[2014] JMSC Civ. 187

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2014 HCV02992

IN THE MATTER of an application by

Constable Pedro Burton for extension of time within which to apply for leave to apply for Judicial Review

AND

IN THE MATTER of leave to apply for

Judicial Review

AND

IN THE MATTER of the decision of the Commissioner of Police of November 17, 2011

Mr. Phillip Bernard instructed by Zavier Mayne & Company for the Applicant

Miss Tamara Dickens instructed by the Director of State Proceedings for the Respondents

IN CHAMBERS

Heard: 6th November, 2014 and 21st November, 2014

Judicial Review – Application for leave to apply for judicial review - Application to extend time to apply for leave - Reasons for delay - Whether good reasons exist to extend time - Whether arguable ground having a realistic prospect of success - Considerations for court's discretion - CPR 2002

DUNBAR-GREEN J(Ag.)

[1] The applicant, Mr. Pedro Burton, is a former constable of the Jamaica Constabulary Force (JCF).

[2] His original Notice of Application for leave to apply for judicial review was filed on the 19th day of June, 2014. This Amended Notice of Application for leave to apply for judicial review was filed on the 11th day of August, 2014.

[3] The reliefs sought are as follows.

(1) An order granting an extension of time within which to apply for leave to apply for judicial review.

(2) That leave be granted to file a Fixed Date Claim Form in support of an application for judicial review seeking the following remedies:

(a) an order of mandamus to compel the 1st Defendant to re-instate the applicant to the JCF;

(b) an order of certiorari to quash the decision made in or about November 17, 2011 to dismiss the Applicant as a member of the JCF;

(c) damages to compensate the applicant for his loss of income;

(d) further and such other relief as this honourable court deems fit; and

(e) costs to be costs in the claim.

[4] The applicant filed two affidavits in support of his notice of application. They are affidavits of Pedro Burton filed on June 19, 2014 and August 11, 2014.

[5] I have extracted from the affidavits the relevant background, as follows:

(a) The applicant was enlisted in the JCF on May 21, 1999.

(b) At about 11.00p.m. on September 7, 2006, he and a Corporal Reid were at a petrol station in Naggos Head, St. Catherine, when an incident occurred involving himself and two other police officers. Those officers were Detective Sergeant Patrick Walker and Constable Brennan Cohen.

(c) The applicant had observed a breach of the Road Traffic Act and Constable Reid used the service vehicle they were travelling in to block the path of the offending Nissan Motor car. As the Nissan reversed, the applicant alighted from the police vehicle, walked towards the Nissan and observed that the driver had a firearm on his lap. He pointed his M16 rifle at the Nissan and directed the driver to get out of the vehicle with hands in the air. The disgruntled driver identified himself as a police officer, had a conversation with

Corporal Reid and then left the scene along with a passenger who by then had joined him.

(d) A report was subsequently made by Sergeant Walker and Constable Cohen to Sergeants Allison and Richie at the Portmore Police Station, alleging that the applicant had alighted from a police vehicle which was used to block the path of a service vehicle in which they were travelling, and that the applicant pointed his firearm at their vehicle and said, "Pussy come out now". In the course of the event, he also reportedly said, "Me nuh care bout yu pussy hole rank, come out of de vehicle" and "gwan go do wah yu wan do, a my party in power, yu should a lucky say a yah so we deh".

(e) The applicant subsequently gave his version of the incident to Superintendent Terrence Bent, who instructed him to apologise to Detective Sergeant Walker and Constable Cohen.

(f) In November 2010, the applicant was instructed to submit a report on the incident . He complied on November 22, 2010.

(g) On or about March 8, 2011, the applicant was served with disciplinary charges which had been laid against him pursuant to Regulation 47 of the *Police Service Regulations, 1961* (The Regulations). (The Notice and charges are exhibited as PB1 in affidavit filed August 11, 2014)

(h) A Court of Enquiry was held between June 29, 2011 and October 5, 2011.

(i) On or about November 17, 2011 the applicant was served with notice that the charges against him had been proved and the Commissioner of Police (the Commissioner) had ordered his dismissal from the JCF.

(j) He appealed the decision of the Commissioner to the Privy Council within the time prescribed by the Regulations.

(k) He attempted to re-enlist as a member of the JCF in January 2014.

(l) On January 31, 2014 he was served with Notice of Suspension with effect from November 17, 2011.
(The Notice is exhibited as PB2 to Affidavit of August 11, 2014)

(m) On March 21, 2014 the dismissal was published in the weekly Force Orders.
(The extract is exhibited as PB3 to affidavit of August 11, 2014).

(n) Subsequently, the applicant was notified in letter dated March 17, 2014 that his appeal had been refused.
(The letter is exhibited as PB4 to affidavit of August 11, 2014).

[6] The applicant contends that when he met Superintendent Terrence Bent and was told to apologise that was the end of the matter. It is also his contention that at the Court of Inquiry he did not get an opportunity "to present a case to establish [his] innocence". Further, there had been an inordinate delay of five (5) years between the date of the alleged offence and the hearing. This, he claimed, was prejudicial and caused him hardship.

Extension Of Time

[7] The authority for granting an extension of time is provided in rule 56.6 of the Civil Procedure Code Rules (the CPR) which states as follows:

(1) An application for leave to apply for judicial review must be made promptly and in any event within three months from the date when grounds for the application first arose.

(2) However the court may extend the time if good reason for doing so is shown.

(3) Where leave is sought to apply for an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date on which grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings.

(4) Paragraphs (1) to (3) are without prejudice to any time limits imposed by any enactment.

(5) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to –

(a) cause substantial hardship to or substantially prejudice the rights of any person; or

(b) be detrimental to good administration.

[8] As one of the remedies to be sought is an order of certiorari to quash the decision of the Commissioner, the date on which the grounds for the application first arose must be determined. The CPR requires that an application for leave to apply for judicial review must be brought within three (3) months from the date when the grounds for the application first arose.

[9] On a proper construction of rule 56.6(1), the date of the impugned decision is the date when grounds for the application first arose. Accordingly, grounds for the application first arose from the decision contained in the Commissioner's letter of November 14, 2011, which was to take effect on the date when the applicant received the notice.

[10] The applicant deposed that he received the letter on November 17, 2011. Based on his evidence, the date on which grounds for the application first arose was November 17, 2011. Therefore, the limitation period for this application would have expired on February 17, 2012.

[11] The first application in this case was filed on 19th June, 2014. This was some thirty-one (31) months after the grounds for the application first arose. An amended application was filed on August 11, 2014 in which the applicant requested an extension of time for leave to apply for judicial review.

[12] This is undue delay. The CPR requires that the applicant make the application promptly and certainly within three (3) months. Where the application is not made within three (3) months it cannot prevail unless there is good reason to justify why an extension should be granted by the court. Ackner L.J. in **R v Stratford-on-Avon DC, ex p Jackson [1983]** 3 ALL ER 769, 744 expresses the effect of the rule in these terms:

> *...we have concluded that whenever there is failure to act promptly or within three months there is undue delay. Accordingly, even though the court may be satisfied in light of all the circumstances...that there is good reason for the failure, nevertheless the delay viewed objectively remains "undue delay"...*

[13] Counsel for the applicant submits that although the date of dismissal is the date on which grounds for the application first arose, the applicant had acted promptly to pursue the statutory remedy available to him and it was pursuit of that remedy which had delayed the application for leave to apply for judicial review. He relies on rule 56.3(3)(d) in conjunction with rule 56.6(3), and also **R v Commissioner of Police ex parte Detective Constable Glen Riley** 2013 HCV 00593 at paras 20-22.

Rule 56.3(3)(d) requires that an application for leave state –

> *whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;*

Rule 56.6(3) provides:

> *Where leave is sought to apply for an order of certiorari in respect of any...proceeding, the date on which grounds for the application first arose shall be taken to be the date of that... proceedings.*

[14] In **R v Commissioner of Police ex parte Detective Constable Glen Riley** Morrison J cited, with approval, the dictum of Lord Scarman in **Preston v Inland Revenue Commissioners [1995] 2 ALL ER 372** as authority that an applicant must exhaust alternative remedies before resorting to judicial review (para 22). Lord Scarman indicated that "It would only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision" (ibid, 372).

[15] Conduct in relation to exhaustion of remedies can therefore be advanced in favour of extending time for leave to apply for judicial review but it is not a basis on which to determine when time began to run against the defendant.

[16] The Director of State Proceedings (the DSP) contends that there was no proper evidence before this court of the alternative remedy which the applicant said he pursued. Whilst it is accepted that the applicant has not exhibited any document in relation to the process itself, I find that the letter of March 17, 2014, which advised that his appeal had been refused, is sufficient evidence of the fact that he did appeal the decision of the Commissioner.

[17] That letter, addressed to the applicant and purportedly signed by an Assistant Commissioner of Police, reads as follows:

> You are advised that pursuant to your appeal against conviction and penalty imposed by the Commissioner of Police relative to the

> Court of Enquiry which concluded on October 5, 2011, the Governor General, acting on the advice of the Privy Council, has ordered that:
>
> (a) the reference made by you should be refused; and
>
> (b) the appeal dismissed.
>
> You are therefore dismissed from the Jamaica Constabulary Force with effect from November 17, 2011.

[18] The court agrees with the applicant that if the reason for the delay in seeking leave to apply for judicial review is the exhaustion of the remedy available to him, that is a relevant factor for a favourable consideration of the application.

[19] But the court must also determine whether there was any delay in making the application subsequent to the alternative remedy being exhausted. Rule 56.6(1) makes promptitude an important consideration to the granting of leave. The word 'promptly' in rule 56.6(1) is not a dead letter and should not be ignored: **R (Young) v Oxford City Council** [2002] EWCA Civ 990, para. 38).

[20] The test of promptness is also an imperative in public law claims even more so than ordinary cases of civil litigation (**Civil Procedure Vol 1 The White Book Service (White Book)** 2011 para 54.5 referencing **R v Institute of Chartered Accountants in England and Wales Ex.p.Andreou** (1996) 8 Admin LR. 557). This is evident from cases that have established that even within the 3 months allowed for an application for judicial review, the court must satisfy itself that the application is prompt (see for example **R v Cotswold DC Ex p.Barrington Parish Council** *(1997)* 75 P & CR 515 at p 523 cited in White Book 54.5).

[21] The applicant exhibited the letter of refusal of appeal which was dated March 17, 2014 (PB 4). Counsel asserts that the dismissal letter was not received until early May

2014. It is established in law that it would be a good reason for the delay if an applicant were unaware of the decision but acted expeditiously once he became aware of it (see **R v Secretary of State for the Home Department Ex p. Ruddock** [1987] 1W.L.R. 1482.

[22] However, counsel's assertion about the date on which the letter was received is unhelpful in this regard, because there is no evidence before the court to support it. In the absence of the applicant saying exactly when he became aware that his appeal had been refused, the date of the letter, March 17, 2014, has to be taken as the date of notification.

[23] Counsel's explanation for the applicant's delay, post appeal, is that he was operating under the belief that when rules 56.3 and 56.6 are read together, time began to run after the statutory remedy was exhausted. For reasons explained before, this is a misinterpretation of the rule. This mistaken belief might explain why the applicant did not apply to extend time for leave to apply for judicial review when he first made his application on June 19, 2014.

[24] The question which arises is whether this delay should act as a bar if it were found that there are good reasons to allow the application. The import of rule 56.6 is that it is not so much a question of whether there are good reasons for the delay as good reasons to extend time (See **R (Young) v Oxford City Council (2002)** EWCA Civil 240). Albeit, the existence of unexplained delay could be decisive in an exercise of discretion whether to grant leave for extension of time (see **R v Secretary of State ex p Furneaux** [1994]] 2 ALL ER 652, 658. It is my view that the applicant's pursuit of a statutory remedy is good reason for the delay. But that is not the end of the matter. The court must now decide whether good reason exists to extend time.

[25] Maurice KJ in **R v Secretary of State for Trade and Industry Exp. Greenpeace** [200] Env L.R. 221, 261-264 stated that good reasons for extending time could include no hardship or prejudice to third party rights, no detriment to good administration were

permission granted, and a public interest requirement for the application to proceed. It is also recognised that a good reason for extending time may also be found in the reasons for delay as well as the strength of the merits of a particular case.

[26] Counsel for the applicant advanced a number of arguments as good reasons. The first was that the application had been delayed because the applicant was pursuing an appeal. This issue has already been discussed, and for the reasons stated before I accept it to be a good reason.

[27] Another ground is that there was inordinate delay in the process (a total of seven and a half years) since the incident in 2006 up to the refusal of the appeal in March 2014, including four and a half years when the applicant was operating under the presumption that the matter was already summarily determined by his commanding officer. Based on the evidence before me, I am not inclined to the view that there was any summary determination of the matter prior to the Commissioner's action. The applicant deposed that he provided his supervisor with an explanation of the incident and was directed to apologise. In my judgement, that is not sufficient to be deemed a summary hearing. I will return to this matter later. But in respect of the impugned history of procedural delays, there might be an arguable case with some prospect of success.

[28] Counsel also referred to the unblemished record of the applicant and the hardship he had endured since being suspended without pay from November 2011. He submitted further that there would be no harm to good administration were I to extend time to make an application. With respect, I do not consider these references relevant to the issue to be determined.

[29] The DSP asked the court to consider that there is a finite number of posts in the JCF and the Commissioner is obliged to fill those positions as soon as a vacancy arises. This necessitates a prompt challenge to his decision.

[30] This court considers that it is both in the public interest and good administration that the complement of the police force should not be compromised for inordinate periods and that there be speedy certainty in the exercise of authority and discipline over the force. As Sir John Donaldson MR stated in **R v Monopolies and Mergers Commission, Ex parte Argyll Group** [1986] 1 WLR 763, "Good public administration requires decisiveness and finality, unless there are compelling reasons to the contrary" (p774H – 775B). However, I do not find that if leave were granted to pursue the remedies, it would be detrimental to good administration. Good administration cannot be divorced from procedural fairness. It can be corrupted and in the long run undermined by unfairness. In other words, good administration must have embedded in it, the tenets of administrative justice.

[31] For the reasons aforesaid, leave is granted to extend time.

Should Leave Be Granted to apply for Judicial Review?

[32] Applications for leave to apply for judicial review are dealt with under part 56 of the CPR. The philosophy underpinning the rule is that the court can eliminate at the earliest stage of the judicial review process, claims which are hopeless and "to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending although misconceived" (see paragraph 54.4.2 White Book).

[33] The conditions for granting leave to apply for judicial review were stated by Lord Diplock in **R v Inland Revenue Commissioners Ex p. National Federation of Self Employed and Small Businesses Ltd**. [1982] A.C. 617, 642. He said:

> *The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at that stage. If*

> *on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion to give him leave to apply for the relief. The discretion that the court is exercising at that stage is not the same as that which it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.*

[34] In ***Minister of Transport Works and Housing v The Contractor General*** [2013] JMSE Civ. 12 paragraph 13, Campbell, Q.C., J cited, with approval, the judgements of Lords Bingham and Walker in ***Sharma v Brown-Antoine and Others*** (2006) UKPC 780, at 787:

> *The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an* ***arguable ground for judicial review having a realistic prospect of success*** *and not subject to a discretionary bar such as delay or an alternative remedy;...but arguability cannot be judged without reference to the nature and gravity of the issue argued. It is a test which is flexible in its application...the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on a balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved...but in the strength or quality of the evidence that in practice be required for an allegation to be proved on the balance of probabilities.* (My emphasis).

[35] I therefore accept that the proper question for the court to decide is whether the applicant has demonstrated that he has an arguable ground with a reasonable prospect of success in relation to any of the remedies sought. The applicant asserts that there

were two disciplinary proceedings for the same offence which would be contrary to law. It is his assertion that he had been dealt with summarily by his commanding officer, Superintendent Terrence Bent, pursuant to regulation 46 (2) of the Regulations, after which a Court of Enquiry was convened for the same matter.

Regulation 46(2) provides:

> where –
>
> a) it is represented that a member below the rank of Inspector has been guilty of misconduct; and
>
> b) the authorized officer is of the opinion that the misconduct alleged is not so serious as to warrant proceedings under Regulation 47 with a view to dismissal;
>
> the authorized officer may make or cause to be made an investigation into the matter in such manner as he may think proper; and if after such investigation the authorized officer thinks that the charge ought not to be proceeded with he may in his discretion dismiss the charge, but if he thinks that the charge ought to be proceeded with he shall if he is not the Commissioner, report the member to the Commissioner or in the case of any minor offence specified in Part I of the Second Schedule may deal with the case summarily, and may impose a penalty on the member in accordance with these Regulations.

Regulation 2 provides:

> "authorised officer" means the Commissioner or any other Officer not below the rank of Assistant Commissioner of Police or, except in relation to a member of or above the rank of Inspector, a Commanding Officer;
>
> “Commanding Officer”, in relation to any member below the rank of Inspector, means the officer in charge of the Division or other command to which the member is for the time being attached, ….”

[36] The charges laid against the applicant include disrespecting a senior officer and pulling a firearm. These fall within part 1 of the Second Schedule of the Regulations and could have been dealt with summarily by an officer at the rank of Superintendent. But as I concluded earlier, I do not see, on the evidence, that they were dealt with under a summary procedure. This is how the applicant describes the procedure:

> "12. That I later learnt the names of the two police officers as Detective Corporal Patrick Walker and Constable Brennan Cohen as they had made a report to Superintendent Terrence Bent who was the head of the Portmore Police Station at the time.
>
> 13. That in dealing with the matter Superintendent Bent heard my version of how the events unfolded and thereafter instructed me to apologise to the men as he brought closure to the matter.
>
> 15. That I was very surprised when I was charged pursuant to Regulation 47, of the Police Service Regulations 1961 since the matter was already dealt with by Superintendent Bent."

[37] Exhibited to his supplemental affidavit are the statements of the complainants. They make no reference to any report having been made to Superintendent Bent. Instead, the complainants indicate that they reported the incident to Sergeants Allison and Richie who were on duty at the time and then subsequently made an entry in the Station Diary. The court is not aware of the complainants being heard or that any apology was in fact directed and made.

[38] An applicant for judicial review must satisfy the court that he has a case (per Lord Scarman in **R v Inland Revenue Commissioners Ex p. Rossminster** [1980] AC 952, 1026 H). This was further explained by Anderson J in **Leroy Thompson v The Commissioner of Police and the Attorney General of Jamaica** [2012] JMSC Civ. 166, in these terms :

It cannot be over-emphasised that where a court is to be called upon to exercise discretion in favour of a party, that party cannot be and never is entitled to the exercise of the court's discretion in his favour, as a matter of right. Evidence of a sufficiently compelling nature must be placed before this court by a party, as could properly serve to justify the court's discretion being exercised in that party's favour.(para 11).

[39] I am not satisfied, on the evidence, that summary proceedings were held, thereby providing a basis for the applicant to successfully argue that the proceedings in the Court of Enquiry were *ultra vires* the Regulations, ought to be set aside and the decision of the Commissioner quashed.

[40] Strong reliance was placed on **Tameka Watson v The Commissioner of Police and The Attorney General [2012] JMSC Civ. 156**.

[41] In that case, the claimant raised the issue of double jeopardy in relation to two sets of disciplinary proceedings which followed a complaint that she had stolen credit from her roommate's phone while both of them were in training at the Police Training School. At paragraph 9 of his judgement, Batts J found that "...an investigation followed by action, particularly action which [involved] compensatory directives and instruction to one party ought to be categorized as disciplinary" and that the Senior Superintendent had dealt with issue 'summarily' in the way he thought best.

[42] That case can be distinguished on the basis that the court was satisfied that a written report of the complaint had been made to Senior Superintendent Welsh who convened a meeting with the applicant and the complainant, reprimanded the applicant, directed restitution and also instructed that the applicant attend counselling sessions. It is not apparent that any similar procedure was followed in the instant case.

[43] The next ground on which the applicant argues for an impugning of the procedures is that he was not given an opportunity to present a case to establish his innocence at the Court of Inquiry. At paragraph 5 of the supplemental affidavit, he states:

That a Court of Inquiry was held between June 29, 2011 and October 5, 2011 during which an attempt was made for the matter to be properly ventilated. That at the said hearing I was not gjven an opportunity to present a case to establish my innocence.

[44] But it is also known, from the evidence, that he was notified of the charges against him, he was supplied with the statement of his accusers and a copy of the diary entries, and was told that he could state in writing the grounds on which he relied to exculpate himself. The applicant, however, has not put before the court any evidence of the procedure with which he takes issue. He might have obtained and referenced notes of the evidence and copies of documents which were tendered in evidence. He is entitled to those documents (see rule 36 of the Regulations). Even a chronology of the events might have been useful. I am also unable to determine whether he had indicated, in writing, the grounds on which he relied to exculpate himself as the letter to him dated February 24, 2011 indicated could be done; or, if he had been represented or given an opportunity to cross-examine any witness. In the circumstances, there has not been disclosure of grounds on which the applicant has a good prospect of impugning the Court of Enquiry as an unfair proceeding.

[45] It was contended on behalf of the applicant that the delay in the process of seven (7) years and six (6) months (September 2006 – March 2014) is extreme and amounts to a breach of natural justice, particularly in circumstances where the applicant operated for four (4) years and six (6) months (September 2006 to March 2011) on the presumption that the matter was already summarily determined by his commanding officer, Superintendent Terrence Bent. He submitted that he had suffered substantial hardship as a result of the prejudicial manner in which this matter had been administered, and that since November 17, 2011, he has been suspended from duty without pay. He submitted further that failure to grant relief would substantially prejudice his rights and in no way would be detrimental to good administration.

[46] The Regulations do not stipulate any limitation on the time within which a disciplinary charge may be brought. It is only required in Regulation 32 that when a report of misconduct is made to the Commissioner he must deal with it 'as soon as possible thereafter'. Although ordinarily the court should not lightly interfere with the case management decisions of disciplinary bodies, I can infer a general principle that the Commissioner is obligated to act within a reasonable time. This is a matter of fairness. But failure to do so is not a ground for quashing the decision unless this has 'caused prejudice to such an extent that no fair disciplinary process [was] possible'. (See for example **R (Rycroft) v. Royal Pharmaceutical Society of Great Britain** [2010] EWHC 2832 (Admin).

[47] There is no fundamental distinction to be made between a charge being laid and several years elapsing without a trial, on the one hand, and several years elapsing between an alleged wrong action and the laying of charges, on the other. Both scenarios violate the public interest in speedy resolution of alleged improper conduct, and are demonstrably prejudicial.

[48] The evidence shows that four (4) years had elapsed between the incident and when the applicant was required to submit a report (September 2006 to November 2010). Arguably, this delay was inordinate and unreasonable. It might have interfered with the applicant's ability to defend himself and compromised the prospect of a fair trial.

[49] A further four (4) months elapsed between submission of the applicant's report and the notification of charges on March 8, 2011. The Court of Enquiry convened between June 29, 2011 and October 5, 2011, and the decision was communicated to the applicant on November 17, 2011. He appealed the decision within fourteen (14) days of that date. A further three (3) years elapsed before he was advised by letter dated March 17, 2014, that his appeal had been refused and the dismissal would take effect.

[50] The process from beginning to end was one of delay, and lasted close to eight (8) years. An argument might be made that this was punishment in itself.

[51] In these circumstances, I am sufficiently persuaded that the applicant has an arguable ground for judicial review having a realistic prospect of success. I do not consider that granting leave is likely to cause substantial hardship or prejudice to the rights of any person, or be detrimental to good administration. I am also satisfied that the requirement of fairness in these matters is of such importance that the application should not be refused for lack of promptness.

[52] Before making the orders, I must mention that the DSP made submissions that the applicant would not be entitled to the remedy of mandamus against the Commissioner. I fail to see how, in light of rules 56.1 (3) and (4), this could be a basis on which to deny him leave, since the rules give the court a discretion to select and grant the appropriate remedy. Rules 56.1 (3) and (4) provide:

> *(3) "Judicial Review" includes the remedies (whether by way of writ or order) of -*
>
> *(a) certiorari, for quashing unlawful acts;*
>
> *(b) prohibition, for prohibiting unlawful acts; and*
>
> *(c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.*
>
> *(4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant -*
>
> (a) an injunction;
>
> (b) restitution or damages; or
>
> (c) an order for the return of any property, real or personal.

[53] As Lord Scarman concluded in **R v IRC ex p Federation of Self Employed HL (E) AC** [1982] 617,647 "...not only has the court a complete discretion to select and grant the appropriate remedy but it now may grant remedies which were not previously available."

[54] Accordingly, I make the following orders.

1. Extension of time granted.

2. Leave is granted to apply for judicial review.

3. Leave is conditional on the applicant making a claim for judicial review within 14 days of the receipt of this order granting leave.

4. The first hearing of the claim is set for 17th February, 2015 at 11.00 for one (1) hour.