



[2022] JSMC Civ 229

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**[DIVISION]**

**CLAIM NO. 2017 HCV 00744**

<b>BETWEEN</b>	<b>MR. IAN DAVE HAYLES</b>	<b>1<sup>st</sup> APPLICANT</b>
<b>AND</b>	<b>MRS. CHARLOTTE ALEXANDER-HAYLES</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>AND</b>	<b>THE CONTRACTOR GENERAL</b>	<b>RESPONDENT</b>
<b>AND</b>	<b>THE HON. PEARNEL CHARLES SPEAKER OF THE HOUSE OF REPRESENTATIVES</b>	<b>1<sup>ST</sup> INTERESTED PARTY</b>
<b>AND</b>	<b>SENATOR TOM TAVARES FINSON PRESIDENT OF THE SENATE</b>	<b>2<sup>ND</sup> INTERESTED PARTY</b>

**IN CHAMBERS**

**Mr. Abe Dabdoub instructed by Dabdoub and Dabdoub for the Applicants, Mrs Jacqueline Samuels Brown and Mr Lorenzo Eccelston instructed by the Integrity Commission for the Respondent, Ms Lisa White and Mr Foreman instructed by Director of State Proceedings for the Interested Parties.**

**Heard 2<sup>nd</sup>, 3<sup>rd</sup> of November and 20<sup>th</sup> of December 2022**

**Administrative Law- Application for Leave to apply for Judicial Review- Whether the opinion of the Office of the Contractor General as well as subsequent referral can be reviewed- Whether a stay can be granted prior to leave being granted- Whether the Court has jurisdiction to intervene in the conduct of Parliament.**

**Constitution of Jamaica Sections 48 (2) and 51 (1).**

**Civil Procedure Rules 56 (2) ,56 (3).**

**Statues Contractor General Act Sections 4(1) (b), 15, 16, 20, 21, 28- Senate and House of Representatives (Power and Privileges) Act Sections 29 and 51.**

**SHELLY-WILLIAMS, J**

**BACKGROUND**

[1] The applicants filed a Without Notice Application for Leave to apply for judicial review on the 9<sup>th</sup> of March 2017. The applicants amended their Notice of Application on the 13<sup>th</sup> of March 2017 and subsequently filed a Further Amended without Notice Application on the 15<sup>th</sup> of March 2017. The Further Amended Application prayed :-

- (1) The Applicants be granted leave/permission to apply for judicial review seeking Declarations, and Writs/Orders of Certiorari and prohibition.*
- (2) An Injunction retaining the Respondent by himself, his servants and/or agents or otherwise howsoever from causing any report arising from his investigation into “allegations of conflict of interest, irregularity and/or impropriety in relation to the construction of buildings by Mr. Ian Hayles, Member of Parliament for Western Hanover without approval from the Hanover Parish Council” to be published, presented and/or provided to any person whomsoever, including but not limited to any public or statutory body or public servant until further order of the Court.*
- (3) That the costs of this application to be costs in the judicial review proceedings*
- (4) Such other relief and o order as this Honourable Court may deem fit.*

**Section 1: details of the Applicants and Respondent**

- 1. The 1<sup>st</sup> Applicant is Mr. IAN HAYLES Member of Parliament (M.P.) for Western Hanover and the former Minister of State in the Ministry of Water, Land and The Environment whose address for service is that of his said Attorneys-at-Law, Messers. Dabdoub, Dabdoub & Co., Attorneys-at-law.*
- 2. The 2<sup>nd</sup> Applicant is Mrs. Charlotte Alexander Hayles of 31 Hopefield Avenue, Kingston 6, in the Parish of Saint Andrew, Businesswoman and company Director, and the wife of the 1<sup>st</sup> Applicant. Her address*

for service is that of her said Attorneys-at-Law Messrs. Dabdoub, Dabdoub & Co.

3. The Respondent ("The Contractor General") is a Commissioner of Parliament created under 3 of the Contractor General Act ("The Act") whose address is 16 Oxford Road, Kingston 5.

**Section 2: Details of relief being sought including interim relief**

1. A Declaration that the Contractor General Act, pursuant 15, 20 and 28, does not clothe the Respondent with lawful authority or confer upon his jurisdiction to commence and conduct an investigation and make and publish a report into "**allegations of conflict of interest, irregularity and/or impropriety in relation to the construction of buildings by Mr. Ian Hayles, Member of parliament for Western Hanover without approval from the Hanover Parish Council.**" (emphasis added).
2. A Declaration that neither Mr. Ian Hayles M.P. nor Mrs. Charlotte Alexander Hayles his wife, entered into any contract for the erection of any building on lands owned by the Commissioner of Lands and further that the Contractor General does not have the authority or jurisdiction to commence, conduct and continue an investigation or to make and publish a report of the erroneous and improper findings of his investigation into the building on Government land conducted without a contract having been entered into with Government.
3. A Declaration that neither Mr. Ian Hayles M.P. nor his wife Mrs. Charlotte Alexander Hayles entered into any government contract for the construction of a building on lands owned by the Commissioner of Lands or by the Government of Jamaica which, in any event, does not clothe the Contractor General with any lawful authority to commence, conduct and continue an investigation or to make and publish a report of the findings of his investigation.
4. A Declaration that the Contractor General acted ultra vires, unlawfully and/or without lawful authority or jurisdiction by deciding to commence, conduct and continue an investigation and to make and publish a report of the erroneous and improper findings of his investigation as a result of a complaint concerning 'allegations of conflicts of interests, irregularity and/or impropriety in relation to the construction of buildings by Mr. Ian Hayles, Member of Parliament for Western Hanover **without** approval from the Hanover Parish Council".
5. A Declaration that on a proper construction and interpretation of the Contractor General Act, the Contractor General does not have Lawful Authority to initiate any investigation, whether special or not, or to make and publish a report of the findings of his investigation into the construction of a building on any land save and except where there is

- a government contract at issue for the construction of any such building.
6. A Declaration that on the proper construction of the Contractor General Act, it is unlawful for the Contractor General to initiate an investigation and/or special investigation or to make and publish a report of the findings of his investigation in relation to the construction of a building on any land which is privately owned.
  7. A Declaration that Mr. Ian Hayles M.P. is not and was never an owner of any lands, subject of the investigation by the Contractor General and was not involved or intimately linked to the construction of the building on any lands, subject of the investigation by the Contractor General.
  8. A Declaration that the decision to launch an investigation without first seeking to ascertain pertinent facts which were easily ascertainable by the examination of public records accessible to the said Contractor General is irrational and unreasonable having regard to evidence, information and other material available in public records to which he had easy access.
  9. A Declaration that, in light of the evidence of Andrew Bromfield, commissioned Land surveyor, that the Sketch Plan of part of Cousins Cove, Lot 23 and lot 24 was commissioned by Mrs. Hayles and prepared by his office, the finding by the Contractor General that the Sketch Plan is a False document is erroneous, irrational, plainly wrong and injudicious and against the weight of all the evidence.
  10. A Declaration that, in light of the evidence of Andrew Bromfield, Commissioned Land Surveyor, that the sketch Plan of part of Cousins Cove, Lot 23 and Lot 24 was commissioned by Mrs. Hayles and prepared by his office, the finding by the Contractor General that there is Prima Facie evidence of forgery on the part of Mr. Ian Hayles and Mrs. Charlotte Alexander Hayles with respect to the Sketch Plan is erroneous, *unreasonable*, irrational, plainly wrong and injudicious and against the weight of all the evidence.
  11. A Declaration that, in light of the evidence that the Hanover Parish Council was advised by the Vendor of Lot 24 that he had made an error in selling the said Lot to Pauline Gary, the Contractor General's decisions to refer Mrs. Pauline Gray to the Commissioner of Police for further investigation, with respect to the circumstances under which Lot 24, Cousins Cove Hanover was sold to her by Mrs. Pauline Hojan and Mr. Gerhard Hojan is unreasonable, irrational, injudicious and plainly wrong.
  12. A Declaration that in making application to the Registrar of Titles, prior to completion of his investigation, for a Registrar's Caveat No. 2008539 to be lodged on June 17, 2016 against Certificated of Title registered at Volume 1495 Folio 141 and also Volume 1160 Folio 761 of the Register Book of Titles in breach of Section 20 of the Contractor General Act, is illegal, irrational, injudicious and plainly wrong.

13. A Declaration that, having been advised by the National Land Agency in or about June 2016 that the land registered at Volume 1495 Folio 141 upon which Just One Plaza was built was not owned by the Commissioner of Lands or the Government of Jamaica and was privately held land, the Contractor General, in wanton disregard of the constitutional rights of the legal and beneficial owners of the said lands, failed in his duty and obligation to immediately advise the Registrar to Titles of his error and to request that the Registrar's Caveat be withdrawn.
14. An Order of Certiorari to remove into This Honourable Court and quash any report containing improper and erroneous adverse findings in respect to Ian Hayles M.P., and his wife Charlotte Alexander Hayles by the contractor General on the grounds that such findings are irrational and unreasonable and not supported by evidence or in law.
15. A Declaration that the findings that the Hanover Parish Council has not issued a Planning and Building Permit to Just One Service to undertake the development of the petroleum filling station in Orange Bay, Hanover, is against the available evidence.
16. A Declaration that the Contractor General's Report arising from the investigation into "allegations of conflict of interest, irregularity and/or impropriety in relation to the construction of buildings by Mr. Hayles, Member of Parliament for Western Hanover without approval from the Hanover Parish Council" is illegal, null and void and of no legal effect having regard to the fact that the Contractor General lacked the Authority and jurisdiction.
17. An Order of Prohibition to prohibit the Contractor General from causing any report to be published pursuant to Section 28 of the Contractor General Act or any part thereof on the grounds that the Contractor General has no lawful authority so to do and on the further grounds that the findings and recommendations set out therein are erroneous, irrational and unreasonable and not supported by any evidence, including evidence of which he is aware
18. Damages
19. Such further and other reliefs as the Court May deem fit.

**Section 3: The Grounds on which the said reliefs are sought are as follows:-**

1. That the Contractor General's investigation was allegedly triggered by the receipt of a "the type written note along with accompanying attachments" from an unnamed person without the provision or disclosure of any proof that the land in question is owned by the Commissioner of Lands or the Government of Jamaica or any public body or authority.
2. Section 15 (1) of the Contractor General Act confers on the Contractor-General jurisdiction to conduct an investigation, if he

*considers it necessary or desirable, into any or all of the following matters-*

- (a) The registration of Contractors;*
- (b) Tender procedures relating to contracts awarded by public bodies;*
- (c) The award of any Government contract;*
- (d) The implementation of the terms of any government contract;*
- (e) The circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) The practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.*

*3. Section 16 of the said Act expressly gives authority that:*

*“ An investigation pursuant to Section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted.”*

- 4. That “The Type written note along with accompanying attachments” allegedly received by the Contractor General did not establish any of required basis under Section 15 (1) by the Contractor-General’s authority to commence an investigation would arise and consequently the Contractor-General lacked statutory legal authority and jurisdiction to inquire into the construction of a building on privately own land.*
- 5. That there was nothing which arose subsequent to the complaint or arising from his investigation which could provide the basis of his having jurisdiction and lawful authority to conduct an investigation within the meaning the meaning of Contractor General’s Act.*
- 6. That the Contractor General illegally and irrationally sought to clothe himself with the authority and jurisdiction to inquire into the construction of a building against the background that there was no contract with the Government or any public body and the Contractor General improperly, irrationally and unreasonably claimed that he was inquiring into a “complaint concerning allegations of conflicts of interest, irregularity and/or impropriety in relation to the construction of a building by Mr. Ian Hayles. Member of parliament for Western Hanover without approval from the Hanover Parish Council” in reckless disregard for the truth and facts and the manner in which he proceeded to conduct his investigation which would and is likely to result in causing serious irreparable damage to the reputation of MR. IAN HAYES and that his wife MRS. CHARLOTTE ALEXANDER HAYLES.*

7. *The Contractor General is, and was at all material times, the Defendant, Mr. Dirk Harrison.*

8. *The Function of the Contractor General is :-*

(a) *“To monitor the award and the implementation of government contracts with a view to ensuring that:-*

- i. Such contracts are awarded impartially and on merit;*
- ii. The circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;*
- iii. Without prejudice to the functions of any public body in relation to any contract, the implementation of each contract conforms to the terms thereof; and*
- iv. To monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.” (see section 4(1) of the Act).’*

9. *The Contractor General may in his discretion:*

*“conduct an investigation into any or all of the following matters-*

- a) The registration of contractors;*
- b) Tender procedures relating to contracts awarded by public bodies;*
- c) The award of any government contract;*
- d) The implementation of the terms of any government contract;*
- e) The circumstances of the grant, issue, use, suspension or revocation of prescribed licence;*
- f) The practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.” (see section 15 (1) of the Act).*

10. *The Contractor General’s remit is in relation to government contracts, which is defined as:*

*“...any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services.” (see section 2 of the Act).*

11. *A Contractor is defined as:*

*any person, firm or entity with whom a public body enters into any agreement for the carrying out of any building or other works for the supply of any goods or services an includes a who carries out such work or supplies such goods or services for or on behalf of any public body pursuant to a licence, permit or other concession or authority issued or granted to that person by a public body;" (see section 2 of the Act).*

12. A Public body is defined as:

- (a) Ministry, department or agency of government;*
- (b) A statutory body or authority;*
- (c) Any company registered under the Companies Act, being a company in which the government or any agency of Government, whether by the holding of shares or by other financial input is in a position to influence the policy of the company." (see section 2 of the Act).*

13. In order to discharged his functions, the Contractor General is entitled to:-

- (a) to be advised of the award and, where applicable, the variation of any government contract by the public responsible for such contract;*
- (b) subject to section 9, to have access to all books, records, documents, stores or other property belonging to government, whether in the possession of any officer of a public body or a contractor or any other person*
- (c) to have access to any premises or location where work on a government contract has been, is being or is to be carried out;*
- (d) to have access to all books, records, issues, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person;*
- (e) to have access to any premises or location where he has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found;*
- (f) to enter any premises occupied by any person in order to make such enquires or to inspect such documents, record or other property as he considers necessary to any matter being investigated by him; and*
- (g) without prejudice to the provisions of sections 18 and 19, to retain such document, record or other property referred to in paragraph (f).*

14. *The Contractor General's functions are limited to the monitoring and award of:*
- a. *Licences, permits, concessions or authorities issue by a public body;*
  - b. *Agreements entered into by a public body for the carrying out building or other works or for the supply of any goods or services.*

*In regard to the building complained of, the Contractor General has no jurisdiction or authority whatever relating to the building on the said land which is privately owned.*

15. *The Contractor General is only empowered to carry out investigations pursuant to section 15 of the Act, but this power of investigation is limited to public entities. That his investigation is ultra vires as no public entity is involved.*

**Section 4: Jurisdiction and time limited for making the application**

- A. *The judicial review is appropriate as the Contractor General is a special tribunal which has acted ultra vires, unlawfully and/or without authority and there is no alternative form of redress available in the circumstances.*
- B. *That the time for applying for judicial review has not expired.*
- C. *The Applications made no compliant to the Respondent in respect of which any consideration could be given to the subject matter of those proceedings.*
- D. *That the Applicants are directly affected, as the false premises on which the Contractor General launched the investigation and is making and publishing the report of the investigation and the reference to the Mr. Ian Hayles as a person who is building on land which he does not own and who is building without approval is likely to result in tarnishing and damaging his integrity, good name, good reputation an good standing, the restoration of which is greatly dependent on This Honourable Court's determination of the aforementioned remedies.*
- E. *The Application Attorneys-at-Law are Dabdoub, Dabdoub & Co. of Unit #2, 49 ½ Upper Waterloo Road, Kingston 8, in the Parish of Saint Andrew on the Record for the Applicant and the Applicant's address for service is c/o their Attorneys-at-law Dabdoub, Dabdoub & Co. of Unit # 2, 49 ½ Upper Waterloo Road, Kingston 8, in the Parish of St. Andrew.*

[2] In support of their application the applicants filed seven affidavits, the first respondent filed four affidavits whilst the interested parties filed one.

- [3] The Amended Without Notice Application (the application) was listed for hearing on the 13<sup>th</sup> of March 2017, however, it was adjourned to the 7<sup>th</sup> of June 2017 for the Speaker of the House and the President of the Senate to be joined as interested parties.
- [4] On the 20<sup>th</sup> of March 2017 there was a first hearing of the application which resulted in a number of orders being made. These orders included :-
- (i) the date for the inter parties hearing set for the 7<sup>th</sup> of June 2017 being vacated and a new date set for the 11<sup>th</sup> and 12<sup>th</sup> of May 2017.*
  - (ii) The interested parties were granted an opportunity to file affidavits and the applicants given dates to respond to the affidavit.*
  - (iii) tabling of the Contractor General's Report in the House of Representatives and the Senate is stayed until the 11<sup>th</sup> of May 2017.*
- [5] On the 12<sup>th</sup> of May 2017 the hearing was adjourned to the 24<sup>th</sup>, 26<sup>th</sup> and the 27<sup>th</sup> of July 2017 and the stay was extended until the completion of the hearing of the application. On the 31<sup>st</sup> of May 2017 there was an application for leave to appeal which was refused. On the 2<sup>th</sup> of July 2017 the application was adjourned to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> of December 2017. The application did not proceed on the agreed dates due to the Judge being unavailable. The application, by agreement was placed before another Judge so that the application could start de novo. The application was heard on the 2<sup>nd</sup> and the 3<sup>rd</sup> of November 2022.
- [6] The Office of the Contractor General (OCG) was a Commission of Parliament that was mandated to conduct investigations as per the OCG Act. The OCG commenced an investigation in April 2014 due to a report that was made to it concerning certain properties in Hanover. The investigation arose out of a type written, unsigned note that was submitted to the OCG along with some documents. This note indicated that family members of the first applicant, to include the second applicant, had formed a company i.e. Just One Services Ltd. ('Just One') which

undertook the development of a Plaza in Orange Bay, Hanover, without the approval of the Hanover Parish Council.

- [7] In pursuance of this investigation, the OCG conducted interviews with a number of persons. The first applicant, on the request of the OCG, attended one hearing with his attorney. The second applicant attended a number of hearings that were conducted in the presence of her attorney.
- [8] At the conclusion of the investigation, a report was compiled and on the 13<sup>th</sup> of March 2017 the OCG submitted the said report to Parliament. The applicants were later served with a copy of a letter that included conclusions of the OCG based on the information he had amassed, as well as suggested referrals. The applicants were served with copies of the letter, albeit the second applicant was served before the first applicant.

#### **APPLICANTS' SUBMISSIONS**

- [9] Counsel for the applicants advanced a number of issues that he submitted had arisen as a result of the actions of the OCG that should be the subject of judicial review. The first issue raised was that the OCG had no jurisdiction to undertake the investigation against the applicants. Counsel for the applicants argued that the investigations of the OCG were to be limited to public officials, public lands and licenses as detailed in Section 15 and 16 of the OCG Act. The applicant could not be defined under these headings and as such the decision to investigate was ultra vires his powers. Counsel's position was that the lands in question at Orange Bay and Cousins Cove in Hanover were owned by the company Just One Services Ltd. The first applicant who may have been defined as a public official, was neither a shareholder nor director of that company and had no legal beneficial interest in the properties. The second applicant, who did have an interest in the Company, did not fall into any of the categories listed under Section 15 or 16 of the OCG Act and as such, the properties, should not have been the subject of any investigation.

- [10]** Counsel further advanced that since the properties were being sold by private individuals, to a company whose shareholders were private citizens, the properties should not be the subject of an investigation of the OCG.
- [11]** Counsel highlighted to the Court that the OCG had produced a report that expressed certain opinions that he described among other things as irrational. He further submitted that based on these opinions the OCG sought to make referrals to the Director of Public Prosecution and to the Commissioner of Police. He argued that these referrals were in fact decisions that ought to be the subject of judicial review. Counsel contended that the applicants and the parties adversely affected by the report were not informed of the report until after it had been submitted to Parliament and that the parties should have been informed prior to the report being submitted.
- [12]** The report from the OCG having been sent to Parliament, it is the contention of Counsel for the applicants that the Court had the authority to make orders that would prohibit the tabling of it. The contention was that any person, including parliamentarians could be subject to any order of the Court which included injunctions.
- [13]** Counsel urged the Court to order a stay in the proceeding whilst leave is being considered. In support of his position Counsel sought to rely on Rules 17, 54.1(4), 56.4(9) and 54.4(10) of the Civil Procedure Rules (2002) (CPR), Sections 27 and 48 (e) and (g) of the Judicature (Supreme Court) Act, as well as Section 30 of the OCG Act.
- [14]** Counsel argued that the Claim contains serious issues to be tried, it is not vexatious and frivolous. He further contended that damages would not be a sufficient remedy as the publishing of the OCG's report would lead to reputational harm to the applicants. Counsel also submitted that although the second applicant had given the usual undertaking in damages, this was not required as the respondents would not suffer any financial prejudice or hardship.

- [15] Counsel's final submission was that the applicants have an arguable case with a reasonable prospect for success and leave should be granted as they had satisfied the legal requirements.

### **RESPONDENTS' SUBMISSIONS**

- [16] Counsel for the Respondent submitted that leave should not be granted in this case as the applicants do not have an arguable case with a realistic prospect of success. Counsel submitted that the investigation of the OCG was not ultra vires as it touched and concerned licenses. Counsel highlighted for the Court's attention the definition of license under the OCG Act, which included permits and argued that construction had been completed on the properties where the required permits had not been obtained. She drew the Court's attention to the affidavit of the second applicant which acknowledged that there were irregularities in the construction of eleven shops on the Plaza at Orange Bay. Those irregularities included the construction of the shops without the requisite permits being granted. The second applicant, she argued, further averred in her affidavit that penalties could be paid for this failure. Counsel argued that the construction of the resort at Cousins Cove was undertaken on community property, which is public land. This again, she argued would fall under the remit of the OCG. Council argued that the fact that the applicants have sought to explain the issues raised by the OCG, only re-enforce the fact that the actions of the OCG were intra vires.
- [17] In relation to the report that was submitted to Parliament, Counsel's position was that the OCG based on Sections 21 and 28 was obligated to furnish a report to Parliament and was merely carrying out its mandate when it did so.
- [18] In response to the submission that the first respondent failed to serve a copy of its report to Parliament, Counsel pointed to the Section 20 (2) of the OCG Act and submitted that the OCG was obliged to inform the affected party of any adverse sections of the report, and this had been undertaken. There was no obligation to serve the affected party with a copy of the entire report. Counsel indicated that the

OCG Act did not dictate the time period within which the parties were to be informed of the adverse finding ie whether it is before the report was submitted to Parliament or after. In this case she pointed to the fact that the second applicant had been served with a copy of the letter on the 16<sup>th</sup> of February 2017, three days after the report was submitted to Parliament, whilst a copy of the letter was served on the attorney of the first applicant on the 7<sup>th</sup> of March 2017. Ms Pauline Gary was served with that letter on the 16<sup>th</sup> of March 2017.

- [19] The submission of Counsel was that the OCG's report contained conclusions and referrals which cannot be classified as decisions. Counsel's position was that an application for leave for judicial review as it concerns the conclusions and referrals in this case, would at best be premature. She submitted that the application for judicial review concerning an investigation that commenced from 2014 would be grossly out of time and should not be entertained. She urged the Court to find that the applicants did not have an arguable case and as such leave should not be granted.

### **INTERESTED PARTIES' SUBMISSIONS**

- [20] Counsel for the interested party urged the Court to find that the interested parties should not have been joined to the Claim as they were not involved in the decision making process. The interested parties, it was argued, did not render a decision that affected the applicants, they did not alter their rights, nor did they deprive them of any benefit or advantage. It was submitted that the applicants had not, and could not satisfy the requirements of Rule 56.
- [21] Ms White then turned to the issue of privilege. She submitted that Section 28 of the OCG Act stipulates that reports, including annual reports are to be submitted to Parliament. On the submission of the report, the Speaker of the House of Representative and the President of the Senate were then mandated to table the report. Ms. White argued that the tabling of the report was not discretionary, but prescribed by law and as such was clothed in privilege. It was further submitted that

the Court had no jurisdiction to interfere in the proceedings of Parliament, and an order for injunctive relief to prohibit the tabling of the OCG's report would amount to interference.

**[22]** Ms White urged the Court to find that any stay of the tabling of the report would be contrary to the Constitutional principle that internal proceedings of Parliament is not subject to judicial review. In support of the submission, Counsel relied on the Senate and House of Representatives (Powers and Privileges) Act, Standing Orders and case law. Counsel also drew the Court's attention to Sections 48 and 51 as well as Part 2 of Chapter V of the Constitution.

## **ISSUES**

**[23]** There are basically five issues in this case namely :-

- (a) Were the actions of the OCG ultra vires i.e. did he have the jurisdiction to investigate the applicants?
- (b) Were the conclusions and referrals of the OCG irrational?
- (c) Were the conclusions and subsequent referrals of the OCG, decisions that can be the subject of judicial review?
- (d) Were the interested parties properly joined?
- (e) Can the Court make orders that curtail the internal acts/business of Parliament?

## **THE LAW**

### **The Civil Procedure Rules**

**[24]** In arriving at a decision in this case I took into consideration a number of Rules. In applying for judicial review the applicants must satisfy the Court that they fall within

the category of persons that have been aggrieved and have sufficient interest to make the application as stated in Rule 56(2) of CPR. Rule 56(2) states that:

Who may apply for judicial review 56.2 (1)

An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application. (2) This includes –

*(a) any person who has been adversely affected by the decision which is the subject of the application;*

*(b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);*

*(c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;*

*(d) any statutory body where the subject matters falls within its statutory remit;*

*(e) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application; or 291 Administrative Law (f) any other person or body who has a right to be heard under the terms of any relevant enactment or the Constitution.*

#### **STANDARD BY WHICH LEAVE IS TO BE GRANTED**

[25] The test that must be satisfied when applying for leave for judicial review was set out in the Judicial Committee of the Privy Council in the case of **Sharma v. Brown – Antoine** (2006) P C Appeal No. 75 of 2006; In that case the Chief Justice had sought to challenge a decision to prosecute him on the basis that it was unfair and /or an abuse of the process of the Court. Lords Bingham and Walker at paragraph 787(4) of the decision stated that:-

*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 it is not subject to a discretionary bar such as delay or an alternative remedy, - R v. Legal aid Board, ex parte Hughes (1992) 5 Admin L.R. 623 at 628, Fordham, Judicial Review Handbook (4<sup>th</sup> Edn, 2004), p. 42. 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.*

*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**” Matalulu v Director of Public Prosecutions (2003) 4 LRC 712 at 733.” (our emphasis)*

- [26] Mrs. McDonald –Bishop JA in the case of **Private Power Operators v Industrial Disputes Tribunal et al** [2021] JMCA Civ. 18 adopted a similar position when she stated at paragraphs 70 that:

*It is well established that the review court is to fix its gaze on questions of lawfulness or unlawfulness of the decision, that is, matters primarily pertaining to jurisdiction and procedure, inclusive of fairness of the IDT’s processes, reasonableness of its decision in the Wednesbury sense and its adherence to the rules of natural justice. This would, necessarily, involve an assessment of whether the IDT’s decision was arrived at based on errors of Law. (**check this citation**)*

- [27] Mangatal J (as she then was) in the case of **Digicel (Jamaica) Ltd v. The Office of Utilities Regulation** (2012) JMCA Civ. 91 sought to give some perspective as

to how the Court should approach the issue of whether leave should be granted when she stated at paragraphs 20-21:

*Judicial Review is the Court's way of ensuring that the functions of public authorities are carried out in accordance with the law and also that these bodies are held accountable for any abuse of power or unlawful or ultra vires acts. It is the process by which the private citizen can approach the Courts seeking redress and protection against unlawful acts of public officers or authorities, and acts carried out in excess of jurisdiction. Public bodies must exercise their duties fairly. In a constitutional democracy, one of the roles of judicial review is the vindication of the rights of the individual against abuse of power carried out by public officials.*

[21] *On the other hand, the requirement of leave is one of the aspects of the court's function to act as a filter in relation to judicial review claims. As Michael Fordham Q.C. eloquently describes it in his invaluable work Judicial Review Handbook, 5th Edition, at paragraph 13.1: "Public authorities have an important role and function. There must necessarily be questions which it is for them, rather than judges, to decide. In considering whether a public body has abused its powers, Courts must not abuse theirs. In constitutional terms, just as judicial vigilance is underpinned by the rule of law, so judicial restraint is underpinned by the separation of powers". It is part of the Court's function when it dons its "review hat" to be astute to avoid applications being made by busybodies with hopeless, weak, misguided or trivial complaints. Public authorities need protection from unwarranted interference and plainly, the business of government could grind to a halt and good administration be adversely affected if the Courts do not perform this sifting role efficiently and with care.*

**[28]** In assessing whether or not the OCG had jurisdiction to investigate the applicants I considered the Contractor General Act, in particular Sections 4, 15,16, 20 and 28. Section 4 speaks to the functions of the OCG whilst Section 15 and 16 speaks to how these functions are implemented. Section 4(1)(b) defines a prescribed licence as-

*any licence, certificate, quota permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof.*

Public body is defined to include

*a Ministry, department or agency of government (or) a statutory body or authority.*

**[29]** The report of the OCG had been submitted to Parliament. Section 28 speaks of reports that the OCG should make to Parliament. It states that :-

*(1) A Contractor-General may at any time be required by Parliament to submit a report to Parliament in respect of any matter being investigated by him.*

*(2) A Contractor-General shall submit a Parliament an annual report relating generally to the execution of his functions and may at any time submit a report relating to any particular matter or matters investigated, or being investigated, by him which, in his opinion, require the special attention or Parliament.*

*(3) Reports under this section shall be submitted to the Speaker of the House of Representatives and the President of the Senate who shall, as soon as possible, have them laid on the Table of the appropriate House.*

*(4) A Contractor-General may, in the public interest, from time to time publish in such manner as he thinks fit, reports relating to such matters*

*as are mentioned in subsection (2) and any case which is the subject of a special report under section 21, but no such report shall be published until after it has been laid pursuant to subsection (3).*

[30] The OCG was duty bound to inform the parties affected of his findings. This is mandated by Section 20 of the Contractor General Act which states that “-

*(1) After conducting an investigation under this Act, officer of the public body concerned and the Minister having responsibility therefor of the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated.*

*(2) If any report of a Contractor-General reflects adversely upon any person the Contractor-General shall, so far as practicable, inform that person of the substance of the report.*

[31] Section 21 of the Contractor General Act speaks to the referrals that should be made by the OCG once there is evidence of breach of duty or criminal misconduct. Section 21 states that :-

*If a Contractor-General finds, during the course of his investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.*

## **ANALYSIS**

### **Did the OCG have the jurisdiction to undertake this investigation?**

[32] The unrefuted evidence in this case is that the OCG had received a report in the form of an unsigned document which alluded to family members of the applicants,

having formed a company, which was undertaking development of a Plaza without the requisite approval of the Hanover Parish Council. It is unclear what is meant as development without approval, however, this could be deemed to be a matter of concern for the investigative body.

**[33]** Counsel for the applicants raised a number of issues concerning the investigation launched by the OCG. The first issue that was raised was whether the OCG had the jurisdiction to investigate the second applicant as she was not a public figure. On a review of the affidavits submitted by the second applicant, she averred that she and other family members formed a company Just One and through it they sought to develop two properties. The first was a Plaza at Orange Bay, and the other being a resort in Cousins Cove in the parish of Hanover. Her evidence is that she constructed 20 shops at Orange Bay, nine of which she had received permission to construct. She averred that although she had not received permission to proceed with the construction of the additional eleven shops, she had been assured by personnel from the Hanover Parish Council that she could proceed and would be able to pay a fine after completion.

**[34]** Section 4(1) (b) of the OCG Act empowered the OCG to investigate the grant, issue and revocation of any prescribed license, with prescribed licenses being defined to include permits. The fact that eleven shops, on the admission of the second applicant had been built without the requisite permit, the OCG would have had the requisite jurisdiction to investigate.

**[35]** I then turn to the other property that was investigated by the OCG i.e. the property at Cousins Cove. The evidence of the second applicant was that the company, had entered into an agreement to purchase several parcels of land. One of the parcels for which a sale agreement had been executed was referred to as community property therefore making it public property. On realising the problem, the parties sought to negotiate with the Hanover Parish Council for another parcel of land to be substituted and deemed to be the community property. That error had not been corrected as the proposed substitution was not accepted by the Parish

Council. The issue that arose in relation to this parcel of land is that a resort had been constructed on the property. This construction would have fallen under the jurisdiction of the OCG as it would have taken place without the requisite permit.

- [36]** The second issue raised was that the first applicant had no interest in the company Just One and as such the OCG ought not to have launched an investigation that touched and concerned him. On a review of the affidavits and the exhibits placed before the Court, I agree with Counsel for the applicants that there is no evidence that the first applicant is either a shareholder or a director of Just One. I however took note of one particular exhibit that was attached to the affidavit of the second applicant filed on the 9<sup>th</sup> of March 2017 i.e. a survey diagram. The evidence of Mr Maurice Barrett was that the person whose name appears on the surveyor's drawing, would have been the person who had commissioned it. The second applicant averred that she had commissioned Mr Andrew Broomfield to carry out surveys and to provide sketch plans of Lots 23 and 24 of Cousins Cove, however it is the first applicant's name that appeared on that drawing. This raises questions as to why the first applicant's name had appeared on a document if he had no connection with the company.
- [37]** There is also the evidence of Mr Maurice Barrett that the first applicant had made certain utterances to personnel from the Hanover Parish Council about approving his plans, referencing construction of shops at the Plaza at Orange Bay. This evidence would invoke the jurisdiction of the OCG as it may reasonably give rise to the inference that the first applicant was seeking to influence the granting of permits to property he may have a beneficial interest in.
- [38]** There seems to be little merit in the submission of Counsel for the applicants that the OCG would have acted ultra vires in investigating the applicants and I find that the investigation was covered under Section 4 (1) (b) of the OCG Act. The fact that the investigation may have included private citizens and that the properties may have been owned by private citizens does not automatically lead to the conclusion

that the OCG had no jurisdiction to investigate the persons and the property. I find that the investigation launched by the OCG was *intra vires*.

- [39] There is one additional point that I had considered, which is whether the applicants were out of time in challenging the jurisdiction of the OCG's investigation. This investigation commenced in 2014, i.e. three years before the application for leave was filed. Rule 56.6(1) dictates that an application for leave must be made promptly and gives a limitation period of three months by which an application must be made. I find that the aspect of the application for leave that speaks to whether the OCG has jurisdiction to pursue its investigation would be woefully out of time.

#### **WERE THE CONCLUSIONS AND THE REFERRALS OF THE OCG IRRATIONAL?**

- [40] The submission of Counsel for the applicants was that the OCG at the conclusion of his investigation made certain findings which ought to be the subject of judicial review. The findings, were referenced in a letter that had been sent to the applicants dated the 16<sup>th</sup> of March 2017. Although Counsel had submitted that the OCG had made findings, the letter of the 16<sup>th</sup> spoke to four conclusions the OCG had arrived on which included that :-

1. *The developers of the 'Just One Plaza' initially applied to the HPC for the construction of nine (9) shops' and a supermarket. A total of over twenty (20) shops' and a supermarket were constructed.*

*The 'Just One Plaza was constructed in the absence of a planning and building permit from the Hanover Parish Council (HPC), and in wanton disregard for the cease Work, Stop and Enforcement Notices which were served thereupon. On these premises, the proprietors of the 'Just One Plaza' breached (a) Section 3 of the Parish Council Act and By-Laws 1952, by undertaking construction of the plaza without the approval of the HPC and (b) Section 24 (3) of the Town and Planning Act continuing the Construction of the plaza to the point of completion, subsequent to the enforcement Notice being served.*

2. The OCG has concluded, Prima Facie, that the “Sketch Plan of Cousins Cove Lot 23 and 24” which was submitted to the HPC, in furtherance of the application for building and planning permission for the Resort, is a forged document. The OCG’s premise is based upon the fact that Mr. Andrew Bromfield, who is represented on the face of the said sketch Plan as the Surveyor, has denied preparing the referenced document. In point of fact, Mr. Bromfield has unequivocally stated that the signature that appears on the document ...is clearly not my signature...” It was further explained by Mr. Bromfield that the logo which appeared on the referenced document was no longer in use by his company as at the date which was reflected on the subject Sketch Plan.
  3. In respect of the representations which were made by Miss Shernet Haughton regarding a ‘favour” which was requested of her by Mr. Ian Hayles to stamp and sign documents which related to “...his land and plaza in Hanover”, the OCG is of the considered opinion that such an act gives rise to an attempt to influence the actions of a public officer in the lawful conduct of her duties. In this regard, the OCG concludes that such an act is contrary to Section 14 (7) of the Corruption Prevention Act (CPA).
  4. The OCG further concluded that Given Mr. Hayle’s affinity to Mrs. Charlotte Alexander-Hayles, Dr. Kesha Gaye Alexander Gabbadon and Ms. Pauline Ray, his intervention in respect of the approval process, as represented above, would amount to a conflict of interest.”
- [41]** Having arrived at these conclusions the OCG in the said letter then suggested the following referrals:-
1. *The Contractor General is hereby, referring Mrs. Charlotte Alexander-Hayles and Mr. Ian Hayles to the Commissioner of Police for further investigation, having found, prima facie, evidence of forgery, given that the referenced sketch plan is a false document.*

*The OCG's Referral is also being made for further criminal investigations with respect to the subject Sketch Plan and the Maker(s) of such a false document which gives rise to the offence of 'Conspiracy' to defraud the Hanover Parish Council.*

The instant referral is being made based upon the submission of a **"Sketch plan of Part of COUSINS COVE Lot 23 and 24"** which was submitted to the HPC by Mr. Kesmore Rattary in Furtherance of obtaining planning and building permission. Mr. Kesmore Rattary was authorised by Mr. Charlotte Alexander-Hayles to conduct business on her behalf with respect to the referenced application. Mr. Rattary was provided with the referenced Sketch Plan by Mrs. Alexander-Hayles.

The **"Sketch plan of Part of COUSINS COVE Lot 23 and 24"** was purposed to have been prepared and signed by Mr. Andrew Bromfield. Mr. Bromfield, however, distanced himself and his firm from the preparation of the document when he advised the OCG that the document was not prepared by him and that his signature had been forged. The document is a false document and its source is to be determined accordingly.

The Contractor General is hereby referring Mr. Ian Hayles and Mrs. Charlotte Alexander-Hayles to the Commissioner of Police for further Investigation pursuant to Section 3, 5 and 9 of the Forgery Act 1942.

2. Notwithstanding Mr. Kesmore Rattary's disclosure that he was not aware that the documents were fraudulent, the OCG is hereby referring Mr. Rattary to the Commissioner of Police in order to determine whether he committed a breach of the Forgery Act or any Act as an agent in furtherance of the process of submitting the said Application Form.
3. The OCG is also referring Mr. Ian Hayles to the Commissioner of Police for further investigation in respect of the allegations which were made by Miss Shernet Haughton as it regards Mr. Hayle's attempt to

*influence the actions of a public officer in the lawful conduct of her duties contrary to the Section 14(7) Corruption Prevention Act (CPA).*

*This referral is also being made to the Commissioner of Police for further investigation in respect of whether the aforementioned acts by Mr. Ian Hayles gives rise to conflict of interest.*

4. *The OCG is referring Mrs. Pauline Gray (nee Brown) to the Commissioner of Police for further investigation with respect to the circumstances under which lot twenty-four (24), Cousins Cove, Hanover, was sold to her by Mrs. Pauline Hojan and Mr. Gerhard Hojan*

[42] The submission made by Counsel for the applicants was that these findings were among other things irrational. Any submission about a decision being irrational requires the Court to consider the concept of Wednesbury reasonableness as defined by the decision of the Court of Appeal of England in **Associated Provincial Picture Houses Ltd v Wednesbury Corporation** 1948 1 KB 223. Lord Greene in that case stated :-

*The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them.*

[43] This issue was succinctly stated by Phillips JA in the case of **Jamaica Public Service Company Limited v. The All Island Electricity Appeal Tribunal**, [2015] JMCA Civ. 17 where in referencing the case of **Mahon v Air New Zealand Ltd and others** [1984] 3 All ER 201, stated at paragraph 57 that:-

*... A person making a finding in exercise of an investigative jurisdiction must base his decision on evidence that has some probative value, that is, some material that tends logically to show the existence of facts consistent with the finding. Thus, although judicial review is largely concerned with the manner in which a decision is reached, the complaint in relation to irrationally requires that there be some consideration of the evidence that was before the decision making body I question.*

[44] I find that the conclusions and referrals by the OCG were supported by the evidence gathered during the course of the investigation. For instance, there was reference to a sketch plan bearing the name of Mr Andrew Broomfield being forged. The conclusion of the OCG was based on the evidence gathered from Mr Broomfield who not only indicated that it was not his plan, but also indicated that the signature was not his. Counsel for the applicants pointed to additional information that the OCG ought to have taken into consideration, including the fact that Mr Broomfield did not deny being commissioned to create the plans. I find that even if that information had been considered, that would not have changed his conclusions as the document in question that was submitted by the applicants was alleged to be a forgery. In the circumstances therefore, the conclusion of the OCG cannot not be described as irrational. On careful perusal of all the conclusions and referrals of the OCG, I do not find them to be irrational.

#### **WHERE THE CONCLUSIONS OF THE OCG CAPABLE OF BEING REVIEWED?**

[45] There is some debate as to what finding may be the subject of judicial review and which are not. Sykes J. as he then was, in the case of **Dale Austin v The Solicitor**

**General of Jamaica and The Permanent Secretary of the Ministry of Justice**

[2018] JMSC Civ. 1 at paragraph 10 of his decision in commenting on the case of Debra Patrick Gardener opined that :-

*... not all recommendations are susceptible to judicial review. Much depends on the type of recommendation and its status in the decision making process. In the case of Mrs Patrick-Gardner the PSC's recommendation would in all likelihood be followed by the Governor General. The PSC in effect does all the leg work necessary and then makes its recommendations to His Excellency who usually acts upon the recommendation. In that context the recommendation has great weight and significance because it will be followed unless there is some unusual development.*

[46] This issue was also explored in the case of **Dr. Andrew Wheatley v The Integrity Commission** [2020] JSMC Civ. 187 where George J at paragraph 16 of the judgment stated that :-

*Thus given the totality of the foregoing, it would appear that the consideration of the Court ought to be whether the (i) the recommendations/conclusions or findings can be considered to be tantamount to decisions and (ii) whether findings of the Respondent have negatively affected the rights of the Applicant or has breached some legitimate expectation. It is with these considerations in mind that the Court has to assess whether this is an appropriate case for the granting of leave to apply for judicial review.*

[47] In that case the decision of the Court at paragraphs 23 and 24 was that:-

*Unlike the case of Deborah Patrick-Gardner v Mendez and another (supra), this recommendation is not tantamount to a decision and there is no evidence that it is likely to be followed. In fact, section 54 (3) gives the Director of Corruption Prosecution a discretion to do*

*as he deems appropriate. As submitted by the Respondent "The recommendation by the Director of Investigation that the Report be referred to the Director of Corruption Prosecution has not crystallized into a decision by the Commission and there has been no initiation of criminal proceedings." It is clear also that this application may be considered premature due to the lack of finality to the recommendation. See R (on the application of Verna Wilson and Others v Coventry City Council [2008] EWHC 2300, (a case cited by the Respondent). This recommendation is therefore not reviewable. [24] In any event, even if this recommendation amounted to a decision, in that it had some finality, Judicial Review would in all likelihood be an inappropriate method for its challenge.*

**[48]** The OCG's conclusions and referrals in this case would not and cannot lead to the final dispensation of the matter. They would not lead automatically to charges or any other disciplinary action by the Commissioner of Police. The referrals made would have to be assessed and further investigation undertaken prior to any decision being made by the police. Unlike the case of **Debra Patrick Gardener**, the conclusions and referrals would not be determinate and as such not be the subject of judicial review.

**Should a stay be granted?**

**[49]** The next issue raised was whether a stay should have been granted that prohibited Parliament from tabling the report of the OCG. Counsel for the applicants had advanced that such a stay could be granted, and in support of his submission sought to rely on Section 17 of the CPR as well as the Supreme Court Act Sections 27, 48 (e) and (g). I am not persuaded by this submission.

**[50]** The CPR as well as the Supreme Court Rules dictates the manner in which Claims are to be filed in the Supreme Court. Almost all cases are commenced by either filing Claim form with Particulars of Claim or a Fixed Date Claim Form. There are

exceptions to these Rules one of which are judicial reviews. Prior to filing a Claim for judicial review leave would have to be obtained. Section 56(3) (1) of the CPR states that :-

*A person wishing to apply for judicial review must first obtain leave.*

[51] Section 48 (g) of the Judicature (Supreme Court) Act supports this position as it states that :-

*The Supreme Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it shall grant either absolutely or on such reasonable terms and conditions as to it seems just, all such remedies as any of the parties thereto appear to be entitled to in respect of any legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and multiplicity of proceedings avoided.”*

The Supreme Court Act dictates that prior to remedies being granted there must be a cause or action that is pending before the Court.

[52] There is no existing Claim before the Court as no leave had been granted in this case. It therefore follows that no stay of an injunction can or should have been granted.

**Whether a stay should have been granted against the Speaker of the House and the President of the Senate?**

[53] Counsel for the interested parties submitted that the stay that had been granted intervened in the daily operations of Parliament for which the Court has no jurisdiction.

**[54]** In addressing the issue as to whether Parliament may be subject to an order for a stay I took into consideration Sections 48 (2) and 51(1) of the Constitution of Jamaica, which states that:-

*48(2) without prejudice to the generality of subsection (1) and subject to the provisions of subsections (3), (4) and (5) of this section Parliament may by law determine the privileges, immunities and powers of the two Houses and the members thereof.*

*51 (1) Subject to the provisions of this Constitution, each House may regulate its own procedure and for this purpose may make Standing Orders.*

**[55]** Parliament, pursuant to sections 48 and 51 of the Constitution promulgated the Senate and House of Representatives (Power and Privileges) Act which has insulated the Speaker and President as well as officers of either House from the jurisdiction of the courts when they are exercising their powers under that Act. Sections 29 and 51 state that :

*29. Neither the President, the Speaker, nor any officer of either House shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the President or Speaker or such officer by or under this Act.*

*51. – (1) Subject to the provisions of this Constitution, each House may regulate its own procedure and for this purpose may make Standing Orders.*

**[56]** There are two existing Standing Orders i.e. House of Representative Standing Order 9 and House of Representative Standing Order 12 which governs the order of business in each sitting and the conduct/ arrangement of public business. The question is whether or not the tabling of the report from the Contractor General falls

within the category of business in a sitting, and as such would not be subject to the jurisdiction of the Court?

- [57] There are a number of cases that have considered the powers of the Court to intervene in the business of Parliament. In the Caribbean Court of Justice case of **Hughes v Rogers** AI 2000 HC1 (CARILAW) 12 Jan (HC Ang) the issue was whether the Court should entertain an application to compel the Speaker of the House of Assembly of Anguilla to convene sittings of the chambers. Saunders J (as he then was) opined at paragraph 60 that :-

*Since I can discern no infringement of the Anguilla Constitution by the Speaker, who was acting intra vires his powers, the court ought not to embark upon an enquiry into those proceedings or the propriety of the actions of the Speaker. In these circumstances, the House, and by extension the Speaker's decision to adjourn the meeting, is immune from scrutiny by the courts.*

- [58] In addressing the issue of Legislative Council (Powers and Privileges) Ordinance of Anguilla in the said case, the learned Judge stated that :-

*Neither the Speaker, nor any officer of the Council shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker...by or under this Ordinance.*

- [59] In a case from the Bahamian jurisdiction, **Bahamas Methodist Church v Symonette** [2000] UKPC 31, the Privy Council was asked to decide on not only whether a particular statute was legitimately passed, but also whether the Court had jurisdiction to intervene in the affairs of Parliament. It was stated at paragraph 27 that :-

*The second general principle is that the courts recognise that Parliament has exclusive control over the conduct of its own affairs. The courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions: see Prebble v Television New Zealand Ltd [1995] 1 AC 321, [1994] 3 All ER 407, at p 332*

*of the former report, where some of the earlier authorities are mentioned by Lord Browne-Wilkinson. The law-makers must be free to deliberate upon such matters as they wish. Alleged irregularities in the conduct of parliamentary business are a matter of Parliament alone. This constitutional principle, going back to the 17<sup>th</sup> century, is encapsulated in the United Kingdom in art 9 of the Bill of rights 1689: "that... proceedings in parliament ought not to be impeached or questioned in any court or place out of Parliament". The principle is essential to the smooth working of a democratic society which espouses the separation of power between a legislative Parliament, an executive government and an independent judiciary. The courts must be ever sensitive to the need to refrain from trespassing, or even appearing to trespass, upon the province of the legislators: see R v HM Treasury, ex parte Smedley [1985] 1 QB 657, [1985] 1 All ER 589, at p 666 of the former report, per Sir John Donaldson MR.*

[60] Section 28 of the OCG Acts specifically speaks to OCG submitting reports to Parliament. On the report being submitted, Section 29 (3) dictates how the Speaker of the House and the President of the Senate ought to proceed. It states that :-

*(3) Reports under this section shall be submitted to the Speaker of the House of Representatives and the President of the Senate who shall, as soon as possible, have them laid on the Table of the appropriate House.*

The Speaker of the House and the President of the Senate would have been acting *intra vires* by tabling the report submitted to it by the OCG. Their actions would be categorised as Parliament conducting their internal affairs and as such their actions would be immune from the jurisdiction of the Court. I find that the Speaker of the House and the President of the Senate were improperly joined to the application for leave as interested parties.

### **ALTERNATE FORMS OF REDRESS**

[61] The applicants had submitted that they had no adequate alternative form of redress but to apply for judicial review. They further submitted that if the report was allowed to be tabled, they would suffer reputational harm that could not be compensated monetarily. I firstly note that unfortunately some of the details of the report has already been published. Secondly, in the event the allegations are found to be unsubstantiated the applicants would have redress in the form of a claim for

damages for defamation of character. I find therefore, that the applicants do in fact have alternative forms of redress apart from an application for judicial review.

## **CONCLUSION**

**[62]** The applicants have not satisfied the Court that they have an arguable ground for judicial review with a reasonable prospect for success. I find that the applicants would have alternative remedies in the form of a claim for damages for defamation if character. I further find that the conclusions of the OCG were not irrational as they were reasonable based on the evidence garnered during his investigations. Conversely, I do not find that the referrals to the Commissioner of Police as well as the Director of Public Prosecution amounted to a finding that can properly be the subject of a judicial review as these entities are expected to independently conduct their own investigations and arrive at their own conclusions and therefore would be rubber stamping the conclusions of the OCG. I find that the interested parties were improperly joined as the tabling of the OCG's report can be described as the internal business of Parliament which is not subject to the jurisdiction of the Court. On the foregoing, leave to apply for judicial review is refused.

## **ORDERS:**

1. The application for leave to file judicial review is refused.
2. No order as to costs.