

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2021-02560**

**BETWEEN**

**JEMOL AUSTIN**

Intended Claimant

**AND**

**THE COMMISSIONER OF POLICE**

First Named Intended Defendant

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Second Named Intended Defendant

**Appearances:**

Intended Claimant: Gerald Ramdeen and Umesh Maharaj instructed by Nerisa Bala

Intended Defendants: Nadine Nabie instructed by Michelle Benjamin

**Before the Honourable Mr. Justice Devindra Rampersad**

**Date of delivery: September 21, 2021.**

**JUDGMENT ON INTERIM RELIEF**

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1. By notice of application for leave to apply for judicial review, accompanied by the affidavit of Jemol Austin (“the intended claimant”), certificate of urgency and notice of application for interim relief all filed on 7 August 2021, the intended claimant brought a claim against the Commissioner of Police (“the first intended defendant”) and the attorney general (“the second intended defendant”) for the following reliefs:

1.1. Against the first defendant:

1.1.1. A declaration that the suspension of the intended claimant for a period of more than 3 years without the preferment of any charge is unreasonable, illegal, procedurally improper, unfair and amounts to an abuse of power;

1.1.2. A declaration that there has been unreasonable delay on the part of the first intended defendant, its servants and or agents in appointing an investigating officer;

1.1.3. A declaration that it is an abuse of process and procedurally unfair for the first intended defendant, its servants and or agents after a delay of more than 2 years and 5 months to appoint an investigating officer;

1.1.4. A declaration that it is an abuse of process and unfair to charge the intended claimant now, or at any time in the future, in light of the fact that more than 3 years that have elapsed because of the inaction of the first named defendant, its servant and or agents;

1.1.5. An order of certiorari to remove to this court and quash the disciplinary charges laid against the intended claimant;

1.1.6. An order permanently staying the disciplinary proceedings against the intended claimant;

1.1.7. An order of mandamus directing the first intended defendant to reinstate the intended claimant into the police service because there is no lawful basis for his continued indefinite suspension;

1.1.8. Such further or other reliefs as this Honourable Court may deem fit in the circumstances of the case;

1.2. Against the second intended defendant:

1.2.1. A declaration that the suspension of the intended claimant for a period of more than 3 years without the preferment of any charge is in breach of the intended claimant’s

constitutional rights under sections 4(b) and 5(2)(h) of the Constitution;

- 1.2.2. A declaration that the appointment of the investigating officer after a delay of more than 2 years and 5 months constitutes a breach of the intended claimant's constitutional rights under sections 4(b) and 5(2)(e) and (h) of the Constitution;
- 1.2.3. An order that monetary compensation including vindictory damages be paid to the intended claimant for the breach of his constitutional rights;
- 1.2.4. An order that the second intended defendant do pay the intended claimant's costs of his claim to be assessed by the Registrar of the Supreme Court in default to agreement; and
- 1.2.5. Such further or other relief as this Honourable Court may deem fit in the circumstances of the case.

2. The interim relief being sought by the intended claimant is as follows:
  - 2.1. The intended defendants are restrained from taking any steps under disciplinary procedures of the Police Service Regulations in relation to the intended claimant until the hearing and determination of this matter or until further order;
  - 2.2. Costs of this notice of application be the intended claimant's costs in the cause.
3. On 17 August 2021, the intended claimant filed a supplemental affidavit and on 19 August, the intended claimant filed a speaking note in support of his application for interim relief.
4. On 2 September 2021, the application for leave for judicial review and the application for interim relief was heard and the court gave directions for the filing of written submissions in opposition to the application for interim relief and reply submissions by the intended claimant, if necessary.

## **Background**

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5. The intended claimant is a Police Constable Regimental No. 20093 within the Trinidad and Tobago Police Service.

6. On 9 June 2018, the intended claimant was involved in an incident whereby Police Vehicle PDK 6837 became stuck on a beach. By memorandum dated 14 June 2018, the intended claimant provided an explanation in writing to the Senior Superintendent Professional Standards Bureau.
7. By letter dated 23 June 2018, the Commissioner of Police informed the intended claimant that he would be suspended pending the outcome of an investigation into the incident and directed the intended claimant to report to the senior superintendent on the first Wednesday of each month in accordance with Regulation 154, Police Service Regulations.
8. On 30 March 2020, the intended claimant received a warning notice dated 26 March 2020 issued by Sergeant Johnson-Brewster informing him of an allegation made against him that he committed an offence, namely, acting in a disorderly manner that was prejudicial to discipline or reasonably likely to bring discredit to the service in contravention of Regulation 150 (2)(e) of the Police Service Regulations.
9. On 3 April, 2020 the intended claimant was issued another warning dated 26 March 2020 by Sergeant Johnson-Brewster informing him that the previous notice was cancelled. He was informed that he committed a breach of discipline to wit; damage to marked police vehicle PDK 6837 in contravention of Regulation 150(2)(k)(i), Police Service Regulations.
10. By memorandum dated 30 November 2020 from no. 13006 Sergeant Bruce, the intended claimant was informed that the disciplinary officer complaints division had appointed Sergeant Bruce as the investigating officer to conduct an investigation into the allegations of misconduct relative to the incident which occurred some 2 years and 5 months prior.
11. On 14 July 2021, the intended claimant through his attorneys at law issued a pre-action protocol letter to the office of the Solicitor General and the Police Legal Unit. Almost immediately after, by memoranda dated 21 July 2021 issued to the intended claimant on 3 August 2021, the intended claimant was charged with the following offences:
  - 11.1. "Being an accessory to a disciplinary offence" contrary to Regulation 150 (2)(p) Police Service Regulations;
  - 11.2. "Neglect of duty" contrary to Regulation 150 (2)(d)(iv), Police Service Regulations;
  - 11.3. "Neglect of duty" contrary to Regulation 150 (2)(d)(iv), Police Service Regulations;
  - 11.4. "Disobedience to orders" contrary to Regulation 150 (2)(c), Police Service Regulations.

12. At the disciplinary hearing on 9 August 2021, the intended claimant, represented by his attorney at law, informed the Tribunal that an application for an injunction was filed to prevent the holding of the Tribunal but it remained undetermined. The intended claimant entered a plea in relation to one charge as the prosecutor noted that the charges she had was different from those being read out by the Tribunal. The matter was then adjourned to 23 August 2021.
13. The intended claimant complained of prejudice to his defence of these charges due to the passage of time since the incident took place as he is unable to remember every single detail of the incident and is unable to track down any witnesses in support of his defence.

### The issue to be determined

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14. Whether interim relief ought to be granted to the intended claimant to effectively prevent the intended defendants from taking any steps against the intended claimant under the disciplinary procedures of the Police Service Regulations pending the hearing and determination of this matter.
15. The attorney-at-law for the intended defendants indicated that she would not be objecting to the application for the grant of leave, only for the application for the interim relief.

### The intended defendants' submissions

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16. The intended defendants relied on s 10 of the Judicial Review Act, Chap 7:08 and ***National Commercial Bank Jamaica Ltd v Olint Corp Ltd***<sup>1</sup> to state that the court has a discretion to grant interim relief.
17. Reliance was also placed on ***Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment of Belize and another***<sup>2</sup>, ***American Cyanamid Company v Ethicon Ltd***<sup>3</sup> and ***The Chief Fire Officer and Public Service Commission v Elizabeth Felix-Phillip and others***<sup>4</sup> as

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<sup>1</sup> [2009] 1 WLR 1405 at 1409

<sup>2</sup> [2003] 1 WLR 2839

<sup>3</sup> [1975] AC 396

<sup>4</sup> Civ Appeal No. S49 of 2013 where it was noted that ***R v Secretary of State for Transport, ex parte Factortame Ltd and others (No. 2)***[1991] 1 AC 603 was the defining decision in respect of the guidelines to be followed for the grant of interim relief in public law cases

it relates to guidelines to be followed for grant of interim relief in public law cases.

18. In *Elizabeth Felix-Phillip*<sup>5</sup>, Bereaux JA crafted the following issues to be considered in the grant of an interim injunction:
  - 18.1. Is there a serious case to be tried?
  - 18.2. Adequacy of damages;
  - 18.3. Balance of justice/convenience, including a consideration of:
    - 18.3.1. Prejudice to the applicants;
    - 18.3.2. Strength of the respective cases;
    - 18.3.3. Public interest.

#### Whether there is a serious case to be tried?

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19. As it relates to the question of whether there is a serious case to be tried, the intended defendants submitted that the court must be satisfied that the intended claimant's case is not frivolous or vexatious and there is a serious case to be tried.<sup>6</sup>
20. It was submitted that the intended claimant was involved in an incident on 9 June 2018 which resulted in his suspension. The intended claimant received warning notices dated 26 March 2020 from Sergeant Johnson-Brewster and was eventually served with a memorandum dated 30 November 2020 informing of the appointment of Sergeant Bruce as the investigating officer. The intended claimant was thereafter charged with 4 offences.
21. It was stated that the intended claimant's case is that there have been irregularities in the intended defendant's disciplinary process under the Police Service Regulations resulting in delays in appointing an investigating officer and instituting charges. The intended claimant therefore contended that resultantly, he ought not to be the subject of any disciplinary proceedings.<sup>7</sup>
22. The intended defendants, in response, submitted that the authorities being relied on by the intended claimants are distinguishable from the instant case in that the delay in those cases constituted periods of 4 months and 6 years

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<sup>5</sup> Ibid.

<sup>6</sup> *American Cyanamid Company v Ethicon Ltd*

<sup>7</sup> The intended claimant relied on the authorities of *Anthony Leach v Public Service Commission HCA 1002 of 2004*, *Paula Barrimond v Public Service Commission HCA S1301 of 2005* and *R v The Chief Constable of the Merseyside Police ex parte Calveley [1986] QB 424* to form the basis that there has been unreasonable delay constituting an abuse of process

respectively whereas the instant case involves a time frame of 2 years and 5 months from the incident in appointing an investigating officer and 3 year 1 month from the incident in instituting charges against the intended claimant. Therefore, these are vastly different timeframes than the authorities which the intended claimants seek to rely upon on the issue of delay.

23. Additionally, the intended defendants stated that the authority of ***R v The Chief Constable of Merseyside Police ex parte Calveley***<sup>8</sup> where there was a delay of two years in serving notices of disciplinary action is similarly distinguishable as the crux of that case concerned whether the availability of an appeal constituted an alternative remedy which barred the application for judicial review.
24. Notwithstanding the aforementioned, the intended defendant acknowledged that there are serious questions to be considered about whether there was substantial compliance with the Police Service Regulations and whether there was any delay in the timeframe between the alleged incident and the appointment of an investigating officer and institution of charges against the intended claimant.

#### Adequacy of damages

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25. It was stated that where damages are an adequate remedy for the intended claimant, an interim injunction ought not to be granted. The intended claimant, in his relief, seeks damages for breaches of his constitutional rights.
26. The intended defendant submitted that damages would be an adequate remedy for the intended claimant and the interim relief ought not to be granted.

#### Balance of Justice/Convenience

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27. The intended defendants relied on the Court of Appeal decision of ***Jet Pak Services Ltd v BWIA International Airport Ltd (1998) 55 WIR 362***<sup>9</sup> where the Honourable de la Bastide, C.J. stated,:

*“...the question (was) whether the risk of injustice would be greater if he granted the injunction or if he refused it.”*

#### Prejudice to the applicant

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28. It was submitted that the intended claimant was well aware that the incident in question was being investigated and that he knew or ought to have known that he could possibly be preferred charges following the said investigations

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<sup>8</sup> [1986] QB 424

<sup>9</sup> Page 370



and a prudent police officer ought to have started preparing his possible defence, including tracking down his witnesses in support. Further, it is the duty of a prudent police officer to conduct proper investigations in all matters and keep a proper record of same as they are well aware that it is potential evidence in matters which often times, takes years. It was submitted that it was illogical and far reaching for the intended claimant to suggest that he cannot recall the details or cannot track down the witnesses.

29. The intended claimant asked the court to consider the particular charges against the intended claimant and note that the first three charges are squarely for the intended claimant to answer and does not involved the calling of any witnesses on his behalf. In respect of the last charge, any potential witnesses which the intended claimant may intend to call on behalf of the defence would be police officers and so it is incredulous for the intended claimant to put forward any argument that he is unable to track down any witnesses.
30. It was also submitted that should this court grant the interim relief being sought by the intended claimant to stay the disciplinary proceedings pending the determination of these proceedings, this will further add to the alleged delay and prejudice already being complained about by the intended claimant and be inimical to the intended claimant's best interest in having a fair trial. Moreover, there is no set time frame for the determination of these proceedings which has the possibility of being appealed all the way to the Privy Council and could therefore result in years of delay to determine the matter, resulting in an even more egregious delay and further prejudice.
31. The intended defendants submitted that there is no prejudice to the intended claimant in the interim relief being rejected and instead being subject to the disciplinary proceedings.

#### Strength of the respective cases

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32. The intended defendant stated that they are not in a position to discuss the strength of the respective cases without having had the opportunity to file any affidavit evidence on its behalf save to say that the cases that are being relied upon by the intended claimant as it relates to the issue of delay are distinguishable from the instant case.
33. Moreover, neither party has put forward any evidence before the court as to when this complaint came to the attention of the disciplinary officer under Regulation 156, Police Service Regulations to trigger the process. It is only at this point that the disciplinary process under this Regulation is triggered and from which any semblance of delay can be calculated.

## Public interest

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34. The intended defendant relied on the authority of *Smith v Inner London Education Authority*<sup>10</sup> and *ex parte Factortame*<sup>11</sup> to state that the balance of justice must be looked at more widely in public law applications for interim relief. The court must consider the interest of the general public to whom the public authority owes its duties.
35. It was stated that the first intended defendant has the jurisdiction to exercise disciplinary control over persons holding or acting in an office within the Trinidad and Tobago Police Service via section 123 of the Constitution of Trinidad and Tobago and Part XIII of the Police Service Regulations. It is no doubt in the public interest to ensure that the constitutionally mandated exercise of disciplinary control over officers within the Trinidad and Tobago Police Service is not unnecessarily inhibited.
36. Further, the integrity of the police service is fundamental to the effective preservation of law and order. Officers are held to the highest standards of honour and at all times, are to act in a manner which instils confidence in the police service. It is in the public interest to allow the intended claimant to go through the disciplinary process and have the opportunity to present his defence and clear his name, as opposed to having a cloud of suspicion looming over him and his career within the police service.

## Related matter of CV2021-02561

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37. The matter of *CV2021-02561 Vickram Maharaj v Commissioner of Police and Attorney General of Trinidad and Tobago* is a related case stemming from the same incident in this case.
38. At the hearing at the interim relief application that was held on 18 August 2021, it was stated that the issues of delay complained about by the intended claimant in those proceedings could be made before the disciplinary tribunal, which in any event had already begun and was set to be heard again very shortly thereafter on the 23 August 2021. The court declined to grant the interim relief sought in this related matter.

## Conclusion

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39. The intended defendant acknowledged that this matter is one that involves a serious issue to be considered and submitted that the balance of justice is in favour of not granting the interim relief as to do so would further add to the alleged delay and prejudice already being complained of by the intended

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<sup>10</sup> [1978] 1 All ER 411

<sup>11</sup> Supra

claimant and be inimical to the intended claimant's best interest in having a fair trial.

40. Moreover, the intended defendants stated that the intended claimant's argument concerning his inability to remember the incident or call witnesses ought to be rejected as the intended claimant prejudiced his own defence by not taking such measures from the onset. Furthermore, as accepted by the Honourable Justice Donaldson-Honeywell in the related case of **Vickram Maharaj**, the issues of delay being complained about by the intended claimant in those proceedings could be made before a disciplinary tribunal, which in any event, had already begun and in which the intended claimant has been and continues to be represented by Counsel.
41. Furthermore, as it relates to the public interest considerations, the Court must ensure that the constitutionally mandated exercise of disciplinary control over officers within the police service is not unnecessarily inhibited. This is imperative in order to uphold the standards of honour and integrity expected of and to instil public confidence in police officers within the police service. The intended defendants submitted that application for interim relief be dismissed with no orders as to costs.

#### **The intended claimant's submissions in reply**

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42. In response to the intended defendant's submissions that the current case is distinguishable from the learning in **Anthony Leach v Public Service Commission HCA 1002 OF 2004**, **Paula Barrimond v Public Service Commission HCA S1301 of 2005** and **R v Chief Constable of the Merseyside Police ex parte Calveley [1986] QB 424**, it was stated that the submission fails to consider that the delays in the cases of Leach and Barrimond related primarily to the delay in deciding whether disciplinary charges would be laid. Regulation 90 (vi) of the Public Service Regulations which prescribed the disciplinary procedures in both cases did not provide any timeframe within which the decision to charge must be made.
43. It was stated that in the case of **Leach**, her ladyship, drew the distinction between the delay and in deciding whether to lay charges and the delays in both the making of the investigating officer's report as well as in informing the applicant of the charges laid against him. In considering the delays and the effect they had, her ladyship also considered the authority of **Hubert Charles v The Judicial and Legal Service Commission and the Disciplinary Tribunal**<sup>12</sup>

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<sup>12</sup> Privy Council Appeal No. 26 of 2001

where it was held that these shorted delays did not in and of themselves vitiate the entire proceedings.

44. It was stated that the primary delay being complained of in the current case is the delay of approximately 2 years and 5 months in the appointment of an investigating officer. As per Regulation 156 (3) of the Police Service Regulations, the investigating officer is to be appointed within 7 days and the delay in appointing an investigating officer is therefore not the type of delay upon which the decisions in Barrimond and Leach were arrived at, but rather, the type to which a clear expressed statutory time frame was attached. Therefore, this court must discern between the delays encountered throughout the disciplinary procedure and determine whether any of those delays had the effect of rendering these proceedings an abuse of process.
45. It was the intended claimant's submission that the delay in appointing the investigating officer far exceeded the expressed statutory timeframe for doing so and this delay is in and of itself enough to render the entire proceedings an abuse of process as it constitutes a significant departure of the statutory timeframe laid down by Regulation 156 (3).
46. As it relates to the authority of ***R v Chief Constable of the Merseyside Police ex parte Calveley***<sup>13</sup>, it was stated that the intended defendant's submission was a misunderstanding of the principle laid down.

#### The adequacy of damages

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47. It was stated that the award of damages claimed in this case is not a form of compensatory damages but rather vindicatory damages to recognise the breaches of the constitutional rights of the claimant.<sup>14</sup>
48. It was also submitted that the damages being claimed in this case cannot compensate the claimant for the prejudice he will suffer should this interim relief not be granted. The nature of the relief claimed is such that a monetary award of damages cannot serve to compensate the claimant herein in the same way that an award of damages may be adequate in another setting.
49. As it relates to the issue of the failure to address the strength of the respective cases by the intended defendants, the intended claimant stated that the court ought to find that the claimant has a very strong case. Further, that under Regulations 156 (2) and (11), the manner in which complaints are to be brought to the attention of the disciplinary officer are addressed.

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<sup>13</sup> [1986] QB 424

<sup>14</sup> The intended claimant relied on the authority of *Felix Durity v The Attorney General* [2008] UKPC 59

50. It was stated that whether the complaint made comes to the attention of a junior officer or a senior officer, it is to be reported to the disciplinary officer “as soon as possible” or “immediately”. The incident in question occurred on 9 June 2018 and the evidence shows that as early as 14 June 2018, a memorandum explaining the incident was issued to the Senior Superintendent Professional Standards Bureau. As early as 23 June 2018, the claimant had been suspended pending an investigation into the matter by the Commissioner of Police and the disciplinary office ought to have been made aware of the complaint in any circumstance before 23 June 2018.

#### Prejudice to the applicant

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51. It was stated that the intended defendant’s contention that the claimant cannot be prejudiced in the preparation of his defence before the tribunal by the delay as he ought to have tracked down witnesses and ought to know the details of the incident as a prudent police officer.
52. However, the intended claimant stated that this submission reverses the burden that is imposed by the disciplinary procedure set out in the Police Service Regulations. The responsibility to adhere to the regulations is that of the Police Service and it cannot be argued that the claimant ought to assume that there will be a delay in his case and task himself with tracking down witnesses to support his case early on. The Regulations set the standard that must be adhered to.
53. Further, that the claimant ought not to have assumed that he would be charged for any offences at all and more particularly for the offences for which he was charged. The claimant cannot track down witnesses or prepare his defence to a charge for which he does not know. The preparation of his defence is dependent on the case he will be called upon to defend.
54. It was also submitted that the intended defendants have failed to put forward any way in which they will be prejudiced at all by the granting of the interim relief. The claimant will continue to be suspended as he has been for over 3 years before any charge was laid. There is simply no prejudice to be suffered by the intended defendant on the granting of this interim relief and on this basis alone, the court ought to grant the interim relief sought.

#### Public interest

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55. It was submitted that the intended defendants were not concerned with the public interest of having the matter ventilated before the tribunal prior to the issuance of the pre action protocol letter which was necessitated by a delay of

2 years and 5 months in appointing the investigating officer and at stage, an ongoing delay in deciding whether any charges would be laid.

56. It was submitted that the court must consider the public interest in not allowing the tribunal to continue in circumstances where the claimant contends that, by virtue of the delay for which the first named intended defendant, its servants and or agents are at fault, the said tribunal no longer has jurisdiction. Therefore, it cannot be in the public interest to allow this public power to be exercised in such a manner.

## Discussion

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57. The court has considered the authorities relied upon by the intended claimant's attorney-at-law in relation to the issue of delay, along with the other authorities discussed:

**57.1. *Anthony Leach v Public Service Commission HCA 1002 of 2004***

- 57.1.1. This decision of Judith Jones J, as she then was, held that a 4 year delay in preferring charges was an abuse of process

**57.2. *Paula Barrimond v Public Service Commission HCA S1301 of 2005***

- 57.2.1. This matter was decided by the Honourable Mr. Justice Aboud as he then was.
- 57.2.2. The court is of the respectful view that this matter is certainly distinguishable from the one before this court. In Barrimond, one of the major distinguishing features was the fact that the claimant in that matter was not suspended.
- 57.2.3. An investigating officer had been appointed within 6 months of the incident that was the subject of the investigation and the claimant responded to his request for an explanation within a week of that request. She heard nothing about any further steps being taken until about 4 and three-quarter years after she had submitted her explanation. It seems therefore that there was nothing to have engaged her mind actively that there was anything still amiss for that extended period of time.
- 57.2.4. In this case before this court, the applicant was suspended and has remained on suspension and therefore ought to

have known that the process was still ongoing in a manner which could possibly lead to charges being laid.

**57.3. *R v The Chief Constable of the Merseyside Police ex parte Calveley [1986] QB 424***

57.3.1. In this case, complaints were made against 5 police officers but no formal notice of the complaints were given to the officers until approximately 4 ½ years later. At their disciplinary hearing, a submission that the delay had caused the officers to be irremediably prejudiced in that records and logs had been routinely destroyed was rejected. A hearing was conducted and they were found guilty. The officers had a right of appeal against that decision which they exercised.

57.3.2. However, before the appeal was heard, they also applied for judicial review of the decision and that application was refused on the ground that there was this alternative appeal procedure.

57.3.3. At the appeal of that refusal, the court held that even though there was an alternative remedy, the court had to consider, as well, the speed of the alternative procedure, whether it was as convenient and whether the matter depended on some particular or technical knowledge available to the appellate body amongst other things. In this case, the appeal of the decision to refuse the application for judicial review was granted despite the fact that there was the alternative remedy of an appeal because, despite the expertise of the appeal Tribunal, the delay of over 2 years before the service of the regulation 7 notices was a serious departure from the disciplinary procedure and that justified the grant of judicial review.

58. In this case, in considering whether or not the court should grant interim relief, the court has also considered the nature of the charges that have been preferred. The court has also considered all of the submissions and the affidavits in support.

59. By Memoranda dated 21st July 2021, the Intended Claimant was charged with the following four offences:

59.1. “Being an Accessory to a Disciplinary Offence” contrary to Regulation 150(2)(p), Police Service Regulations 2007; that is to say, you the said No. 20093 Police Constable AUSTIN on Saturday 9th June 2018 at Galfa

Beach, Cedros connived with No. 19085 Police Constable MCALPIN to drive motor vehicle PDK 6837 along the said Galfa Beach resulting in damage to vehicle PDK 6837 the property of the Service, which was entrusted in the care of the said No. 19085 Police Constable MCALPIN;

- 59.2. "Neglect of Duty" contrary to Regulation 150(2)(d)(iv), Police Service Regulations 2007; that is to say you the said No. 20093 Police Constable AUSTIN on Saturday 9th June 2018 being attached to the South Western Division Task Force Area West and detailed to perform mobile patrol duty along the main areas of the Cedros Police District with No. 8870 Special Reserve Police Constable JOSEPH in vehicle PDE 2463, did leave your place of duty and proceeded to Galfa Beach in vehicle PDK 6837 without due permission or sufficient cause;
  - 59.3. "Neglect of Duty" contrary to Regulation 150(2)(d)(iv), Police Service Regulations 2007; that is to say you the said No. 20093 Police Constable AUSTIN on Saturday 9th June 2018 being attached to the South Western Division Task Force Area West and detailed to perform mobile patrol duty along the main areas of the Cedros Police District with No. 8870 Special Reserve Police Constable JOSEPH in vehicle PDE 2463, did leave your place of duty and proceeded to Galfa Beach along with No. 18579 Police Constable MAHARAJ and No. 19085 Police Constable MCALPIN in vehicle PDK 6837 without due permission or sufficient cause;
  - 59.4. "Disobedience to Orders" contrary to Regulation 150(2)(c), Police Service Regulations 2007; that is to say you the said No. 20093 Police Constable AUSTIN on Saturday 9th June 2018 being attached to the South Western Division Task Force Area West and detailed to perform duty in the Cedros Police District without good and sufficient cause disobeyed the lawful instructions given to you by No. 16272 Police Sergeant ALI that you are not to leave the main areas of Cedros to assist any other officers, section or agency without first informing the officer in charge of the Task Force or another senior officer of whatever information or assistance is needed.
60. The applicant has contended in his affidavit that his defence to the charges would be prejudiced because of the passage of time and he gave examples:
- 60.1. That he cannot remember every single detail of the incident. However, the court notes that he gave an explanation in writing on 14 June 2018 – 5 days after the incident. The court also notes that the applicant is a police officer who is or ought to be familiar with the Police Standing Orders and, in any event, would be familiar with the need to make a



contemporaneous note of the events which occurred on 9 June 2018. This therefore does not seem to be a substantial actual matter of prejudice;

60.2. He is unable to track down any witnesses to the incident. He said that there were witnesses who would have seen the attempts made to free the vehicle and he cannot locate them to give evidence on his behalf. Even if he were able to locate them, it is unlikely that they would remember the incident clearly. In this case, however, the court notes the nature of the charges made against the applicant. They mostly hinge on the applicant's failure to follow orders and it may well be that the attempts to free the vehicle may have arisen as a result of any such failure to follow orders but, as it stands, it seems as though the consequence of the failure to follow orders is not the main thrust of all of the charges laid. On that note, however, the court notes the charge of being an accessory to a disciplinary offence and also notes that the issue of damage to the vehicle in question is an ingredient of it. However, this is one of four charges laid and it is premature, in this court's respectful consideration, for this court to enter into the minds of the prosecutor and the decision-maker (s) to determine at this preliminary stage whether that charge will be proceeded with and what the process of the disciplinary hearing would result in. Of course, the tribunal hearing the disciplinary charges may be best positioned to hear and consider any application arising out of delay.

61. However, the court's concern at present is with respect to the application of regulation 156 of the Police Service Regulations which provides as follows:

*(11) Where an officer finds an officer of a lower rank than him committing a disciplinary offence or receives a report from another officer or a member of the public, the senior officer shall warn the officer in writing that he may be charged for a disciplinary offence and shall refer the matter to the disciplinary officer immediately.*

62. In this case, so far, and without further information as yet, this sub-regulation (11) seems to be the starting point. Of course, the regulations are the foundation for any act that follows and it sets seemingly mandatory timelines for the process:

*(3) The disciplinary officer shall, within seven days from the date he is informed of the complaint under subregulation (2) or (11), appoint an investigating officer who shall give the officer concerned a written notice stating the specific nature of the complaint, that the matter shall be investigated and the officer concerned may, within seven days of*

*receipt of the written notice, give to him an explanation in writing concerning the complaint.*

....

*(5) Subject to subregulation (6), the investigating officer shall promptly but not later than thirty days after his appointment investigate the matter, produce a report of his investigations and forward the report to the disciplinary officer.*

*(6) The investigating officer may apply to the disciplinary officer during the time specified in subregulation (5) for an extension of time but shall not be granted an extension exceeding thirty days to forward his report to the disciplinary officer.*

.....

*(9) Where the disciplinary officer, based on the results of the investigation under subregulation (3), finds that there is substance in the complaint he shall cause the officer concerned to be charged for any disciplinary offence disclosed and refer the matter to the disciplinary tribunal not later than twenty days from the date of the charge.*

63. As can be seen from the statutory provisions, the whole process is intended to be a fairly expeditious one – from the complaint, which requires an immediate referral to the disciplinary officer, to the appointment of an investigating officer, which is required to be done within 7 days of being informed, to the preparation of the investigation report, which, at the maximum, has to be prepared 60 days thereafter, to the charge and the referral of the matter to the disciplinary tribunal not later than 20 days from the date of the charge. One can easily see this whole process being completed within 90 days potentially.
64. In the case before this court at present, those 90 days have long since expired and we are approximately 1008 days past that 90 day mark. The court will have to consider the effect of the failure to maintain those timelines and whether that amounts to procedural irregularities and abuse of process in particular under the judicial review regime, and breaches of due process and other constitutional rights. If those rights have been breached, then it is likely that the failure to act within the times prescribed by law may have so tainted the process that that, notwithstanding any failure to show actual prejudice, the very act of inexcusable delay and procedural irregularity may be irremediable prejudice in itself.
65. In any event, the court would have to consider whether the intended first defendant would have any recourse available to him where he is in breach of

the provisions of the regulations. In other words, where Parliament has provided time frames for the completion of certain processes and that intended defendant, through his functionaries, has failed to comply with those processes, does that intended defendant have any jurisdiction to proceed? Is there, for example, any power or jurisdiction or even discretion to extend the time frames which have been set out by Parliament? Can the intended defendants bypass those time frames with impunity upon the reliance that the intended claimant would not suffer actual prejudice? Is actual prejudice alone the sole consideration to be taken into account in relation to the intended respondent's apparent failure to comply with the provisions of the law?

66. All of these questions that the court has raised, and others that may arise, are matters which have to be resolved after all of the evidence has been presented and proper arguments made.
67. It is an important point since suspensions with pay under Regulation 152 means that a police officer such as the intended claimant remains as an officer receiving a salary but without doing any work in return, arguably, to the detriment of the taxpayer and the State in a circumstance where Parliament intended such a recourse to be expeditiously handled and determined. Therefore, the public interest of having that issue resolved must also be balanced against the public interest of calling the intended claimant to account and possibly be disciplined for his actions.
68. If the process is so tainted as mentioned above, then there may be no jurisdiction for any tribunal to act upon in relation to this intended claimant. As a result, waiting until the outcome of that tribunal hearing would not only cause greater inconvenience and cost to the intended claimant and the intended defendants for having gone through a process and incurred litigation costs unnecessarily but would also be a recipe for further litigation. As a matter of fact, the court is of the respectful view that the determination of the impact of the failure to abide by the statutory provisions is a necessary prerequisite to the validity of any action before the tribunal. Respectfully, as was recognized in the case of *Calveley*, such an argument is a technical one notwithstanding the obvious competence of the tribunal. In this case, constitutional rights arise for determination as well and the greater risk of prejudice lies in not granting the relief since the court will be turning a blind eye to a possible breach of the law and the Constitution.
69. As a result, considering all of the authorities and principles involved, the court is of the respectful view that there is a serious question to be tried and the greater risk of prejudice is in not granting the interim reliefs sought.

## The Order

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70. Leave is therefore granted to the intended claimant to commence judicial review proceedings against the intended defendants for the following reliefs:

70.1. Against the first defendant:

70.1.1. A declaration that the suspension of the intended claimant for a period of more than 3 years without the preferment of any charge is unreasonable, illegal, procedurally improper, unfair and amounts to an abuse of power;

70.1.2. A declaration that there has been unreasonable delay on the part of the first intended defendant, its servants and or agents in appointing an investigating officer;

70.1.3. A declaration that it is an abuse of process and procedurally unfair for the first intended defendant, its servants and or agents after a delay of more than 2 years and 5 months to appoint an investigating officer;

70.1.4. A declaration that it is an abuse of process and unfair to charge the intended claimant now, or at any time in the future, in light of the fact that more than 3 years that have elapsed because of the inaction of the first named defendant, its servant and or agents;

70.1.5. An order of certiorari to remove to this court and quash the disciplinary charges laid against the intended claimant;

70.1.6. An order permanently staying the disciplinary proceedings against the intended claimant;

70.1.7. An order of mandamus directing the first intended defendant to reinstate the intended claimant into the police service because there is no lawful basis for his continued indefinite suspension;

70.1.8. Such further or other reliefs as this Honourable Court may deem fit in the circumstances of the case;

70.2. Against the second intended defendant:

70.2.1. A declaration that the suspension of the intended claimant for a period of more than 3 years without the preferment of any charge is in breach of the intended claimant's constitutional rights under sections 4(b) and 5(2)(h) of the Constitution;

- 70.2.2. A declaration that the appointment of the investigating officer after a delay of more than 2 years and 5 months constitutes a breach of the intended claimant's constitutional rights under sections 4(b) and 5(2)(e) and (h) of the Constitution;
  - 70.2.3. An order that monetary compensation including vindictory damages be paid to the intended claimant for the breach of his constitutional rights;
  - 70.2.4. An order that the second intended defendant do pay the intended claimant's costs of his claim to be assessed by the Registrar of the Supreme Court in default to agreement; and
  - 70.2.5. Such further or other relief as this Honourable Court may deem fit in the circumstances of the case.
- 71. Such leave is conditional upon the intended claimant filing his claim for judicial review within 14 days of the date hereof.
  - 72. Permission is granted to the intended claimant to rely upon his affidavits filed in these proceedings on 7 August 2021 and 17 August 2021.
  - 73. It is further ordered that interim relief is granted in favour of the intended claimant as follows:
    - 73.1. The intended defendants are restrained from taking any steps under disciplinary procedures of the Police Service Regulations in relation to the intended claimant until the hearing and determination of this matter or until further order;
    - 73.2. Costs of this notice of application for leave and for interim relief shall be the intended claimant's costs in the cause.
  - 74. A case management conference is fixed for Tuesday, 23 November 2021 at 9 AM by virtual hearing.

/s/ D. Rampersad J.

Assisted by  
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Judicial Research Counsel