prior to the convening of the CMC required under 2(2)(a) of the Rules, for directions in respect of any proceedings commenced prior to the commencement date where a trial date has not been fixed for those proceedings.
3. Interlocutory applications filed prior to the commencement date

but which have not been heard by the Court

3.1 Where the Rules apply to an application which had been filed with the Court prior to the commencement date but not heard by the Court, the parties will not be required to file new applications and the Court may proceed to determine the applications on the documents already filed with the Court.

3. 2 The Court in managing the hearing of the interlocutory application may permit the parties to file any additional material which may be required for the application to be properly considered where the Rules now apply.

[43.]

[44.] Practice Direction 9 of 2023 was made pursuant to Rule 4.2 CPR 2022. It directs that if an application or new document is filed on or after March 1, 2023, that application or new document must comply with the CPR even if the civil proceedings commenced prior to March 1, 2023. These principles were reviewed and reiterated by this court in ***Stefanie Ann Schaffer et al v Clayton Patterson Smith et al*** CLE/GEN/00708.

[45.] The rules apply to civil proceedings save those expressly excluded. Judicial Review are included in the categories of civil proceedings caught by the CPR, not being excluded by Preliminary Section 2(4) CPR and being provided for by Part 54 CPR.

[46.] In the case before me, the action, entituled as an application for leave to apply for Judicial Review was instituted on June 21, 2022 which is prior to the commencement date of the CPR. However, that matter was not heard until after March 1, 2023. The Claimants have submitted that the CPR can only apply if one of the parties made an application for an adjournment of the hearing date. This submission appears to be based on a misconstruction of Rule 4 CPR.

[47.] The current substantive proceedings – application for leave to pursue judicial review - is not in the nature of proceedings where a trial date was set. The only matters saved by Preliminary Section 4, CPR for determination under the RSC are proceedings instituted prior to March 1, 2023 matters which had a trial date fixed prior to March 1, 2023 and where the trial date was not adjourned. This case does not fall into that category.

[48.] Practice Direction 9 of 2023 confirms that Preliminary Sections 2(1)(b) and Section 4, CPR requires that any application or any new document filed after March 1, 2023 is to comply with the CPR. Therefore the hearing of any such application will proceed under that regime. In this instance, this construction leads to several consequences:

(i) The Claimant's instituted action is not one to be considered under the RSC because it is not a matter in which a trial date had been fixed. Therefore all further proceedings and hearings are to be conducted under the regime of the CPR.

(ii) The application filed by the Defendants was filed on June 20, 2023 which was subsequent to the Commencement date of the CPR. Accordingly, the CPR governs the application presently before me.

(ii) The Amended Originating Notice of Motion was filed subsequent to March 1, 2023 and is a document that ought to comply with the CPR.

(iii) If the Defendants' application proved unsuccessful and this matter were to proceed, it would proceed pursuant to the rules of the CPR.

The court's jurisdiction to strike out

[49.] **Rule 26.3 (1)** of the CPR gives the court power to strike out a statement of case and provides:

> "(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that —
> (a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;
> (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
> (c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
> (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10."

[50.] A Court is empowered to strike out any pleading or indorsement on the grounds set out in Rule 26.3(1) (a)-(d), CPR. This includes a failure to comply with the rules.

[51.] Striking out is a discretion to be exercised carefully and only in plain and obvious cases as such an order operates to deprive a litigant of a trial on the pleaded matters. However in several cases, some of which are identified in Rule 26.3(1) CPR, it is an appropriate remedy. It is an appropriate remedy where, for example, the matters pleaded are not fit for litigation or are not justiciable or the pleadings infringe the procedural rules in a way that constitutes an abuse of process or where the pleadings show that the litigant does not have a realistic prospect of success. Striking out an ill-fated matter is an efficient use of judicial time and court resources, saves expense and costs, and otherwise serves the overriding objective of the CPR.

ISSUE 1
COMPLIANCE WITH PART 54 CPR

[52.] The Applicants argue that the Claimants' application for Judicial Review is not in compliance with Rule 54 of the CPR. The relevant sections of the CPR provide:

> "54.1 (1) An application for — (a) an order of mandamus, prohibition or certiorari; or (b) an injunction under section 18 of the Act restraining a person from acting in any office of a public nature in which he is not entitled to act, shall be made by way of an application for judicial review in accordance with the provisions of this Part.
>
> 54.3 (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.
>
> 54.3 (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.
>
> 54.4 (1) (1) 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."

[53.] The rules require that a Claimant who wishes to pursue judicial review proceedings must first comply with Rule 54.3, by filing notice in Form JR1 with the requisite information and a verifying affidavit. If the Applicant for leave wishes to amend the application, the Applicant may seek the court's leave to do so on the hearing of the application: Rule 54.3(6).

[54.] In summary, the rules require that a Claimant who wishes to pursue judicial review proceedings must first comply with Rule 54.3 by filing notice in Form JR1 with the requisite information and a verifying affidavit. Only after leave is granted, may the claimant institute action by way of an Originating Application. An Originating Application is one of the modes of instituting actions under the CPR: Part 8.

[55.] In this case, the Claimant initially commenced his application by way of an Originating Notice of Motion filed on June 21, 2022 said to be in compliance with the institution of an action under the RSC. It is not, for these purposes, necessary to determine whether this is so because that Originating Notice of Motion was said to be overtaken by an Amended Originating Notice of Motion filed on April 25, 2023.

[56.] The Amended Originating Notice of Motion is said to be an application for leave pursuant to Order 53 rule 3(2) of the RSC and the Claimants by that pleading seeks to invoke the exercise of the court's jurisdiction and power pursuant to that rule. However the

document was filed after the coming into effect of the CPR and ought to have followed the procedure laid down by that regime which requires compliance with Rule 54.3, by filing a notice in Form JR1. This was not done.

[57.] For the reasons given above, the Amended Originating Notice of Motion infringes the CPR which are the applicable rules.

ISSUE 2
Whether the Originating Notice of Motion and the Amended Notice of Motion disclose any reasonable ground for bringing a claim or, alternatively that the action is frivolous, vexatious, scandalous and an abuse of the process of the court.

[58.] The Amended Originating Notice of Motion significantly expands the scope of the Claimants' application for leave to pursue judicial review proceedings.

[59.] By the Originating Notice of Motion filed on June 21, 2022, the Claimants' action was framed as:

> **TAKE NOTICE** that the Supreme Court sitting at Bank Lane, Nassau, New Providence, The Bahamas will be moved before **Justice Carla Card - Stubbs** on the **24** day of **May** 2023 at 1**0:00 o'clock** in the **fore** noon or so soon thereafter as Counsel can be heard, on behalf of **SAMUEL BEVANS** and **EURIE INDUSTRIES, INC.** the Applicants for the following relief namely:
>
> 1. A declaration that the applicants are entitled to be granted a scientific research permit and be permitted to construct and operate a research facility/laboratory in The Commonwealth of The Bahamas under the Biological Resources and Traditional Knowledge Act, 2021.
> 2. A declaration that the portal called Open Researcher and Contributor ID, abbreviated **ORCID** under the Biological Resources and Traditional Knowledge Act, 2021 offends Article 26 of the Constitution of the Commonwealth of The Bahamas as it makes no allowance for citizens of the said Commonwealth to apply for a scientific research permit and to operate a scientific research facility/laboratory and is therefore discriminatory.
> 3. That an Order be made pursuant to Order 53 rule 3 (2), Rules of the Supreme Court to issue a scientific research permit and to construct and operate a scientific research facility/laboratory, application reference # 571514 by the 2nd Respondent or any of its agents or servants to Eurie Industries, Inc. as a research institution as applied for under the Biological Resources and Traditional Knowledge Act, 2021
>
> **AND TAKE FURTHER NOTICE** that the grounds of this application are: -
>
> (i) That the Applicants are eminently qualified to be issued a scientific research permit and to construct and operate a research laboratory.
> (ii) The grant of a scientific research permit and to construct and operate a research facility/laboratory was unreasonably and unconstitutionally withheld by the relevant government authorities.

[60.] By the Amended Originating Notice of Motion filed on April 25, 2023, the Claimants' application was amended and read:

Amended

ORIGINATING NOTICE OF MOTION

TAKE NOTICE that the Supreme Court sitting at Bank Lane, Nassau, New Providence, The Bahamas will be moved before Justice Carla Card-Stubbs on the 24th day of May, 2023 at 10 o'clock in the fore-noon or so soon thereafter as Counsel can be heard, on behalf of SAMUEL D. BEVANS and EURIE INDUSTRIES, INC. the Applicants for the following relief namely:

1. A declaration that the Applicants are entitled to be issued a scientific research permit, an export permit, and an import permit to access the biological and genetic resources as applied for on application reference #571514 (application #571514) along with a research operation permit to construct and operate a scientific research and development laboratory (Eurie Industries Inc.) in The Commonwealth of The Bahamas under the Biological Resources and Traditional Knowledge Act 2021 ("the Act").
2. A declaration that the Applicants are entitled to be granted crownland and a seabed in Exuma, Bahamas to facilitate the scientific and economic activities of Eurie Industries Inc. in the sustainable use of the biological and genetic resources thereby creating a new Industry under the Preamble of the Constitution of the Commonwealth of The Bahamas.
3. A declaration that the online-permitting system called Open Researcher and Contributor ID, abbreviated ORCID under "the Act" offends Article 26 of the Constitution of the Commonwealth of The Bahamas ("The Constitution') as it makes no allowance for citizens of said Commonwealth to apply for a scientific research permit and a research operation permit and is therefore discriminatory.
4. A declaration all scientific discoveries and inventions done by the Applicants is the Intellectual Property/Proprietary Right of the Applicants under Article 27 of The Constitution and "the Act".
5. A declaration that the letter dated March 17, 2022 from Director Rhianna M. Neely-Murphy of the Department Environmental Planning and Protection (DEPP) in regards to application #571514 for non-issuance of scientific research permit to access the biological and genetic resources on public land is an abuse of power under "the Act" and Article 27 of The Constitution.
6. A declaration that the appeal panel for application #571514 infringes on the Applicants economic liberty under Article 15 of The Constitution.
7. A declaration that Nonfeasance in Public Office as Minister Vaughn P. Miller responsible for the Competent National Authority is in breach of a statutory duty to make an order within a reasonable period of time with respect to application #571514 under "the Act".
8. ~~That an Order be made pursuant to Order 53 rule 3 (2), Rules of the Supreme Court to issue a scientific research permit and to construct and operate a scientific research facility/Aaboratory, application reference # 571514 by the 2nd Respondent or any of its agents or servants to Eurie Industries, Inc, as a research institution as applied for under the Biological Resources and Traditional Knowledge Act, 2021.~~

9. That an Order be made pursuant to Order 53 rule 3 (2), Rules of the Supreme Court to issue:

a) Scientific research permit as applied for on application #571514.
b) A research operation permit to construct and operate Eurie Industries Inc.
c) Crownland along with the accompanying seabed in Exuma, Bahamas.
d) The work undertaken and subsequent scientific discoveries and inventions made by the Applicants is the Intellectual Property/Proprietary Right of the Applicants.
e) All relevant import permits and export permits to conduct scientific research as applied for on application #571514 by the Applicants to the 2nd Respondent or any of its agents or servants under "the Act".

10. A declaration that the Applicants be awarded damages due to the wrongful conduct of both Director Rhianna M. Neely-Murphy and Minister Vaughn P. Miller under Section 36 of "the Act".

AND TAKE FURTHER NOTICE that the grounds of this application are: -

I. That the Applicants are eminently qualified to be issued a scientific research permit to access the biological and genetic resources as applied for on application #571514, and a research operation permit accompanied by all relevant import and export permits pertinent to the scientific and economic activities of Eurie Industries Inc. (EI).

a. Section 14 (1) and Section 14 (2) (c) of "the Act" give Bahamians an ***established right*** to have access to the genetic resources.
b. Email dated February 14, 2022 from The Commonwealth of Bahamas (research@depp.gov.bs) contains the completed application #571514 along with a draft of the Mutually Agreed Terms (MAT) [Exhibit SDB-34; Page 1]; The MAT also known as Access Benefit and Sharing (ABS) contract states the access permit BS-2021-571514 is to be issued [Exhibit 34; page 13, Section 2] and the Applicants are authorized to collect and export the sample (biological and genetic resources) [Exhibit SDB-34: page 14; Section 3.2].
c. Eurie Industries Inc. is a foreign registered company under the Companies Act 1992 [Exhibit SDB-30]. Being duly registered allows El to continue its economic activities [Companies Act 1992: Section 24 (2)], and to enter into contracts [Section 25: Companies Act 1992]. Eurie Industries Inc. signed a Collaborative Research Agreement with the 4th largest university in Canada, University of Prince Edward Island (UPEI) [Exhibit SDB-32; Pages 1-10].
d. Coral Vita Ltd. became a legal business entity March 2019 [Exhibit SDB-15, page 1] and subsequently launched May 2019 [EXHIBIT SDB-23; page 1] and was allowed to secure coral restoration permits, access to the seabed, contracts with the Bahamian government and $500,000 from the Bahamian government in grant funding which occurred while the moratorium was in effect [Exhibit SDB-13]. The domicile of the executives of Coral Vita Ltd. are outside of The Bahamas [Exhibit SDB-15: Page 2] and I do not know if the principal owners of Coral Vita Ltd. are Bahamian citizens. There is no mention in Exhibit SDB-23 of the land that houses the land based coral farm (Coral Vita Ltd.) which has a seabed access via a canal waterway was paid for out of corporate or personal funds from the agents of Coral Vita Ltd. or if it was a crownland and seabed lease grant from the government of The Bahamas.

i. The Applicants were informed via email and telephonically in November 2019 that a moratorium was in place from April 2019 for the collection and export of biological samples by Lester Gittens [Exhibit SDB-18].

ii. The online-permitting system (ORCID) came into effect April 1, 2021 [Exhibit SDB-38] and non-Bahamian scientists were able to secure access permits for biological resources, namely, corals [Exhibit SDB-23] and continue economic activities during the moratorium [Exhibit SDB-38]. The moratorium time period was April 2019-April 2021.

e. Letter dated July 19, 2020 from Mr. Jack Thompson, Secretary to the Governor General with respect to refusal of scientific research permit by the relevant authority to the Applicants, the letter was supposed to serve as an impetus for the Office of the Attorney General to investigate. As best to my knowledge the Office of the Attorney General has never acted on this evidence [Exhibit SDB-19].

II. ORCID is discriminatory towards Bahamians.

a. Samuel D. Bevans is the beneficial owner of over 95% of the shares Eurie Industries Inc. making it a Bahamian company as per Preliminary 2 of the Companies Act 1992.

b. The third (3) to last paragraph [Exhibit SDB-38: Page 3], an agent of DEPP admits to Dr. Higgs that there are no categories for Bahamian scientists, there is no consideration for Bahamian scientists on ORCID; published in The Tribune on April 12, 2022.

c. The Applicant Checklist: Documents to be uploaded [Exhibit SDB-25] makes no mention of an established right of Bahamians or has a section for Bahamian applicants.

d. The Applicants had to apply as Research Institution, namely an American business entity [Exhibit SDB-24] because there are no provisions on ORCID for Bahamian scientists.

e. Section 18 of "the Act" mandates an annual scientific research permit along with an export permit to operate a research laboratory. The online-permitting system makes no provision for a research operational permit to operate a scientific research laboratory in the Bahamas.

f. Article 26 (3) of The Constitution protects Bahamian scientists from discrimination by ORCID.

III. That the Applicants are entitled to be granted Crown land and a seabed to construct and operate a scientific research and development laboratory in Exuma, Bahamas,

a. The Cabinet of the Bahamas via written communications dated June 18, 2018 to Applicant refusing to issue crown land and seabed in addition to prohibiting the Applicants to construct and operate a laboratory [Exhibit SDB-8]. Mr. Vaughn P. Miller was a Parliamentary Secretary for the FNM that year. Because of this letter Samuel D. Bevans had to open a company in the state of Florida then register said company [Eurie Industries Inc.] at the Registrar General Department of The Bahamas. To date Samuel D. Bevans cannot construct a scientific research and development laboratory and or office complex because of the aforementioned letter from the FNM Cabinet, this letter violates the Applicants economic rights guaranteed in Article 26 (4) (b) of The Constitution.

b. The Cabinet of The Bahamas via written communications dated June 21, 2018 το Applicant to view the Bahamas Water and Sewerage Corporation books [Exhibit SDB-91.

c. The Competent National Authority knows the health hazards that outdoor toilets pose to the general public and the environment [Exhibit SDB-6: page 2].

d. Marine Resources gave recommendation for the Applicants to have access to seabed; email dated February 14, 2019 [Exhibit SDB-14].

e. I believe the Cabinet of The Bahamas to be compromised when making those decisions because Mr. Renward Wells under ***Article 48 (1) (f) The Constitution*** and by law under ***Section 8 Anti-Doping Act 2009***, was not eligible to become a Member of Parliament and I believe not fit to serve as a Cabinet Minister; Mr. Renward Wells had a 2-year ban from competitive athletics for testing positive for a banned performance enhancing drug [Exhibit SDB-10], Mr. Renward Wells later became Minister of Health [Exhibit SDB-20].
f. An agent from the University of Prince Edward Island (UPEI) confirms in 2018 that said university will partner with the Applicants on projects involving a seabed [Exhibit SDB-7].
g. Under the Preamble of the Constitution the Applicants existence should not be frustrated by deprivation but there should be a national commitment to Industry building among the Inheritors of and Successors (Bahamian citizenry) inheriting this Family of Islands.

IV. The work done by the Applicants should be declared the Intellectual Property of the Applicant.
a. The MAT contract under the heading Property Rights, the Applicants have to seek permission from The Bahamas government before securing Intellectual Property Rights [Exhibit SDB-34, page 18, Section 9.3] but under Section 14 (2) (ii) of "the Act" it recognizes that the Applicants have Intellectual Property Rights and makes no mention of asking the government's permission to secure such rights.
b. Article 27 (1) of The Constitution establishes Intellectual/Proprietary Rights for the individual.

V. Abuse of power by the Director Rhianna M. Neely-Murphy:
a. Application #571514 was approved by ORCID and by former Director Rochelle Newbold via verbal confirmation to Samuel D. Bevans, December 2021. The approval by ORCID and former Director Rochelle Newbold was rejected by the new Director Rhianna M. Neely-Murphy in March 17, 2022 [Exhibit SDB-35].
b. Since becoming Director of DEPP in January 2022, Rhianna M. Neely-Murphy made the applicant edit application #571514 and as a result another MAT contract was signed and forwarded to DEPP on February 14, 2022 [Exhibit SDB-34, page 21].
c. Director Rhianna M. Neely -Murphy misrepresented the facts to the Applicants and the all those copied in the correspondence [Exhibit SDB-35], the first (1st) reason given for declining application #571514 was that it was a commercial investment venture, this is inaccurate as Director Rhianna M. Neely-Murphy is possession of a signed non-commercial contract from the Applicants [Exhibit 34 page 11, ***Non-Commercial Contract].*** Within the MAT contract it explicitly states for non-commercial purposes [Exhibit 34, page 14, Section 4.2] which the Applicants agreed to [Exhibit SDB-34, page 21]. Nowhere in application #571514 the Applicants stated that this was a commercial investment venture.
d. Exhibit SDB-35 Director Rhianna M. Neely-Murphy misrepresented the facts to the Applicants and the all those copied in the correspondence, the second (2nd) reason given for declining application #571514 was that the research was unclear or deficient but the MAT contract was created based off the uploaded information from the Applicants onto ORCID. The same information provided to Director Rhianna M. Neely-Murphy was forwarded to UPEI subsequently $25,000 was released from the Canadian government and UPEI was willing to send 5 scientists

from the University for the scientific endeavor as applied for on application #571514 [Exhibit SDB-34, page 8].

e. Exhibit SDB-35 Director Rhianna M. Neely-Murphy misrepresented the facts to the Applicants and the all those copied in the correspondence, the third (3rd) reason given was the Background information is inadequate, the MAT contract and the scope of the contract was created from the background information provided by the Applicants.

f. Exhibit SDB-35 Director Rhianna M. Neely-Murphy misrepresented the facts to the Applicants and the all those copied in the correspondence, the fourth (4th) reason given was that the application was incomplete this is inconsistent with Exhibit SDB-34: Pages 2-10 as ORCID recognizes that the application was completed and access permit BS 2021-571514 ready to be issued.

g. Exhibit SDB-35 Director Rhianna M. Neely -Murphy misrepresented the facts to the Applicants and the all those copied the correspondence, the fifth (5th) reason given was that the Data Management plan is unacceptable to the government of The Bahamas but ORCID accepted the Data Management plan [Exhibit SDB-34, page 10]. Up to March 2023 Director Rhianna M. Neely-Murphy still has not indicated the additional information needed for the government of The Bahamas with respect to the Data Management.

h. Director Rhianna M. Neely-Murphy intentionally decline applicant #571514 March 17, 2022 knowing the Canadian government released $25,000USD and the (vi) Canadian scientists from UPEI were expected to arrive March 27, 2022 and depart April 27, 2022 [Exhibit SDB-34, page 11].

i. The denying of application #571514 by Director Rhianna M. Neely-Murphy contradicts The MAT contract that states the access permit would be issued to the Applicants BS 2021–571514.

j. Director Rhianna M. Neely-Murphy decision eliminates the ***established right*** allowing Bahamian/indigenous citizens to have access to the genetic resources on public land under Section 14 of "the Act".

k. With the exception of Samuel D. Bevans being the lead scientist Director Rhianna M. Neely-Murphy misrepresented the facts in her communication to Minister Vaughn P. Miller for non-issuance of scientific research permit on application #571514 [Exhibit SDB-33].

l. The reasons given by Director Rhianna M. Neely-Murphy [Exhibit SDB-33] [Exhibit SDB-35] are inconsistent with Article 27 (3) of The Constitution as the Applications are Bahamians and all public lands are collectively owned by the Bahamian citizenry and every Bahamian citizen has an interest/establish right in having access to the biological and genetic resources.

m. In Director Rhianna M. Neely-Murphy's possession is the Access Benefit and Sharing (ABS) contract that the Applicants signed which states the access permit BS-2021-571514 is to be issued [Exhibit 34; page 13, Section 2] and the Applicants are authorized to collect and export the sample (biological and genetic resources) [Exhibit SDB-34: page 14; Section 3.2].

VI. The appeal panel infringes on the Applicants' economic liberty as guaranteed under Article 15 of The Constitution.

a. The Companies Act 1992 Section (24)(2) allows for EI to conduct business and Section (24) (1) affords EI the same privileges and rights of the individual enshrined under Article 15 and Article 26 (4) (b) of The Constitution.

b. Section 14 of "the Act" give Bahamians the established right to have access to the genetic resources.

c. The appeal panel had access and was made aware of the contents of the Access Benefit and Sharing (ABS) contract that the Applicants signed which states the access permit BS-2021-571514 is to be issued [Exhibit 34; page 13, Section 2] and the Applicants are authorized to collect and export the sample (biological and genetic resources) [Exhibit SDB-34: page 14; Section 3.2].
d. El has a signed contract with UPEI to collaborate on scientific research; the Applicants cannot honor said contract because it does not have the liberty to conduct scientific activities with respect to the genetic resources. The appeal panel did nothing to restore the established right of The Applicants.
e. e. El was not afforded the same right of conducting business as Coral Vita Ltd.
f. f. Without a scientific research permit the Applicants cannot earn a living [Exhibit SDB-4; pages 2-4] and cannot access the $6,000,000 USD the Applicants are allowed to capitalize Eurie Industries Inc. [Exhibit SDB-11; Page 5] pending approval of application #571514 and being able to construct and operate El.
g. g. As best to my knowledge I do not know of any profession that requires a Bahamian to be issued a permit to work in The Bahamas. The appeal panel formed to review application #571514 with the foreknowledge knowing ORCID is discriminatory towards the Bahamian scientists and also knowing selected businesses are only reserved for 100% Bahamian participation [Exhibit SDB-43] but the reverse has happened to the Applicants and to date the Applicants are not privy to the appeal panel's recommendations. The Applicants has been excluded from the economic and scientific activity thus depriving El of its economic liberty enshrined under Article 15 of The Constitution. Exhibit SDB-18 states that the moratorium stops the Applicants from exports biological samples for cosmetics and other purposes but Exhibit SDB-43 has cosmetic establishments reserved for Bahamians only.

VII. The Minster's willful neglect of fiduciary responsibilities:
a. To ensure participation of all persons in the sustainable use of the Biological Resources under Section 5 (1) (a) of "the Act".
b. Under Section 14 (2) (b) of "the Act" a decision was to be made within a reasonable period of time for access to the genetic resources.
c. Under Article 72 the power vested to Mr. Vaughn P. Miller to give directives and control of the Competent National Authority. To date appeals to Minister Vaughn P. Miller have gone unanswered [Exhibit SDB-36] and [Exhibit SDB-40].
d. Section 38 (1) Minister Vaughn P. Miller received the appeal from the Applicants within twenty-eight (28) days as required by "the Act",
e. Under Section 39 of "the Act" to date the Minister Vaughn P. Miller has not made an order with respect to application #571514 for the Supreme Court to examine.
f. The minister has a duty of care to establish and maintain a help desk specifically for Bahamians to have access to the genetic resources under Section 6 (m) (iii) of "the Act".
g. The Minister is aware of Bahamian scientists being disenfranchised by the online permitting system and not having access to the biological and genetic resources on public lands [Exhibit SDB-38].
h. The final determination on the application rests with the Competent National Authority by way of Section (6) (i) of "the Act", this Section holds Minister Vaughn P. Miller accountable for his conduct in Public Office.

i. Minister Vaughn P. Miller has been made aware of the wrongful conduct of Director Rhianna M. Neely-Murphy.
j. The Applicants have not received an Order from Minister Vaughn P. Miller with respect to application #571514 nor has the findings of the appeal panel been released to the Applicants.
k. From 2015 [Exhibit SDB-2]-2019 the Applicants applied for scientific research permits every year but none were ever issued to the Applicants but the government of the Bahamas were issuing 100 scientific research permits per year to foreign institutions and foreign scientists without any benefit to The Commonwealth of The Bahamas [Exhibit SDB-21] and there were no requirements to be issued a scientific research permit [Exhibit SDB-1]. From April 2021-March 2023 the Applicants were never issued a scientific research permit after repeated attempts.
l. Minister Vaughn P. Miller was made aware of the contents of the Access Benefit and Sharing (ABS) contract that the Applicants signed which states the access permit BS-2021-571514 is to be issued [Exhibit 34; page 13, Section 2] and the Applicants are authorized to collect and export the sample (biological and genetic resources) [Exhibit SDB-34: page 14; Section 3.2].
m. Minister Vaughn P. Miller knows without a scientific research permit the Applicants cannot earn a living [Exhibit SDB-4; pages 2-4] and therefore cannot access the $6,000,000 the Applicants are allowed to capitalize Eurie Industries Inc. [Exhibit SDB-11; Page 5].

VIII. Under Section 36 of the Act the Applicants are entitled to damages and the grounds are:
a. Coral Vita Ltd. was eligible for $500,000 grant funding from the Commonwealth of The Bahamas before they were a legal entity while the Applicants were under a moratorium [Exhibit SDB-13] and domicile outside of The Bahamas.
b. The PIMS group were eligible for $5,000,000 grant funding from government of The Bahamas along with the necessary access permit [Exhibit SDB-4; page2] while the Applicants were under a moratorium.
c. The conduct of Director Rhianna M. Neely-Murphy resulting from the refusing to issue permit BS 20221-571514.
d. The Nonfeasance in Public Office by Mr. Vaughn P. Miller to issue an order as mandated by "the Act" in regards to access permit BS 2021-571514.
e. Minister Vaughn P. Miller knows without a scientific research permit the Applicants cannot earn a living [Exhibit SDB-4; pages 2-4] and therefore cannot access the $6,000,000 the Applicants are allowed to capitalize Eurie Industries Inc. [Exhibit SDB-11; Page 5].
f. Breach of the MAT contract allows the government of The Bahamas to impose a $7,000,000 USD fine [Exhibit SDB-34 Page 14 Section 4.3] but makes no mention if the government of The Bahamas breaches the contract.

IX. The granting of a scientific research permit and research operation permit and crownland and seabed were unreasonably and unconstitutionally withheld by the relevant government authorities.

[61.] It appears from the face of both the Originating Notice of Motion and from the Amended Originating Notice of Motion that the central matter to be placed before the court for judicial review concerns an application (Application # 571514) dated February 14, 2022 and the refusal of same.

[62.] The Originating Notice of Motion, on the face of it, appears to challenge the "withholding" of the permit sought by the applicant (via Application #571514) on the ground that the grant of the permit was "unreasonably and unconstitutionally withheld" and that the Applicants are "eminently qualified" to be issued such a permit.

[63.] The Amended Originating Notice of Motion expands that matter and includes, but is not limited to, issues of constitutional rights, public malfeasance, refusal of related permit approvals, refusal of a grant of Crown land and a seabed to construct and refusal of permission to operate a scientific research and development laboratory in Exuma and a claim for damages.

[64.] The Defendants argue that the Amended Originating Notice of Motion constitutes a wholly new claim.

[65.] Paragraphs 11 and 12 of the Defendants' affidavit of Luana Ingraham reads in part:

> 11. A comprehensive read of the documentation filed on behalf of the Claimants Amended Application and the grounds on which the Claimants rely in their Application do not disclose any reasonable grounds for bringing a Claim against the Defendants.
>
> 12. The Claimants' Application and action ought to be struck out as the Application and the accompanying Affidavit filed herein are fraught with serious allegations against the Defendants, and other individuals not directly associated with the Defendants, that are frivolous, vexatious, scandalous, and abuse of the process of the Court and ought not be entertained in the court of law.

[66.] On August 17, 2023, the Claimants filed an affidavit in response to that of Luana Ingraham. The affidavit does not address these issues. However, the affidavit serves to address the chronological events of the "Non-issuance of Scientific Research Permit #571514". What is apparent is that the Claimants filed the Amended Notice of Originating Motion after a date was set for the hearing of the Notice of Originating Motion and prior to receipt of a decision by the Minister (paragraphs 18 to 22 affidavit filed August 17, 2023).

[67.] The Claimants in their filed affidavits (three affidavits) seek to set out a litany of complaints against various boards and individuals which complaints seem to stem from the disappointment and irritation of the First Claimant after having his various efforts to seek approval to further his research and enterprise bear no fruit.

[68.] Some of the matters pleaded in the Originating Notice of Motion and raised in the affidavit in support are allegations concerning the denial of applications which do not appear to be applications for which leave for judicial review is being sought. Additionally, other allegations, such as whether a decision-maker was fit to serve in a cabinet post and whether a non-decision maker ignored phone calls and was rude have not been shown to be relevant to the refusal of the 2022 application (Application # 57514). Nor are doping allegations. The Claimants are not challenging the composition of Cabinet with respect to

the decision concerning the application that was the basis of the Originating Notice of Motion (viz Application # 57514)

[69.] I appreciate that the Claimants appear pro se and that the First Claimant is not a lawyer. In oral submissions, the First Claimant's passion for his work was apparent and his frustration at the denials was palpable. However, the salacious pleadings serve to disparage individuals and, in my view, the allegations are irrelevant to a court's review of the decision-making process in the 2022 application (i.e. Application # 571514) dated February 14, 2022. Therefore the pleadings containing these allegations are deemed to be scandalous and an abuse of the court's process. However, the matter does not end there because in introducing the scandalous content, the Claimants introduced a challenge to a decision other than that concerning the 2022 Application # 571514.

[70.] I note the inclusion in the expanded claim under the Amended Original Notice of Motion of a reference to a 2018 decision which was not a part of the Original Notice of Motion. Rule 54.4 CPR, as noted above, provides that "an application for judicial review shall be made promptly and in any event within six months from the date when the 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." As it concerns the 2018 decision, the Claimants are woefully out of time and have pleaded no reason for the delay. It appears that a reconsideration of the Claimants' application was triggered by the fixing of a court date. Based on the Amended Notice of Motion, the 2018 decision had been communicated to the Claimants on June 18, 2018 and thus prior to the 2022 application. The challenge to the 2018 decision is appended to a challenge to the 2022 decision. That challenge is out of time and, on the face of it, does not form part of the decision-making process of the 2022 Application.

[71.] By virtue of the pleaded case, it seems to me that in mounting what may appear to the Claimants to be an unassailable case, they have made allegations which are irrelevant and which serve to engage the court's process to vilify persons who are either not parties to the matter or not part of the decision-making process.

[72.] In the circumstances, I find such pleading to be scandalous and an abuse of process.

ISSUE 3

Whether the Claimants' application is premature and whether an alternative remedy is available to the Claimants.

[73.] The Defendants submit that the Claimants' Application for Leave for Judicial Review is premature. Relying on section 39 of the Biological Resources and Traditional Knowledge Act 202, they also submit that the Claimants have not fully exhausted all alternative remedies available to them.

[74.] Paragraph 13 of the Defendants' affidavit of Luana Ingraham reads,

The Claimants' Application for Leave for Judicial Revie is also premature, as the Claimants have not fully exhausted all alternative remedies available to them, especially; as the original Application was brought before the Claimant received the decision of the Honorable Minister in regard to his appeal of the decision of the ABS Committee.

[75.] On August 17, 2023, the Claimants filed an affidavit in response to that of Luana Ingraham. By paragraphs 11-13 of that affidavit, the Claimants aver

> 11. An appeal of "the Director's" decision from paragraph 10 was invoked by the Claimants to Minister Vaughn P. Miller ("the Minister") on the *18th day of March A.D. 2022* as required by the Biological Resources and Traditional Act, 2021 ("the Act") Section 38 (1) via email, which gives the Claimants twenty-eight (28) days to file a written appeal to the Minister **[TAB 36 SDB-36).** "The Minister" was aware of the Claimants collaborators traveling from Canada on the *27th day of March A.D. 2022* under research permit #571514 with the 1st Claimant being the lead scientist/researcher, in addition, "the Act" allows for "the Minister" to grant access to the Biological Resources via prior informed consent by way of Section 14(1) of "the Act".
>
> 12. "The Minister" upon appeal done by the Claimants had a fiduciary responsibility to appoint an appeal panel ("the panel") that comprises of five (5) persons with expertise in the scientific field as mandated by *Section 38 (2/(a)* of "the Act" to advise "the Minister" on the appeal. The Claimants never heard from "the panel" or "the Minister" subsequently on the 27th *day of March A.D. 2022* the Canadian collaborators had to cancel the scientific expedition with the Claimants.
>
> 13. From *18th day of March A.O. 2022* to the *20th day of June A.D. 2022* the Claimants never heard from "the panel", "the Director" or "the Minister" after which the only remedy at the Claimants disposal was to make an application to the Supreme Court because of the "Nonfeasance in Public Office" outlined in Paragraph 12 after the scientific expedition was cancelled.
>
> a. *Section 39* of "the Act" give the Claimants the right to apply to the Supreme Court for relief within sixty (60) days of "the Minister's" decision, but,
>
> b. "The Minister" never made a decision in regards to the Claimants appeal by the 27th *day of March A.O. 2022,* which would have been the start of the scientific expedition under research permit #571514.

c. The first (1) and only time the Claimants heard from "the Minister" with respect to scientific research permit #571514 was *19th day of Moy A.O. 2023* exactly fourteen (14) months after the initial appeal from paragraph 11.

d. "The Act" does not have a provision as to the timeframe of when the Minister should form an appeal panel and or respond on a written appeal from an aggrieved applicant for a scientific research permit.

[76.] The Affidavit of the Claimants makes it clear that the Claimants were aggrieved that the Minister, after receiving the appeal on March 18, 2022, did not make a determination by the date a proposed scientific expedition was to start. Part of the Claimants' grievance is that the Minister did not respond by March 27, 2022, the Minister being "aware of the Claimants collaborators traveling from Canada on the 27th day of March A.D. 2022 under research permit #571514".

[77.] Be that as it may, the chronology set out by the Claimants is evidence that the Claimants did not await the Minister's determination before approaching the court.

[78.] Sections 38(1) and Section 39 of the Biological Resources and Traditional Knowledge Act 2021 provide:

> 38. Appeals to Minister
>
> (1) Any person who is aggrieved by a decision of the ABS Committee may appeal against such decision to the Minister within twenty-eight days of receipt [of] notice of the aggrieving decision.
>
> (2) Where an appeal has been made pursuant to subsection (1)
>
> (a) the Minister shall appoint an appeal panel consisting of five persons who have knowledge and experience in matters of access and benefit sharing of genetic resources and associated traditional knowledge to advise the Minister on the appeal;
>
> (b) the appeal panel shall receive submissions and, where necessary, take sworn testimony so as to hear the full issue and to be enabled to make recommendations to the Minister;
>
> (c) the Minister shall consider the appeal made under subsection (1) and may confirm, set aside or vary the order or the decision and make any other appropriate order, including an order that the prescribed fee paid by the appellant or any part thereof, be refunded;
>
> (d) any expenditure resulting from the performance of functions by the appeal panel are to be paid by the appellant;
>
> (e) an appeal made under subsection (1) does not suspend the operation or execution of the decision of the ABS Committee pending the decision of the Minister;
>
> (f) any award of an appeal made under subsection (1) by the

> Minister must be published in the Gazette for the purposes of informing the public for a period of five consecutive days with such cost to be paid by the Ministry.
>
> 39. Appeal to the Supreme Court
>
> A person aggrieved by a decision of the Minister made pursuant to section 38 may appeal against that decision to the Supreme Court within sixty days from the date of the receipt of the decision of the Minister.

[79.] The scheme of the Biological Resources and Traditional Knowledge Act 2021 in this regard is that an application is made to the Minister who appoints a panel to advise him and thereafter a decision is made (Section 38). If the Applicant is aggrieved by the decision of the Minister then the Applicant may appeal that decision to the Supreme Court (Section 39).

[80.] In oral submissions, the First Claimant argued that the timeline in section 39 is to be interpreted as the timeline for filing an action and runs from the date of submission of the appeal to the Minister. The Claimants state that the current action was filed on June 22, 2022 which, by their calculation, was the 59th day from the date of their submission of the appeal to the Minister.

[81.] There are several difficulties with this submission of the Claimants.

[82.] Firstly, the statute gives an aggrieved applicant a right of appeal "against that decision". The right of appeal is an appeal to the Supreme Court. The appeal is to be made "within sixty days from the date of the receipt of the decision of the Minister." The plain and ordinary meaning of the words used are that a person aggrieved may appeal against the Minister's decision within a certain timeline. It would serve no purpose for the legislation to provide for a right of appeal in the absence of something to appeal from. A remedy is given to a person who is aggrieved *by a decision* and who wishes to challenge *that decision*. Usually a person is aggrieved by an unfavourable decision. There is no cause or reason to launch an appeal where the decision is not yet known. The language of the statute also clearly sets out when time begins to run and it declares it to be "from the date of the receipt of the decision of the Minister."

[83.] I find no merit in the Claimants' argument that the time runs from the date of submission of the appeal to the Minister.

[84.] Secondly, the Act refers to an *appeal* to the Supreme Court. The relief provided for pursuant to section 39 is an appeal from a decision of the Minister. The matter before me is styled as an application for judicial review. Judicial Review invokes a different jurisdiction of the court than that of an appeal.

[85.] Thirdly, the Claimants' application for judicial review was filed prior to receiving a determination from the Minister. Therefore there is no decision emanating from a decision-making process for review by the court. In response, the Claimants argue that there was malfeasance from the Minister by not acting in a reasonable time. The Claimants

concede that the Act does not give timelines for the formation of a panel or the rendering of a decision by the Minister (section 38). At the time of filing the Originating Notice of Motion, by the Claimants' count, they had given the Minister 59 days to determine the appeal. There is nothing in that pleading that is based on malfeasance. The issue of malfeasance was first raised in the Amended Originating Notice of Motion. That pleading infringes Rule 54 CPR.

[86.] Therefore at the time of filing the Originating Notice of Motion and the Amended Originating Notice of Motion, the Claimants had not received the Minister's decision.

[87.] Having initiated an application prior to a determination by the Minister, the Claimants acted prematurely. There was no decision to review.

[88.] Judicial review is a remedy of last resort. The Claimants' remedy is by way of appeal. The Claimants' action is framed as an application for leave for judicial review and not as an appeal pursuant to the Act.

[89.] I find that the application was premature and that the Claimants ought to have exhausted their available remedies before approaching the court for leave to pursue judicial review. There is no evidence that an application was been made or an amendment to the current proceedings sought subsequent to the receipt of the Minister's decision.

CONCLUSION

[90.] I have determined that the CPR is the appropriate regime for the consideration of this matter. I have concluded that the filed Amended Originating Notice of Motion did not comply with Part 54 CPR. It is my determination that pleaded allegations were scandalous and rendered the pleadings an abuse of process. I have found that no decision had been made on the appeal concerning Application # 571514 and therefore the application for leave to pursue judicial review as brought by the Originating Notice of Motion was premature.

[91.] I have further found that the Claimants failed to exhaust their available alternative remedy of an appeal. The application before the court is styled as an application for judicial review and not an appeal and was filed in the absence of a decision of the Minister.

[92.] In the circumstances, the Court is inclined to strike out the Claimants' entire claim.

COSTS

[93.] The Applicants seek the cost of this application.

[94.] This raises the question of the Defendants' appearance and audience by the Court. The Defendants were served with the Claimants' application (Originating Notice of Motion) and amended application (Amended Originating Notice of Motion) of the Claimants. In this case, the Claimants engaged the Defendants and served the filed

documents on the Defendants who objected to the manner of proceeding. They did not "come on the record" in the usual way by entering a Memorandum of Appearance (RSC) or an Acknowledgement of Service (CPR) to an initiating action. By Part 54 CPR, until leave to pursue judicial review is given by the court, there is no commencement of proceedings in its usual sense. The Defendants sought to be heard on what may be deemed to be a preliminary objection on the Claimants' application for leave by way of (Originating Notice of Motion) and an amended application (Amended Originating Notice of Motion).

[95.] Given the nature of the proceedings (an application for leave to pursue judicial review), the named Defendants were given leave by this court to be heard and were required to provide the Claimants with written submissions. The Defendants were given leave to address a limited scope and did not include an address the substance of the claim. The Claimants had an opportunity to file responses. The failure of the Defendants to come on the record did not, to my mind, prevent this court from hearing them. However, the fact that they are not on the record also means that have not submitted to the jurisdiction of the court to be treated as a party entitled to costs on a hearing. The named Defendants were heard at the discretion of the court.

[96.] In those circumstances, the application for costs is refused.

ORDER

[97.] For the foregoing reasons, the order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The entirety of the Claimant's application, encompassing the Originating Notice of Motion and Amended Notice of Motion, is struck out.

2. Each party will bear its own costs.

Dated this 14th day of August 2025

Carla D. Card-Stubbs

Justice