IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION

2012: No. 23

IN THE MATTER OF the Department of Labour and Training

IN THE MATTER OF the Department of Immigration

AND IN THE MATTER OF the decisions taken by the Authorities and the Minister in respect of their failure to both lawfully and effectively exercise the statutorily appointed Investigative and Enforcement powers of their Offices in the handling of the Applicant's complaints filed with the Authorities-February 11th, 2010 and February 15th, 2010 respectively. The final decisions handed down by the Authorities through the Office of the Ombudsman for Bermuda on July 12th, 2011

BETWEEN:

ANTHONY L. KEITH DAVIS

Applicant

-and-

THE MINISTER OF ECONOMY TRADE AND INDUSTRY

First Respondent

-and-

THE MINISTER FOR NATIONAL SECURITY

Second Respondent

RULING

(in Chambers)

Date of Hearing: May 18, 2012, September 10, 2012
Date of Ruling: September 20, 2012

The Applicant in person

Ms. Maryellen Goodwin, Attorney-General's Chambers, for the Respondents

Mr. Ben Adamson, Conyers Dill & Pearman, for Rosewood Limited, the Affected Party

Introductory

1. By Notice of Application for leave to apply for Judicial Review, the Applicant sought leave to challenge the legality of the Respondents' handling of the following complaints:

    (a) his February 11, 2010 complaint about his employer's General Manager's "*selective refusal….to honour the existing company agreement regarding already accrued overtime*…";

    (b) his February 15, 2010 unfair dismissal complaint, which was initially found to be lacking in merit on May 6, 2010;

    (c) his February 15, 2010 complaint about Immigration irregularities in relation to the hiring of his employer's General Manager which were not initially investigated; and

    (d) the reconsidered decision of the 1st Respondent on June 1, 2011 pursuant to the intervention of the Ombudsman not to refer the unfair dismissal complaint to an Employment Tribunal (communicated by the Ombudsman to the Applicant on or about June 23, 2011 and/or June 28, 2011);

    (e) the decision of the 2nd Respondent made on June 30, 2011, having investigated the Immigration complaints pursuant to the intervention of the Ombudsman, not to revoke the General Manager's work permit (communicated by the Ombudsman to the Applicant on or about July 12, 2012).

2. Leave was granted by me without a hearing on January 16, 2012. By Summons dated April 5, 2012, the Respondents applied to set aside leave on the grounds of the Applicant's delay in seeking relief.

3. The original 2010 decisions were now largely academic and the real question of delay turns on an analysis of any delay in issuing the present proceedings in

relation to the 2011 decisions, having regard to the fact that the underlying matters in controversy occurred in or about 2010. It must also be taken into account that, seemingly entirely by coincidence, the employment of the expatriate General Manager at the centre of the Immigration complaint was terminated shortly after the filing of the present proceedings.

Legal findings: principles governing delay

4. Section 68 of the Supreme Court Act 1905 is the governing statutory provision on the need to act promptly in seeking judicial review:

> "***Delay in making of application***
> *68 (1) The Court may refuse to grant leave for the making of an application for judicial review, or to grant any relief sought on the application, if it considers that—*
>
> *(a) there has been undue delay in making the application; and*
>
> *(b) the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.*
>
> *(2) Subsection (1) is without prejudice to any enactment or Rule of Court which has the effect of limiting the time within which an application for judicial review can be made.*"

5. Order 53 rule 4 is the subsidiary procedural rule contemplated by section 68(2) and provides as follows:

> "***53/4 Delay in applying for relief***
> *4 (1) An application for leave to apply for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.*
>
> *(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.*
>
> *(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.*"

6. Ms. Goodwin correctly submitted that: (a) judicial review is a remedy which should be sought promptly, notwithstanding the 6 months' time-limit fixed by the Rules; (b) for the purposes of computing time under the rule, time runs from the

date of the relevant decision, irrespective of when notice was received; and (c) where an extension of time was required, it was for the applicant to establish good reasons for the Court to accede to the extension request. Such good reasons will usually require proof that the applicant is not himself at fault for the delay. Thus in *R-v-Stratford-on-Avon District Council et al, ex parte Jackson* [1985] 3 All ER 769 at 773b (CA), the delay occurred "*through no fault at all of the applicant*". However, in considering whether good reasons have been advanced for the delay, in addition "*the Court is required to consider whether the grant of an extension of time would be likely to cause substantial hardship or prejudice, or may be detrimental to good administration*": *Perinchief-v-Public Service Commission* [2009] Bda LR 11 at page 7 (Bell J).

7. The Applicant referred the Court to authorities demonstrating that where the issue raised is one which ought to be determined in the public interest this may constitute grounds for excusing a delay. In *Darrell-v- Board of Inquiry* [2010] Bda LR 71, a board of inquiry was appointed in 2005 and reported in 2006/2007. The applicant in that case learned in March 2009 of matters which led him to commence judicial review proceedings about the impartiality of the board of inquiry panel in December 2009, some nine months later. The Court of Appeal held that the Chief Justice ought to have granted leave. Zacca P stated at paragraph 5:

> "*5.The Court of Appeal cannot interfere with his discretionary decision save on limited grounds, but we are concerned that he did not refer in his judgment to a factor which, in our opinion, is of substantial if not overriding concern: that is, the public interest in having an allegation of the sort which is now made fully investigated by the Court.*"

8. In *R-v-Secretary of State for the Home Department* [1987] 1 WLR 1482, there was no satisfactory reason for the delay of more than three months after the applicants learned of facts giving rise to their application. The applicants were leading members of the Campaign for Nuclear Disarmament who discovered through statements made by a former intelligence officer on television that at least one of their phones had been tapped in breach of the applicable legal guidelines. The Court granted leave because of the "general importance" of the application in circumstances where no response was made to the central allegations and the authorities sought to rely on a national security defence. Taylor J declined to regard the relief sought as academic because, since the events in question, there had been a change in the applicable law.

Findings: delay

9. The Applicant failed to commence the present proceedings promptly and his Third Affidavit filed in answer to the application to set aside leave does not disclose good or satisfactory reasons for the delay. In paragraph 12 he merely deposes: "*However, due to the fact that he was encumbered with moving house during the months of August-September 2011, the Application for Judicial review was filed as soon as was possible by the litigant; January 2012.*"

10. It is clear that the Applicant expended considerable time and effort in preparing grounds running to 65 pages and a supporting affidavit and exhibits of comparable length. He also indicated orally that he sought legal advice. These matters do not amount to legally justifiable excuses for commencing the present proceedings over six months after the applicant learned of the relevant decisions. After all, his core complaints had been initially formulated almost two years before he sought relief from this Court.

Prejudice flowing from delay

11. Ms. Goodwin for the Respondents submitted that it would be prejudicial to the interests of good administration for the Departments in question to be required to deal further with complaints which had been reconsidered following the intervention of the Ombudsman. The unfair dismissal complaint was clearly unmeritorious and the Immigration complaint had been dealt with by way of a reprimand.

The unfair dismissal complaint

12. Mr. Adamson submitted that the Party Affected would be severely hampered in defending any Employment Tribunal proceedings as the key witness was no longer in the company's employ and conveniently available as a witness. The Applicant's own assertions as to the supposedly involuntary nature of the former General Manager's departure from Bermuda, if correct, only served to underscore Mr. Adamson's point.

13. On May 6, 2010, the unfair dismissal complaint was found to be unmeritorious and the Inspector did not refer the complaint to an Employment Tribunal. The Applicant could at that juncture have applied for judicial review; his recourse to the Ombudsman was not a mandated statutory remedy which he was legally obliged to pursue before seeking leave to obtain judicial review. The remedy he elected to pursue yielded the most success he could hope to obtain. The 1st Respondent agreed to reopen his complaint. On June 6, 2011 it was again decided that there were no reasonable grounds for believing that the Applicant had been unfairly dismissed.

14. The First Affidavit of George Outerbridge and the June 6, 2011 reconsidered decision letter addressed to the Ombudsman, which were not before me when I granted leave on the papers, undermine my initial finding that it was arguable that the 1st Respondent had applied the wrong test in declining to refer the complaint to an Employment Tribunal. It is difficult in the light of the material now before me to identify any seriously arguable grounds upon which the reconsidered decision could be quashed bearing in mind that the remedy of judicial review can only be utilised to correct errors of law or perverse findings of fact.

15. Taking these considerations into account, it is highly prejudicial for the 1st Respondent (in reality the relevant Departmental staff) to have been required to respond to the present application at the time when it was filed and, looking forward, to be required to apply her mind to this matter any further.

16. The same conclusion applies, albeit for different reasons, to the Party Affected. The time limit for filing complaints under the Employment Act 2000 is three months, as Mr. Adamson pointed out. The dismissal on grounds of redundancy occurred in February 2010. The complaint was initially rejected on June 6, 2010. The Applicant elected to seek an out of court review through the Ombudsman which he succeeded in obtaining. The complaint was still rejected after a fuller investigation and based on more carefully articulated grounds.

17. The ability of the Party Affected to defend the complaint, in the unlikely event that it were to be referred to an Employment Tribunal, would now likely be prejudiced as their key witness has left their employ, by the Applicant's own account on other than amicable terms. While the Applicant may not have anticipated this eventuality, his own election to refer his grievance to the Ombudsman in the first instance rather than to this Court is the primary reason the present application was not made until January of this year.

The Immigration Department Complaint

18. The Applicant's initial complaints about, *inter alia*, the granting of a work permit to his then employer's General Manager were not properly investigated. Following the Ombudsman's investigation, this complaint was reconsidered and the Applicant's former employer was reprimanded for the way the work permit application had been handled, namely for failing to re-advertise the post to properly reflect the post the General Manager actually assumed. The Applicant's reference of this complaint to the Ombudsman secured even more vindication in that the 2nd Respondent effectively acknowledged the validity of some the Applicant's concerns. The Minister did not take the extreme step of revoking of the General Manager's work permit as the Applicant wished.

19. However, the Ombudsman concluded there was no merit to the Applicant's complaint that instead of making him redundant the employer and/or the 2nd Respondent ought to have revoked the work permit of an expatriate holding the Housekeeping Manager position. This was because the Applicant's redundant position and the work permit holder's position were different and existing Immigration policy did not support the action the Applicant contended ought to have been taken.

20. Ms. Goodwin submitted that it was contrary to good administration for the 2nd Respondent to be required to respond to what were now stale complaints having regard to (a) how the 2nd Respondent had dealt with the matter in response to the Ombudsman's intervention, and (b) the fact that the General Manager had now vacated the post in any event.

21. It is unclear whether the Applicant seeks judicial review of the complaint about the 2nd Respondent's failure to revoke another work permit-holder's permit rather than permitting him to be made redundant. It is difficult to see how the interests of public administration would be advanced by a judicial inquiry at this juncture into a highly tenuous complaint.

22. The only outstanding complaint against the 2nd Respondent in relation to the irregular work permit process adopted in relation to the General Manager is not whether the process was irregular. That has now been acknowledged (First Danette Ming Affidavit) and was dealt with by way of a reprimand contained in a letter sent to the Applicant's former employer on July 5, 2011. The Applicant was notified of this specific outcome by letter from the Ombudsman dated July 11, 2011. The outstanding issue now is whether or not the action taken was sufficient. It is unclear on what legal basis that quintessentially discretionary Executive judgment as to what punitive action should be taken for regulatory infractions can tenably be challenged in this Court.

23. Mr. Adamson raised the additional point, which I gave little regard to in the course of the hearing, that the Applicant lacks sufficient interest to raise his Immigration complaints. Without deciding this point, it is obvious that the Applicant's interest in having this Court determine the legality of the Minister's failure to revoke the work permit for a position he was not himself seeking or qualified is very slim indeed.

24. For all these reasons, the 2nd Respondent would be prejudiced were the Immigration complaints to be fully heard in the present proceedings: (a) almost three years after the relevant events took place; and (b) in circumstances where the Applicant has in the interim pursued alternative elective remedies which appear to have yielded significant redress for his meritorious concerns.

Public interest

25. It follows from the above findings in relation to delay and prejudice that this Court would have to find strong public interest reasons for hearing the present application on its merits to justify refusing the application to set aside leave on the grounds advanced by the Respondents and the Party Affected. Such grounds simply do not exist when the evidence filed in response to the application is taken into account.

Unfair dismissal complaint

26. I initially considered the unfair dismissal complaint raised an important legal point of general interest, namely what test should be applied under section 37(4)(a) of the Employment Act 2000 by an inspector in determining whether he "*has reasonable grounds to believe that an employer has failed to comply with any provision of this Act*"? The reconsidered decision was made after taking legal advice and was a carefully reasoned one. Despite my initial contrary views, I am bound to accept Ms. Goodwin's submission that, in the present context at least, the test for rejecting a complaint at the preliminary stage was a simple one.

27. I merely note for present purposes the risk that if inspectors set the bar for the requisite belief under section 37(4)(a) too high, there will be at least the perception that the Executive is determining the civil rights and obligations of employees which section 6(8) of the Constitution guarantees will be determined by an independent tribunal. This risk will be heightened in contexts such as the

present case where the Employment Act complaint overlaps with an Immigration complaint being adjudicated by another Government Department.

28. The Applicant's real grievance, however, appears to be the merits of the rejection of his unfair dismissal complaint in circumstances where it is impossible to construe the inspector's decision as an irrational one. He might originally have been able to challenge the legality of the investigative process, but this grievance has been effectively resolved by the Ombudsman.

Immigration complaint

29. Again, any valid complaints the Applicant might have raised before this Court in 2010 have in the interim been resolved by the Ombudsman. She has provided independent verification that one limb of his Immigration complaint lacked merit and persuaded the 2nd Respondent to investigate the other limb of his complaint. It is clear from his own evidence that the Applicant was told by the Ombudsman by letter dated July 11, 2011 that the Ministry had (a) found that the work permit application for the General Manager had been irregular, and (b) had reprimanded his former employer. Now that it is known that this is what occurred, it is difficult to identify any arguable point of public law which the public interest still requires this Court to determine.

30. When I granted leave on the papers and expressed the view that the Immigration complaints raised issues of public importance, this was on the premise that it was arguable that the Department had failed to "*revoke work permits granted…for jobs the Bermudian Applicant claims he was qualified for*". In fact the complaints did not relate to any job the Applicant was qualified for, as found by the Ombudsman. The admitted errors in relation to one such post were in fact acted upon, albeit in the form of a low-level punitive response. The post-holder in question has now left Bermuda.

31. In light of the admissions and action taken in respect of the valid complaint advanced by the Applicant, the only outstanding complaint is whether the reprimand imposed can be said to be an appropriate regulatory response to the irregularities in question. That raises essentially factual and policy issues rather than legal questions of public interest, since in my judgment it is not arguable that the action taken was one which no reasonable Immigration Department, properly directing itself, could properly take. It is difficult to imagine the circumstances in which this Court would (or properly could) substitute its judgment for the Minister's in terms of how best to respond to a regulatory infringement.

Summary: public interest

32. In all the circumstances of the present case the Applicant's complaints do not raise any strong questions of public interest which require their full adjudication despite the Applicant's delay and the prejudice and/or public inconvenience which such delay has caused.

Has the Applicant had the benefit of an adequate alternative remedy in referring his complaints to the Ombudsman or was this reference a reasonable precondition to seeking the present relief?

33. This Court must not forget the unique role of judicial review and the distinctive role that it plays in determining the legality of administrative action in relation to the potentially overlapping role of the Ombudsman. The Ombudsman Act 2004 expressly contemplates that the Ombudsman will not act in circumstances where a complainant has statutory appeal rights or is able or likely to seek judicial review:

> "***Restrictions on jurisdiction to investigate***
> *6 (1) Where there is under any enactment a right of appeal or objection to a tribunal or a right to apply to a Court for a remedy in respect of administrative action taken by an authority, the Ombudsman shall not investigate such action –*
>
> *(a) until after that right of appeal, objection or application has been exercised and determined; or*
>
> *(b) until after the time limit for the exercise of that right of appeal, objection or application has expired.*
>
> *(2) Notwithstanding subsection (1), the Ombudsman may investigate any administrative action of an authority in circumstances where the complainant has or had such right or remedy, if he is satisfied that in the particular circumstances it is not reasonable to expect the person to resort or to have resorted to it…*"

34. The Ombudsman would only have commenced her investigation into the Applicant's complaints either after the six month time limit for seeking judicial review had expired (section 6(1)) or in circumstances where she was *satisfied that in the particular circumstances it is not reasonable to expect the* [Applicant] *to resort or to have resorted to it*" (section 6(2)). A judicial review applicant cannot have his cake and eat it too by seeking relief under the Ombudsman Act and then seeking a judicial determination of issues which have already been investigated to conclusion by the Ombudsman. The events upon which the present application is primarily based occurred in the first half of 2010. The Applicant sought redress from the Ombudsman, which resulted in one complaint being reconsidered and another complaint being in large part upheld. He argued in response to the application to set aside leave that it was reasonable for him to postpone coming to Court until he had exhausted this avenue of alternative relief.

35. With respect to the Department of Labour and Training complaints, the Ombudsman advised the Applicant in a Memorandum dated June 23, 2011: "*In accordance with section 16 of the Ombudsman Act 2004, I find that the Department has implemented the recommendations with requisite diligence….While this may not be the result the Complainant wished for , I can assure him that our review of the complaint and of the Department's actions taken to effect the recommendations have been handled thoroughly and fairly*". As

regards the Immigration complaints, the Ombudsman on July 11, 2011 advised the Applicant that: "*The Department, which is within my jurisdiction, has appropriately and adequately complied with my recommendations.*"

36. The present case provides a clear example of the invaluable services provided by Bermuda's Ombudsman under the Ombudsman Act 2004. The Applicant has had his complaints about two Government Departments investigated by the Ombudsman who made recommendations to the Departments which have been acted upon. As regards the unfair dismissal complaint, the impugned decision was reconsidered with the benefit of legal advice and more fully explained although the end result was the same. Had the Applicant instead sought and obtained judicial review, the most likely relief would have been an order quashing the initial decision and remitting it for reconsideration in accordance with law.

37. As regards the Immigration complaints, which were not initially dealt with adequately if at all, the Department actually (a) carried out an investigation, and (b) both acknowledged that certain policy requirements had been infringed by and reprimanded the Applicant's former employer. This was probably more than the Applicant could have achieved through contentious judicial review proceedings where relief might well have been ultimately refused on technical standing grounds. Moreover, the non-adversarial and facilitative nature of the way in which the Ombudsman's jurisdiction is exercised quite possibly encouraged the Department to go further than it could be compelled by this Court to do through the more brittle tool of judicial review relief.

38. Having regard to the dual roles played in relation to ensuring good administration by the Ombudsman and this Court, judicial review will rarely be an appropriate remedy in relation to facts and matters which have previously been referred to the Ombudsman for resolution. Exceptional contexts in which judicial review may be appropriate will include judicial review applications properly designed to enforce recommendations of the Ombudsman which the public body concerned has declined to accept. For instance in *Susan Smith-v-Minister of Culture and Social Rehabilitation* [2011] Bda LR 7, a case in which the Ombudsman intervened to support the application for judicial review, I made the following central finding:

> "*27. For the above reasons I find that the Acting Minister erred in law when he refused on January 27, 2010 to refer the Applicant's complaint to a board of inquiry as requested by the HRC on the recommendation of the Ombudsman. This decision based on the purported grounds that the HRC had no jurisdiction to reconsider a complaint which it had purportedly previously dismissed was wrong, having regard to an analysis of the applicable legal principles, which do not previously appear to have been judicially considered as a matter of Bermuda law.*"

39. The present application, carefully scrutinised, is not designed to obtain relief made necessary by the Ombudsman's recommendations. Rather, the application seems designed to obtain relief which the Ombudsman's investigation and

recommendations do not support based on the findings she made as to the merits of the Applicant's complaints and the remedial action undeniably already taken by the Departments concerned.

40. For these reasons I reject the Applicant's submission to the broad effect that the time spent referring the subject-matter of the present application to the Ombudsman was the equivalent of exhausting an alternative 'private law' remedy as a precondition for seeking judicial review. The legal dimensions of this Court's domain of judicial review and the Ombudsman's domain of maladministration both fall within the ambit of public law. This point is illustrated by Lord Diplock's following observation in *Commissioner of Inland Revenue-v-National Federation of Self-Employed and Small Businesses Limited* [1981] UKHL 2 at 17-18 :

> "*Are we in the twilight world of 'maladministration' where only Parliament and the Ombudsman may enter, or upon the commanding heights of the law? The courts have a role, long established, in the public law. They are available to the citizen who has a genuine grievance if he can show that it is one in respect of which prerogative relief is appropriate*…"

41. Whether discretionary relief by way of judicial review is appropriate may in appropriate cases take into account whether alternative remedies have been or could have been obtained by the applicant in question. As Lady Hale noted in the course of a discussion of the historical development of judicial review in *R (on the application of Cart)-v-The Upper Tribunal* [2011] UKSC 28:

> "33…*Judicial review had always been a remedy of last resort. As the Court of Appeal had recognised in R (Sivasubramaniam) v Wandsworth County Court [2003] 1 WLR 475, permission would not be granted where satisfactory alternative recourse existed, whether or not it had been exhausted.*"

42. Leave to seek judicial review could not properly have been refused in 2010 on the grounds that the Applicant was obliged to refer his complaints to the Ombudsman. But the decisions he now seeks to challenge were made against the background of an investigation carried out and recommendations made by the Ombudsman to whom the Applicant took his complaints. The Ombudsman is satisfied that the decisions are consistent with her recommendations. The present application, as Ms. Goodwin implied, is an indirect attack on the Ombudsman's findings under the guise of a challenge to Departmental decisions.

43. The fact that the Applicant requested the Ombudsman to review the legality of the original 2010 decisions and received relief which cannot likely be bettered by this Court is an additional discretionary factor which fortifies the case for setting aside leave and dismissing the application at the interlocutory stage. It is, perhaps, another way of saying that the pursuit of the present proceedings would be

inconsistent with the interests of good public administration which the remedy of judicial review is quintessentially designed to serve.

Conclusion

44. The Respondents' application for an Order setting aside the leave to seek judicial review which I granted on January 16, 2012 succeeds. I decline to grant the Applicant the extension of time which he requires under Order 53 rule 4 because:

    (a) there is no good reason for the delay;

    (b) the delay has occasioned prejudice and pursuit of the application would be inconsistent with the interests of public administration; and

    (c) there is no overriding public interest in the application being fully heard, taking into consideration the additional factor that since the impugned decisions were first made in 2010, adequate relief has been obtained by the Applicant through the good offices of the Ombudsman; and

    (d) the relief already obtained from the Ombudsman materially undermines the strength of the complaints advanced in the present application.

45. My approach ordinarily is to adopt a generous approach to granting leave and to rarely exercise the discretion to dismiss a judicial review application at the interlocutory stage. That approach presupposes a timely application, a good arguable case and a public interest in having the legality of the relevant administrative action judicially assessed. The present case is distinguishable in that the application is not only late; the evidence now before the Court significantly undermines the strength of what I originally thought was the Applicant's best point.

46. Overall, it now seems clear that the relief the Applicant seeks amounts to an attempt to obtain a second independent review (the Ombudsman's being the first) of the legality of the relevant administrative acts. Judicial review is intended to be resorted to promptly after any statutory appeal rights have been exhausted. Where a public law complaint is referred to the Ombudsman for determination and her recommendations have been implemented by the public authorities concerned, the complainant will in most cases be deemed to have elected to pursue an alternative public remedy to the relief available from this Court.

47. The Applicant is a litigant in person who is admittedly unable to afford to retain a lawyer. That brings into question his ability to meet any costs order that would inevitably be made against him if he fails to make out what appears to be a weak case. The quantum of such costs would likely be twice what they are at this stage if the matter is fully heard. Public resources, including court time, which could be expended on more meritorious matters, would be diverted to an undeserving cause. The right of access to the court under section 6(8) of the Constitution is not absolute. As Order 1A of this Court's Rules ("The Overriding Objective") makes

plain, the Court may impose reasonable fetters on the right and summarily dispose of applications which do not merit full consideration at trial. Having regard to the following provisions of Order 1A of the Rules, exercising the Court's discretion to refuse relief at this stage without fully hearing the application for judicial review is in my judgment most consistent with the Overriding Objective:

> "***1A/1 The Overriding Objective***
> *1 (1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.*
>
> *(2) Dealing with a case justly includes, so far as is practicable —*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> ***(b) saving expense;***
>
> ***(c) dealing with the case in ways which are proportionate —***
>
> *(i) to the amount of money involved;*
> ***(ii) to the importance of the case;***
> *(iii) to the complexity of the issues;* ***and***
> ***(iv) to the financial position of each party;***
>
> *(d) ensuring that it is dealt with expeditiously and fairly; and*
>
> ***(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.***"

48. Unless any party applies within 21 days by letter to the Registrar to be heard as to costs, I would make no order as to costs. My provisional view is that this exceptional course is based on the following considerations:

    (a) the Applicant is a litigant in person and not well–placed to make an informed judgment about the likelihood of leave being granted and/or set aside;

    (b) the Applicant's case nevertheless afforded the Court the opportunity to consider for the first time the consequences of delay occasioned by a judicial review application brought to challenge reconsidered administrative decisions made in compliance with recommendations made by the Ombudsman to whom the underlying complaints had first been referred.

Dated this 18th day of September, 2012 _____
IAN RC KAWALEY CJ