[2025] JMSC Civ 68

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2023 CV 04197

IN THE MATTER of the Integrity Commission Act, 2017

AND

IN THE MATTER of an application by Morjorn Wallock for Administrative Orders

BETWEEN	**MORJORN WALLOCK**	**CLAIMANT**
AND	**THE INTEGRITY COMMISSION**	**DEFENDANT**

Mrs Symone Mayhew KC, Mr Lemar Neale and Ms Aaliyah Myrie instructed by Mayhew Law attorneys-at-law for the Claimant

Ms Annaliesa Lindsay instructed by Lindsay Law Chambers attorneys-at-law for the Defendant

January 22, 2025 and June 2, 2025

Judicial review – duty to inform witness of status in hearing – whether adverse findings can be made against a witness – whether adverse findings made against a witness should be disclosed to the witness before the findings are published

JUSTICE T MOTT TULLOCH-REID

Background

1. Ms Morjorn Wallock has filed a claim seeking judicial review of the findings and decision of the Integrity Commission. The circumstances in which the decision was made concerns a development relating to 11 Charlemont Drive, Kingston 6 in the parish of Saint Andrew. The owners of the property along with their developer were said to have breached the approval plans issued by the Kingston and St Andrew Municipal Corporation (KSAMC) and National Environment and Planning Agency (NEPA) and had built apartments outside of the scope of their permits. The approval and permits issued were for the construction of two three-storey blocks consisting of twelve 1-bedroom units. The development however comprised 2 and 3-bedroom units, in breach of the permits issued.

2. As a result, an investigation was launched. The Claimant was one of the persons who was interviewed in the course of the investigation because of the role she played as former Director, Legal and Enforcement Division at NEPA. A Summons to Witness was issued to her summoning her to appear before the Defendant on February 1, 2023, and to give evidence with respect to:

> *"Allegations of irregularities in the approval processes which led to the construction or intended construction of a residential development located at 11 Charlemont Drive, Kingston 6".*

   She was required to bring along certain documents with her, which she did.

3. The Claimant was interviewed twice at the hearing. First, on February 1, 2023, and then again on February 15, 2023. On both occasions she was represented by her attorney-at-law, Mrs Althea Tomlinson. The members of the Commission included Mr Kevon Stephenson, Ms April Channer, Mr Sanjay Harrisingh, Mr Adrian Wellington and Mr Sean Gray.

4. Ms Channer established the parameters of the interview. She said:

> *"The purpose of this hearing is to ascertain information concerning allegations of irregularities in the approval processes which led to the construction of a residential development located at 11 Charlemont Drive, Kingston 6."*

The Chairman advised her of her right not to answer questions that could incriminate her as well as not to answer questions that would affect the privilege that was accorded to communications between herself and her legal adviser.

Mrs Tomlinson then said

> *"… you had mentioned she is being treated as a witness. I just want to confirm that she is not a suspect in any investigation at this time."*

Mr Stephenson responded:

> *"No, she is not a suspect in the investigation at this time."*

He further added later:

> *"Now, the proceedings are considered to be cordial proceedings and so the investigation can only be helped if we have the cooperation of persons like Miss Wallock who are public officers who acted in the course of their duties and are now required to give an account of what they did in relation to their duties."*

Ms Wallock responded by saying:

> *"Thank you very much Chair for saying that these proceedings will be cordial because the summon to me said, "You failed at your peril", so I need not fret. But I am happy to hear that it is cordial."*

Mrs Tomlinson indicated to the Chairman that the summons was specific to the investigation into allegations of irregularities in the approval process that led to it. She wanted confirmation if the investigation was limited to the approval process. Mr Stephenson's response was:

> *"Well, not only the approval process, but it is everything surrounding the grant of the licence because we are not only concerned with the approval process as a Commission. We want to know what happened after the approval was granted and so on. Whatever information is in Miss Wallock's knowledge around that then, of course, we will be happy to receive it for the purposes of our investigation. The summons is not the crafting of anybody at the Integrity Commission. It is a schedule to the Act. We cannot change anything, except to add the allegation so it is a standard form, but 'Failing at your peril' is standard. So, it is not a threat at all. … "*

Mrs Tomlinson in seeking further clarification said

> *"So, because the allegations in the summons specified the approval process you are now clarifying not only the approval process but what happened thereafter."*

To which Mr Stephenson replied "Right…."

5. All was going well in the interrogation until the parties got to the point where it became clear that as Director of Legal and Enforcement, the Claimant issued a letter to the Barnetts informing them that they had built outside of the approved plans. Ms Wallock informed the Commission that because of the publicity which this particular development had attained, she took charge of it and used her authority as Director of Legal to indicate to the Barnetts the seriousness of the breach. She had informed them in a letter dated November 2021 that they should apply to the KSAMC and NEPA for an amendment to their plans. Mrs Barnett responded by requesting additional time to do so. The request for additional time was granted. No follow up was done subsequent by the Claimant except that she

made checks with her staff and was informed there had been an amendment on the development. She had not checked as to what the amendment was but on the morning of the hearing when she made further checks, it became apparent to her for the first time that the amendments that were made to the development did not touch and concern the issue that she had raised with the Barnetts in her letter to them dated November 2021.

6. The Commission sought further clarification on the process to enforce where there was a breach. They also sought to understand why the Claimant would invite an application for an amendment instead of following the enforcement procedure which she had herself assisted in creating.

7. At the end of that hearing, Ms Wallock was bound over to reappear before the Commission on February 13, 2023, which she did.

8. On that hearing date, the Chairman indicated that

> *"We continue to hear you as witness Miss Wallock and not as a suspect."*

The questions asked at the hearing seemed to be to obtain information about the process that was to be followed once it became obvious to the authorities that the developers had built outside of the approved building plans.

9. The questions having been answered and all the relevant persons having been interviewed, Mr Kevon Stephenson, as Chairman of the Commission prepared a report which included his findings. The report is dated September 2023. According to the Claimant, the report was placed on the Defendant's website and was tabled in Parliament.

10. The pertinent sections of the report are:

"1.1 This investigation Report concerns allegations of irregularities in the approval and post-permit monitoring processes in relation to the construction of a residential development located at 11 Charlemont Drive Kingston 6."

"6.1.11 The DI concludes that Ms Morjorn Wallock, former Director, Legal and Enforcement Division, NEPA, failed to execute any further enforcement measures to ensure compliance with the permit issued in relation to the development located at #11 Charlemont Drive, Kingston 6, subsequent to the issuance of the Warning Letter dated February 10, 2021.

The DI further concludes that the foregoing omission on Ms Morjorn Wallock's part, amounts to gross dereliction of duty and significantly contributed to the creation of the environment/opportunity which facilitated the breached identified herein."

"7.1.5 The DI is advised, and does verily believe, that Ms Morjorn Wallock is no longer in the employ of NEPA, and therefore a recommendation for disciplinary action in respect of her, would be futile. Notwithstanding, the DI recommends that NEPA's Legal and Enforcement Division, conducts a review of its enforcement policies and procedures with a view to ensuring that, where breaches are detected, as in the present; the necessary enforcement actions are taken…"

The Claimant's Case

11. The Claimant seeks several orders in the judicial review claim. She wishes to have:

    a. an order of certiorari to quash the findings, conclusions and/or recommendations made in relation to the Claimant by the Defendant's Director of Investigations ("DI") contained in his September 2023 report.

b. an order of mandamus compelling the DI to recommend to the Defendant that the Claimant be exonerated of culpability in relation to the subject matter of the investigation, in such manner as the Defendant deems fit.

c. a declaration that the DI of the Defendant acted *ultra vires* the Integrity Commission Act, 2017 ("ICA") in making adverse findings, conclusions and/or recommendations against the Claimant who was a mere witness and not a person under investigation.

d. a mandatory injunction compelling the Defendant to remove all adverse findings, conclusions and/or recommendations made in relation to the Claimant from the Investigation Report dated September 29, 2023.

e. A declaration that the findings, conclusions and/or recommendations made in relation to the Claimant by the DI of the Defendant which are contained in an Investigation Report dated September 29, 2023, were made in breach of the principles of natural justice and procedural fairness and are therefore ultra vires.

f. A declaration that the process utilised by the DI of the Defendant in conducting its investigation, which resulted in its findings, conclusions and/or recommendations made in relation to the Claimant, which are contained in an Investigation Report dated September 29, 2023, was unreasonable and irrational.

g. A declaration that the Claimant's legitimate expectation that the DI of the Defendant would have observed the principles of natural justice and procedural fairness, in conducting its investigation, which led to its findings, conclusions and/or recommendations made in relation to the

Claimant, which are contained in an Investigation Report dated September 29, 2023, was breached.

A claim was made for damages, including stigma damages, but Mrs Mayhew advised the Court at the trial that that claim was not being pursued.

12. Ms Wallock's claim is supported by an affidavit which she deponed to. She indicated that while she held the post of Director Legal and Enforcement at NEPA she maintained high delivery standards and achieved all assigned key performance indicators and other targets. She set out what her duties and responsibilities were as Corporate Secretary and Director. The role of the Enforcement Branch of NEPA include post permit monitoring of approvals granted by the National Compliance and Regulatory Authority/ Town and Country Planning Authority ("NRCA/TCPA"), investigation of complaints and the monitoring of the annual bird shooting season.

13. She indicated that she was served with a Witness Summons to attend a hearing at the Integrity Commission, which she did. The details of the hearing are set out in the Background above. Ms Wallock's evidence is that she was never informed at any point before or during the judicial hearings held by the Commission that she was a person under investigation. She thought she was attending merely as a witness to assist with the investigation. The Witness Summons requested her attendance to answer questions concerning the approval processes. She became aware of the report prepared by the DI when it was published on the Integrity Commission's website. She complains that she was not aware that she was the subject of an investigation and so had no opportunity to make representations. She is of the view that the findings and recommendations made concerning her are unfair and were done in a manner that was procedurally irregular as she was not given the opportunity to defend herself against the allegations.

14. The Claimant also complains that the DI went outside the scope of the Summons. The Summons referred to the approval processes, but the hearing was centred around the post-permit monitoring process. She should have been notified in writing that she was a person who was under investigation and given the opportunity to make representation. She was summoned as a witness and compelled to give evidence and so she answered the questions that she was asked. She was informed by her attorney if she had opted not to answer any questions without reasonable excuse she would have committed an offence and been liable to pay a fine or face imprisonment. It was unfair that she was called as a witness and assured that she was not the subject of investigation and not at peril but then have negative and damning conclusions drawn against her without allowing her the opportunity to rebut or defend it.

15. The DI's conclusions made were never put to her at the hearing. The findings, conclusions and/or recommendations made against her were made in breach of the principles of natural justice and procedural fairness. The DI, when coming to his conclusions, failed to consider pertinent and relevant information. If she knew she was being investigated and that adverse findings would have been made against her she would have provided the DI with additional information as to the steps she personally took in relation to the matter. The DI asked her what she could have done but not what was required of her in her role as Director of Legal and Enforcement and had she had the opportunity she would have informed him of her role at that point in time. She was only made aware of the breach when the buildings had already been completed. She had a legitimate expectation that the DI would have observed the principles of natural justice and procedural fairness in conducting the investigation and considered relevant information in conducting his investigation.

16. The publication of the report has caused her reputational harm and embarrassment and distress. The report was submitted to the Director of Public Prosecutions. Ms Wallock is an attorney-at-law. She is of the view that since the

report was made public, she should be exonerated publicly. She has no other form of redress as she is no longer employed to the NEPA.

The Defendant's case

17. The Defendant's case is contained in the Affidavit of Kevon Stephenson who is the DI at the Integrity Commission. His evidence is that as DI he is empowered to summon witnesses, compel the production of documents or other information and do all such things that are necessary for the purpose of conducting investigations under the ICA. He has the discretion to adopt whatever procedure he considers appropriate in the circumstances of a particular case and upon completion of the investigation he is required to and obligated to table a report of his findings and recommendations in Parliament.

18. He stated further that in September 2022 he began to investigate allegations of irregularities in the approval process which led to the construction of a residential development located at 11 Charlemont Drive, Kingston 6 in the parish of St Andrew. This necessitated a review of all the processes involved, including gathering evidence, analysing it and then reporting the findings. One of the objectives of the investigation was to determine

> *"(b) whether the terms and conditions of the approvals and/or permits which may have been issued to the Permittee(s) were adhered to."*

In order to carry out his role, he summoned the Claimant to give evidence. She was one of several persons who gave evidence.

19. At the beginning of the questioning, the Claimant was advised of her rights and reminded that she was not compelled to answer any questions that may incriminate her. She was informed that she could object to questions and the Chairman, he being the DI, would decide if the objection should be upheld. She was advised against perjuring herself pursuant to the Perjury Act and informed that

if she did not understand any questions, she could seek clarification. The Claimant signed the form which embodied the advice given to her at the start of the proceedings pursuant to section 48 of the ICA and a copy was provided to her attorney.

20. Mr Stephenson said that upon clarification as to whether the Claimant was a suspect, he made it clear that she was not a suspect at this time. He said the proceedings were to be considered cordial proceedings. It was clarified for the benefit of the Claimant that it was not just the approval processes that concerned him but also what happened after the approval was granted. He set out in detail relevant sections of the Claimant's interrogation. It was also noted that the Claimant's attorney intervened from time to time as she thought it necessary to and was not hindered by any member of the Commission.

21. He said that the findings and conclusions arrived at in relation to the Claimant were informed by the evidence that she gave at the hearing. There were no allegations made against the Claimant but because of her evidence and the role she played post permit, it was apparent that she had a role to play in enforcing the approvals granted and that the enforcement procedure was not followed. The Claimant herself had admitted to this at the hearing.

> *"…I assumed that the amendment was related to my letter so I thought everything was settled so I did not engage with the permittee, I did not do anything else because I thought the amendment treated with my letter."*
>
> *"Now that I am thinking about it, yes. I should have gone, check the amendment from top to bottom to make sure it is in accordance with the letter I had written, yes."*

22. He said the Claimant attended the hearing with her attorney-at-law who was capable of and did in fact object to certain questions and sought clarifications as

she thought necessary. She was not prevented from giving her evidence and was free to explain and expand as she thought necessary. She was fully aware of the scope of the investigation which included the approval processes and post permit/approval activities. Because she knew the parameters of the investigation and that it included the role she would have played as the head of the Enforcement Branch, she could have given evidence that she thought was necessary. The post-permit phase of the process was essential to the investigation.

23. Mr Stephenson's evidence is that he considered all the evidence that was put before him in coming to his decision and is of the view that it was fair and reasonable of him to have arrived at the findings and conclusions he made in relation to the Claimant. He denies that the Claimant was ever a person under investigation.

24. It was the evidence of the Claimant which led to his findings and conclusions about her. He was not obligated to invite comments on any of his findings or conclusions. He was only obligated to refer the matter to the relevant public body if he had reasonable grounds for suspecting that there had been a breach of any code of conduct by a public official, or act of corruption or offence. He says his findings are fair, reasonable, rational and supported by the evidence that was garnered during the course of the investigation. Mr Stephenson said he acted within the scope of his statutory duties and obligations.

The Claimant's submissions

25. The Claimant's submissions are contained in her written submissions filed on October 4, 2024, and the oral submissions made on her behalf on the day of the hearing. Mrs Mayhew began the submissions with a reference to section 6(3)(a) of the ICA which provides that the Commission is not to be subject to the direction or control of any other person or authority except for the Court by way of judicial review when it is exercising its powers. The case of **Latoya Harriott v University**

of Technology, Jamaica [2022] JMCA Civ 2 was cited as setting out the bases on which an application for judicial review could be grounded. These include the grounds of illegality, procedural impropriety, proportionality and unconstitutionality.

26. It was argued that findings, conclusions and recommendations made in a report can be the subject of judicial review. The findings, conclusions and recommendations could properly form the basis of judicial review on the grounds of illegality, irrationality, procedural impropriety, proportionality and unconstitutionality, breach of natural justice and legitimate expectation. The argument was supported by the Board's decision in the case of **Coomaraval Pyaneandee v Paul Lam Shang Leen and others [2024] UKPC 27**. Paragraphs 53 and 59 were referenced in particular wherein it was held:

> *"53. In the Board's view, the first question to be asked is whether a fair-minded, detached, and objective reader would conclude that passages in an inquiry report however they might be described (whether as findings, observations, comments, remarks, or recitals of evidence) either form a component part of an adverse decision affecting an individual or adversely affect an individual's reputation. If so, judicial review will be available as a remedy where the Commission has acted without jurisdiction or otherwise irrationally, unlawfully or unfairly in breach of the principles of natural justice. It is not appropriate to parse the impugned passages in a report sentence by sentence, as both parties sought to do in this case. Rather, the impugned passages should be read as a whole to see what is conveyed to the fair-minded reader.*
>
> *59. Furthermore, as a recognized in Jadoo-Jaunbocus, considerable harm to a person's professional standing and reputation can flow, not only from findings of a commission but also from allegations or*

> *adverse comment set out in an inquiry report, and this too may justify the conclusion that the impugned report is amenable to judicial review.... The allegations are presented in a one-sided manner, with brief or incomplete references to the appellant's responses to them, notwithstanding that they are allegations of prima facie serious unethical and or criminal conduct. For this further reason, the passages are amenable to judicial review.*

27. Section 6(3)(b) of the ICA was also referenced to show that the Commission shall act independently, impartially, fairly and in the public interest. The Privy Council in the case of **University of Ceylon v E.F.W. Fernando PC Appeal No 17 of 1958 judgment delivered February 16, 1960, page 7** asked and answered its own question:

> *"What are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, that the tribunal should act in good faith."*

A similar finding was made in the case of **De Verteuil v Knaggs [1918] AC 557 at page 60**

> *"Their Lordships are of the opinion that in making such an enquiry, there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."*

Mrs Mayhew acknowledged that in the case at bar, there was no complaint made against the Claimant, and she was not aware that she was the subject of the investigation. This put her in a worse position than the appellants in the cases

relied on as they were the subjects of an investigation. The courts found that because they were being investigated, they were entitled to certain safeguards. The Claimant who was merely a witness, was entitled to even more protection when findings adverse to her were to be made. The Claimant was not given an opportunity to respond to the adverse findings made against her before they were published, and this went against the rules of natural justice.

28. It was argued further that when the DI believed that there was a risk that adverse findings would be made against the Claimant, he should have notified her so that she could make representations on her behalf. The fact that she had an attorney present was not sufficient as she had an attorney representing her as a witness in an investigation and not a suspect in an investigation. When the circumstances changed, the rules of natural justice demanded that the Claimant be afforded a hearing before the report was tabled in Parliament because of the adverse findings, recommendations and conclusions that were contained therein. In **Coomaraval** the Court said at paragraph 71 that

> *"…the more finality there was in the expression of such findings in the Report, the more the Commission was required to do to satisfy the principles of fairness and natural justice."*

29. In **Re Pergamon Press Limited [1970] 3 All ER 535, 539** Lord Denning had this to say

> *"It is true, of course, that the inspectors are not a court of law. Their proceedings are not judicial proceedings… they only investigate and report... They have to make a report which may have wide repercussions. They may, if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some; they may condemn others; they may ruin reputations or careers…. Seeing that their work and their report may lead to such consequences, I am clearly of the opinion that*

the inspectors must act fairly… The inspectors can obtain information in any way they think best, but before they condemn or criticize a man, they must give him a fair opportunity for correction or contradicting what is said against him. They need not quote chapter and verse. An outline of the charge will usually suffice."

30. On the question of whether the Defendant acted illegally and *ultra vires*, Mrs Mayhew referred to sections 45(2), 48 and 54(5) of the ICA. She said none of those sections gave the DI any power to made adverse findings against a witness. When the witness became a suspect (as it was said she was not a witness at this time), she should have been notified. When he failed to notify the Claimant, he acted *ultra vires* the ICA. He also acted *ultra vires* the ICA when the report was tabled in Parliament because he tabled it without having been satisfied that there were reasonable grounds for suspecting that there was a beach of code by a public official or an act of corruption had been committed. He would also have to make a recommendation to the Defendant before the report was submitted for tabling. He also acted *ultra vires* when he acted procedurally improperly, unreasonably and irrationally.

31. When adverse findings were made against the Claimant even though she was a witness only and nothing more, this was irrational and unreasonable especially in circumstances where she was not given the opportunity to be heard. The case of **Aston Reddie v The Firearm Licensing Authority and anor 2010 HCV 1681, judgment delivered November 24, 2011,** was prayed in aid of this submission.

32. The Claimant had a legitimate expectation that the Defendant would have adopted a procedure that was fair to her at the hearing. There was a promise that she was not being investigated at this time. The Defendant has not put forward anything which justified its actions in treating the Claimant as anything but a witness and then publishing a report adverse to her. It has not shown why the Claimant's

legitimate expectation had to be frustrated in the public's interest and so its conduct was so unfair as to amount to an abuse of its powers.

33. It is for all these reasons, the Claimant's case against the Defendant should succeed.

The Defendant's submissions

34. Ms Lindsay on behalf of the Defendant highlighted the fact that the Claimant was summoned as a witness after the investigation had already started and she was one of several witnesses. The content of the Witness Summons was again put to the Court. Ms Lindsay pointed out that several documents were required of the Claimant which she provided. These documents included process utilised by the Enforcement Branch in relation to post permit monitoring, the issuance of the enforcement instruments, enforcement instruments issued by NEPA concerning the property and all post-permit monitoring reports prepared by the Enforcement Branch. The Claimant complained that the rules of natural justice were not followed during the investigative process and so Ms Linsday assisted the court by reminding it of the rules of natural justice and fairness.

35. The Claimant was not the subject of investigation, but the DI was concerned with the pre and post internal processes and wanted to ensure that the procedures that were documented to be followed had indeed been followed.

36. She relied on De Smith's Judicial Review, 8th ed paragraphs 6-011 which defined natural justice as having two constituents of a fair hearing

> *"(a) that the parties should be given a proper opportunity to be heard and to this end should be given due notice of the hearing and*
> *(b) that a person adjudicating should be disinterested and unbiased."*

Ms Lindsay emphasized the issue of fairness and relied on the case of **R v Secretary of State for the Home Department ex p Doody [1994] 1 AC 531, 560-561** which set out some of the requirements to establish fairness. The Court said:

> *"(3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects…. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favorable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer…. The court must constantly bear in mind that it is to the decision maker, not the court, that Parliament has entrusted not only the making of the decision but also the choice as to how the decision is made."*

In the case of **Hoffman La-Roche (F) & Co AG et al v Secretary of State for Trade and Industry [1975] AC 295, 368** Lord Diplock in examining the course of an investigation by the Monopolies Commission said:

> *"Nevertheless, I would accept that it is the duty of the commissioners to observe the rules of natural justice in their investigations – which means no more than that they must act fairly by giving to the person whose activities are being investigated a reasonable opportunity to put forward facts and arguments in justification of his conduct of these activities before they reach a conclusion which may affect him adversely."*

At page 369 of the judgment, Lord Diplock went on to say that

> *"Even in judicial proceedings in a court of law, once a fair hearing has been given to the rival cases presented by the parties the rules of natural justice do not require the decision maker to disclose what he is minded to decide so that the parties may have a further opportunity of criticizing his mental processes before he reaches a final decision.*

Ms Lindsay highlighted this case as the Claimant's argument is that the Defendant should have alerted her to the adverse findings, he was going to make against her so that she could have responded. Ms Lindsay says the case law does not support this point of view. The rules of natural justice do not require that this be done.

37. In light of the above, the DI did all he should have done. He gave the Claimant notice of the subject of his investigations prior to the hearing; she was given the opportunity to provide evidence and clarify evidence. She was provided with advice at the start of the proceedings and warned against self-incrimination, she was not prevented from having her attorney with her and the DI was not obligated under the rules of natural justice to advise the Claimant of how he was minded to conclude.

38. She is of the view that the issues that are to be determined are:

    a. Whether the DI, given the answers provided to him during the course of his investigations, could reasonably make the findings, conclusions and/or recommendations that were made.
    b. Whether the DI is empowered to carry out the investigation that he did pursuant to the ICA.
    c. Whether the ICA sets out the manner in which the investigations are to take place and whether the powers of the DI during an investigation are circumscribed in any way, given the scope of the investigation
    d. Whether the DI carried out his investigation within the parameters of the principles of natural justice and fairness.

e. Whether the challenged findings, conclusions and/or recommendations were reasonable and rational in the circumstances.
f. Whether the circumstances of the investigation were in breach of any legitimate expectation that the DI led the Claimant to have.
g. Whether the Claimant is entitled to damages, in particular, stigma damages.

39. Sections 3, 6 and 33 of the ICA were put forward as outlining the role of the DI and of the Integrity Commission. Section 52 was put forward as setting out the duty of the DI to conduct investigations in certain matters. Section 54 mandates that the DI, on completion of an investigation is to prepare and submit to the Commission, through an Executive Director, a report of his findings and recommendations. If the DI is satisfied that there are reasonable grounds for suspecting that there has been a breach of any code of conduct or act of corruption, then his report is to be sent to Parliament for tabling. Ms Lindsay thought it was important to set out the relevant aspects of the ICA because having a good understanding of the relevant sections would allow the Court to be able to properly consider the legality of the DI's actions as he investigated and reported on his findings.

40. Ms Lindsay argues that given the fact that the Claimant was fully informed in the Summons, and orally at the start of the hearing, of what her role was to be in the investigation process and the fact that she herself accounted for what she did and did not do in the post permit process when she became aware of the irregularities in the development, she cannot now complain that the findings of the Commission were adverse to her. Ms Lindsay again relies on the case of **Hoffman La-Roche** which she said makes it clear that after there has been an investigation, the commission can arrive at its own conclusion. The conclusion must be based on evidence and the conclusion which the Claimant challenges is based on her own evidence. It was her own admission that she should have checked that the amendment had been done, that condemned her. Her response showed that she failed to make checks to determine whether the instructions she had given to the permittees had been carried out. She took no enforcement steps although she

had threatened to do so if the permittees failed to fulfil their requirements. The breach identified by the agency was never corrected and it was the duty of the Claimant as director of legal in the Enforcement Branch of NEPA, and in circumstances where her evidence is that she took charge of the issue, to ensure that it was done.

41. It was therefore inevitable that in the circumstances the DI would have found as he did. It was also important that his findings be recorded so that the internal processes could be examined and revised if necessary to prevent similar mistakes being made in the future. The DI was under no obligation to put their tentative conclusions to the Claimant for further comment before issuing his report. Reliance was placed on the case of **Maxwell v Department of Trade and Industry [1974] QB 523** to support this point of view. The DI did not breach the principles of natural justice or fairness. He did not act in an irrational or unreasonable manner, and he did not act *ultra vires* his powers under the ICA.

42. As it relates to the issue of legitimate expectation, this should also fail. According to Ms Lindsay the Claimant has not brought any evidence that would support any view that there was a promise or a practice that would cause the Claimant to form the view that the Defendant would do more than that which was required by the ICA. There is no evidence that the Defendant acted outside of what was required of him as set out in the ICA. She relied on the case of **R (Majed) v Camden London Borough Council [2009] EWCA Civ 1029** wherein Lord Justice Sullivan said at paragraph 14

> *"Legitimate expectation comes into play when there is no statutory requirement. If there is a breach of a statutory requirement, then that breach can be the subject of proceedings. Legitimate expectation comes into play when there is a promise or a practice to do more than that which is required by statute."*

43. Submissions were then made in relation to the claim for stigma damages but since that claim is not being pursued, I will not spend any time on the issue.

44. Ms Lindsay then invited the Court to dismiss the claim in its entirety as the Claimant had not fulfilled her burden of proving that the Defendant had acted *ultra vires* or in breach of natural justice and fairness and accordingly her claim for declaratory relief on the basis of legitimate expectation should also fail.

Analysis

45. The question the Court has to answer is whether the DI acted in an unreasonable, irrational or unfair manner. I must also resolve the issue of whether the Commission acted *ultra vires* the ICA and by its actions breached the rules of natural justice. I do not believe I have to delve into whether the report emanating from the investigation can be the subject of judicial review. Ms Lindsay did not make any submissions which would suggest that she was not of that view. Her arguments in defence of the application are that the Defendant acted fairly, reasonably, rationally and *intra vires* the ICA.

46. Section 6(1)(a), (c) and (d) of the ICA sets out the functions of the Commission which relate to this claim. The Commission is to investigate alleged or suspected acts of corruption; it is to take necessary steps to prevent and detect corruption in public bodies and it is to examine the practices and procedures of public bodies and make recommendations in relation to its review of the practices and procedures which it believes will reduce the likelihood of the occurrence of the acts of corruption. Ms Lindsay emphasised the fact that Section 6(3)(c) provides that the Commission shall have the power to do all such things it feels necessary to carry out its functions. At paragraph 3 of his affidavit Mr Stephenson also indicated that he has the discretion to adopt whatever procedure he considers appropriate to the circumstances of a particular case. I will add that the Commission must do all those things which it considers necessary in carrying out its functions, in accordance with the law. The law requires the Commission to act fairly,

independently and impartially in the interest of the public. It means therefore that the Commission must apply the rules of natural justice when investigating and reporting on acts of alleged corruption.

47. I will start with the Summons. The Summons referred to the investigation of allegations of irregularities in the "approval process." At paragraph 11 of his affidavit, Mr Stephenson outlined the parameters of his investigation. It was to investigate the allegations of irregularities in the approval process which led to the construction of a residential development. At paragraph 12 of his Affidavit, he set out the scope of his investigations,

> "*a) Whether there exists a development located at #11 Charlemont Drive, Kingston 6, and if so, whether the requisite approvals were obtained in relation to the construction of the said development.*
> *b) Whether the terms and conditions of the approvals and/or permits which may have been issued to the Permittee(s) were adhered to.*
> *(c) Whether there were any breach(es) of the Building Act … in relation to the permits granted for the construction of the development…."*

The summons spoke to the approval process, but it also requested the presentation of documents that would require the Commission to consider post permit processes. Mr Stephenson, at paragraph 11 of his affidavit said that the investigation necessitated a review and consideration of all the processes involved including garnering evidence, analyzing evidence submitted and then providing a report. At the hearing he informed the Claimant and her attorney-at-law that in addition to the approval process, the post permit monitoring process was also being considered.

48. I am of the view that there could have been greater clarity in the drafting of the summons. If all the processes were to be investigated as Mr Stephenson said in paragraph 11 of his Affidavit, then that should have formed the parameters of his investigation and that should have been stated clearly in the summons. At the

hearing Mr Stephenson had explained that the summons was a schedule to the ICA and therefore the Commission could change nothing in it. All that could be done was to add the allegation. However, based on the form summons in the schedule to the ICA, there is nothing which would have prevented the drafters from summoning the Claimant to give evidence on the *allegations of irregularities in the approval process which led to the construction or intended construction of a residential development as well as the post permit monitoring process at the site of the residential development.* That to my mind would have solved the issue with some clarity of what was being investigated. Notwithstanding, I am of the view, that given the documents requested and what the DI told the Claimant and her attorney-at-law that the Commission was investigating on the first day of the hearing, was sufficient to notify them of the scope and extent of the investigation.

The Case Law

49. In the case of **Coomaravel** a report was published which was critical of the conduct of an attorney who had visited prison inmates who had been convicted of drug trafficking or who were awaiting their trial on drug trafficking charges. The attorney sought judicial review on the grounds that the report was unlawful as it did not offer him a fair opportunity to understand the allegations that had been made against him and to put forward a response. He, along with other lawyers, were summoned to appear before a Commission to answer questions. At paragraph 70 of the decision, the Privy Council held that in its view

> *"…there is an obvious relationship between the nature and extent of the investigative process adopted by a commission of inquiry and the terms of the report it ultimately makes. The more finality there is in the conclusions reached by the commission and reflected in its inquiry report and the greater the strength of their expression, the more there is required to be done by the commission to ensure that the process is fair;…"*

In deciding whether fairness was pursued, the Board considered the terms of the summons, what transpired at the hearing and the precise terms in which the report was expressed. If we apply the law to the facts of this case before me and consider the terms of the summons, it is clear that the basis of the investigation was the approval processes. The summons required her to provide the Commission with documents pertaining to the post permit monitoring process so the Claimant would have been alerted to the fact that post permit monitoring was also being considered. At the hearing the DI informed the Claimant and her attorney that post permit processes would also be considered although that was not contained in the summons, and she was questioned extensively about the post permit monitoring process and the role that the Claimant specifically played in that monitoring and enforcement process.

50. In **Coomaravel** having looked at the report which housed the conclusions of the investigation, the Board considered whether there had been a basis for the allegations made and whether the procedure adopted was one that accorded with the principles of fairness and natural justice. The Board was of the view that the Commission had already, at the start of the proceedings, made up its mind that the appellant had been involved in unethical or potentially criminal conduct and that it was based on that view that it had formed that it put certain allegations to the appellant during the hearing. In those circumstances, it was held that the Commission ought not to have published the report without the appellant having been provided in advance with copies of certain documents that would have assisted him in meeting the allegations being made against him. These failures on the part of the Commission, put the appellant at a disadvantage when he gave evidence and was a breach of the standards of fairness and natural justice.

51. I do not believe that this case is on all fours with the case at bar. It is Ms Wallock who would have provided the documents which impeached her. There was therefore nothing for the Commission to bring to her attention in terms of documentation as she was already privy to the documents and their contents. It

was she who would have shared the details with the Commission at its request. I do not believe that the Commission had a preconceived view about the Claimant's role. It depended on her to clarify that role. In **Coomaravel**, the allegations were made against the appellant, and the Board held the view that he should have been provided with prison visits book and a copy of the relevant entry ahead of the hearing. In addition, there was unsupported evidence that was accepted by the Commission and not put to the appellant and on that basis, it was concluded that such statements made about the appellant in the report ought not to have appeared there. Also of note is the fact that the transcript indicated that the appellant had been reassured by the commission members that there had not been any suggestion by Mr Jeeva's sister that he had been one of those lawyers who had pressured Mr Jeeva to change his evidence. In those circumstances, the Board did not believe that it was reasonably foreseeable that the criticism of Mr Jeeva should have been contained in the report or expressed in the terms that they were expressed.

52. Mrs Mayhew wishes this Court to make a similar finding. She argued that based on the reassurances given by the DI that the Claimant was merely a witness and not under investigation and that the proceedings were cordial, it was not reasonably foreseeable that findings made against her, specifically, would appear in a report. The Claimant had not been called on to answer allegations against her and therefore the report ought not to have included negative findings against her. She also argued that it was very strange that adverse findings could be made against a witness. A tribunal may find a witness to be unreliable or not credible, but it is not likely that it will find against the witness.

53. She relied on the case of **De Verteuil v Knaggs and anor [1918] AC 557**. In that case Lord Parmoor, on behalf of the Board, said that apart from special circumstances, there is a duty to give any person against whom a complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement

brought forward to his prejudice. Mrs Mayhew's submission is that since Ms Wallock was not even under investigation it was even more important for her to be made aware of the allegations or findings that would be made against her so she could answer them. The question is whether there is such a duty on the Commission's part to make such disclosure before publishing the report. The case of **Peter Mahon v Air New Zealand Ltd and ors [1984] 1 AC 808** provides some guidance. Lord Diplock had this to say at pages 819-820 of the judgment:

> *"The first rule[1] is that the person making a finding in the exercise of such a jurisdiction must base his decision upon evidence that has some probative value in the sense described below. The second rule is that he must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made….*
> *The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional material off probative value which, had it been placed before the decision-maker, might have deterred him from making the finding even though it cannot be predicted that it would inevitably have had that result."*

54. The principle of law as set out in the **Peter Mahon case** is also evident in the case of **Re Pergamon Press Limited [1970] 3 All ER 535**. In this case the appellants were accused persons and not witnesses, but it is my view that the legal principle applies to either category of persons in an investigation. If the investigator *"was disposed to condemn or criticize anyone in a report they must first give them a fair*

[1] Referring to the rules of natural justice

opportunity to correct or contradict the allegation, for which purpose an outline of the charge would usually suffice" (paragraph b of the Held, page 536 refers). What is required is that the Claimant should be given a fair opportunity to correct or contradict any allegation of wrongdoing on her part, and the allegations that were being made against her as a result of her evidence and documents she provided should be put to her so she could respond to them. In other words, Ms Wallock should have been informed of her wrong, that being, dereliction of duties and failure to execute any further enforcement measures to ensure compliance with the permit issued and given the opportunity to respond. If the Commission did this, then they would have acted fairly and the content of the report as it relates to Ms Wallock could not be challenged. In **Coomaravel, De Verteuil, Peter Mahon** and **Re Pergamon** the appellants were the persons against whom the complaint was made. I agree that at no point in time was a complaint made against Ms Wallock. This is what Mrs Mayhew says makes the issue more significant because if there was no complaint against her, how could there be adverse findings against her?

55. Ms Lindsay submits that the report is what it is, a report on the findings of the investigation which the DI had a duty under the ICA to table. She relied on the case of **Maxwell v Department of Trade [1974] 1 QB 523**. In that case, the appellant was a witness against whom adverse findings were made. He sued on very similar grounds as those which Ms Wallock raised in the case before me. The facts in brief follow. The plaintiff who was the chairman and chief executive officer of certain companies gave evidence at an enquiry and was recalled on a number of occasions so that the inspectors could put to him the criticisms that other witnesses made of him, or which were contained in documents. He was given the opportunity to respond to the criticisms. The inspectors signed their first interim report which was very critical of the plaintiff. He sued and sought declarations that the inspectors had not followed the rules of natural justice and sought injunctions restraining the inspectors from continuing with the enquiry. The trial judge did not find in the plaintiff's favour so he appealed. The Court of Appeal dismissed the appeal. The Court concluded that once the investigators had put to the witnesses

what had been said against them and the witnesses were given an opportunity to respond to those criticisms, the investigators had acted fairly, and their report was not to be impugned. The Court did not believe it was necessary for the inspectors to put their tentative conclusions to the witnesses in order to give them an opportunity to refute them. The investigators had acted fairly in their conduct of the investigation. They had put to the plaintiff all the matters which appeared to call for an answer and since they acted honestly and fairly their report was not to be called into question.

56. Ms Lindsay also relied on the case of **Hoffman-La Roche & Co AG and ors v Secretary of State for Trade and Industry [1975] AC 295** to support her client's position that there was no duty to inform the Claimant that an adverse finding would be made against her and have her respond to it. At page 369 of the judgment Lord Diplock had this to say

> *"My Lords, upon the only evidence that is before your Lordships the appellants were given every opportunity to put their case before the commission both orally and in writing. … The commission for reasons that are set out in its report rejected the appellants' arguments. Even in judicial proceedings in a court of law, once a fair hearing has been given to the rival cases presented by the parties the rules of natural justice do not require the decision maker to disclose what he is minded to decide so that the parties may have a further opportunity of criticizing his mental processes before he reaches a final decision."*

57. It is clear that the findings need not be disclosed to the party under investigation for his comments before they are published. It is also clear that this is only the case in circumstances where the party under investigation was given every opportunity to put his case before the commission fully. A similar conclusion was drawn in **Re Pergamon** at page 540. Once the rules of natural justice are followed and the procedure is fair, then the DI can make his report *"with courage and*

frankness, keeping nothing back." There was no need for the DI to provide Ms Wallock with a copy of the report before it was tabled. What he was required to do was to indicate to her that based on the investigation, her role as Director of Legal and Enforcement was being called into question because she failed to do X and Y and give her the opportunity to respond to that allegation.[2] Once she was given the opportunity to respond and put her case before the Commission then there was no need for the Commission to disclose how he intended to decide and give her further opportunity to respond.

58. Ms Wallock's role was called into question after the evidence was taken from Mrs Barnett and even on Ms Wallock's own evidence. When Ms Wallock returned to the hearing on February 13, 2023, she returned with her attorney-at-law, Mrs Tomlinson. She was again assured she was being heard as a witness and not as a suspect. She was questioned as to the process that was to be followed post permit. She showed some trepidation at points in the hearing and wanted to have copies of documents for her file as she "*did not know where this matter is going,.."* Her attorney took pictures of a letter dated February 10, that was being relied on at the hearing. Her attorney objected to certain questions being asked of her again as she said they had already been asked and answered on the first day that Ms Wallock gave evidence, that being February 1, 2023. Her attorney required precision in the asking of the questions. She reminded the interviewer of answers that Ms Wallock had previously given, she examined documents being put to Ms Wallock.

59. The Commission wanted to know why Ms Wallock suggested to the Barnetts that they seek an amendment of the plans when there was a set enforcement procedure to be followed. That appears to have been the crux of the matter. Mrs Tomlinson said that the question had been answered on the last occasion and

[2] See the cases of **Aston Redie v The Firearm Licensing Authority and ors** Claim No HCV 1681 of 2010 judgment delivered on November 24, 2011; **Francis Paponette v The Attorney General of Trinidad and Tobago [2010] UKPC 32**

again explained her concern about questions already being asked and answered. The Chairman explained that he understood that there were four instruments available to the Enforcement Division once a breach had been identified. Ms Wallock asked for a specific question "*because I want to be very specific. Because I feel like…"* While her feelings were not captured in its entirety by the reporter, it seems to me that Ms Wallock got the sense that her actions or rather inactions as Director of Enforcement were being considered by the Commission. When the question was asked specifically, that is, why she gave the Barnetts the option to apply for an amendment, Ms Wallock explained that it was a part of the NEPA's customer service strategy. In addition, she explained in detail the process to be followed when enforcement was being pursued and highlighted section 18 of the governing statute, which dealt with the issuance of the enforcement notice. Ms Wallock was asked about the earlier reports that had been issued identifying the breach and that steps had not been taken to bring things into regularity with the permit. She was asked about the appropriate steps that should have been taken once the breach had been identified – not by her personally but by officers in her department/division.

60. When asked how soon after she had written to the Barnetts suggesting that they seek an amendment and she got their response, did she seek to find out from her officers whether there had been an amendment, she answered when she was coming for the first hearing. That would be February 1, 2023. I will write out the evidence here for convenience. I have put into bold those aspects of this part of the interview that I believe are important.

"Chairman	*Let's not go there yet.*
A	***No, I want to make sure I have it covered, Mr Stephenson***
Chairman	*Well, go ahead.*
A	***I am the one that is in jeopardy****. I believe it was the 1st of February*.

Chairman *You were here the 1st of February 2023*

A So when I was coming on the 1st of February, I went to the same applications Management Division and I asked generally, does the development have an amendment and I was told, yes, the development has an amendment. I saw a copy of the amendment and I read it and to me the amendment that I saw did not address the issue that was in my letter and I decided not to ask any further questions….

Chairman *What if anything did you do when you heard that?*

A *I stopped my process because – and I said this on the last occasion, I assumed that the amendment was related to my letter so I thought everything was settled so I did not engage with the permittee, I did not do anything else because I thought the amendment treated with my letter.*

Chairman ***Okay. I want to ask another question on that, Ms Wallock. Do you think that you reasonably should have checked to see what the amendment was, having regard to the breach identified?***

A ***Yes. Now that I am thinking about it, yes. I should have gone, check the amendment from top to bottom to make sure that it is in accordance with the letter that I had written, yes….***

Mr Wellington *Ms Wallock, what should have happened next, given that the permittee did not make the amendment?*

A *That's the thing. I do not know that the permittee has not made the amendment because I have not really gone -* ***I am now afraid to ask things in the process because I am aware that the Commission is already in the process of doing what it is doing.***

The Chairman then sought to ask directly that since the permittee had not made the amendment if there was anything in NEPA's process that she as head of enforcement at the time knew that could happen. Mrs Tomlinson however interrupted by saying the question had to be hypothetical as Ms Wallock's evidence is that she did not know whether the amendment had been made. The Chairman did not say specifically to Ms Wallock that the amendment had been made. The Chairman asked her if there was anything that was done in terms of the breach. Ms Wallock replied that she could only speak up to the point of the letters that she had sent to the Barnetts and could speak of nothing else.

"Chairman	***I think we covered everything. Do you wish to add anything, Ms Wallock?"***
A	***Not at this time..***
Chairman	***Do you wish to clarify anything?***
A	***Not at this time, sir."***

That brought the interview with Ms Wallock to an end.

61. It would appear to me that the Commission had put the points of concern to Ms Wallock, and she was given the opportunity to respond to them. The Commission had asked directly about the invitation to apply for an amendment, they had asked about whether that invitation was a part of the enforcement process and why it was embarked on when it was clearly not a part of the enforcement monitoring plan that governed enforcement procedure at NEPA. They asked about what Ms Wallock did or did not do when she realised that the amendment had not been done and if she would have done things differently. The only thing that was not put to Ms Wallock was the fact that there had been no amendment. She said she did not know if there had been one, in keeping with her requisition and she did not seek to find out because of the investigation, but I am of the view that the fact that there was no amendment was clearly to be implied from the way Ms Wallock was questioned and her tentativeness in answering some of the questions asked of her.

Conclusion

62. It is true that the Claimant was informed at the hearing that the investigation also included the post permit processes. It is true that she was asked to provide documents which would speak to the post permit processes. I accept that the Claimant was given the opportunity to provide evidence before the DI and to appear before him after contradicting evidence was received from another party before the DI. I also accept that all the necessary precautions and advice was provided to her before she started to give evidence and that she was not obstructed from raising objections to questions as she saw fit. I also accept that the DI is not obligated to give advance notice of how he is minded to conclude. I accept that all these statements of the Commission in its defence are true when Ms Wallock was assisting the investigation as a witness. I accept that the Claimant was a witness only and was not under investigation. Although adverse findings were made against her, I do not believe that the Commission acted unfairly, unreasonably or irrationally. The evidence suggests that the process was fair, and that Ms Wallock was apprised of concerns that the Commission had about the part she played in the post permit approval and enforcement processes. The Commission put the issues that they had with the role she played in the process to her, and she was given an opportunity to respond. In addition, she was asked if she wanted to add anything. She declined. She was asked if she wanted to clarify anything, but she also declined. In my view, the process was fair and did not breach the rules of natural justice. I do not find the Defendant's conduct of the investigation unreasonable, irrational or procedurally improper. I do not find that the adverse findings made against the Claimant in the report were unreasonable or irrational. I do not find that the Defendant acted *ultra vires* the ICA.

Orders:

63. In light of the foregoing my orders are as follows:

a. The orders and declarations sought in the Fixed Date Claim Form filed herein are refused.
b. Each party is to bear her or its own costs in the claim.
c. The Defendant’s attorneys-at-law are to file and serve the Judgment.