

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
PUBLIC LAW DIVISION
CLAIM NO. PUB/JRV/00012 OF 2022**

IN THE MATTER of an Application for leave to apply for Judicial Review

BETWEEN

GARVIN EVANS

Applicant

AND

THE COMMISSIONER OF POLICE

First Respondent

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Respondent

JUDGEMENT

Before: **The Hon. Madame Justice Carla D. Card-Stubbs**

Appearances: K. Melvin Munroe of Counsel for the Applicant
Randolph Dames of Counsel for the First & Second Respondents

Hearing Date: 6th September 2023

Judicial Review- Application for leave pursuant to Order 53 of the Rules of The Supreme Court-New Civil Procedure Rules-Injunction-Powers of the Commissioner of Police-Police Act-Police Service Commission Regulations- Disciplinary procedure of an inspector-Police Disciplinary Regulations

The Applicant is a Police Inspector who alleges that the First Respondent, The Commissioner of Police ('COP'), failed to follow procedures as outlined in the Constitution, The Police Force Act and the Police Service Regulations concerning discipline of officer at the rank of Inspector and above when he decided to place the Applicant before the Police Disciplinary Tribunal. The case for the Applicant is that the procedure that he has been subject to is unfair, flawed and illegal.

Held: The Applicant has an arguable case fit for judicial review. The disciplinary proceedings are to be stayed pending the determination of the judicial review application, or further court order.

INTRODUCTION

[1.] This is an application for leave to apply for Judicial Review pursuant to Order 53 of the Rules of the Supreme Court. The Applicant is a Police Inspector. He alleges that the First Respondent, The Commissioner of Police ('COP'), failed to follow procedures as outlined in the Constitution, The Police Force Act and the Police Service Regulations concerning discipline of officer at the rank of Inspector and above when he decided to place the Applicant before the Police Disciplinary Tribunal.

[2.] The application for leave is acceded to. That decision and the reasons therefor follow.

BACKGROUND

[3.] On July 25, 2022, the Applicant filed both a Summons and an application for leave to apply for Judicial Review pursuant to Order 53 Rules of The Supreme Court. The Summons also sought an injunction preventing the continuation of "any prosecution before the Disciplinary Tribunal" pending the determination of the application.

[4.] The Application is supported by the Affidavit of Garvin Evans filed on July 25, 2022.

[5.] The grounds on which relief is sought by the Applicant in these proceedings are as follows:

- a. The decisions of the Respondent are procedurally unfair, flawed and illegal as the Police Service Commission Regulations 33 procedure set by the regulation was not followed by the Respondents and it makes it wrong and/ unfair and or flawed.
 - i. The decisions by the Respondent are procedurally unfair, flawed and illegal as the Respondents did not observe the procedure prescribe [sic] by the Police Service Commission Regulations.

- ii. The decisions of the Respondents are irrational because no reasonable decision-maker, acting fairly would consider charging the applicant without following procedures of the Police Service Commission Regulations. A rational decision-maker would take steps to ensure that it was giving fair consideration to all available reports and or/procedures.
- b. The First Respondent's decision to charge the Applicant is ultra vires and irrational.
- c. The Applicant was never dealt with under the disciplinary procedure set out by the Police Service Commission Regulations and he has been severely prejudiced in his defense in relation to the said offences.
- d. That the present interdiction is an abuse of the process of the First Respondent herein.

[6.]The reliefs sought by the Applicant are as follow:

- a. A Declaration be made that the Applicant's fundamental rights under the Constitution of the Commonwealth of The Bahamas have been violated by the First Respondent.
- b. A Declaration that the Respondents did not follow the law as set out in the Police Service Commission Regulations.
- c. A Declaration and/or Order be made that the Honorable Court deem that Section 63 (1) and (2) of the Police Force Act is unconstitutional in the circumstances.
- d. An Order of prohibition preventing the Respondents from continuing with the Court of Inquiry which is presently before the Police Tribunal.
- e. An Order that the First Respondent be mandated to observe the provisions and supremacy of the Constitution of The Bahamas and the Police Service Commission.
- f. Injunction;
- g. Damages
- h. Cost in the amount of \$5,000.00
- i. Such other relief as this Honorable Court deems fit.

SUBMISSIONS OF THE PARTIES

SUBMISSIONS OF THE APPLICANT

[7.]The Applicant's case is that the Applicant was charged before a Police Tribunal and he argues that Section 33 of the Police Service Commission Regulations sets out the procedure for disciplinary matters and that section 40 (1) provides for the institution of disciplinary proceedings for officers of the rank of the Applicant. The Applicant's case is that the procedure was not observed. The Applicant submits that there is a serious issue to be tried

and that there is an arguable case. The Applicant relied on **Breon Davis v the Commissioner of Police et al PUB/jrv/00002 of 2022 and Sharma v Browne Antoine [2007] 1 WLR 780** in this regard. The Applicant also submitted that there was no available alternative remedy because there has been no conviction by the Disciplinary Tribunal.

[8.]The Applicant submitted that an interim injunction should be granted because if the proceedings were to continue and the Applicant were to be convicted, then such a conviction could “result in him being reduce [sic] in rank or dismiss [sic] from the Royal Bahamas Police force. These actions would cause irreparable damage to the Applicant’s reputation and livelihood. Therefore, no amount of money in the form of damages can or would be able to repair the damage to the Applicant’s reputation and livelihood these unlawful acts would cause if the Defendants are not restrained from the continuation of the Tribunal proceedings.” The Applicant argues that damages would not be an adequate remedy and that the balance of convenience lies in granting the injunction.

SUBMISSIONS OF THE RESPONDENT

[9.]It is the Respondent’s case that the Applicant was not charged with offences before the Police Disciplinary Tribunal as alleged. The Respondents’ case is that the Applicant is being subjected to preliminary investigations.

[10.] The Respondent submitted that there are alternative remedies that are available to the Applicant that were not exhausted and therefore leave should not be given to pursue judicial review: **Exp Waldron [1985] 3 All ER 775**. The Respondent also submits that the Applicant failed to make full and frank disclosure of all materials facts including that the Commissioner has disciplinary control over the Applicant, that the Applicant remains “gainfully employed” on the force, that there were effective alternative remedies and that he was informed that an investigation will be conducted via the procedure of an Investigation/ Enquiry and not a disciplinary tribunal. The Respondent argues that such failure to disclose is a bar to relief: **Guyana Power and Light v Wong 78 WIR 344**. The Respondents also argue that there is no arguable issue to be tried because the COP has power over the Applicant and that the Applicant “was not charged with disciplinary offences but was informed he was subject to a Preliminary Investigation/Enquiry.”

[11.] In relation to the application for an injunction, the Respondent submitted that there is no serious issue to be tried because procedures relating to an investigation of an Inspector has been followed and that the onus lay on the Applicant to show why damages would not be an adequate remedy. The Respondents’ position is that if an injunction were to be granted, then “the Commissioner's power of disciplinary control

over the Applicant will be bound. The Court would have prohibited the Commissioner from officially investigating a complaint which is mandatory by statute.” The Respondent submitted that the Applicant has not shown any exceptional circumstance as to why an injunction should be granted against the COP: **Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment and Another- (2003) 63 WIR 42; Paradise Games v Attorney General [2013] 1 BHS J. No. 48.**

LAW AND ANALYSIS

[12.] Judicial Review is the power of the Court to review the decision of statutory bodies and decision makers in determining whether the process by which the decision was derived was lawful.

[13.] **Order 53 of the Rules of the Supreme Court, 1978 (RSC)** makes provision for the grant of leave to apply for judicial review. It provides:

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 *ex parte*

to a judge by filing in the Registry —

(a) a notice in Form A in the Schedule to this Order 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 counsel and attorney (if any); and

(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 and in any case, the Registry shall serve a copy of the judge’s order on the applicant:

Provided that in no case shall leave be refused without giving the applicant a hearing.

(4) Where the application for leave is refused by the judge, or is granted on terms, the applicant may renew it by applying —

(a) in any criminal cause or matter, to the Court of Appeal;

(b) in any other case, to a single judge sitting in open Court:

Provided that no application for leave may be renewed in any non-criminal cause or matter in which the judge has refused leave under paragraph (3) after a hearing.

(5) In order to renew his application for leave the applicant shall, within 10 days of being served with notice of the judge's refusal, lodge in the Registry notice of his intention in Form B in the Schedule to this Order.

(6) Without prejudice to its powers under Order 20, rule 8, 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.

(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.

(11) Where leave is granted, the magistrates court or tribunal shall transmit a record of the proceeding to the Registrar within 21 days after receiving a copy of the order granting leave.

[14.] At the time that this matter was heard, the Supreme Court (Civil Procedure) Rules 2022 had come into effect ('CPR'). **Part 54** the Civil Procedure Rules identifies the procedure which an Applicant must follow in seeking relief under the new regime. Rule 54.3(1) provides:

"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 ex parte to a judge by filing in the Registry

—
(a) a notice in Form A in the Schedule to this Order 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 counsel and attorney (if any); and*
 - (iv) the applicant's address for service; and*
- (b) an affidavit which verifies the facts relied on.*

[15.] The Applicant must show that “there is an arguable ground for judicial review having a realistic prospect of success” and that there are no circumstances (‘discretionary bars’) that would cause a court to refuse leave. This is the threshold test for an application as captured in *Sharma v Browne Antoine* [2007] 1 WLR 780, 787 in the judgment of the Privy Council:

“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’.”

[16.] In this case, the decision which the Applicant seeks to review is the First Respondent’s decision to place the Applicant before the Police Force Disciplinary Tribunal for alleged minor and major breaches of discipline.

[17.] In this case, the parties are agreed on the principles of law applicable for consideration of an application for judicial review. It also appears that the parties are agreed on the process of the disciplinary procedures applicable to Applicant and others of this rank. The decision which the Applicant seeks to review is said to be the First Respondent’s decision to place the Applicant before the Police Force Disciplinary Tribunal and not observing the procedure set out in the Police Service Commission Regulations provisions 33, 40-43. By way of response, the Respondent denies that the Applicant was placed before the Police Force Disciplinary Tribunal and submits that the Applicant was placed before a Court of Enquiry.

[18.] The Applicant's case is set out in the affidavit of Garvin Evans filed on the 25th July 2022. The affiant avers:

5 That on Wednesday 16th March, 2022 I was summons [sic] to the Police Complaints Unit where I saw and spoke to Assistant Superintendent Anthony Sawyer who informed me of a matter that the Police Complaints Unit were investigating. He then served on me six (6) Royal Bahamas Police Force Discipline Notices (CD4 forms).

6 That on the same date Assistant Superintendent Anthony Sawyer conducted a record of interview with me in relation to the matter reported to the Royal Bahamas Police Force Complaint Unit. During the interview I produced my report which outlined the sequence of events as they occurred on the date in question.

7 That on Tuesday 12th July 2022, I appeared before the Police Disciplinary Tribunal and was arraigned by Chief Superintendent David Lockhart on four (4) counts of Conduct of a major nature, one (1) count of Any Act which is unlikely to interfere with the impartial discharged of duty or to give rise to the public impression that it might so interfere which is contrary to Discipline, Good Order, and Guidance of the Force, one (1) count of Insubordination by word, act and demeanor and one (1) count Without good and sufficient Cause omitting and neglecting to carry out any lawful order written or otherwise. I plead not guilty to each count. I was told to return to the Tribunal on Wednesday 10th August, 2022. Copies of the charge sheets and hereto attached.

...

9 That prosecution of the Disciplinary Tribunal hearing is set to commence on the 10th of August 2022 and this is not in compliance of the procedures set out in regulation 33-40 of the Police Service Commission Regulations.

10 That at no time did I receive any communication from the Secretary of the Cabinet informing me of any allegation against me as mandated by section 33 of the Police Service Commission Regulations.

[19.] The evidence of the Applicant is that he was arraigned on certain charges before the Police Disciplinary Tribunal and that he entered not guilty pleas. A hearing was set for August 10, 2022.

[20.] The evidence of the Applicant is refuted by that of the Respondent in the affidavit of Assistant Superintendent Lakisia Moss filed on the 28th August 2023 . Ms. Moss avers:

1. I am a police Officer attached to the Royal Bahamas Police Tribunal Court of Enquiry and a prosecutor/ marshall at the aforementioned.

2. I am duly authorized to make this Affidavit on behalf of the Respondents herein and I do so from information within my personal knowledge and from information obtained by me in my capacity, as Assistant Superintendent of Police in the Royal

Bahamas Police Force, and from sources with whom I work and I very believe to be credible and reliable, unless otherwise expressly stated therein.

....

5. That the Royal Bahamas Police Court of Enquiry Tribunal is a constituted court within The Bahamas in accordance with Article 31 of the Constitution of The Bahamas.

.....

8. That it is alleged, the Applicant on 13th February 2022, breached Covid 19 health travel requirements by not producing a vaccination card along with a negative Antigen or RTPCR test to travel onboard a chartered plane leaving from Grand Bahama to Andros. Further, the Applicant in his position as a Police Inspector improperly used his rank for private advantage to travel without the required health travel requirement; and in the process of travelling, insubordinate to his superior officer.

9. That Paragraph [sic] 5 and 6 of the Applicant's Affidavit is [sic] not refuted. The complaint was reported to the Police Complaints Unit and the Complaints Unit informed the Applicant of the allegations. An investigation commenced and the Applicant was given an opportunity to give his account to the alleged allegation. A formal notice of the complaints were given to the Applicant.

10 As a result of the complaints, against the Applicant, they amounted to major offences under regulation 3 of the Police Disciplinary Regulations 1965.

11 In accordance with The Bahamas Constitution, section 61 (1) Police Act, a Court of Enquiry was appointed by the Commissioner of Police to conduct a Preliminary Enquiry/Investigation to determine whether or not the disciplinary offences were committed by the Applicant.

.....

13 That paragraph 7 of the Applicant's Affidavit is refuted in that the Applicant appeared before the Court of Enquiry for a Preliminary Enquiry/Investigation. The Police Tribunal Court of Enquiry has two folds. Firstly, in short, officers in the rank of constables to sergeants facing disciplinary charges are required to enter a plea of guilty or not guilty, then a tribunal hearing is heard to determine whether they committed the disciplinary offences. If found guilty of the disciplinary offence a punishment is levied. Secondly, in the case of an Inspector (The Applicant) facing disciplinary offences, the Preliminary Enquiry/Investigation is only a fact finding mission to determine the validity of the disciplinary charges therefore no plea is taken.

....

17. In relation to the Applicant, at the Preliminary investigation/ Enquiry, he was informed of the disciplinary offences and the charges were read to him. He was informed and it was explained to the Applicant that an enquiry will be conducted to determine the validity of the disciplinary charges. It was also explained the findings of the Investigation/Enquiry will be place in a report (Inclusive of the Deposition and attestation sheets) and forwarded to the Commissioner of Police. There was no doubt as to why the Applicant was before the Court of Enquiry.

.....

24. The Court of Enquiry is presently investigating other Police Inspectors alleged with disciplinary offences. The procedure outlined in Paragraph 14 of this Affidavit has previously been conducted as recent as 4th August 2023 involving another Police Inspector.

[21.] The response of the Respondents is that a Court of Inquiry was constituted to investigate the complaints as a “fact-finding mission”.

[22.] The Applicant’s case is that the 1st Respondent failed to adhere to the procedure regarding discipline which governs officers of or above the rank of Inspector pursuant to Regulations 33, 40-43 of the Police Service Commission Regulations.

[23.] **Regulation 33** of the **Police Service Commission Regulations** provides the manner in which police officers of and above the rank of inspectors ought to be disciplined. It provides:

“An offence against discipline or any other misconduct by a police officer of or above the rank of inspector shall be dealt with under the provisions of regulations 40-43. Section 40-43 of the regulations addresses major and minor breaches”

[24.] **Regulations** 40-42 provide the procedure for dismissal proceedings for officers of the police force, proceedings for misconduct not warranting dismissal and proceedings for discharge on the grounds of public interest.

[25.] **Regulation 40** provide:

(1) When the Commissioner considers it necessary to institute disciplinary proceedings against an officer to whom this regulation applies on the ground of misconduct which, if proved, would justify his dismissal from the Police Force, he shall, after such preliminary investigation as he considers necessary, report the facts to the Governor-General, the Prime Minister and the Commission through the Secretary to the Cabinet, together with a recommendation as to whether the officer should be interdicted from the exercise of the powers and functions of his office. On receipt of such a report the Secretary to the Cabinet shall report the facts to the Director of Public Personnel. On receipt of such a report the Director of Public Personnel shall, after consulting with the Attorney-General as to the terms of the charge or charges, forward to the officer through the Secretary to the Cabinet a statement of the charge or charges framed against him together with a brief statement of the allegations, insofar as they are not clear from the charges themselves, on which each charge is based; and shall call on the officer to state in writing, within such time as shall be specified, whether he admits the charges and, if so, any mitigating circumstances he may wish to submit, or if he denies the charges, any grounds on which he relies to exculpate himself.

(2) On receipt of a reply to any charge forwarded under paragraph (1) of this regulation through the Secretary to the Cabinet, the Director of Public Personnel may, if he thinks fit, refer the matter back to the Commissioner for further consideration and report, or shall forward the Commissioner's report together with the officer's reply to the Commission. (3) If after considering the Commissioner's report and the officer's reply and any mitigating circumstances, if any, the Commission considers that if the offence is proved some penalty other than dismissal is likely to be appropriate, it shall act in accordance with the procedure prescribed in regulation 41(1) (d) or 42, as the case may be, of these Regulations. (4) If the charge or charges are admitted by the accused officer, the Commission shall forward the Commissioner's report, the officer's reply thereto and any relevant documents to the Governor-General and recommend the punishment, if any, which should be inflicted on the accused officer. (5) If the officer does not furnish a reply to any charge forwarded under paragraph (1) of this regulation within the period specified, or if, in the opinion of the Commission, he fails to exculpate himself, the Commission shall advise the Governor-General whether a committee, which shall consist of not less than three members, should be appointed to inquire into the matter, and the Governor General may appoint a committee for such a purpose. One member of the committee, if so appointed, shall be a judge, magistrate or a public officer with legal qualifications, and all members shall be selected with due regard to the standing of the officer concerned. No police officer shall be a member of the committee. (6) The committee shall inform the accused officer that on a specified day the charges made against him will be investigated and that he will be allowed or, if the committee so determines, will be required, to appear before it to defend himself. (7) If witnesses are examined by the committee, the accused officer shall be given an opportunity of being present and of putting questions on his own behalf to the witnesses and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

(8) The committee may permit the prosecuting party and the accused officer to be represented by a public officer or a counsel and attorney, provided that where the committee permit the one party to be so represented, they shall permit the other party to be represented in a similar manner. (9) If during the course of the inquiry grounds for the framing of additional charges are disclosed the committee shall so inform the Secretary to the Cabinet who shall inform the Director of Public Personnel and the latter shall follow the same procedure as was adopted in framing the original charges. (10) The committee, having inquired into the matter, shall forward their report thereon to the Commission accompanied by the record of the charges made, the evidence taken and any other proceedings relevant to the inquiry. The report of the committee shall include — (a) a statement whether in the committee's opinion the accused officer has or has not committed the offence or offences charged and a brief statement of the reasons for that opinion; (b) details of any matters which in the committee's opinion aggravate or alleviate the gravity of the case; and (c) a summing up and such general comments as will indicate clearly the opinion of the committee on the matter under inquiry. the committee shall not make any recommendation with respect to the form of punishment. (11) The Commission after consideration of the report of the committee may, if it is of

the opinion that the report should be amplified in any way or that further investigation is desirable, refer the matter back to the committee for further investigation and report.

(12) The Commission shall forward the written proceedings of the inquiry to the Governor-General together with its recommendation as to the punishment, if any, (including retirement from the service under regulation 42 of these Regulations) which should be inflicted on the accused officer.

[26.]

Regulation 41 provides:

(1)(a) When the Commissioner considers it necessary to institute disciplinary proceedings against an officer to whom this regulation applies on the grounds of misconduct which, if proved, would not be serious enough to warrant proceedings under regulation 40, he shall, after such preliminary investigation as he may consider necessary, report the facts to the Secretary to the Cabinet together with copies of reports of the case, the charges and his own comments. (b) The Secretary to the Cabinet shall report the facts to the Director of Public Personnel who shall forward to the officer through the Secretary to the Cabinet a statement of the charge or charges made against him and shall require the accused officer to state in writing within such time as shall be specified whether he admits the charge or charges made against him or any grounds on which he relies to exculpate himself. (c) On receipt of the accused officer's reply to the charge or charges, the Director of Public Personnel shall forward it together with the Commissioner's report to the Commission. (d) If on consideration of the Commissioner's report and the officer's reply the Commission is of the opinion that no further investigation is necessary it may forthwith report the facts to the Governor-General together with a recommendation as to the penalty, if any, (other than dismissal), which should be inflicted on the officer. (e) If the officer does not furnish a reply within the time specified or if the Commission, on consideration of the report submitted by the Commissioner, is of the opinion that the matter should be further investigated, it shall advise the Governor-General as to the manner in which the allegations against the officer should be investigated. (f) The results of such investigation shall be communicated to the Commission in such manner as may be ordered by the person conducting such investigation. (g) The Commission may, if it considers that the results of the investigation should be amplified in any way or that further investigation is desirable, refer the matter back to the person conducting such investigation for further inquiry and report.

(h) The Commission shall forward to the Governor General the proceedings against the officer and shall recommend the punishment, if any, (other than dismissal) which should be inflicted on the officer. (2) Notwithstanding the provisions of this regulation, if at any stage during the proceedings (a) it appears to the Commission that the offence, if proved, would justify dismissal; or (b) the Commission considers that, if the offence is proved, proceedings for the retirement of the officer from the service on grounds of public interest would be more appropriate, such proceedings shall be discontinued and the procedure in regulation 40 or 42, as the case may be, of these Regulations shall be followed.

[27.] Regulation 42 provides:
(1) Notwithstanding the provisions of regulation 40 of these Regulations, if the Commissioner considers that an officer to whom this regulation applies should be discharged on the grounds that he is unlikely to become or has ceased to be an efficient police officer, or that for any other reason his discharge is necessary in the public interest, he shall report the fact to the Secretary to the Cabinet who shall make a report thereon to the Director of Public Personnel. The Director of Public Personnel through the Secretary to the Cabinet shall inform the officer in writing that his discharge has been recommended and the grounds upon which the recommendation has been made and allow the officer an opportunity to show cause why he should not be discharged. (2) If the Director of Public Personnel, after considering the officer's statement and having regard to all the circumstances of the case, and after consultation with the Secretary to the Cabinet, is of the opinion that such officer should be discharged, he shall forward to the Commission the report of the Commissioner and the statement of the officer together with his own recommendation. The Commission shall recommend to the Governor-General the action, if any, that it considers should be taken against the officer.

[28.] The Applicant avers that “*at no time did I receive any communication from the Secretary of the Cabinet informing me of any allegation against me as mandated by section 33 of the Police Service Commission Regulations*”.

[29.] The Respondents assert the command of the COP and set out what they say was an adherence to the correct procedure.

[30.] The **Constitution of The Bahamas** outlines the powers of the First Respondent relating to discipline for officers of or above the rank of inspector. It also provides for an intended appeal mechanism for officers who are the subject of such breaches and are found guilty of same. **Section 121 (b)** provides:

(2) Save as provided in Article 120 of this Constitution and paragraphs (1) and (3) of this Article, power to remove and exercise disciplinary control over persons holding or acting in offices in the Police Force is vested in the Governor-General acting in accordance with the advice of the Police Service Commission.

(3) The following powers are vested in the Commissioner of Police —

(a) in respect of officers of or above the rank of Assistant Superintendent, the power to administer reprimands;

(b) in respect of Inspectors, the power to exercise disciplinary control other than removal or reduction in rank; and

(c) in respect of officers below the rank of Inspector, the power to exercise disciplinary control including the power of removal.

(4) The Commissioner of Police may, by direction in writing, and subject to such conditions as he thinks fit, delegate to any officer of the Police Force of or above the

rank of Inspector any of his powers under subparagraph (3)(c) of this Article other than the power of removal; but an appeal from any award of punishment by such officer shall lie to the Commissioner.

[31.] The **Police Force Act 2009** gives the power for an inquiry to be carried out where there are allegations of misconduct for officers of or above the rank of inspector. It gives the First Respondent jurisdiction to reprimand any officer for minor misconduct and the Governor General, acting on advice from the Police Service Commission, the jurisdiction to reprimand officers of or above the rank of inspector for more major offences.

[32.] **Section 61** the Act provides:

“(1) Any complaint of an offence against police discipline enumerated in the regulations made under this Act or other misconduct committed by a police officer of or above the rank of inspector in regard to which proceedings are not instituted in a criminal court shall be the subject of an inquiry by the Commissioner in accordance with the regulations under this Act. The Commissioner may initiate disciplinary proceedings against any such officer:

Provided that nothing in this section contained shall apply to any complaint made against the Commissioner or Deputy Commissioner or any person acting in either of those offices.

(2) Any police officer of or above the rank of inspector found guilty of any such offence or other misconduct may be punished by the Governor-General acting in accordance with the advice of the Police Service Commission by any one or combination of the following punishments, namely —

- (a) dismissal;*
- (b) requirement to resign;*
- (c) reduction in rank or seniority;*
- (d) fine not exceeding one month’s pay;*
- (e) withholding of increment;*
- (f) deferment of increment;*
- (g) severe reprimand;*
- (h) reprimand.*

(3) The Commissioner may summarily administer a reprimand or severe reprimand to any police officer for minor misconduct.

[33.] **Regulation 4** of the **Police Disciplinary Regulations** provides for investigations to be carried out from a Court of Enquiry when any Inspector, subordinate police officer or constable is charged with a major offence against police discipline. It provides:

(1) When any Inspector, subordinate police officer, or constable is charged with a major offence against police discipline the Commissioner shall appoint, in his discretion, either one or more gazetted police officers to form a Court of Enquiry: Provided that each such

gazetted police officer is at least two substantive ranks senior to the police officer charged with the offence. If the Court of Enquiry consists of more than one gazetted police officer, the senior officer appointed shall preside.

(2) Any such police officer to be charged with a major offence against police discipline shall be supplied as soon as practicable with a copy of the charge or charges and informed of the date on which the Court of Enquiry will be convened. Such charge or charges shall specify the time, date, place and particulars of the alleged offence. If the defendant requests further time to prepare his defence he may be granted a maximum extension of seven days from the date originally determined for the enquiry. The presiding officer shall ask the defendant whether he pleads guilty or not guilty to the charge or charges. A separate plea shall be taken on each charge and each plea shall be recorded.

(3) Whenever any such police officer pleads not guilty, it shall be the duty of the Court of Enquiry to investigate the charge or charges and record the evidence of the witnesses on oath. The Court of Enquiry shall give the defendant the opportunity to question the witnesses, give evidence on his own behalf, and call witnesses for his defence. Should the evidence not satisfy the Court of Enquiry that such charge or charges have been proved, the charge shall be dismissed and the findings forwarded to the Commissioner.

(4) If the Court of Enquiry is satisfied that the charge or charges have been proved, the Court of Enquiry shall record its findings and, after giving the defendant the opportunity to say anything he may wish in mitigation or in extenuation, it shall consider the defendant's record of service, any mitigating circumstances, and, if the defendant is a substantive police officer or constable, the Court may impose such punishment as it is empowered to impose under the provisions of section 51(2) of the Police Act and inform the defendant accordingly. If the Court considers that the offence merits a more severe punishment than it is empowered to impose under section 51 (2) of the Police Act, or if the defendant is an Inspector, it shall forward its findings and all the evidence recorded to the Commissioner for sentence.

(5) In the case of an Inspector found guilty of a major offence against police discipline or other serious misconduct which, in the opinion of the Commissioner, justifies a more severe punishment than he is empowered to impose under section 50(2) of the Police Act, he shall forward the record of evidence and the findings of the Court of Enquiry to the Police Service Commission, through the Secretary to the Cabinet, with his recommendations.

[34.] **Regulation 4** is relied upon by the Respondents. The regulation appears to make provisions of the taking of pleas as a part of the investigation. The Respondents' affiant, Ms. Moss, gives evidence that no plea is taken in these investigations which are to be treated as fact-finding missions in the case of an Inspector. However, implicit in Ms. Moss' affidavit given on behalf of the Respondents, is a confirmation that the procedure described by the Applicant (1) is not the procedure undertaken for police officers at the Applicant's level and (2) would not be the appropriate procedure for an officer at the Applicant's level.

[35.] While the Affiant Moss may be well-aware of the distinction in the procedures, it is unclear that she is in fact aware of which procedure prevailed in this instance. Paragraphs 1 and 2 of her evidence by affidavit read:

1. I am a police Officer attached to the Royal Bahamas Police Tribunal Court of Enquiry and a prosecutor/ marshall at the aforementioned.

2. I am duly authorized to make this Affidavit on behalf of the Respondents herein and *I do so from information within my personal knowledge and from information obtained by me in my capacity, as Assistant Superintendent of Police in the Royal Bahamas Police Force, and from sources with whom I work and I very believe to be credible and reliable, unless otherwise expressly stated therein.*

[36.] It is unclear what evidence is of the affiant's personal knowledge and what is based on reports to her.

[37.] At the application for leave stage, this Court will not resolve the stark dispute of facts. Nor can I on the nature of the evidence before me. What I must assess is whether the Applicant has an arguable case. The Applicant, if he can prove his case, asserts that the wrong procedure was embarked upon as it concerns him. As I understand the case of the Respondent, there is an acceptance that such a procedure would be wrong but the Respondent's case is that what the Applicant described was not the nature of the process that was undertaken.

[38.] It is my determination that there is a serious issue to be tried and that the Applicant has an arguable case.

DISCRETIONARY BARS

[39.] Judicial Review is a remedy of last resort and an Applicant must ensure that all adequate remedies available to him have been exhausted before seeking leave from the court for Judicial Review. Such remedy must equally be able to properly deal with the issue raised before the courts.

[40.] The Court of Appeal in **R v Hallstrom and another, ex parte W [1985] 3 All ER 775** gave leave to apply for judicial review in the absence of a suitable alternative remedy. **Lord Justice Glidewell** opined, at pages 789-790:

What we can properly do, in my view, is to reiterate what was said by Lord Widgery CJ in *R v Hillingdon London Borough, ex p Royco Homes Ltd* [1974] 2 All ER 643 at 648, [1974] 1 QB 720 at 728

'In particular, it has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy.'

Whether the alternative statutory remedy will resolve the question at issue fully and directly, whether the statutory procedure would be quicker, or slower, than procedure by way of judicial review, whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body, these are amongst the matters which a court should take into account when deciding whether to grant relief by way of judicial review when an alternative remedy is available.

[41.] The Respondents submitted that the Applicants had alternative remedies under the constitution, the Regulations and the Civil Procedure Rules, that the Applicant has not exhausted all the remedies available to him and that therefore the court ought not to grant leave for Judicial Review.

[42.] **Regulation 34 (2)** of the Police Service Commission Regulations provides:
“(2) Any case of which no appropriate procedure exists under these or other Regulations, shall be reported to the Chairman and the Commission may issue instructions as to how the case shall be dealt with, and the case shall be dealt with accordingly.”

[43.] The Respondent submits that the Applicant could have reported the procedure to the Chairman and Commission under Regulation 34(2). I think that that submission is misconceived. Regulation 34(2) concerns a case where “no appropriate procedure exists”. That does not appear to be the contention of the Applicant. One ground on which the application is filed is that the Applicant “was never dealt with under the disciplinary procedure set out by the Police Service Commission Regulations and he has been severely prejudiced in his defense in relation to the said offences.” The case of the Applicant is that the procedure used was not appropriate for his rank. It is not the submission of the Respondent that there is no appropriate procedure. Indeed, the Respondents have set out what they deem to be the appropriate procedure. Regulation 34(2) will not avail this Applicant.

[44.] **Article 121 (5)** of the Constitution provides:
Parliament may by law provide that an appeal shall lie to the Governor-General from a decision of the Commissioner of Police to remove or exercise disciplinary control over persons holding or acting in offices in the Police Force in such cases as may be prescribed by such law, and in determining any such appeal the Governor General shall act in accordance with the advice of the Police Service Commission.

[45.] The Respondent submits that the Applicant has made allegations that his constitutional rights have been infringed and as such, should have commenced a constitutional motion. The Respondents also argue that the Applicant has a remedy by virtue of Article 121(5) of the Constitution. It seems to me that there is nothing to preclude the Applicant from bringing an application for judicial review where there is also an allegation of a constitutional breach. The Respondents have not furnished the court with a relevant statutory enactment made by Parliament pursuant to Article 121(5) of the Constitution. In any event, I accept the Applicant’s proposition that no appeal lies in the

absence of a conviction by the Disciplinary Tribunal. The Respondents' own submission is that nothing had yet commenced "in terms of evidence at the investigation/enquiry".

[46.] The Respondents submit that the Applicant failed to make full and frank disclosure in his application. The failures are said to include a failure to disclose a Constitutional provision, viz Article 121(3)(b), that gives the First Respondent disciplinary control over the Applicant and that there are effective alternative remedies outlined in regulation 34 (2) Police Service Commission Regulation. Such failures, in my view, are matters of law to be addressed in argument and represent the position of the Respondents. The Respondents also submitted that the Applicant failed to state which article of the Constitution has been breached. This raises the question of whether and how the issue of the constitutional breach may be approached but, for the reasons outlined above, will not bar an application for judicial review.

[47.] The Respondent also submits that the Applicant did not disclose the fact that "he remains gainfully and lawfully employed as a Police Inspector; with all of the powers, duties and responsibilities as a police inspector". The Affidavit of the Applicant describes him as a Police Inspector. This application is brought to examine the lawfulness of proceedings launched against him. Those proceedings have not advanced. There is no material non-disclosure of the fact.

[48.] The Respondent further submits that the Applicant "has misrepresented the fact he was informed that an investigation will be conducted via the procedure of an Investigation/ Enquiry and not a disciplinary tribunal." This is a dispute of fact that is to be resolved on a substantive hearing.

INJUNCTION

[49.] The Respondent's submission was that it was not a Disciplinary Tribunal that had been convened by the Respondents. On that basis, the parties agreed to hold the status quo and the proceedings would be held in abeyance pending the determination on the leave application. For that reason, this Court need not treat with the application for an interim injunction.

[50.] Having determined to grant the Applicant leave to pursue judicial review, this Court will grant a stay of further disciplinary proceedings pending the determination of the judicial review application.

CONCLUSION

[51.] The Application for leave serves to cause a court to enquire whether the Applicant has a sufficient interest in the decision being impugned, whether there is a serious issue to be tried, whether the Applicant has an arguable case and whether there are any discretionary bars (such as alternative remedies, failure to make full and frank

disclosure, delays) that ought to prevent leave being granted. The case for the Applicant is that the procedure that he has been subject to is unfair, flawed and illegal. The Applicant has an arguable case fit for judicial review.

[52.] The disciplinary proceedings are to be stayed pending the determination of the judicial review application, or further court order.

[53.] For avoidance of doubt, this matter shall proceed pursuant to the CPR 2022, as amended.

ORDER

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

- a. The Applicant is granted leave to commence judicial review proceedings.
- b. The disciplinary proceedings launched is hereby stayed until the determination of the judicial review application, or further order of the court, PROVIDED that the Applicant files and serves an Originating Application within 14 days of the date of this Order. Failing the filing and service of same, the stay will be lifted.
- c. Costs in the cause.

Dated this 28th Day of May 2025

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs J

