

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2014-02496

BETWEEN

PAMELA HUNT

Claimant

AND

**JENNIFER DANIEL
PERMANENT SECRETARY IN
THE MINISTRY OF EDUCATION**

1st Defendant

**HARRILAL SEECHARAN
CHIEF EDUCATION OFFICER IN
THE MINISTRY OF EDUCATION**

2nd Defendant

THE TEACHING SERVICE COMMISSION

3rd Defendant

**THE COUNCIL OF ELDERS OF
THE SPIRITUAL SHOUTER BAPTIST FAITH A/C
THE COUNCIL OF ELDERS OF THE
SPIRITUAL BAPTIST FAITH OF
TRINIDAD AND TOBAGO**

4th Defendant

AND

MS. ROSEANNE RONDON

1st Interested Party

ARCHBISHOP BARBARA GRAY-BURKE

2nd Interested Party

**THE COMMITTEE FOR THE COUNCIL OF ELDERS OF THE
SPIRITUAL BAPTIST (SHOUTERS) FAITH OF
TRINIDAD AND TOBAGO LIMITED**

3rd Interested Party

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Martin G. Daly S.C. and Mr Christopher Sieuchand instructed by Mr Kendell Alexander for the Claimant

Mr. Douglas L. Mendes S.C. instructed by Mr Anthony Bullock for the 3rd Defendant

JUDGMENT

I. Background:

- [1] By Court Order dated the 21st August, 2014, the Claimant, Pamela Hunt, obtained leave to make a claim for Judicial Review against certain decisions made by the Defendants which led to her transfer and/or removal as the principal of the St. Barbara's Spiritual Shouter Baptists Primary School (the "School") on the 3rd December, 2012.
- [2] Ms Hunt sought several declaratory reliefs and orders against each of the opposing parties in her application. In particular, she sought reliefs against the 3rd Defendant, the Teaching Service Commission (the "TSC") for its decision to institute disciplinary proceedings against her as well as its failure to enquire into the authority of the Council to make an application for her removal as principal.
- [3] In pursuance of this Order, on the 26th August, 2014, the Claimant filed a Fixed Date Claim and relied on the affidavit used in her application for leave in support. A supplemental affidavit was later filed on the 20th August, 2014.

Appearances were filed by all four Defendants as well as the 2nd and 3rd Interested Parties.

- [4] On the 20th October, 2014, the TSC filed an affidavit in response to the Fixed Date Claim, which adduced the evidence of Veronica Creed, the Acting Director of Personnel Administration for the Public Service Commission. Veronica averred that she was responsible for the administration of the Service Commission Department, which provides support to the TSC. She further stated that she had custody and access to documents, files and records of the TSC.

In her affidavit, Veronica stated, inter alia, that the TSC met on the 23rd July, 2014 and after considering their investigator's report, it was determined that no further action be taken against the Claimant as there was no evidence to substantiate the allegations. This decision effectively brought an end to the disciplinary proceedings and was communicated to Pamela by letter dated the 24th July, 2014.

- [5] Just over five months later, Pamela, by Notice filed on the 21st November, 2014, applied to discontinue several of the reliefs in her Judicial Review claim, one of which was against the TSC.

- [6] At the next case management conference ("CMC") heard on the 21st January, 2015, Pamela sought permission to discontinue all the reliefs sought in her claim against the TSC and asked the Court to exercise its discretion to award costs in her favour.

Attorneys for the TSC objected to the request for costs and further sought permission to file a supplemental affidavit, which they argued would greatly assist the Court on the issue of costs by outlining the essential facts that would have influenced the decision to withdraw the claim.

Despite the objections from the Claimant's attorneys, at the close of the hearing on the 21st January, 2015, this Court allowed the withdrawal of the claim against the TSC and permitted the TSC to file its supplemental affidavit.

Thereafter, the parties were then ordered to file and exchange their submissions on costs. An order to this effect was filed on the 5th March, 2015.

- [7] The Claimant's submissions on costs were filed on the 21st April, 2015. A further extension was granted for the TSC to file its submissions by the 30th April, 2015, however

its submissions on costs were not filed until the 11th May, 2015. Additionally, the TSC failed to file the supplemental affidavit pursuant to the Court's order of the 5th March, 2015.

- [8] Nevertheless, this Court, having considered the evidence along with the parties' submissions, gives its decision on the issue of costs consequent on the Claimant's withdrawal of its claim against the 3rd Defendant as follows:

II. Submissions & Law:

- [9] The relevant provisions in the **Civil Proceedings Rules 1998** (the "CPR") which govern this specific issue on costs are contained at **Parts 38 and 66**.

Part 66.6 contains the general rule on costs as follows:

- [1] *"If the court...decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.*

- [2] *The court may, however, order a successful party to pay all or part of the costs of an unsuccessful party.*

- [3] *This rule gives the court power in particular—*

- a) to order a person to pay only a specified proportion of another person's costs;*
- b) to order a person to pay costs from or up to a certain date only; or*
- c) to order a person to pay costs relating only to a certain distinct part of the proceedings,*

but the court may not make an order under paragraph 3(b) or 3 (c) unless it is satisfied that an order under paragraph 3(a) would not be just.

- [4] *In deciding who should be liable to pay costs the court must have regard to all the circumstances.*

- [5] *In particular it must have regard to-*

- a) *the conduct of the parties;*
- b) *whether a party has succeeded on particular issues, even if he has not been successful in the whole of the proceedings;*
- c) *whether it was reasonable for a party—*
 - i. *to pursue a particular allegation; and/or*
 - ii. *to raise a particular issue;*
- d) *the manner in which a party has pursued—*
 - i. *his case;*
 - ii. *a particular allegation; or*
 - iii. *a particular issue;*
- e) *whether the claimant who has won his claim caused the proceedings to be defended by claiming an unreasonable sum; and*
- f) *whether the claimant gave reasonable notice of his intention to issue a claim.*

[6] *The conduct of the parties includes—*

- a) *conduct before, as well as during the proceedings, and in particular the extent to which the parties complied with any relevant pre-action protocol; and*
- b) *whether either or both parties refuse unreasonably to try an alternative dispute resolution procedure.”*

[10] **Part 38** prescribes the procedure for the discontinuance of a claim and **Part 38.6** speaks specifically on the liability for costs. It states:

[1] *“Unless the court orders otherwise, a claimant who discontinues is liable for the costs which a defendant against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him.*

[2] *If proceedings are only partly discontinued—*

- a) *the claimant is liable for only the costs relating to that part of the proceedings which he discontinues; and*
- b) *unless the court orders otherwise, the costs which the claimant is liable to pay may not be quantified until the conclusion of the rest of the proceedings.”*

[11] It is clear that both provisions are discretionary. Further, as stated by Mendonca J.A. in **The Chief Fire Officer and The Public Service Commission v Sumair Mohan**¹, **Part 38.6** is to be viewed as a corollary to the general rule contained in **Part 66.6 (1)**. Therefore, the claimant who discontinues the claim should generally pay the costs where his withdrawal is on the basis that he realised that his claim would likely have been unsuccessful.

The Mendonca J.A. also advised that these general rules may be departed from in circumstances where good reasons dictate that the Court should make some other costs order. In deciding whether to make another order, he stated that **Parts 66.6 (4) (5) & (6)** are relevant².

[12] It is undisputed that Pamela has discontinued her claim, which comprised of three reliefs, against the TSC as follows:

- 1) **A declaration that the TSC exceeded its jurisdiction and/or acted on instructions from an unauthorized person and/or failed to protect the Claimant from arbitrary interference in receiving from the Council and considering an application for the Claimant’s transfer or removal from her post as Principal (Primary) of the School.**
- 2) **A declaration that the TSC’s decision to institute proceedings against the Claimant in the absence of any report or allegation of misconduct or indiscipline is ultra vires, illegal, irrational, unreasonable and oppressive.**

¹ In **Chief Fire Officer and the Public Service Commission v Sumair Mohan Civ. App No 45 of 2008**

² Paras 15 & 16 of **Sumair Mohan** supra.

- 3) **A declaration that the TSC’s decision to institute disciplinary proceedings against the Claimant pending the determination of an application for the transfer of the claimant on moral and/or religious grounds arising out of the same grounds is unreasonable, unfair, oppressive and an abuse of power.**

What must be determined is whether the discontinuance amounted to an acknowledgment of defeat.

[13] Counsel for the Claimant submitted that the discontinuance of the claim against the TSC became academic due to two factors: (i) the determination of the disciplinary proceedings against Pamela in her favour; and (ii) Pamela’s retirement as principal, which occurred while the application for her transfer made by the Council was still pending before the TSC. Therefore, he argued that the Claimant should be entitled to all of her costs up to the discontinuance of the claim against the TSC.

In support, reliance was placed on the English High Court case of the **Queen v Liverpool City Council**³, the learning from which was instructive to the issue:

In **Liverpool CC**, the applicant applied to have his challenge against the respondent discontinued. The challenge was brought by several applicants who believed that they were threatened with redundancy and as a result, they applied for leave to file a judicial review claim. After leave was granted, four of the applicants were satisfied that they were no longer under threat and indicated that they wished no further part in the proceedings. Justice Simon Brown agreed that the proceedings of these four applicants had become academic and commented that the primary issue before him was the issue of costs, which he thought would be substantial.

Brown J. had before him one authority, being a short report of Henry J’s judgment in **Barretts & Baird (Wholesale) Ltd and Others v The Institution of Professional Civil Servants and Others**. The Lordship viewed that while that case dealt with the general rule in civil actions—being that the respondents would receive their costs, it would similarly apply where judicial review proceedings are discontinued “*provided that such*

³ 1993 5 Admin L.R. 669

discontinuance can be shown to be consequent upon the applicant's recognition of the likely failure of his challenge."

The remaining excerpts from Justice Brown's judgment are highly relevant and are set out in full:

"The position is however entirely different where, as here, the discontinuance follows some step which had rendered the challenge no longer necessary, which, in other words, renders the proceedings academic. If, for instance, it has been brought about because the respondent, recognizing the likelihood of the challenge against him succeeding, has pre-empted his failure in the proceedings by doing that which the challenge is designed to achieve- even if perhaps no more than agreeing to take a fresh decision- it may well be just that he should not merely fail to recover his own costs but indeed pay the applicant's.

*On the other hand, it may be that the challenge had become academic merely through the respondent sensibly deciding to short circuit the proceedings, to avoid their expense or inconvenience or uncertainty without in any way accepting the likelihood of their succeeding against him. He should not be deterred from such a cause by the thought that he would then be liable for the applicant's costs. Rather, in those circumstances, it would seem to me appropriate that the costs should lie where they fall and there should accordingly be no order. **That might equally be the case if some action wholly independent of the parties had rendered the outcome of the challenge academic.**"*

In conclusion, Justice Brown ordered discontinuance of the claim on the ground that each party bear its own costs:

*"All that it is possible to say with certainty is that, without accepting the validity of the challenge, **the respondents, following the grant of leave, acted so as to render academic any continuing interest in the proceedings on the part of those who NALGO represent.** In short, the*

case seems to me to fall clearly into the category of those in which it is appropriate to allow discontinuance without penalty to the applicants.

In the result, I accede to this application and order discontinuance on the terms that each party pays its own costs.”

- [14] Counsel for the TSC did not challenge nor refer to this case in his submissions. Instead he simply acknowledged that the general rule contained in **Part 38.6** should only be departed from if there are good reasons to do so and that he Court must be guided by **Part 66.6 (4) (5) & (6)** in its deliberations⁴.

Accordingly, this Court is concerned with the facts surrounding and influencing the Claimant’s decision to withdraw its claim against the TSC.

- [15] The Claimant first indicated to this Court its intention to withdraw the claim against the TSC at the CMC held on the 21st January, 2015. However, no reasons were given for its withdrawal. Rather, the reasoning for the Claimant’s change of heart is gleaned from the affidavit of Veronica Creed, which was filed on the 20th October, 2014 on behalf of the TSC.

- [16] Two of the three reliefs sought pertained to the TSC’s purported decision to institute disciplinary proceedings and were dealt with at paragraph 20 of Veronica’s affidavit:

*20. “The commission’s next meeting was on the 23rd July 2014. It considered the investigator’s report and **decided that no further action should be taken**. Accordingly, by memorandum dated the 24th July, 2014, I advised the 1st Defendant of the Commission’s decision. A letter of delivery to the Claimant dated the 24th July, 2014, informing her of the Commission’s decision, was also forwarded to the 1st Defendant.”*

No affidavit in response was ever filed by the Claimant and accordingly, it is undisputed that the disciplinary proceedings against Pamela had concluded in her favour.

⁴ Para 8 of the 3rd Defendant’s submissions.

Thereafter, some 4 months later, the Claimant proceeded to withdraw the 2nd stated relief in its Notice of Application on the 21st November, 2014.

- [17] In **Liverpool CC**, while Justice Brown did not give a full account of the facts, he nevertheless asserted that it was because the applicants were under a serious threat of redundancy, which was only abated after leave was granted, that he viewed a “no order as to costs order” was appropriate. The Lordship stated:

“I shall not embark upon any description of the nature of these proceedings, because I would either unrealistically oversimplify that description, or else take substantial time to set it out in cogent form. Suffice to say that the challenge is brought by seven named individuals, all members of NALGO, and was designed to guard against their being made redundant following a cost-cutting exercise proposed as part of economies to make good Liverpool's budget setting last March. The challenge was to the resolutions underlying the proposed redundancies.

The seven applicants believed, as I apprehend with good reason, that they were threatened with redundancy. True it is that after leave was given four of the seven became satisfied that they were no longer under threat and indicated that they wished no further part in the proceedings.”

- [18] Accordingly, the Claimant must prove that (i) she was justified in bringing the claim i.e. that there was a serious threat of disciplinary proceedings being instituted against her when she applied for leave; (ii) that the TSC had a duty to investigate the composition of the Council to see if they were authorised to make the application for her transfer; and (iii) that there was some act on the part of the TSC, after leave was granted, that rendered the three reliefs sought academic.

Provided these criteria are met, pursuant to **Liverpool CC** supra, this Court can depart from the general rule on costs and make some other order.

Serious threat of disciplinary proceedings:

- [19] To ascertain whether Pamela was aware that disciplinary proceedings had begun prior to the application for leave, it would be necessary to chronicle the pre-action correspondence between the Claimant and the TSC.
- [20] The first complaint concerning Pamela's stewardship of the School occurred by letter dated the 13th October, 2013, captioned **"Disappointment in your stewardship of the school"**. The purpose of the letter was to provide notice to Pamela that Dr Burke, the School manager, was going to request a new principal for the school. Accusations of deficient management of the School grounds and contemptuous disregard for the involvement of the School Board and its manager were made in this letter.
- [21] A second letter was sent by Dr Burke on the 22nd October, 2013 requesting that Pamela remove a Rasta man painting on the wall of the school and notifying Pamela that she would not be confirmed as the principal of the school and that a new principal would be implemented.
- [22] The third letter dated the 11th December, 2013 demanded that Pamela **"cease and desist"** from all activities relative to a boat ride fundraiser that she organized. Pamela, through her attorneys, issued a letter on the 9th January, 2014 to the TSC indicating that she had been told by the Acting School Supervisor that he was investigating a series of allegations made against her by the Council and that this was the first time Pamela was aware of such investigation. She also sought clarification on the investigative procedure from the TSC.
- [23] The TSC then responded by letter dated the 16th January, 2014 indicating that the matter was under consideration and that a response would be sent shortly.
- [24] It was not until the 14th February, 2014 that Pamela's attorney received a response from the TSC indicating that *the disciplinary process had not been invoked* as there had been no report of misconduct and therefore, Regulation 90 was not applicable. The TSC informed Pamela of an application dated the 6th November, 2013 calling for Pamela's removal as principal under Regulation 138, which was forwarded to Jennifer Daniels, the 1st Defendant, for investigation.
- [25] The next letter in the chain of correspondence between Pamela and the TSC occurred on the 24th April, 2014. In this letter Pamela's attorneys indicated that she was prevented

access to the school by Dr Burke on the 22nd April, 2014. The letter sought clarification on several issues as follows:

- [1] Whether or not the TSC had concluded its consideration of the Council's application for her transfer/removal and if so, what is the decision;
 - [2] The date that the TSC communicated this decision to Pamela;
 - [3] Whether the TSC has taken any decision to dismiss Pamela and if so the date of such decision;
 - [4] If not, what steps have been taken by the TSC to allow Pamela to discharge her duties as principal?
- [26] Pamela sent a follow up letter to the TSC on the 15th May, 2014, complaining about the lack of response to her previous letter issued on the 22nd April, 2014.
- [27] Pamela did not receive a response from the TSC until the 11th June, 2014, where they merely apologized for their late response and informed her that the matter was still under consideration.
- [28] Finally, on the 16th June, 2014, a comprehensive response was sent by the TSC indicating as follows:
- [1] That it had made no determination on the application for Pamela's transfer/removal;
 - [2] that it was unclear whether the investigation initiated by the school supervisor was made under Regulation 90 or whether Pamela was informed of the Council's allegations;
 - [3] **That it undertook to order a formal investigation into the allegations under Regulation 90;**
 - [4] That the Claimant would be informed of the allegations against her;
 - [5] That a report of the findings of the investigation would be submitted to the TSC; and

[6] **That the Ministry of Education would take all necessary steps to ensure that the Claimant is allowed to perform her duties as principal of the school.**

The TSC also informed Pamela that the investigation report was received on the 10th June, 2014 and any decision taken in respect of which would be forwarded to her.

[29] Therefore, as of the 16th June, 2014, Pamela first became aware that disciplinary proceedings had commenced against her. As a consequence, pursuant to **section 11 of the Judicial Review Act, Chap 7:08**, the grounds for the claim against the TSC then arose and therefore, from the date of that letter, the three month clock had begun to run for Pamela to make her application for leave.

[30] Accordingly, at the time of applying for leave on the 15th July, 2014, disciplinary proceedings had already commenced against Pamela.

It was not until the 24th July, 2014 that the TSC advised the 1st Defendant to issue a letter on even date informing Pamela that they had considered the investigation report and *decided not to take any further action against her.*

The above therefore illustrates a fact pattern similar to **Liverpool CC** supra, where the applicant's threat was only abated after obtaining leave. Further, Pamela had been very proactive in attempting to seek clarification from the TSC beforehand but the responses were lethargic.

Accordingly, the Court is of the view that Pamela was justified in seeking the two reliefs relating to the TSC's institution of disciplinary proceedings against her.

The reliefs becoming academic:

[31] Further, it was because of the actions of the TSC— by considering the investigator's report and discrediting the allegations therein, that the disciplinary proceedings were brought to an end and the reliefs sought thereby becoming academic.

[32] Moreover, this Court is of the opinion that it is the TSC's awareness that leave had been granted for Judicial Review, coupled with the realisation that the claim against them would likely succeed, that the Commission acted with a newfound haste in disposing of the disciplinary proceedings less than 10 days after leave was granted.

[33] Based on this reasoning, this matter would fit squarely into the first of the examples given by Justice Brown and would therefore justify an order requiring the TSC be liable for Pamela's costs in relation to these two reliefs.

Whether the TSC had a duty to investigate the composition of the Council:

[34] With respect to the remaining relief sought against the TSC, the Court is not convinced that Pamela had any basis at the pre-action stage to accuse the TSC of exceeding its jurisdiction and/or acting on instructions from an unauthorized person and/or failing to protect her from arbitrary interference by its decision to consider the application for her transfer.

Support for this relief was given at paragraph 104 of Pamela's affidavit, where she accused the TSC of consistently acceding to the "baseless requests" of the Council and Dr Burke.

[35] This evidence was countered at paragraph 21 of Veronica's affidavit, where it was made clear that neither Dr Burke nor the Council fell within the TSC's jurisdiction and therefore, the TSC could not take any action relative to their authority or composition. Further, Veronica averred that the TSC cannot determine whether an allegation is baseless unless and until an investigation has been completed. Based on this unchallenged evidence, this relief became academic.

[36] The question is, therefore, whether there was information before Pamela prior to her application for leave, which would have placed her under serious threat that the TSC was interfering with her duties as principal by acceding to the Council's baseless requests.

[37] In this Court's considered opinion, there is simply no evidence to show that the TSC actively interfered with Pamela's discharge of her duties. To the contrary, in the TSC's letter dated 16th June, 2014, Pamela's attorneys were told that the TSC had "*directed that*

the Ministry of Education take all necessary steps to ensure that your client be allowed to perform her duties as principal... ” of the School.

Further, there is also nothing to suggest that there was anything wrong in the TSC’s decision to consider the application for a transfer.

[38] Accordingly, the Court finds that this particular relief sought against the TSC was baseless from inception and therefore, doomed to fail. Its subsequent withdrawal was therefore an acknowledgment of its likely defeat and in this respect, the Court would not be inclined to depart from the general rule on costs in relation to this relief.

[39] Considering that the Court is only inclined to depart from the general rule on costs in relation to 2 out of the 3 reliefs, the Court must apply the factors contained at **Part 66.6 (4) (5) & (6)** to determine what other appropriate costs order should be made.

Pre action conduct:

[40] Counsel for the Claimant detailed the chain of correspondence prior to the application for leave, which he argued showed that the TSC acted in bad faith and failed to ever address the Claimant’s concerns. While the Court agrees that the TSC’s responses at times seemed listless considering the seriousness of the matter, its final letter immediately preceding the application for leave on the 16th June, 2014, addressed all concerns.

[41] It was also submitted that the TSC never saw it fit to inform the Claimant that it was recommending a disciplinary investigation under Regulation 90 against her. However, **Regulation 90 of the Public Service Commission Regulation, Chap 1:01**, which details the investigative procedure, does not appear to require such a warning from the TSC. It states:

[1] *“Where a report or allegation of indiscipline or misconduct by an officer is received...the Permanent Secretary or Head of Department shall report the matter to the Director for the attention of the Commission and concurrently warn the officer in writing of the report or allegation of indiscipline or misconduct.”*

- [2] *An investigating officer shall be appointed by the director from the Public Service Investigations Unit to investigate the report or allegation.*
- [3] *An investigating officer may also be appointed by a Permanent Secretary or Head of Department of the Ministry or Department to which the officer is assigned and shall hold an office in a grade higher than that of the officer.*
- [4] ***The investigating officer shall, within three days of his appointment, give the officer a written notice specifying the time, not exceeding seven days from the date of the receipt of such notice, within which he may, in writing, give an explanation concerning the report or allegation to the investigating officer.***
- [5] *The investigating officer shall require those persons who have direct knowledge of the alleged indiscipline or misconduct to make written statements within seven days for the information of the Commission.*
- [6] *The investigating officer shall with all possible dispatch but not later than thirty (30) days from the date of his appointment, forward to the Director of Personnel Administration for the information of the Commission an investigating officer's report consisting of the original statements and all relevant documents together with his own report on the particular act.*
- [7] *Where the Commission considers that the circumstances before it warrants an extension of time, the period referred to in subregulation (5) may be extended by a period not extending thirty days.*
- [8] *The Commission, after considering the report of the investigating officer and any explanation given under subregulation (3), shall decide whether the officer should be charged with an offence, and if the Commission decides that the officer should be so charged, the Commission shall, as soon as possible, cause the officer to be informed in writing of the charge together with such particulars as will leave the officer under no misapprehension as to the precise nature of the allegations on which the charge is based."*

Accordingly, the Court is not persuaded that the TSC's pre-action conduct exhibited any bad faith or abuse of power.

[42] To the contrary, the Court finds merit in the TSC's submissions that the Claimant failed to issue any pre-action letter to the TSC prior to its commencement of proceedings by the application for leave on the 15th July, 2014.

By failing to issue a pre action letter, the Claimant effectively removed the opportunity for the TSC to respond and possibly inform Pamela of the facts contained in its affidavit, which may have revealed the futility of the Claimant's case against the TSC.

Post-action conduct:

[43] On the other hand, the post-action conduct of the TSC was nothing to be admired. They failed to comply with all the attendant orders and/or rules relating to Judicial Review Applications.

[44] Firstly, the TSC did not attend the hearing for the application for leave nor did it enter an appearance for the Fixed Date Claim Form for the substantive Judicial Review application.

[45] Further, **Part 56.11 CPR** requires that an affidavit in response be filed in accordance with **Part 10. Part 10** dictates that it must be filed within 28 days of the Fixed Date Claim Form. The Fixed Date Claim was filed on the 26th August, 2014, which means that the deadline for Veronica's affidavit was the 13th October, 2014 (taking into account that time does not run during the long vacation unless the Court orders otherwise. Time began to run from the 16th September, 2014). The TSC did not file her affidavit until the 20th October, 2014, which amounted to 7 days overdue.

[46] Finally, the TSC applied to file a supplemental affidavit at the CMC of the 21st January, 2015 and despite objection from the Claimant's counsel, leave was granted. Nevertheless, no such affidavit was ever filed.

[47] In a similar vein, the Court does not find that the Claimant was at all times efficient in its conduct of its case. In particular, the Claimant's decision to withdraw certain reliefs upon them becoming academic was not timely.

[48] In Pamela's supplemental affidavit filed on the 20th August, 2014, she confirmed receipt of the TSC's letter dated that 24th July, 2014 on the 14th August, 2014. The said letter had indicated that no further action would be taken against Pamela as the allegations were unsubstantiated. Despite this revelation, Pamela did not seek to withdraw any of the reliefs sought against the TSC until the 21st November, 2014. Further, the remaining reliefs were not discontinued until the CMC of the 21st January, 2015. This delay amounted to just over 5 months.

[49] In fact, had the Claimant's attorneys acted with greater haste, the costs attendant to Veronica's affidavit and the parties' submissions would have been avoided.

The Reliefs pursued:

[50] Based on the above, the Court finds that it was reasonable for the Claimant to pursue the two reliefs that relate to the TSC's decision to institute disciplinary proceedings against Pamela. However, it was not reasonable for her pursue the relief challenging the TSC's failure to enquire into the constitution of the board so as to ensure the application was coming from a good source.

[51] Accordingly, the Court must therefore consider an abundance of opposing factors in its assessment of each party's entitlement to costs:

[1] That pursuant to Liverpool CC supra, the Claimant would be entitled to 2/3 of the costs in the claim based on the reasonableness in seeking 2 out of the 3 reliefs against the TSC;

[2] The Claimant's pre-action conduct, in particular, the failure to issue a pre-action letter, which may have saved costs;

[3] The Claimant's unreasonable delay in its withdrawal of the claim against the TSC, which resulted in additional unnecessary costs;

[4] TSC's failure to comply with the rules requiring its attendance of the hearing for leave, the filing of an appearance and filing an affidavit in response on time;

[5] The fact that the 3rd Defendant failed to file its supplemental affidavit and failed to file its submissions on time.

[52] Given the above and the fact that both parties have been at fault in the conduct of their case, the Court feels that each party should bear its own costs.

III. Disposition:

[53] Accordingly, having considered the relevant case law along with the provisions in **Parts 38.6 & 66.6 of the CPR**, the Court gives the following order on costs:

- a. On the Claimant's discontinuance of all reliefs against the 3rd Defendant in her Fixed Date Claim for Judicial Review filed on the 26th August, 2014, each party shall bear its own costs.

Dated this 10th day of January, 2018

Robin N. Mohammed
Judge