In The Supreme Court of Bermuda

CIVIL JURISDICTION

2017: No. 289

BETWEEN:-

ARNE SCHWARZ

Plaintiff

-and-

(1) MINISTER OF HOME AFFAIRS
(2) PREMIER OF BERMUDA
(on behalf of the Cabinet)

Defendant

JUDGMENT

(In Court)

Application for permanent resident's certificate ("PRC") under section 31B of the Bermuda Immigration and Protection Act 1956 – whether former right of appeal to Cabinet under Act against Minister's refusal to grant PRC breached section 6(8) of the Constitution – whether to grant damages for breach of constitutional right – judicial review of decisions of Minister and Cabinet – whether decisions based on mistakes of fact that were unfairly prejudicial to the Plaintiff – whether decisions applied the correct legal principles – whether Minister acted unlawfully or unreasonably in declining to reconsider his decision after Cabinet dismissed Plaintiff's appeal – whether to remit matter to Minister for reconsideration – whether to direct Minister to grant PRC

Date of hearing: 10th January 2018
Date of judgment: 2nd February 2018

Mr Peter Sanderson, Benedek Lewin Limited, for the Plaintiff
Ms Lauren Sadler-Best, Attorney General's Chambers, for the Respondents

Introduction

1. The Plaintiff, Mr Schwarz, seeks judicial review of: (i) the refusal by the First Defendant, the Minister of Home Affairs ("the Minister"), to allow his application for a permanent resident's certificate ("PRC"); (ii) the refusal of the Cabinet to allow his appeal against the Minister's refusal; and (iii) the Minister's subsequent refusal to reconsider his decision. The Plaintiff further submits that the appeal process was unconstitutional. He seeks orders quashing these various decisions; a declaration that the appeal process was void; and an order mandating the Minister to grant him a PRC.

2. I was greatly assisted by the able submissions of counsel: Peter Sanderson for the Plaintiff and Lauren Sadler-Best for the Defendants.

Narrative

3. The Plaintiff is a citizen of Austria. He moved to Bermuda in August 1987 to become a waiter for the Coral Beach & Tennis Club ("Coral Beach"). He went back to Austria in January 1989, but returned to Bermuda in March 1993 to work as dining room captain for Coral Beach and later as maître d'.

4. In June 1997 the Plaintiff became a father. The child had Bermudian status because the child's mother was Bermudian.

5. In February 2003 the Plaintiff returned to Austria because his father was gravely ill. He wanted to be at his father's side and help manage his affairs.

He returned to Bermuda in March 2003. It is not clear for how long. There was no work permit in force between February 2003 and March 2004.

6. From March 2004 through to 2008 inclusive the Plaintiff spent 9 months of the year in Austria and three months – from March to June – in Bermuda, working at Coral Beach as Chef de Rang and running the International Players' Lounge at the annual XL Tennis Championship.

7. In 2008, the Plaintiff applied to the Minister for a PRC. The application was made pursuant to section 31B of the Bermuda Immigration and Protection Act 1956 ("the 1956 Act"). Section 31B(1) provided in so far as relevant that a person referred to in subsection (2) may apply to the Minister for the grant of a PRC if (a) he is at least 18 years of age; (b) he has been "*ordinarily resident*" in Bermuda for a period of 10 years immediately preceding the application; and (c) he makes his application before 1st August 2010. The Plaintiff was a person referred to in subsection (2) as he was the natural parent of a person who possessed Bermudian status.

8. Section 19(3) – (9) of the 1956 Act, which was applicable by operation of section 31B(4), contained various provisions relating to the determination of whether a person was ordinarily resident in Bermuda. These included:

   (1) Where any question arose as to a person's ordinary residence in Bermuda, that question should be decided by the Minister (section 19(3)(a)).

   (2) Where an applicant had been ordinarily resident in Bermuda, and had then been absent from Bermuda for any period for the purpose of his education outside Bermuda, the Minister might count that period of absence as a period of ordinary residence in Bermuda if satisfied that, but for that period of absence, the applicant would have in fact continued to be ordinarily resident in Bermuda (section 19(3)(b)).

   (3) The Minister should not approve an application for a PRC if during the period of 10 years immediately preceding the application the

applicant had been convicted of an offence which, in the Minister's opinion, showed moral turpitude on the applicant's part, or if the applicant's character or conduct otherwise in the Minister's opinion disqualified him for the grant of a PRC. Otherwise, the Minister was required to approve the application if the requirements of section 31B had been satisfied (section 19(4)).

9. By letter dated 12th December 2008, the Department of Immigration ("DOI") informed the Plaintiff that his application for a PRC had been rejected. The reason given for the rejection was as follows:

> "*… the Minister is not satisfied that you fulfil the requirements of section 31B of the 1956 Act, namely have been ordinarily resident in Bermuda for a period of ten years immediately preceding your application.*
>
> *In calculating the 10 years residence immediately preceding application, you must do so in continuous periods of twelve months or more.*
>
> *According to the supporting documentation submitted with your application together with documentation contained on your Immigration file, your last one year (12 month) work permit in Bermuda ended in February 2003 at which time you left Bermuda. Subsequently you were employed in Bermuda on a three month temporary work permit for the years 2004-2006 and again in 2008. Even if you were to add up the three month periods that you were in Bermuda you would fall considerably short in fulfilling the residence requirement.*"

10. The Plaintiff had a right of appeal to the Cabinet (1956 Act, sections 19(3)(c) and 19(8); section 124). Section 10(1) provided that the decision of the Cabinet: "*shall be final and conclusive and not subject to question or review by any court or tribunal whatsoever*". Section 10(2) stated that it was not incumbent upon the Cabinet to give reasons for its decision. Appeals to the Cabinet are determined by the Cabinet Appeals Tribunal. References in this judgment to the Cabinet are references to that Tribunal.

11. The Bermuda Immigration and Protection Amendment Act 2011 ("the 2011 Act") has since amended section 19(8) with effect from 10th August 2011 to

provide that an appeal lay instead to the Immigration Appeal Tribunal ("IAT").

12. The Plaintiff appealed to the Cabinet by a letter dated 26th December 2008. The DOI made written submissions in a letter dated 12th March 2009 which repeated the reasons given in its letter of 12th December 2008. The submissions stated that a letter from Coral Beach to the DOI dated 28th April 2003 stated that the Plaintiff had terminated his employment and had left Bermuda. I have not seen the letter. It is not clear whether it refers to the Plaintiff leaving Bermuda when his employment ended in February 2003 or alternatively to a subsequent departure after his return to Bermuda in March of that year.

13. By letter dated 8th April 2009, the Assistant Cabinet Secretary notified the Plaintiff that the Cabinet had met the previous day and had "*after careful consideration*" dismissed his appeal. The letter gave no reasons for the Cabinet's decision.

14. From 2009 through 2013 inclusive, the Plaintiff visited Bermuda once a year to see his son, who also visited him in Austria for two months every summer. In 2014 the Plaintiff returned to live and work in Bermuda. He took up the issue of a PRC again and instructed various attorneys.

15. By letter dated 15th January 2015, the Plaintiff's then attorneys, Christopher E Swan & Co, wrote to the DOI requesting the Minister to reconsider his decision. On 5th January 2016 the Plaintiff's subsequent attorneys, Wakefield Quin, wrote directly to the Minister in similar vein. By letter dated 13th February 2017, the DOI notified Christopher E Swan & Co that the Plaintiff had no recourse against a decision of the Cabinet because, by reason of section 10 of the 1956 Act, it was final and conclusive.

16. On 9th August 2017 I granted the Plaintiff leave to apply for judicial review. I was satisfied that there were good reasons for extending the six month period within which the application should have been made in relation to the Minister's refusal to grant a PRC and the Cabinet's refusal of the Plaintiff's

appeal. As the constitutional challenge to the appeal process was not time-barred, I judged it appropriate that the Court consider the decision making process in relation to the application for a PRC in the round.

17. On 28th August 2017 the Plaintiff filed a Notice of Motion seeking an order for relief on the basis set out in his leave application, as summarised at the start of this judgment.

The constitutional challenge

Merits

18. Section 6(8) of the Constitution provides in so far as relevant:

> "*Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; …*"

19. Mr Sanderson submits that the statutory process for the determination of the Plaintiff's application for a PRC breached section 6(8) in that: (i) the Cabinet was not an independent and impartial tribunal; and (ii) the ouster provision in section 10(1) of the 1956 Act ("the ouster provision") meant that there was no right of appeal to a court on the merits.

20. In relation to section 6(8), I was referred to Re Haynes [2008] Bda LR 75, in which Kawaley J (as he then was) considered *obiter* whether the right of appeal to the Cabinet complies with the section, and Roberts and Hayward v Minister of Home Affairs [2004] Bda LR 5, in which Kawaley J considered whether the Human Rights Commission was an independent tribunal.

21. Section 6(8) is analogous to article 6(1) of the European Convention on Human Rights ("the Convention"), which provides in so far as relevant:

> "*In the determination of his civil rights and obligations …, everyone is entitled to a fair and public hearing … by an independent and impartial tribunal established by law.*"

22. In relation to article 6(1) of the Convention, I was referred to R (Alconbury Ltd) v Environment Secretary [2003] 2 AC 295 HL, which was concerned with whether the determination of various planning applications by the Secretary of State was compatible with article 6(1) of the Convention, and considered the applicable case law of the European Court of Human Rights ("ECHR") in some detail; and Jurisic and Collegium Mehrerau v Austria, (62539/00), in which the ECHR considered whether article 6(1) applied to an application for an employment permit.

23. In my judgment, the position is as follows. The Plaintiff had a right to a PRC provided that he could establish that he satisfied the criteria in section 31B of the 1956 Act. The determination of whether he did satisfy those criteria was therefore the determination of a civil right within the meaning of section 6(8) of the Constitution. On this point, the Jurisic case provides a helpful analogy. Although neither the Minister nor the Cabinet were independent decision makers in that they both formed part of the Executive, decisions taken by them were not incompatible with section 6(8) provided they were subject to review by an independent and impartial court or adjudicating authority which had jurisdiction to deal with the case as the nature of the decision under review required. See the headnote in Alconbury at 296 C.

24. What the decision under review required was *at the very least* a right of appeal to an independent and impartial court or adjudicating authority within the limits identified by Kawaley CJ in Clark v Minister of Home Affairs [2016] SC. The ouster provision was inconsistent with this requirement: although it did not exclude the right to judicial review – eg see Anisminic Ltd v Foreign Compensation Commission [1969] 2AC 147 HL *per* Lord Reid at 171 – it did exclude an appeal on the substantive merits of the decision.

25. As to those limits, Kawaley J stated at para 63 of Clark:

"*… in my judgment it is wrong in principle for an appellate tribunal to make primary factual findings on an issue Parliament has expressly mandated the Minister to determine. Section 19(3)(a) of the Act would be rendered nugatory if the determination of ordinary residence was treated as reviewable on appeal on precisely the same basis as other statutory criteria which are not expressly required to be "determined by the Minister". To give due deference to the clear legislative intent that the Executive should primarily determine whether ordinary residence has been established on the facts of any particular case, it is necessary to distinguish two categories of case where ordinary residence is in issue:*

(a) an appeal where the Minister has made factual findings and taken relevant evidence into account but adopted a legally flawed approach or drawn impermissible inferences in concluding that a case for ordinary residence has not been made out (in which case the IAT and/or this Court may decide the merits of the ordinary residence issue); and

(b) an appeal where the Minister has not considered the relevant evidence at all and not made any factual findings on the merits of the ordinary residence issue (in which case the IAT and/or this Court ought ordinarily only remit the matter to the Minister for reconsideration of the ordinary residence issue according to law)."

26. I have two observations about this test. First, not every case will fit neatly into one or other of these categories. Eg in the present case, as set out below in the section of this judgment on judicial review, the Minister has made factual findings and taken some relevant evidence into account, but made mistakes of fact in relation to other pieces of relevant evidence because factually incorrect submissions were placed before him. However that is a practical rather than a theoretical difficulty, and can no doubt be resolved on the pragmatic basis: "*when in doubt, refer to the Minister*".

27. Second, I said "*at the very least*" because Kawaley CJ appears to take the position that the IAT, still less the Court, cannot substitute their own view of the facts for that of the Minister simply because they disagree with him – ie where the Minister has taken all the relevant evidence into account and has not erred in law. Given that a PRC is awarded (or not) as of right and not pursuant to the exercise of a discretion, there is in my judgment a serious issue to be tried as to whether this approach is sufficient to satisfy the

requirements of section 6(8) – a question which was not before Kawaley CJ. That, however, is an issue for another day.

28. To conclude, I am satisfied that in the premises the Plaintiff's constitutional challenge was well founded. I find that the statutory appeal process in relation to his appeal to the Cabinet against the Minister's decision to refuse his application for a PRC was in breach of section 6(8) of the Constitution and was therefore a nullity.

Remedy

29. The Court has broad powers to enforce constitutional rights. Section 15 of the Constitution provides, in so far as relevant, that the Supreme Court may make such orders and give such directions as it may consider appropriate for enforcing the constitutional right in question. In my judgment the Court has those powers irrespective of whether the application for constitutional redress is brought as a standalone application under section 15 or alternatively brought together with an application for judicial review, as in the present case, or for other relief.

30. In Ramanoop [2006] 1 AC 328 PC, Lord Nicholls, giving the judgment of the Board, stated at para 18:

> "*When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation.*"

31. This passage was considered in James v AG [2011] 2 LRC 217; [2010] UKPC 23. Lord Kerr commented at para 24:

> "*Enforcement of the protective provisions may require more than mere recognition that a violation of those provisions has occurred. As Lord Nicholls said in Ramanoop, 'when exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened' (para 18). The constitutional*

dimension adds an extra ingredient. The violated right requires emphatic vindication. For that reason, careful consideration is required of the nature of the breach, of the circumstances in which it occurred and of the need to send a clear message that it should not be repeated. Frequently, this will lead to the conclusion that something beyond a mere declaration that there has been a violation will be necessary. This is not inevitably so, however. Nor is it even the case that it will be required in all but exceptional circumstances. Close attention to the facts of each individual case is required in order to decide on what is required to meet the need for vindication of the constitutional right which is at stake."

32. I grant the Plaintiff a declaration in terms of para 23 of this judgment that his constitutional right to the determination of his claim to a PRC by an independent and impartial adjudicating authority has been breached.

33. The Plaintiff claims damages for breach of his constitutional rights, but in my judgment an award of damages is not appropriate. The alleged damage upon which he relies is the time taken up by the unconstitutional Cabinet appeals process. He calculates this as about eight months: a little over three months for the resolution of the appeal to Cabinet and roughly five months for the resolution of his constitutional appeal to this Court. I am not persuaded that this amounts to damage, particularly as the Plaintiff and his legal representatives were responsible for a much longer delay of more than eight years between the dismissal of his appeal and his application for constitutional relief. There was no evidence before me that he has sustained any other damage. There is no need to send a message that the breach should not be repeated as the 1956 Act has been amended to make the statutory appeal procedure constitutionally compliant.

34. If there were no application for judicial review before me I should direct that the Plaintiff's letter of 26th December 2008 stand as a notice of appeal to the IAT, and give Mr Sanderson a reasonable period of time in which to amend the notice as he sees fit (including completely redrafting it). It was not the provision in section 124 of the 1956 Act providing for the Plaintiff to lodge a written notice of appeal that was unconstitutional, so the letter was not a nullity, but rather the statutory process whereby the appeal was dealt with by

the Cabinet rather than, as now, by the IAT. However if the application for judicial review of the Minister's decision is successful, then from an abundance of caution I shall remit the matter to the Minister to reconsider his decision.

Judicial review

35. The application for judicial review remains relevant for three reasons, notwithstanding my decision on the constitutional issue. (i) If I quash the Minister's decision then I shall remit the matter to the Minister rather than direct that it proceed before the IAT; (ii) Mr Sanderson submits that a reasonable decision maker, properly directing himself, is bound to find that the Plaintiff was ordinarily resident in Bermuda for the period of 10 years immediately preceding his application for a PRC certificate. He therefore invites the Court to direct that the Minister grant the Plaintiff a PRC; (iii) a higher Court may disagree with my finding that the statutory appeal process in force at the time was unconstitutional.

36. In inviting the Court to judicially review the decisions of both the Minister and the Cabinet, the Plaintiff is following the approach taken in the leading case of Schurman v The Minister of Immigration [2004] Bda LR 21 SC. It is one which I am content to follow.

37. Assessing the adequacy of the Minister's decision making is straightforward because the reasons for his decision are contained in the letter from the DOI dated 12th December 2008 informing the Plaintiff that his application for a PRC had been rejected.

38. The Court's task in assessing the adequacy of the Cabinet's decision making is less straightforward as the Cabinet gave no reasons for its decision. Section 10(2) of the 1956 Act provided that it was under no duty to do so. However I draw the reasonable inference that the Cabinet accepted the statements of fact and submissions of law contained in the 12th March 2009 submissions from the DOI. They are, in effect, its reasons.

39. Thus it is fair to say that, in the context of judicial review, to a large extent the decisions of the Minister and the Cabinet stand or fall together. I shall refer to the 12th December 2008 letter and the 12th March 2009 letter jointly as "the DOI letters".

40. Schurman provides a useful starting point. As Simmons J stated at page 3 ll 10 – 12:

> "*... whether on a proper consideration of the Applicant's case ordinary residence has been made out is a matter for the Minister [or Cabinet] on consideration of the facts; however the Minister [or Cabinet]must decide that issue on proper legal principles.*"

41. It is to the consideration given by the Minister and the Cabinet to the facts and their approach to the proper legal principles that we now turn.

Facts

42. The Minister and the Cabinet found on consideration of the facts that ordinary residence for the requisite period had not been made out. However Mr Sanderson challenges this conclusion on the ground that it was based on mistakes of fact which were unfairly prejudicial to the Plaintiff.

43. He referred me to E v Home Secretary [2004] QB 1044 EWCA, which was an appeal on a point of law from a decision of the Immigration Appeal Tribunal in England and Wales. Carnwath LJ (as he then was) gave the judgment of the Court. He stated at para 42 that the substantive grounds for intervention by the Court were the same whether the procedure invoked was an appeal or judicial review. The *ratio* of the case is at para 66:

> "*In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of the Criminal Injuries Compensation Board case [an appeal against an the dismissal of an application for judicial review, reported at [1999] 2 AC 330 HL].*

First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been 'established', in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the tribunal's reasoning."

44. A review of the internet data base Westlaw reveals that this decision has been applied on many occasions, and the principle is now well established. It chimes with the observation made *obiter* by Lord Bingham in Runa Begum v Tower Hamlets LBC [2003] 2 AC 430 HL at para 7 that judicial review will lie *inter alia*: "*if the decision-maker is shown to have misunderstood or been ignorant of an established and relevant fact*".

45. In the present case, I am satisfied that the Minister and the Cabinet were both mistaken as to two existing facts which were uncontentious and objectively verifiable.

46. First, the DOI stated in its letter of 12th December 2008, and strongly implied in its written submissions of 12th March 2009, that the Plaintiff left Bermuda in February 2003 and did not return until March 2004: an absence of more than 12 months. In fact, as documented by a stamp on his passport, the Plaintiff returned to Bermuda in March 2003, although it is not clear for how long.

47. Second, the DOI letters stated that the Plaintiff did not come to Bermuda to work at all in 2007, the year immediately preceding his application. In fact he was working in Bermuda from 12th March 2007 to 12th June 2007, as evidenced by his work permit for that period and a letter from his employer to the Chief Immigration Officer dated 19th June 2007.

48. Neither the Plaintiff nor his advisors were responsible for the mistakes. I draw the reasonable inference that the mistakes played a material part in the reasoning of the Minister and the Cabinet as they go directly to whether the Plaintiff satisfied the requirement of ordinary residence.

Legal principles

49. In Schurman at pages 3 – 4, Simmons J reviewed a trilogy[1] of House of Lords decisions on the meaning of "*ordinarily resident*": Levene v Inland Revenue Commissioners [1928] AC 217; Inland Revenue Commissioners v Lysaght [1928] AC 234; and R v Barnet LBC, Ex p Shah [1983] 2 AC 309. Ex p Shah has since been relied upon by this Court in Sharifi v Minister of Home Affairs [2015] Bda LR 78 and Clark.

50. The leading judgment in Ex p Shah was given by Lord Scarman, with whom the other members of the House agreed. He stated at 343 G – H that the court should generally give "*ordinarily resident*" the natural and ordinary meaning of the words as explained in Levene and Lysaght:

> "*Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that 'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration.*"

51. This was subject to one exception, namely that the person concerned was lawfully present in the place in which he was said to be ordinarily resident.

52. The mind of the person concerned was important in determining ordinary residence in two, and no more than two, respects: (i) the residence must be voluntarily adopted; and (ii) there must be a degree of settled purpose. As to the latter, Lord Scarman stated at 344 C – D:

> "*The purpose may be one; or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the 'propositus' intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. and there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.*"

[1] In Schurman, the decisions in Levene and Lysaght were wrongly attributed to the Privy Council.

53. The Minister and the Cabinet do not appear to have understood and applied these principles correctly in concluding that the periods in which the Plaintiff was off-island from February 2003 through to 2008 broke the necessary continuity.

54. The statement: "*In calculating the 10 years residence immediately preceding application, you must do so in continuous periods of twelve months or more*", which occurs in both DOI letters, suggests that *as a matter of law* the Plaintiff's absence from Bermuda from 2003 to 2004, and again for nine months out of twelve from 2004 to 2008, was incompatible with ordinary residence in Bermuda throughout the qualifying period when in fact it was not. Even if that is not what the statement in the DOI letters was intended to mean, it is at the very least ambiguous.

55. For the avoidance of doubt, section 19(3)(b) of the 1956 Act does not mean that as matter of law a period of absence from Bermuda for purposes other than education cannot count as a period of ordinary residence in Bermuda.

56. The DOI mistakenly believed that the Plaintiff was absent from Bermuda for a period of more than 12 months from February 2003 to March 2004. For the avoidance of further doubt, had he in fact been absent from Bermuda for more than 12 months during this period, that would not necessarily have broken the 10 year qualifying period although it would have been a material consideration in deciding whether it had been broken, as was the period for which the Plaintiff was in fact absent.

57. As Lord Brown stated in South Bucks DC v Porter (No 2) [2004] 1 WLR 1953 HL at para 36: "*The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, ...*". I am left with a very substantial doubt on that question.

58. On the other hand, I am not satisfied that no reasonable decision maker, properly directing himself, could properly have found that the Plaintiff had failed to establish that he was ordinarily resident for the requisite period. The merits of the case are not so clear cut that a reasonable decision maker

could only decide it in one way. That is not, of course, the same as saying that to the question of ordinary residence there is not in principle a right answer.

Conclusion on judicial review

59. The decisions of the Minister and the Cabinet on the question of ordinary residence were based on incorrect facts and were not based on the correct legal principles. I therefore quash the decision of the Minister and remit the matter to him for reconsideration. But I decline the Plaintiff's application to direct that the Minister grant him a PRC.

60. Had I not already found that the decision of the Cabinet was a nullity I should have quashed that too. However, that decision stood unless and until the Court declared that it was a nullity. As Lord Judge CJ stated in Interfact Ltd v Liverpool City Council [2011] QB 744 DC at para 37: "*... the starting point is that the courts treat both administrative and subordinate legislative acts as effective and valid until quashed by a court of competent jurisdiction.*" The Minister was therefore correct, in light of the ouster provision, in declining to reconsider his decision to refuse a PRC.

61. I shall hear the parties as to costs.

DATED this 2nd day of February, 2018

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Hellman J