IN REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CA No. 29 of 2006

IN THE MATTER OF AN APPLICATION BY CHANDRESH SHARMA OPPOSITION MEMBER OF PARLIAMENT FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PURSUANT TO THE PROVISIONS OF THE JUDICIAL REVIEW ACT 2000

BETWEEN

CHANDRESH SHARMA

Appellant

AND

DR. LENNY SAITH
MINISTER OF PUBLIC ADMNISTRATION AND INFORMATION

Respondent

PANEL: **R. Hamel-Smith J.A.**
W. Kangaloo J.A.
A. Mendonca J.A.

APPEARANCES: Mr. A. Ramlogan and Ms. C. Bhagwandeen for the Appellant
Mr. Hosein, SC., Mr. C. Sieuchand and Ms. K. Reid for the Respondent

Date of Delivery: June 9th, 2008

I agree with the judgment of Mendonca J.A. and have nothing to add.

R. Hamel-Smith
Justice of Appeal

I too agree.

W. Kangaloo
Justice of Appeal

JUDGMENT

Judgment delivered by Mendonca J. A.

1. This is an appeal from the Judge's dismissal of the Appellant's application for judicial review. The application relates to the Respondent's obligation under section 40(1) of the Freedom of Information Act (The Act) to prepare after the end of each year a report on the operation of the Act during that year and to cause a copy of the report to be laid in both Houses of Parliament and to do so as soon as practicable.

2. The background facts and circumstances are fairly straightforward. I will start by referring to the dates the Act came into operation The Act was assented to on November 4th, 1999 and provided that it should come into force on such date as was fixed by the President by proclamation (see section 2). The Act however was proclaimed on a piecemeal basis. Parts I and II of the Act were proclaimed on November 20th, 2000 and April 30th, 2001 respectively and the remainder of the Act, including Part V in which Section 40 falls, was proclaimed on August 30th, 2001.

3. The Appellant was at all material times a member of the opposition party, the United National Congress (UNC) and an elected member of the House of Representatives. He was charged by the UNC with the responsibility of monitoring the implementation and operation of the Act. By February 16th, 2005, the Respondent had not caused to be laid in Parliament the report on the operation of the Act contemplated by section 40(1) for any of the years in which the Act was in operation. By letter dated February 16th, 2005 the Appellant "in his capacity as a citizen, opposition member of Parliament and taxpayer" wrote to the Respondent. The Appellant stated in the letter that he had received numerous complaints from his constituents that a large number of public authorities had not complied with the requirements of Part II of the Act and that his research had substantiated this. He further noted that under section 40 it was the obligation of the Respondent as the relevant Minister to report on the operation of the Act and to cause a copy of the report to be laid in each House of Parliament but according to "his records" this had not been done. He inquired of the Respondent whether a report had ever been laid in Parliament concerning the operation of the Act and if not the reasons for his "neglect of duty". The Appellant also inquired of the Respondent when he intended to lay the report for 2005. The reference to this year however was clearly an error and what the Appellant intended to inquire about was the report for 2004.

4. The Respondent replied to Appellant's letter by letter dated February 23rd, 2005 indicating that he had prepared a report for the period 2001 to 2003 which he intended to shortly submit to Cabinet and thereafter lay in both Houses of Parliament. The Respondent made no reference to the 2004 report.

5. The Appellant by letter dated March 15th, 2005 wrote to the Respondent in response to his letter February 23rd, 2005. The Appellant stated that is was commendable that the report for the years 2001 to 2003 had been prepared but noted that the Respondent had not answered his query regarding the 2004 report. This letter however went unanswered.

6. The Appellant again wrote to the Respondent on April 7th 2005, complaining that the reports for 2001 to 2003 were not yet laid in Parliament and that he had received no response as to when the 2004 report would be ready. The Respondent again did not reply to the Appellant's letter.

7. On June 8th, 2005 the Appellant applied for judicial review pursuant to leave granted on that day. The Appellant sought (a) an order of mandamus directing that the Respondent prepare a report on the operation of the Act for any and all of the years 2001 to 2004 inclusive and cause a copy of same to be laid before each House of Parliament in accordance with section 40 of the Act; and (b) declarations that (i) the Respondent acted illegally and in breach of section 40 of the Act and (ii) that the Respondent was guilty of unreasonable delay in the performance of a statutory duty under section 40 of the Act.

8. Before the matter came on for hearing before the trial Judge, the Respondent however completed the reports for the years 2001 to 2004 inclusive and caused them to be laid in both Houses of Parliament. The relevant dates that the reports were laid in Parliament are as follows: for the years 2001 to 2003 the report was laid before both Houses of Parliament by June 17th 2005. Reports for these years were contained in one document, which detailed the operation of the Act for each of the relevant years. For the year 2004 the report was laid before both Houses of Parliament by November 16th, 2005.

9. The Judge heard the Appellant's application in February 2006 and in a reserved judgment delivered on March 6th, 2006 dismissed the application. He noted that the Appellant had applied in his own right for judicial review and had not made the application in the public interest. The Appellant however had not established that his interests were aversely affected and accordingly lacked sufficient standing to make the application for judicial review. In any event the Judge was of the opinion that the Respondent was not in breach of section 40. The Judge was of the view that the reasons advanced by the Respondent for the failure to complete the reports and have them laid in Parliament before the time that he did were good reasons or reasonable grounds that made it impracticable for the Respondent to do so sooner than he did. Further the Judge

was of the opinion that even if the Appellant were able to establish sufficient standing and that there had been a breach of section 40 of the Act, this was not a case that justified the grant of declaratory relief.

10. The Appellant now appeals to this Court. The Appellant contends that the Judge erred when he concluded that the Appellant did not have standing to make the application for judicial review. The Appellant also submits that the Respondent was in breach of section 40 of the Act. The Appellant conceded that as the reports were filed before the judgment in the matter mandamus was no longer available but he argued that the court should grant the declarations sought to ensure that the "Minister understood the compulsory nature of the section 40 obligation".

11. I turn to the question of standing. The Judicial Review Act (JRA) makes express provision as to the basis upon which an applicant may assert that he has standing to pursue an application for judicial review. Broadly speaking there are three bases on which an applicant may assert that he has standing.

12. The first and perhaps the most common basis is where the applicant claims that his interest is adversely affected. This may be described as personal standing since the applicant makes the application to protect his own interests that are adversely affected by the decision which is the subject of the complaint. This can be seen from section 5 (2) (a) and section 6 of JRA which are as follows:

> 5(2) The Court may, on an application for judiciary review, grant relief in accordance with this Act –
>
> (a) to a person whose interests are adversely affected by the decision.

> 6(1) No application for judicial review shall be made unless leave of the Court has been obtained in accordance with the Rules of Court.
>
> (2) The Court shall not grant such leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

13. The next basis may be described as public interest standing. The relevant provisions here are sections 5(2)(b) and section 7(1) which provide as follows:

> 5(2) The Court may, on an application for judicial review, grant relief in accordance with this Act –
>
> (b) to a person or group of persons if the Court is satisfied that the application is justifiable in the public interest in the circumstances of the case.
>
> 7(1) Not withstanding section 6, where the Court is satisfied that an application for judicial review is justifiable in the public interest, it may, in accordance with this section, grant leave to apply for judicial review of a decision to an applicant whether or not he has a sufficient interest in matter to which the decision relates.

14. As is apparent from these sections even if an applicant does not have a sufficient interest in the matter to which the decision relates such as would give him personal standing under section 5(2)(a), the Court can allow him to pursue an application for judicial review if it is satisfied that the application is justifiable in the public interest. It should be noted that the Court may allow an applicant to pursue an application for judicial review on the public interest standing basis even if the applicant has a sufficient interest to make the application under section 5(2)(a). In considering whether the application is justifiable in the public interest the Court may take into account any relevant fact including those specifically outlined in section 7(7). Where an applicant seeks to pursue an application on the basis of public interest standing sections 7(2) to 7(6) of the JRA set out a procedure that should be followed.

15. The third basis on which an applicant may assert that he has standing to make an application for judicial review is where he makes an application on behalf of a person or group of persons aggrieved or injured by reason of any ground referred to in paragraphs

(a) to (o) of section 5(3) but who is unable to file an application on account of poverty, disability or a socially or economically disadvantaged position. This is provided for in section 5(6) of the JRA which is as follows:

> 5(6) Where a person or group of persons aggrieved or injured by reason of any ground referred to in paragraphs (a) to (o) of subsection (3), is unable to file an application for judicial review under this Act on account of poverty, disability or socially or economically disadvantaged position, any other person or group of persons acting bona fide can move the Court under this section for relief under this Act.

16. This standing may be described as Good Samaritan standing as the applicant is not seeking to protect any interest of his own but is seeking to protect the interest of another person or group of persons who is unable for the reasons set out in section 5(6) to seek to protect his or their own interest. An applicant who is acting as a Good Samaritan receives the protection of section 7(8) of the JRA against an award of costs. This section provides as follows:

> 7(8) Where an application is filed under section 5(6), the Court may not make an award of cost against an unsuccessful applicant, except where the application is held to be frivolous or vexatious.

Thus a Good Samaritan may not be liable for costs except where the application is held to be frivolous and vexatious.

17. In this case there is no dispute that the Appellant was granted leave to apply for judicial review on the basis that he had personal standing. To obtain relief he had to establish that his interests were adversely affected. As I mentioned the judge concluded that the Appellant had not demonstrated that his interests were adversely affected. In determining whether the Judge was correct so to hold, it is necessary to consider the

nature of the breach complained of and whether it has adversely affected any of the Appellant's interests.

18. I have already mentioned that the Appellant was at all material times a member of the opposition party, the UNC, and a member of the House of Representatives. The Appellant deposes to the fact, which is uncontradicted, that he was charged by the "opposition UNC for monitoring the implementation and operation of the Act". Section 40(1) requires the Minister as soon as practicable after the end of each year to prepare a report on the operation of the Act and have it laid in Parliament. It is clear that for someone wishing to monitor the implementation and operation of the Act that the information required to be included in the report is important to the task. The information includes the following: the number of requests made to each public authority (see section 40(3)(a)), the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of the Act under which the decisions were made and the number of times each provision was invoked (see section 40(3)(b)), the number of applications for judicial review of decisions under the Act and the outcome of those applications (see section 40(3)(c)), the number of complaints made to the Ombudsman with respect to the operation of the Act and the nature of the complaints (see section 40(3)(d)), the particulars of any disciplinary action taken against an officer in respect of the administration of the Act (see section 40(3)(f)), and any other facts which indicate an effort by public authorities to administer and implement the spirit and intention of the JRA (see section 40(3)(i)). It is therefore impossible to say that the interests of the Appellant, who is charged with the task as an opposition member of Parliament of monitoring the implementation and operation of the Act, would not be adversely affected by the unavailability of the report as soon as practicable which is the breach complained of. As the Appellant stated, "as opposition MP the legitimate right to access government information is crucial to the proper performance of my duties." Of course the reports were eventually made available but in my judgment that does not affect the question of standing since the reports were relevant to the task of monitoring the implementation and operation of the Act the late provisions of the reports would also affect that task.

19. It seems to be therefore that the Appellant had personal standing in this matter. Counsel for the Respondent submitted that the Appellants' remedy in a matter such as this is really access to Parliament where the Appellant can have recourse to certain Parliamentary procedures. That may be an option open to the Appellant but in this case it is also open to the Appellant to have access to the Court to complain that the Respondent has acted in breach of the law. As Lord Diplock stated in ***Inland Revenue Commissioners v National Federation Of Self-Employed and Small Businesses Ltd*** [1982] A.C. 617, 644:

> It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards the efficiency and policy, and of that Parliament is the only Judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only Judge.

20. Counsel for the Appellant submitted that even if this was not a case of personal standing that it was open to the Court to entertain the application and to grant relief on the basis that the application is justifiable in the public interest notwithstanding that the procedure outlined in sections 7(2) to 7(6) was not followed. As this Court has found that the Appellant had personal standing it is not necessary to decide that point. I think that question is best left for the case in which it arises. I however wish to say that nothing in this Court's decision in Civil Appeal 67 of 2005 ***Dennis Graham v The Commissioner of Police*** is to be taken as deciding that where leave is granted to the applicant to pursue an application for judicial review on the basis of personal standing then notwithstanding that the section 7 procedure was not followed, the Court may treat the application as one made in the public interest and grant relief on that basis. ***Graham*** was a case where the appellant like here, established that he had personal standing and decided that the Court should not have dismissed the application on the basis that he had no such standing.

21. The next question is whether there was a breach of section 40 of the Act by the Respondent. It is convenient here to set out section 40(1), which contains the responsibility of the Respondent to prepare an annual report and have it laid before both Houses of Parliament.

> "40 (I) The Minister shall, soon as practicable after the end of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the Parliament."

22. Counsel submitted that the Respondent was in breach of section 40(1) for two reasons. First that the report for the years 2001 to 2003 was contained in one document and second the report was not prepared and laid in Parliament as soon as it was practicable to do so.

23. As to the first reason advanced by Counsel I see no merit in it. The fact that the report for one year may be contained in one document along with reports for other years does not mean that it is not a report for the purpose of section 40(1). The real question is whether the reports were prepared and laid in Parliament as soon as practicable. This therefore brings us to Counsel's submission that the reports were not prepared and laid as soon as practicable.

24. With respect to this submission it is necessary to consider what is the obligation created by the section. The obligation is to prepare a report on the operation of the Act for each year and cause it to be laid in Parliament as it is practicable to do so after the end of that year. The word "practicable" is defined in the ***Oxford Dictionary of English (2nd Edition)*** as meaning "able to be done or put into practice successfully". In ***Black's Law Dictionary (5th Edition)*** the word is defined as "that which may be done, practiced or accomplished, that which is performable, feasible or possible". In ***Lee v Nursery Furnishing Limited*** [1945] 1 ALL E.R.387 Lord Goddard accepted as the definition of

"practicable", "capable of being carried out in action" or "feasible". In the light of those definitions I think that section 40(1) of the Act requires the Minister to prepare an annual report and lay it in Parliament as soon as it is capable of being done after the end of each year. In assessing whether it is capable of being done regard must be had to all the relevant circumstances. Such circumstances would include financial considerations and the available resources. So far as the question of resources is concerned I agree with the approach in ***R v Secretary of State for the Home Department, ex parte Rofathullah*** [1989] QB 219 that the adequacy of the resources allocated to the task is to be determined on ***Wednesbury principles*** (see ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation*** [1948] 1 K.B.223. However in this matter no contention was raised relating to the adequacy of the resources allocated to the task of the preparation of the report. Another relevant circumstance is that the preparation of the report by the Respondent is in turn dependent on information provided to him by Ministers responsible for the public authorities that are subject to the Act (which from the evidence number 117). This is not to say that the Respondent may sit by and wait indefinitely for the information that he requires. He is expected in the discharge of his duties under section 40 (1), to take such steps reasonably open to him to have the information supplied to him. It should be noted that section 40(2) envisages that the Respondent may make regulations prescribing the requirements relating to the furnishing of information and the keeping of records for the purpose of section 40.

25. Counsel for the Appellant submitted that this Court should set a time period by which the Minister should complete the report and have it laid in Parliament. He suggested that a period of no more than six months would be reasonable so that any report after this was not prepared and laid as soon as it was practicable to do so. It is of course not possible to do so as what is practicable depends on the circumstances. The relevant circumstances that impacted on the Minister's obligation under section 40(1) in any given year may have made it impracticable for him to prepare the report within the time period suggested by the Appellant.

26. In this case the Respondent gave an explanation why the reports were not prepared sooner and contends that they were in fact prepared and laid in Parliament as soon as that was practicable. It is therefore necessary to review the explanation provided by the Respondent to determine whether the reports were prepared and laid in Parliament as soon as practicable, or as soon as that was capable of being done, after the end of the year to which the report relates.

27. The explanation of the Respondent is contained in the affidavit evidence of Donna Ferraz. She deposes to the fact that she is the Acting Director of the Public Service Transformation Division, which, as will appear below, is now responsible for the preparation of the section 40 reports. She states that in anticipation of the responsibilities imposed by the Act, Cabinet agreed on November 1st, 2000 that the Freedom of Information Unit be established. The Unit was established in May 2001 and the responsibilities of the Unit included the compilation of statistics on the operation of the Act and the sensitization of public authorities as to the requirements of the Act.

28. Ms. Ferraz further states that with respect to section 40 reports the Unit needed to collect information from 117 public authorities as to their administration of the Act. In response to this need the Unit developed a manual return system to facilitate the collection of information on a quarterly basis and an electronic system to facilitate the storage of such information. The Unit also offered training opportunities to the public authorities with respect to their duties to monitor and report upon the administration of the Act. Further in February 2003, the Unit distributed a comprehensive guide pertaining to the administration of the Act. However despite the efforts of the Unit to train personnel from the various public authorities as to their monitoring and reporting functions under the Act, certain public authorities remained unclear as to certain aspects of their duties. This, according to Ms. Ferraz, affected the timeliness and clarity of the information provided by the public authorities to the Unit. Consequently the time spent by the Unit in waiting for the information to be provided by the public authorities and in interpreting and clarifying the information affected the timeliness of the report.

29. The term of the Unit came to an end in September 2003. The Unit therefore lasted for approximately two years and four months but for that period the unit maintained its full compliment of staff for only one year and one month. The consequence of this according to Ms. Ferraz is that the collation and analysis of the information necessary for the preparation of the reports could not have been undertaken on a timely basis as would have been desired.

30. According to Ms. Ferraz it also became apparent to the Unit after it had functioned for an initial period that the system in place for the administration of the Act had to be re-assessed. In particular the information management system had to be improved. When the term of the unit came to an end in September 2003 its responsibilities were transferred to the Public Service Transformation Division. Ms. Ferraz stated this division has embarked on a project to improve the information management system.

31. It is in those circumstances that the Respondent claims the reports were prepared and laid in Parliament as soon as that was practicable.

32. It should be noted that the reports were prepared and laid in Parliament from eleven months to three and a half years after the end of the year to which they relate. To explain that time lapse requires cogent evidence. I am of the view that the evidence of the Respondent is not sufficiently cogent.

33. While it is appreciated form the evidence that some of the information relayed to the Unit by some public authorities was not sent and received in a timely manner, there is no mention of the time the information was in fact received and when received what efforts were made by the Unit to have it clarified and when those efforts were made. Without this information it is difficult to get an appreciation as to whether the reports could have been completed and laid in Parliament sooner than they were or in other words as soon as this was practicable.

34. Similarly with respect to the staffing of the Unit, the evidence does not reveal what, if any, steps were taken to fill the vacancies in the Unit. It is all well and good to say that the Unit did not have its full compliment of staff but that says nothing unless reasonable efforts were made to ensure that the unit was fully staffed and that these efforts proved futile.

35. As I mentioned according to the evidence of the Respondent, after the Unit had functioned for an "initial period" it became apparent that the system in place for the administration of the Act had to be re-assessed. However it appears that nothing was done in this regard until after the establishment of the Public Service Transformation Division, which only in October 2005, at the time Ms. Ferraz swore her affidavit, "now embarked" on the upgrading of the information management system. No explanation is given as to why this was not undertaken sooner despite the apparent need to do so.

36. The Division took over the responsibilities of the unit in September 2003 but there is really nothing in the evidence filed on the behalf of the Respondent to explain what difficulties the Division encountered and why the reports were not prepared by the Division sooner than they were.

37. Further according to the evidence the reports for the period 2001 to 2003 were prepared by February 2005. According to the Respondent's letter of February 23rd, 2005, the reports were prepared and were due to be submitted to Cabinet and laid in Parliament shortly. But the reports were not laid in Parliament until July 2005. There is no explanation for this further delay.

38. Having regard to all these circumstances in my judgment the evidence does not establish that the reports were prepared and laid in Parliament as soon as that was practicable or capable of being done after the end of each year. It seems to me therefore that the Respondent acted in breach of section 40 of the Act. The question that now arises is what relief, if any, should be granted in this matter.

39. As I already indicated the Appellant sought an order of mandamus directing the Respondent to prepare the reports for the relevant years and have them laid before Parliament. This relief was obviously not pursued as it would be pointless to compel the Respondent to do something that he has already done. With the respect to the declaratory relief sought by the Appellant as I mentioned earlier the Judge held that even if the Appellant had standing and the Respondent acted in breach of section 40 this is not an appropriate case to grant such relief. I think the Judge was correct to so conclude.

40. A declaration is of course a discretionary remedy and the Court will not grant such a remedy unless there is a need for the relief to be granted. The Court will not usually grant a declaration unless it has some current or future value and is not simply a comment on past events (see ***R v Secretary of State for the Environment, ex parte Nottinghamshire County Council*** (1986) The Times L.R. 586).

41. The Appellant argued that the declaratory relief sought should be granted to ensure that the Respondent understands the compulsory nature of the section 40 obligation and to vindicate the rule of law. There is no indication, despite claiming in these proceedings that section 40 was not breached, that the Respondent does not understand the compulsory nature of section 40. Indeed the evidence is that he appreciates this fact. He has produced the reports for relevant years and had them laid before Parliament. The report for each year was prepared and laid in Parliament sooner than the last. The Minister also recognizes the need for improvement in the timeliness of so doing. As Ms. Ferraz indicates in her affidavit the Respondent has taken steps to improve the efficiency of the information management system which will assist in the better creation and storage of information and should result in the faster retrieval of it and so the quicker preparation of the reports. Further Ms. Ferraz states:

> "In addition to its ongoing work of preparing reports under the [Act], the Division being mindful of the Ministry's responsibilities under the [Act] and having the benefit of the experience of its demands for the past four years, is in the process

> of developing recommendations for the setting up of an institutionally stronger establishment which is to be charged with administration and implementation of the [Act]. More particularly what is being proposed is the establishment of a fixed institutional framework which is to be peopled by officers recruited in a permanent basis. This is in recognition of the problems faced by the Unit which was set up as an immediate interim measure in response to the pressing demands of the [Act], and which comprises officers recruited on the basis of yearly contracts. The final recommendations of the Unit will form the subject of a Note to Cabinet."

In the circumstances I see no need to make the declarations for the reasons advanced by the Appellant.

42. Further as I noted what is practicable under section 40, depends on all the relevant circumstances. Therefore whether the report for any year was prepared and laid in Parliament as soon as practicable after the end of that year is dependant on the facts and circumstances then existing. The Minister, as is clear from the evidence, has encountered problems in the preparation of the reports but it is also clear that he has sought to address these problems and has taken steps to improve the efficiency of the preparations of the section 40 reports. It is not likely that the problems encountered in the initial years of the operation of the Act will present themselves in the future. It is therefore unlikely that the grant of the declarations sought here will be of any real practical utility in the future. As the Judge noted:

> "…because the nature of the inquiry is fact driven it is difficult to make any declaration to fasten future rights which themselves depend on the precise factual context of its case. (***see R v Secretary of State for Home Department, ex parte Salem*** [1999] 1 A C 450)."

43. In the circumstances in my judgment and in agreement with the views expressed by the Judge, this case is not appropriate for the grant of the declaratory relief sought.

44. On the question of costs the Judge made no order as to costs in the Court below. It has not been argued that in the event of an unsuccessful appeal that this order should be varied. However the Appellant has argued that even if unsuccessful on the appeal but if successful on the standing point or that section 40 was breached there should be no order as to costs on the appeal. I however do not agree.

45. The trial Judge refused the application for judicial review on three alternative grounds. He held that the applicant had no locus, and in any event there was no breach of section 40 and further even if the Appellant had locus and there was a breach of section 40 he was not entitled to relief. To succeed on this appeal the appellant had to persuade this Court that the Judge was wrong on all three bases. This would have been apparent to the Appellant at the outset of the appeal and indeed at the time of his decision to appeal. The Appellant in deciding to appeal and to pursue the appeal took on the risk of failure. This judgment has held that the Judge was correct to refuse to grant any relief although this Court has disagreed with him on the other two bases on which he based his judgment. At the end of the day the Appellant has not succeeded and I do not think that it is sufficient to say from the fact that he has persuaded the Court that two of the bases on which the judge based his decision were not correct, that the Court should depart from the general rule that costs follow the event.

46. In Civil Appeal 67 of 2005 ***Dennis Graham vThe Commissioner of Police*** this Court made no order as to costs on the appeal where the appellant had failed to persuade this Court that the Judge was wrong to refuse his application for judicial review. In that case the appellant's application for judicial review was refused by the trial Judge on the basis that he had no locus, that there was material non-disclosure and that the issue was by then academic. The trial Judge in those circumstances set aside the leave granted to apply for judicial review and ordered that costs be paid by the appellant to the respondent. Before this Court, the appellant successfully argued that he had the necessary standing to make the application and that there was material non-disclosure. The Court was of the view that the Judge should therefore have treated with the application on that

basis but was correct to refuse leave on the basis that the issue had become academic. However the Court held that if the Judge had correctly held that the Appellant had locus that should have affected the order as to costs made by the Judge and in those circumstances it was appropriate for the Judge to have made no order as to costs. This Court therefore varied the costs order made by the trial Judge. On question of the costs of the appeal the Court made no order as to costs as the appellant had achieved a significant result. Here however the circumstances are different. The Judge below made no order as to costs. The Appellant has failed in the appeal and has not achieved any different result in the Court below. I see no basis in this case to say that costs should not follow the event.

47. In the circumstances the appeal is dismissed with costs to be taxed and paid by the Appellant to the Respondent.

A. Mendonca
Justice of Appeal