

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

2025/PUB/jrv/00031

B E T W E E N

TOVAN WILLIAMS

Claimant

AND

THE HONOURABLE MINISTER OF LABOUR

1st Defendant

**THE HONOURABLE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE
BAHAMAS**

2nd Defendant

Before: The Honorable Madam Justice Carla Card-Stubbs

Appearances: Mr. Lessiah Rolle and Mr. Cyril Morris of Counsel for
the Claimant
Dr. David Whyms of Counsel for the Defendant

Hearing dates: February 16, 2026; February 17, 2026; (Supplemental Submissions
February 20, 2026)

Application for leave to apply for Judicial Review – Whether Applicant has sufficient interest - Whether Applicant has an arguable ground with a realistic prospect of success - Part 54 The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR')
Jurisdiction of the Minister of Labour to hear appeals under Section 13 of the Industrial Relations Act

The Applicant brought an application for leave to pursue judicial review. The Applicant sought to review the Minister of Labour's decision to refuse to hold an appeal hearing under section 13 IRA.

HELD: Leave refused. The Court held the Applicants did not have an arguable ground with a realistic prospect of success. A review of the Minister's decision to refuse to entertain an appeal was bound to fail because the Minister had no jurisdiction to entertain the appeal. Therefore, an application to compel the Minister to make that decision and to hear the appeal was futile.

RULING

Introduction

- [1.] Before this court is the Claimant’s application for leave to apply for Judicial Review.
- [2.] For the reasons that follow, the application is refused.

Background

- [3.] This is the Claimant’s application to bring Judicial Review Proceedings pursuant to Supreme Court Civil Procedures Rules 2022, as amended (‘CPR’), Part 54.3. By virtue of application filed December 8, 2025, the Applicant (‘Ms. Williams’) seeks to review the decision of the Minister of Labour (‘Minister’) and seeks, inter alia, a Declaration that the Minister’s “decision not to consider my appeal pursuant to section 13 of IRA breach [sic] my constitutional rights to procedural fairness and natural justice pursuant to Article 20 of the Bahamas Constitution.”
- [4.] Ms. Williams was an unsuccessful candidate in the Union of Public Officers (‘UPO’) elections held and supervised by agents and/or servants of the Minister. The election results were certified by the Registrar.
- [5.] Ms. Williams’ complaint is that she had been informed of “electoral discrepancies” by Election Commissioner Tiffany Bethel-Pedican and, thereafter, made a complaint to the Assistant Director of Labour, Mr. Kenneth Demetrius Wilkinson. However, nothing was done to address her concerns. Significantly, no recount was held as was held in the past in the June 2022 elections.
- [6.] On June 16, 2025 the Registrar of Trade Unions certified the UPO elections without conducting a recount.
- [7.] On the June 20, 2025 the Claimant wrote to the Minister of Labour pursuant to Section 13 of the Industrial Relations Act (‘IRA’) to appeal the certification of the UPO elections and requested a recount.

[8.] By letter dated July 9, 2025 the Minister responded that she lacked jurisdiction to hear Ms. Williams' appeal. By that letter the Minister responded, in part,:

“...It is important to note that this provision applies specifically in circumstances where the Registrar refuses to certify an election...

As such, the statutory conditions for ministerial intervention under Section 13 have not been met, and the jurisdiction to entertain an appeal does not arise in this matter.”

[9.] This is Ms. Williams' application for leave for judicial review to challenge the Minister's refusal to consider her appeal under the IRA.

The Application

[10.] The application filed on the December 8, 2025 is made pursuant to Part 54.3 of the CPR.

[11.] The Application is supported by the First Affidavit of Tovan Williams filed on December 8, 2025.

[12.] Ms. Williams makes application for remedies stated in the following terms:

- a. Leave to apply for Judicial Review pursuant Part 54.3 of the Civil Procedure Rules (2022) CPR.
- b. A Declaration that contrary [to the] 1st Defendant's 9th July 2025 Decision, a Minister is vested with jurisdiction to both confirm or reverse a registrar's decision to certify an election pursuant to a proper interpretation of Section 13 IRA.
- c. A Declaration that [the] 1st Defendant's decision not to consider my appeal pursuant to section 13 of IRA breach [sic] my constitutional rights to procedural fairness and natural justice pursuant to Article 20 of The Bahamas Constitution.
- d. A Declaration that the 1st Defendant's agents and/or servants decision to certify UPO ballot on 16th June 2025 without prior notice to withdrawing the claimant's past benefits of redress or recount of election ballots as carried out in UPO June 2022 Election, breached the claimant's legitimate expectation of just and fair treatment.
- e. An Order to [sic] Certiorari quashing the Registrar of Trade Union [sic] decision to certify UPO election [sic] 16th June 2025.
- f. An Order of Mandamus that new elections be held.

- g. An Order that the Registrar's Decision be stayed and that Pre-election UPO Executive Board 2022-2025 be re-instated (Representing status quo) pending determination of [the] matter herein.
- h. Damages ;
- i. Interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act 1992.
- j. Further or other relief as Court deem Just, And
- k. Cost to be assessed if not agreed.

[13.] The basis upon which the application is made is pleaded as follows:

- a. The Claimant was an election candidate in the Union of Public Officers (herein "UPO") elections held and supervised by agents or/ and servants of 1st Defendants on 5th June 2025.
- b. The 1st Defendant's agents and/or servants breach[ed] the Claimant's Legitimate Expectation by certifying UPO's elections on 16th June 2025 without affording the Claimant notice that there will be no address to her elections concerns raised to Assistant Director of Labour Mr. Kenneth Demetrius Wilkinson nor any ballot recount as was practice [sic] in UPO's June 2022 Elections.
- c. By letter dated 20th June 2025 the Claimant made an appeal to 1st Defendant pursuant to section 13 of IRA challenging the Registrar decision to certify the election without affording candidates the benefit of a recount or redress.
- d. On 9th July 2025 the 1st Defendant by letter wrote the Claimant that she lacks jurisdiction to hear her appeal as section 13 of IRA only allows for 1st Defendant to entertain appeals where the Registrar of Trade Union refuses to certify a ballot and not to [the] contrary.
- e. The 1st Defendant's refusal to hear the Claimant's appeal was Procedurally improper and breach [sic] the Claimant's constitutional Rights to procedural fairness and natural justice pursuant to Article 20 of the Bahamas Constitution.
- f. The 1st Defendant's decision not to hear the Claimant's appeal unreasonable as no Minister of Labour directing His/Herself on Woods et al v Minister et al 2021/PUB/jrv/00016 the relevant dictum by Hon. Justice Mr. Loren Klein at para. 21 and acting reasonably could have reach [sic] a decision that a Minister of Labour under section 13 of IRA lack [sic] jurisdiction to hear the Claimant's appeal which concerns the reversal of the Registrar of Trade Union's decision to certify an election.

[13.] Ms. Tovan Williams gives the following evidence by way of affidavit. She avers, in part,:

9. On 5th June 2025 I nominated and participated in UPO's election as a presidential candidate which was supervised by 1st Defendant's agents and/or servants.

10. On 6th June 2025 the Election Commissioner Ms. Tiffany Bethell-Pedican in a WhatsApp noted that several election discrepancies took place at various polling stations nationwide. A copy of said WhatsApp is attached and shown to me marked "Exhibit TW 3"

11. On 9th June 2025 I along with Trustee Darlene Johnson made a protest concerning all election discrepancies to Assistant Director of Labour Mr. Kenneth Demetrius Wilkinson, who promised he would get back to us concerning our queries or concerns.

12. I had a legitimate expectation that 1st Defendant's Assistant Director of Labour would get back to me with a date to recount ballot as similarly conducted UPO election 2022 where an election runoff was held and Mrs. Nadia Vanderpool certified as winner 7th July 2022.

13. On the 16th June 2025 the 1st Defendant's Registrar certified the election without first addressing my election concerns nor affording me a recount as in time past. A copy of said Certificate of Ballot Results is attached and shown to me marked "Exhibit TW 4".

14. By letter dated 20th June 2025, I appealed to the 1st Defendant to set aside the certification and grant a recount pursuant to section 13 of the Industrial Relations Act Chapter 321. A copy of said letter is attached ...

15. On 9th July 2025, 1st Defendant by letter wrote informing me inter-alia that "The statutory conditions for ministerial intervention under Section 13 have not been met, and the jurisdiction to entertain an appeal does not arise in this matter." A copy of said letter is attached ...

...

19. I am advised that 1st Defendant's decision not entertain my appeal pursuant to Section 13 of IRA breach my rights to procedural fairness and natural and as such was unconstitutional pursuant to Article 20 of The Bahamas Constitution.

...

26. The Minister's decision is susceptible to judicial review, and I seek to challenge the decision on the following grounds:

26.1 The decision unconstitutionally breached my rights to procedural fairness and natural justice;

26.2 The decision was unreasonable;

26.3 The decision was procedurally improper; And

26.4 The decision breach my legitimate expectation that I would be afforded a fair hearing and due consideration of my appeal.

27. It is in the interest of justice that I be granted leave for judicial review, as the issues raised go beyond my individual interests and impact the broader public.

Issue

[12.] This Court is tasked with determining whether the Applicant ought to be granted leave to bring Judicial Review proceedings.

LAW AND ANALYSIS

JURISDICTION FOR JUDICIAL REVIEW

[13.] The current application was made pursuant Rule 54.3 of the Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') which sets out the procedure to be followed on an application for leave. That rule provides:

54.3 Grant of leave to apply for judicial review.

- (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.
- (2) An application for leave shall be made without notice to a judge by filing in the Registry —
 - (a) a notice in Form JR1 containing a statement of —
 - (i) the name and description of the applicant;
 - (ii) the relief sought and the grounds upon which it is sought;
 - (iii) the name and address of the applicant's attorney, if any;
 - (iv) the applicant's address for service; and
 - (b) an affidavit which verifies the facts relied on.
- (3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court provided that in no case shall leave be refused or granted on terms not sought in the application without giving the applicant a hearing.
- (4) Where the application for leave in any criminal cause or matter is refused by the judge, or is granted on terms, the applicant may renew it by applying to the Court of Appeal.
- (5) In order to renew his application for leave the applicant shall, within ten days of being served with notice of the judge's refusal, file in the Registry notice of his intention in Form JR2.
- (6) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit provided that if the applicant shall fail to amend his statement within the time specified by the order of the court then such order shall cease to have effect unless the court orders otherwise.
- (7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

- (8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.
- (10) Where leave to apply for judicial review is granted, then —
 - (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
 - (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

[14.] Judicial Review is invoked to test the legality of a decision rather than its merits. An applicant must first apply for leave to bring judicial review proceedings. No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with Rule 54.3 CPR and the Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates. The Application must be made promptly (Rule 54.4 CPR).

[15.] The leave process filters out cases not fit for judicial review: **Byron Bullard v The Minister Responsible for Lands and Surveys [2024] BHS J No. 6.**

LEGAL TEST ON AN APPLICATION FOR LEAVE

[16.] In **Council of Civil Service Unions and others Appellants And Minister for The Civil Service Respondent [1985] A.C. 374**, a case relied on by the Defendants, the House of Lords considered, inter alia, whether executive action was immune from judicial review. The Law Lords considered that it was not. In coming to their determination, the court set out certain principles regarding the nature of judicial review. Lord Diplock opined at page 408:

Judicial review, now regulated by R.S.C., Ord. 53, provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) whom I will call the "decision-maker" or else a refusal by him to make a decision.

To qualify as a subject for judicial review the decision must have consequences

which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either:

(a) by altering rights or obligations of that person which are enforceable by or against him in private law; or

(b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. (I prefer to continue to call the kind of expectation that qualifies a decision for inclusion in class (b) a "legitimate expectation" rather than a "reasonable expectation," in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed, although it might well be entertained by a "reasonable" man, would not necessarily have such consequences. The recent decision of this House in *In re Findlay* [1985] A.C. 318 presents an example of the latter kind of expectation. "Reasonable" furthermore bears different meanings according to whether the context in which it is being used is that of private law or of public law. To eliminate confusion it is best avoided in the latter.)

[17.] Lord Diplock also identified three grounds that would subject administrative action to review, namely illegality, irrationality and procedural impropriety. Lord Diplock, at page 410, opined:

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 Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

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.

[18.] More recently, in this jurisdiction, in the case of **Samuel Bankman-Fried v Mitchell and AG Claim No. PUB/jrv/00015 of 2023**, Hon Justice Klein articulated the principles this way, at paragraphs 29 to 32:

Principles relating to the grant of leave for judicial review

[29] In *Rosetta Foster et. al. v. The Attorney General et. al.* (2020/PUB/jrv/0005, 24 June 2020), this Court had occasion to point out that historically the justification for requiring a sufficient interest and the grant of leave was to weed out “*busybodies with misguided or trivial complaints of administrative error*” (per Lord Diplock in *R v Inland Revenue Commissioners ex parte National Federation of Self Employed and Small Businesses Ltd.* [1982] AC 617, pp. 642-643).

[30] However, the test has evolved over time and the modern test approved by the Privy Council (and also applied by the UK courts) is somewhat more stringent, although it is still accepted that the threshold is not very high (see *AG of Trinidad & Tobago v Ayers-Ceasar* [2019] UKPC 44, Per Lord Sales at para. 2). In *Sharma v Browne Antoine* [2007] 1 WLR 780 (at 787), the Privy Council formulated the test as follows (para. 14, pg. 787):

“The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or alternative remedy”. See *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628 and Fordham Judicial Review Handbook 4th ed. (2004), p. 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal said with reference to the civil standard of proof in *R (N) v. Mental Health Review Tribunal (Northern Region)* [2006] QB 468 [...] It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to ‘justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen.’”

[31] The purpose for leave is to filter out challenges where the applicant either does not have the necessary interest (*locus standi*) to maintain the challenge, where the claim has no real prospect of success, or where it is subject to discretionary bars such as delay or alternative remedy. To summarize the position, an applicant for judicial review has to establish three main things:

(i) that he or she has a sufficient interest to maintain the challenge being

- made;
- (ii) that there is an arguable ground with a realistic (not fanciful) prospect of success; and
- (iii) that there are no discretionary bars such as delay or alternative remedy that would lead the court to refuse the leave.

Judicial review principles

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

[19.] The dictum of Justice Klein in **Samuel Bankman-Fried v Mitchell and AG** was adopted and cited in **Jarol Investments Limited (t/a Chances Games v The Honourable Chester Cooper et al 2023/PUB/jrv/FP/0004**, a case relied on by the Defendants.

[20.] The parties are agreed on the principles applicable to an application for leave for judicial review. The Applicant cites **Miller Enterprises Ltd. and another v Shunda Strachan 2025/CLE/GEN/00121** for the principle that in invoking the supervisory jurisdiction of the court, judicial review concerns the legality of a decision taken and not the merits of it. The Applicant relies on the case of **Prince Albert Symonette Jr. v Commissioner of Police et al - 2025/PUB/JRV/010** for the principle of law that a court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as a delay or an alternative remedy. The Applicant also cites **Dwayne Woods and ors v Minister of Labour et al 2021/PUB/jrv/00016** for the proposition that the Minister of Labour has the authority to reverse or approve a decision by the Registrar under section 13 of the IRA.

SUFFICIENCY OF INTEREST

[21.] Ms. Williams was a candidate in the UPO election and is aggrieved by the decision not to have a recount and by the refusal of the Minister to entertain an appeal. Ms. Williams submits that she has a sufficient interest in the matter because she was a candidate with the

legitimate expectation that the said Assistant Director of Labour would investigate, undertake a recount, and revert to her; and further, that the Minister would have ordered a recount. Ms. Williams asserts that she had a legitimate expectation of a recount based on prior practice. The Applicant is affected by the Minister's decision to refuse to entertain her appeal.

[22.] The Defendant does not appear to dispute that Ms. Williams has sufficient interest in the pleaded matter. The Defendants oppose the leave sought by the Applicant to bring Judicial Review on the grounds that there exist no arguable grounds with any realistic prospect of success.

ARGUABLE GROUND WITH A REALISTIC PROSPECT OF SUCCESS

Submissions of the Applicant

[23.] Counsel for the Applicant submits that Ms. Williams has a good and arguable case based on her legitimate expectation that the Deputy Registrar would investigate her complaint and undertake a recount and that the Minister would have found that she had jurisdiction to hear the Claimant's appeal pursuant to section 13 of Industrial Relations Act.

[24.] Counsel for the Applicant argues that The Minister has jurisdiction to entertain an appeal and order a recount even after the poll has been certified. Counsel argues that the Minister's refusal to entertain the appeal was procedurally unfair and susceptible to judicial review.

[25.] Counsel for the Applicant submits that although Section 13 is silent on the question of a certification of an election, "the jurisdiction of the minister is not muzzled or limited to just a situation where the registrar had refused to certify an election." Accepting that **Dwayne Woods and ors v Minister of Labour et al 2021/PUB/jrv/00016** dealt with a situation where the Registrar refused to certify an election, the Applicant relies on the various Courts' confirmation that the "Minister was empowered to reverse or confirm the [Registrar's] decision". The Applicant's submission is that a Minister therefore has jurisdiction to confirm or reverse a Registrar's decision to certify an election.

Submissions of the Defendants

[26.] Counsel for the Defendants argue that once the poll is certified, the Minister has no jurisdiction to overturn the Registrar's decision.

COURT'S ANALYSIS AND DISPOSITION - SCOPE OF MINISTER'S JURISDICTION

[27.] The Applicant made an appeal to the Minister "to set aside the certification and grant a recount pursuant to section 13 of the Industrial Relations Act Chapter 321." The Minister refused to hold an appeal hearing. It is that decision that the Applicant seeks to have reviewed.

[28.] Section 13 of the Industrial Relations Act provides:

13. Any person aggrieved —
(a) by any decision of the Registrar —
(i) not to register a trade union under this Act;
or
(ii) to cancel the registration of a union; or
(iii) not to register an amendment of the constitution,
or a change of name, of a trade union; or
(b) by the refusal of an officer of the Ministry to
certify any ballot as having been properly taken,
may appeal in respect thereof to the Minister, who may,
with effect from the date of the determination of the appeal,
reverse the decision of the Registrar or officer or confirm
it.

[29.] Section 13 of the statute provides a right of appeal in certain circumstances. It would be helpful to start with a consideration of those circumstances. Those circumstances include who may launch an appeal (the class of persons), the matters that may be appealed (decisions from which an appeal lies), the appellate body (to whom the appeal is to be made) and the available remedies. On my analysis of section 13 of the Industrial Relations Act, I find:

- A. The Right of appeal is afforded to a class of persons. These are *persons aggrieved* by one of the listed decisions.
- B. The matters that may be subject to an appeal are the following decisions:
 - (1) *Any decision of the Registrar not to register a trade union under the Act;*
 - (2) *Any decision of the Registrar to cancel the registration of a union; or*
 - (3) *Any decision of the Registrar not to register an amendment of the constitution of a trade union;*
 - (4) *Any decision of the Registrar not to register a change of name of a trade union and*
 - (5) *The refusal of an officer of the Ministry to certify any ballot as having been properly taken.*
- C. The Right of appeal is to the *Minister*.

D. By way of remedy, the Minister may:

(1) In an appeal from a decision of the Registrar, the Minister may *reverse the decision of the Registrar or confirm it*.

(2) In an appeal from a decision of the officer, the Minister may *reverse the decision of the officer or confirm it*.

[30.] It is a fundamental legal principle that an appellate body established by statute is to operate strictly within the bounds set by that statute. The appellate entity may exercise only those powers expressly granted by the relevant legislation. When statutory provisions specify the possible outcomes on appeal, the decision-maker must adhere exclusively to those remedies.

[31.] As a general rule, statutory appeals are restricted to cases brought by individuals explicitly identified in the statute or in subordinate legislation, unless the statute or subordinate legislation specifies otherwise. The decision-maker lacks authority to admit appeals from parties who are not expressly or impliedly included in the statutory framework. To hear appeals from persons not included in the statutory scheme would be to act *ultra vires* the statute. Likewise, the subject matter of appeals must correspond with the provisions of the legislation, thereby limiting the jurisdiction of the decision-maker to the scope defined by statute.

[32.] In this instance, the right of appeal is given by statute. It is the statute to which one should look to determine the nature of the right and whether the Applicant has launched an appeal within the provisions of the statute. It is the statute that determines and circumscribes the scope of the appellate jurisdiction of the decision-maker, in this case, the Minister.

[33.] As it concerns a ballot, an appeal lies to the Minister from *the refusal of an officer of the Ministry to certify any ballot as having been properly taken*. On an appeal from a decision of the officer, the Minister may *reverse the decision of the officer or confirm it*.

[34.] In this case, Ms. Williams is an unsuccessful candidate in the UPO elections. Ms. Williams is aggrieved not by the refusal to certify a ballot but because the ballot was certified. In my opinion, Ms. Williams does not fall within the class of persons entitled to appeal under the act. She is not a person aggrieved by one of the decisions set out under Section 13.

[35.] Importantly, the Minister does not have jurisdiction to entertain an appeal outside of an appeal against the decisions itemized in Section 13. That means that the Minister cannot entertain an appeal where an officer “certifies a ballot as having been properly taken.” Nor can the Minister provide a remedy to a person so aggrieved. The jurisdiction

of the decision-maker, the Minister, is limited by the statute's provisions. The Minister must act within the four corners of the relevant statute. In Ms. Williams' case, none of the decisions listed in section 13 was put before the Minister by way of appeal.

[36.] The Court performs a supervisory jurisdiction in judicial review. The Court seeks to ensure that a decision-maker acts within jurisdiction and according to law. The decision ought not to be irrational/unreasonable or procedurally improper. The decision ought not to be in breach of a legitimate expectation. The decision is subject to the Court's scrutiny and review. In undertaking a review, the Court will examine the powers of the decision-maker. If the powers are set by statute, a Court cannot expand the statutory powers of the decision-maker or compel the exercise of a power that does not exist.

[37.] In this case, the Applicant accepts that there is no express provision under section 13 IRA to entertain the appeal of the Applicant. The Applicant's position is that the section is "silent" and that it would be just and fair for the Minister to entertain the appeal. The Applicant's position is that since the Minister can confirm or reverse an officer's decision as was confirmed in **Dwayne Woods and ors v Minister of Labour et al**, the Minister has the power to reverse the decision in this case.

[38.] That the court confirmed in **Dwayne Woods and ors v Minister of Labour et al** that a Minister can reverse or confirm a decision by the Registrar, does not, in my opinion, lend to the interpretation that the Applicant is contending for. It is provided in section 13 IRA that those are the powers of the Minister on an appeal that is brought *under the section*. The Minister can only confirm or reverse a decision on an appeal properly brought before him/her. Those are the remedies provided by the statute.

[39.] It is section 13 IRA that confers the right of appeal and it is section 13 IRA that specifies the matters subject to appeal. In my view, the term "*refusal...* to certify any ballot" does not encompass "the certification of any ballot". Based on the clear wording and ordinary meaning of the section, the Minister lacks the authority to consider an appeal from any party aggrieved by "the certification of a ballot." Furthermore, the Minister is not authorised to overturn, or reverse, a decision of the officer or Registrar in such circumstances. It is my view that if the Minister were to entertain and determine an appeal under section 13 IRA where a ballot was certified, this would constitute an *ultra vires* act because the Minister would be acting beyond his/her powers.

[40.] Counsel for the Applicant further contends that the Minister's refusal to entertain the appeal constitutes a breach of Ms. Williams' legitimate expectation, which allegedly stems from an established practice of conducting recounts. However, the Applicant does

not assert that the Minister has previously ordered a recount. Ms. Williams' evidence is that such action was taken by the electoral officer. Nevertheless, the Minister cannot grant a remedy beyond the scope of authority conferred by the Act. While legitimate expectation and customary practice may inform the interpretation of existing powers, there is no provision under section 13 IRA that vests the Minister with power to order a recount.

[41.] At its highest, the Applicant's argument is that such a power, to entertain an appeal where a ballot is certified and to order a recount, ought to be inferred from the silence of the provisions. I find this argument to be unfounded. A court, exercising its supervisory jurisdiction, cannot supplement legislative provisions in the manner suggested. That is a job for the legislature.

[42.] In this case, the Minister has no statutory power to make the decision to entertain the appeal launched by Ms. Williams. A review of the Minister's decision to refuse to entertain an appeal in these circumstances, that is to hear the Applicant's appeal against the certification of the elections, is bound to fail because the Minister had no jurisdiction to entertain the appeal. Therefore, an application for the declarations and consequential relief sought, is bound to fail. There is no ground upon which the application can be sustained and it is, therefore, futile. For this reason I find that the Applicant has no arguable ground with a reasonable prospect of success.

ALLEGED CONSTITUTIONAL BREACH

[43.] The Applicant, in considering whether the Minister ought to have heard her appeal further submits:

1. The Claimant held the legitimate expectation that the Minister would hear her appeal for a recount of the Poll and not take the view that she had no jurisdiction to entertain same.
2. The Claimant's legitimate expectation is a fundamental and constitutional right.
3. The Minister is an adjudicating authority with the right to hear the Claimant's appeal within a reasonable time. The Minister failed to entertain the Claimant's appeal.
4. Consequently, the Minister breached the Claimant's constitutional right to be heard.

[44.] Counsel for the Applicant submits that "Fundamental rights cannot be overruled except by clear words from the legislature, and the Court will be slow to infer an intention to abrogate such rights". The Applicant relies on the case of **R v**

Secretary of State for the Home Department, ex p Simms [2000] 2 AC 115 for the following principle of law:

In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual.

[45.] Counsel for the Applicant argues that the statute cannot oust fundamental rights and that the Applicant in this case enjoys the rights afforded under Article 20 of the Constitution of The Commonwealth of The Bahamas, in particular Article 20(8) which provides:

20(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

[46.] Counsel for the Defendant submits that the Applicant has raised the issue of a breach of constitutional rights and contends that “this is not the appropriate forum to raise such a claim” and that the Court should “dismiss and refuse to entertain such a challenge...”

[47.] In of **R v Secretary of State for the Home Department, ex p Simms [2000] 2 AC 115**, two prisoners who were serving life sentences for murder sought to have their cases reopened and wished to have oral interviews with some journalists. The journalists had taken an interest in their cases. The Governors of the prisons required written undertakings from the journalists that they would not publish any part of the interviews. The journalists refused to sign the undertakings and the prisoners were not allowed to have the interviews. The prisoners sought judicial review of the decisions denying them the right to have oral interviews, relying on the right to free speech. It is in that context that Lord Hoffman declared at page 131:

Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. *In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual.* In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document.

[Emphasis supplied]

[48.] In relation to the matter before them, Lord Hoffman determined at page 132:

What this case decides is that the principle of legality applies to subordinate legislation as much as to Acts of Parliament. Prison regulations expressed in general language are also presumed to be subject to fundamental human rights. The presumption enables them to be valid. But, it also means that properly construed, they do not authorise a blanket restriction which would curtail not merely the prisoner's right of free expression, but its use in a way which could provide him with access to justice.

[49.] In **Dwayne Woods and ors v Minister of Labour et al 2021/PUB/jrv/00016**, the Honourable Mr. Justice Klein considered the approach to be taken by a court when an applicant sought to raise constitutional applications on an application for judicial review. After reviewing a number of cases, the learned judge opined at paragraphs 30 to 31:

[30] The case law reviewed above clearly shows that as a matter of principle, judicial review is not the appropriate vehicle for seeking substantive redress of fundamental rights, or to challenge the validity of primary legislation. Indeed, there are powerful procedural and substantive reasons why this is so. Firstly, there is a leave hurdle in judicial review, which (though admittedly not high) does not apply to constitutional applications, which can be brought as of right. Secondly, remedies in judicial review are discretionary and may be refused in the interest of good public administration, even when a claim is properly made out. By contrast, constitutional relief is granted as a matter of right where proper grounds are shown. Thirdly, as constitutional remedies are intended to be matters of last resort, mixing them in a judicial review claim is likely to constitute an abuse of process, since common law and other remedies are to be pursued prior to commencing constitutional proceedings. Fourthly, judicial review proceedings are subject to rather strict procedural time limits, which do not attach to constitutional claims.

[31] The upshot of these cases is that an applicant for judicial review, while not necessarily precluded from alleging constitutional breaches as part of his judicial review grounds, or as an incidence or example of the breach, cannot use judicial review to deploy a direct constitutional claim. For example, in the *Armbrister* case, Charles J. refused leave because she found that the “*substance of the application is constitutional*”, in that it required a determination of whether a specific article of the constitution (29(2)) had been breached according to constitutional criteria. This was to be distinguished from *Seereeram Bros*, where the constitutional allegations merely amplified the judicial review claim. In other words, using the example of the current application, it would be within the bounds of judicial review to claim that the applicants' right to natural justice was breached in that they were denied the right to a fair hearing, also in breach of the constitutional right as set out at art. 20(8) of the Constitution. But it would be seeking substantive constitutional relief to claim that s. 13 of the IRA is *pro tanto* void, as being incompatible with art. 20(8), to the extent that it provides for Minister to adjudicate where public unions are involved.

[50.] In this case, the Applicant argues that the failure by the Minister to entertain Ms. Williams' appeal is a breach of Article 20(8) of the Constitution. Indeed, Ms. Williams seeks a declaration that the Minister's "decision not to consider my appeal pursuant to section 13 of IRA breach [sic] my constitutional rights to procedural fairness and natural justice pursuant to Article 20 of The Bahamas Constitution." The substance of such a ground is constitutional. I echo the words of Hon. Justice Klein that in such an instance, "judicial review is not the appropriate vehicle for seeking substantive redress of fundamental rights, or to challenge the validity of primary legislation." Such a ground is to be pursued by other means.

CONCLUSION

[51.] It is my determination that in this case there is no arguable ground with a realistic prospect of success. This determination is dispositive of the matter. In the circumstances, leave to bring proceedings in judicial review is refused.

COSTS

[52.] Each party will bear their own costs.

ORDER

[53.] The order and directions of this Court are as follows.

1. Application for leave to apply for judicial review is refused.
2. Each party will bear their own costs.

Dated this 6th Day of March 2026



Carla D. Card-Stubbs, J

Justice