In The Supreme Court of Bermuda

CIVIL JURISDICTION

2021: No. 364

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

MAILBOXES UNLIMITED LIMITED

Applicant

- and -

MINISTER FOR THE CABINET OFFICE

Respondent

RULING

(Judicial Review proceedings, Government procurement process for services, Earlier Judgment of the Supreme Court and Court of Appeal, Application to quash Decision and prohibit Partnership, Good Administration)

Date of Hearing: **4 August 2025**

Date of Ruling: **26 August 2026**

<u>Appearances</u>: **Peter Sanderson, BeesMont Law Limited, for the Applicant**

Eugene Johnston, Attorney General's Chambers, for the Respondents

RULING of Mussenden CJ

Introduction

1. The Applicant in this matter is Mailboxes Unlimited Limited ("**Mailboxes**"), a registered local company concerned with the importation of items on behalf of customers.

2. The Respondent is the Minister for the Cabinet Office.

3. Mailboxes had sought judicial review of the decision (the "**Decision**") of the Minister to enter into a shopping platform partnership (the "**Partnership**") involving the Bermuda Post Office ("**BPO**") and an entity described as Access USA Shipping LLC ("**AUSA**"), and which appears connected to "**myUS.com**", and the procurement procedures relating thereto. An agreement, defined and set out below, provides that there will be a website "**MyBermudaPost**" which supports the shipping services.

4. This Court issued a judgment dated 1 August 2023 (the "**SC Judgment**") where it was declared that it was unlawful for the Minister to enter into the Partnership, with respect to a failure to follow a procurement process. In respect of the relief of prohibition and certiorari, I adjourned the matter for further evidence and submissions, stating:

> *"Relief Sought*
> *75. I have considered the relief sought in this case. In light of the reasons set out above, I make the declaration that the Decision to enter into the Partnership was unlawful.*
>
> *76. I have now considered the relief of an order restraining the Minister from continuing the Partnership and an order to quash the Decision. Mailboxes in its written submissions stated that if the Court was not willing to quash the contract itself, there still needed to be some supervision of the Respondent's practices. Also, Mailboxes argued that as the Respondent provided no evidence for the substantive hearing, it is unknown when the contract is due to expire. Thus Mr. Sanderson argued that the Court should order the Respondent to produce the AUSA contract with a view to making a mandatory order that the Contract will not be renewed without opening the process up to a proper procurement process.*
>
> *77. In my view, the Court would benefit from information provided by the Respondent about the contract, in particular, the end date of the contract and the impact of quashing the decision immediately or allowing it to terminate at the end of the contract. For example, if the contract is for a fixed term and due to expire within a reasonable time, then it may be that the decision is not quashed immediately because many users of the service may be adversely affected. Thus, the contract can end on the contract end date and then the proper procurement process could be undertaken if the BPO wished to continue such a service. If it is an unlikely open-ended contract then the Court may consider quashing the decision at some reasonable point in the near future to allow for a proper procurement process to be undertaken if the BPO wished to*

continue the service. In light of these circumstances, in my view it would be fair to all parties for the Court to grant leave to the Respondent to file if it wishes, within 14 days of the date of this Judgment, affidavit evidence about the end date of the contract and the impact of restraining the Minister from continuing with the contract and quashing the decision immediately or allowing the contract to run its course. Likewise, I grant leave to Mailboxes to file a reply affidavit within 14 days thereafter. I will then hear submissions at an expedited date to be set by the Registrar with any written submissions to be filed three days before the hearing after which the Court will make a decision on the reliefs sought of prohibition and certiorari."

5. The Minister appealed to the Court of Appeal. On 22 November 2024, the Court of Appeal issued its Judgment (the "**CA Judgment**") dismissing the Minister's appeal and wherein, in the final paragraph of the CA Judgment, agreeing to the Judgment of Smellie JA, Clarke P stated [at 95]:

   "95. I, also, agree. I would only add that it seems to me unfortunate, to say the least, that <u>the Appellants have been so unrevealing as to (i) exactly what the nature of the arrangement was; (ii) what was its term; and (iii) how and on what basis the $24,000 figure was calculated., including any estimate of contract value under clause 8.1. of the Code.</u> It does not seem to me that the Appellants have set out "fully and fairly" what exactly they have done. In the absence of such information I entertain considerable doubt as to whether that extremely modest figure is a correct assessment of total value, which is "the value of goods or services to be procured during the term of a contract": see, also section 8 (3) of the Code to the same effect. When the Supreme Court has to determine what further relief to grant (if any) it may well be necessary for it to be provided by the Appellants with further information under categories (i) – (iii) above. I would invite the Appellants to reconsider their policy of reticence." [Emphasis added]

6. The matter now appears before the Court to consider the issue of prohibition and certiorari.

7. As will become clear below, Mr. Brangman in his affidavit evidence sworn 4 April 2025, and clearly well after the SC Judgment and the CA Judgment, and perhaps guided by the invitation of Clarke P, disclosed an agreement dated 18 May 2021 between the Government of Bermuda represented by the BPO on the one part, and Access USA Shipping, LLC on the other part (the "**Agreement**"). At the start of the hearing, Mr. Johnston submitted to the Court that it can accept that the Agreement was still in existence.

<u>Evidence</u>

<u>The Minister</u>

8. The Minister filed evidence, namely the Second Affidavit of the Post Master General (the "**PMG**"), Mr. Samuel Brangman, sworn 4 April 2025 ("**Brangman2**") along with exhibit documents. He asked the Court to reject Mailboxes' claim for certiorari.

9. Mr. Brangman asserted that, despite the Judgments of both this Court and the Court of Appeal, that the BPO had done the right thing because the Post Office Act 1990 ("**POA**") provided support for the BPO to enter into agreements with postal service providers in other countries and to be competitive in the modern age with the private sector. He explained that most countries are members of the Universal Postal Union (the "**UPU**") which has issued a Universal Postal Convention dated 26 August 2021 (the "**Convention**") which supported modernization of postal services including competition with private sector providers, an exercise which almost all Caribbean post offices had now done by way of partnerships with international shipping and postal companies. The UPU had also issued an exhibited Postal Reform Guide in 2019 (the "**Guide**") which addressed the need for member countries to adapt their postal services to the decrease in letter mail and changing technology. The Guide also spoke to the stance taken by private sector couriers and that governments must satisfy their postal delivery obligations, which need not preclude competition.

10. Mr. Brangman stated that in Bermuda, not everyone can afford to use private couriers to send mail and parcels, private couriers are largely unregulated, prices are not controlled and there is minimal oversight. He expressed his view that if Mailboxes could scupper the Partnership by having the Agreement quashed, then it would be a retrograde step and an overt move to damage the BPO, the Government's ability to satisfy its international obligations and a long-term danger to the public.

11. Mr. Brangman referred to some email correspondence dated November 2018 between Dr. Eugenie Simmons, then a corporate services manager for the BPO and Mrs. Elaine Blair-Christopher, then a procurement manager for the Office of Project Management and procurement (the "**2018 Emails**"). These were clearly before the Agreement was entered into. Dr. Simmons explained the concept of the shipping service where the shipping entity would be responsible for the business operations in the foreign jurisdictions and BPO would be responsible for performing the 'final mile services/functions (the "**Final Mile Services**"[1]) which includes receipt of packages, customs clearance and delivery options.

[1] Mr. Johnston referred to the action as the 'last mile service/delivery'

Mrs. Blair-Christopher replied *"…We agree, it appears that this is a new product offering within the suite of services that the BPO could offer to new and existing clients and is not a procurement activity.*" Thus, Mr. Brangman relied on the view of Mrs. Blair-Christopher to state that the intended service was not a procurement activity. This position was advanced by Mr. Johnston in submissions. To this point, I should add that Mrs. Blair-Christopher also said in the same email "*In addition, as mentioned by you – the information collected in the RFI, it supports the notion there is an interest for type of service and there are a number of businesses who may concern (the possibility of) working with BPO*."

12. Mr. Brangman stated that this was a convenient time to disclose the Agreement, it having not been disclosed previously before this Court and the Court of Appeal as set out above. He explained some details about the Agreement: (i) the Agreement is defined as a 'partnership'; (ii) AUSA's responsibility is to provide services to BPO's customers; (iii) it expressly defines AUSA as the customers' agent; (iv) most importantly there is no obligation on the Government to pay AUSA anything for the services AUSA provides to the BPO's customers; (v) the only provision that obliges BPO to pay AUSA anything is in article 4.2 - when the Total Shipping Weight per Month ("**TSWM**") does not amount to at least 1,750 pounds in 4 months, and at least 3,250 pounds after 10 months, then, for each of the months this occurs, BPO has to pay $2,000 to AUSA. Thus, the potential outlay of the Government is $24,000 per year, and BPO has never been required to pay. Mr. Brangman explained that this is the true reason that sum was quoted by the Minister in his early statements. He stated that it should now be clear from reading the 'compensation' provisions that, in the standard month-to-month situation, AUSA pays BPO, not the other way around. He stated that the 'MyUS Website Tech Fee' mentioned in Exhibit C to the Agreement, and triggered when the minimum TAWM has not been met, is actually an access fee, implemented to help recover the website tech costs to develop BPO's online presence, just in case service fails.

13. Mr. Brangman stated that it was clear that the Agreement did not call for a procurement activity and thus there should be no question of invalidating the Agreement. His main point was his view that the Court of Appeal stated [at para 87] that even if the Agreement should

have been procured, it was 'a low value procurement'. Mr. Brangman stated that this would have required the BPO to have obtained 'three quotations by telephone or in writing' [para 60], insisting that that was the full process failure. Thus, in his view it would be counter-productive to quash the Agreement to correct that form of error. Further, Mr. Brangman stated that as of the date of the hearing, there were at least 4,643 registered customers who benefited from the Agreement, who bring in parcels at prices more affordable than those offered by Mailboxes or any other private courier on-island. Thus, quashing the Agreement would do nothing but stifle or slow down progress and it would inconvenience thousands of people who use the BPO to bring in parcels.

Mailboxes

14. Mailboxes' filed evidence, namely the Second Affidavit of Kenneth Thomson, sworn 6 May 2025 ("**Thomson2**") along with exhibits (Approved Estimates of Revenue and Expenditures for the BPO for the years 2022/23, 2024/25, 2025/26 (the "**Estimates**") and Hansard for 20 March 2024 (the "**Hansard**")) addressing Brangman2. Mr. Thomson addressed various clauses of the Agreement, to support his contention that the Agreement was a significant procurement, including to clause 4.2 and the potential TSWM payment.

15. Mr. Thomson referred to the Estimates for 2022/23 stating that the figures in the Estimates do not make it clear what revenue the BPO is receiving from the Agreement. However, he gave figures for Customs Declarations Fees for the years since 2020/21 when for 2020/21 it was $119,000, for 2021/22 it was $203,000, for 2022/23 it was estimated to be $553,000 although the 2024/25 Estimates Report showed that the actual revenue for that year was $272,000, for 2023/24 it was $473,000 and for 2024/25 it was estimated to be $523,000.

16. Mr. Thomson referred to a Hansard Senate discussion for the BPO when then Senator Owen Darrell confirmed that Customs Declaration fees included MyBermudaPost processing and front counter service fees, stating that without MyBermudaPost, the BPO would be another $350,000 in deficits. Mr. Thomson used that figure to say the procurement was far above a low-value procurement. Thus, the previous four years, the

Agreement had siphoned hundreds of thousands of dollars each year to a foreign contractor, undermined the local retail sector, and drawn it into an expensive, protracted dispute with a law-abiding, tax-paying Bermudian shipping company. He stated that the Agreement had not meaningfully reduced the BPO's sizeable deficit or erased its burden on the Bermudian public, thus it was sensible to rescind the Agreement, re-tender the contract to a local shipping company, and cut spending by improving efficiency with which it delivers its core services.

Mailboxes' Submissions

17. Mr. Sanderson submitted that the Estimates and the Hansard showed that the revenue as a result of the Agreement was significant and clearly a procurement. Also, there was further support in the Agreement: (i) at clause 3.3 where it states that AUSA would "*on the Partners behalf*", that is on the BPO's behalf, make services available to customers; (ii) at clause 3.4 where it explicitly refers to "procuring" services – by BPO procuring the services from AUSA does not create an obligation to continue to procure such services from AUSA – and – AUSA acknowledges that BPO is free at all times to procure similar services from other service providers; and (iii) at clause 4.2 in respect of the minimum TSWM. Thus, the combination of these factors aligned with BPO being the procurer. Further the Price Schedule showed that AUSA gets paid for processing packages, and then the 50/50 split takes place thereafter, thus again it was clear that the BPO was procuring services.

18. Mr. Sanderson submitted that Bermudian business ought to have a chance to be involved with the process. He submitted that the Agreement was dated 18 May 2021 and at clause 8.1, was to remain in effect for four years and not automatically renew taking it to 18 May 2025. As the Agreement was still in effect, it was clear that it had been renewed, again without going out to procurement. Thus, after four years, it was time for the procurement process to be implemented whereby local businesses can have the opportunity to be involved. When challenged by the Court that an order to quash the Agreement would affect several thousand people, Mr. Sanderson submitted that the Agreement could be quashed

later on after the procurement process was allowed to take place, meaning there would be no interruption in service or income.

19. Mr. Sanderson referred to the CA Judgment [at 87] where Smellie JA found that it was reasonable for the Judge to infer that the payment of $24,000 was in respect of a service agreement and was therefore subject to the process of the Code as a low-value procurement, thus rejecting the Minister's argument that there was no procurement. He also referred to paragraph 95 where Clarke P stated that in the absence of such information, he entertained considerable doubt as to whether the extremely modest figure was a correct assessment of total value, which was the value of goods or services to be procured during the term of a contract. Based on these statements, and based on the evidence before the Court now, it was clear that the Agreement was a procurement, despite the structure for the arrangement, and it was not dependent on which entity got paid first. In respect of the 2018 Emails, which preceded the Agreement, it was unclear what the Procurement Office was privy to at the time, and in any event the view of the Procurement Office was superceded by the Judgments of the Courts. Thus, it was wrong for the Procurement Office to say it was not a procurement when it was a high-value contract – not a low-value procurement - and it was a profit sharing platform.

20. Mr. Sanderson submitted that there was a lack of case law on the quashing or setting aside of contracts stemming from unlawful procurement processes, as in the United Kingdom, there were regulations, and thus generally outside the ambit of judicial review. However, the case of *R (on the application of Structadene) v Hackney London Borough Council* [2001] 2 All ER 225, Elias J in the High Court on a judicial review application set aside a contract for disposal of land, on the basis that the local authority had not obtained requisite consents from the Secretary of State.

<u>The Minister's Submissions</u>

21. As stated above, at the start of the hearing, Mr. Johnston submitted to the Court that it can accept that the Agreement was still in existence. Mr. Johnston submitted that the BPO was

content with the SC Judgment and the CA Judgment, although he noted that neither Court had the Agreement before them before the Judgments were issued. He noted that the Court of Appeal found that it was a low-value procurement, such which requires three (3) telephone quotations.

22. Mr. Johnston submitted that Mr. Sanderson had resorted to the Estimates in order to obtain a high level of revenue, but he noted that the earlier Estimates did not break out the MyBermudaPost fees. When challenged that Mr. Brangman could disclose the actual revenue, Mr. Johnston submitted that the procurement process was based on an estimate of revenue. Mr. Johnston submitted that clause 8.3 of the Code of Practice indicated that the value is an estimate of what a contractor will receive, so to attempt to say what the BPO is receiving in revenue will result in incorrect figures. Mr. Johnston submitted that the safest process was to use what the Court of Appeal stated at paragraphs 60 and 87 of its Judgment:

> *"60. In summary then, from [11.3] of the Code, for Low Value Procurements, while the more formal aspects of the Open Procurement Procedure are waived, a public officer is nonetheless required to obtain at least three (3) quotations by telephone or in writing.*
>
> *87. While neither the Judge nor this Court could determine precisely what the payment of $24,000 to Access USA was for, nor in what capacities made, it was reasonable for the Judge to infer, as he did at [71], that the payment was in respect of a service agreement and was therefore subject to the process of the Code as a low value procurement. Further, that which the Cabinet Office spokesman was quoted by the Royal Gazette as saying in October 2021 – see [16] above - was, as the Judge recorded at [70], in effect a statement that the BPO had procured a service which had a value of $24,000. The Procurement Argument must therefore also be rejected."*

23. Mr. Johnston submitted that having now reviewed the Agreement, it was not a procurement, which is the position of the Procurement Office and the BPO. Further, he stated that the Courts had made pronouncements about good administration, standing, duty of candour and the Government passing a law but not enacting it, but having to abide by it. He submitted that good administration had occurred, such that it did not make sense to quash the Agreement. He noted that clause 3.4 of the Agreement set out that AUSA was not retained as an exclusive provider of the services, thus the BPO could enter agreements with other service providers by tendering locally and overseas, although Mr. Thomson expressed the view that the partnership should be made with a local entity.

24. Mr. Johnston made reference to the concept of the Final Mile Services and to the invitation of Clarke P [at 95] in the CA Judgment to set out some pertinent details of the Agreement to assist the Court at this stage. Thus, Mr. Johnston then explained the terms of the Agreement, giving an example of the process of a customer ‘C’ purchasing an item overseas and it being shipped to Bermuda: (i) C orders an item from a vendor overseas which is shipped to AUSA; (ii) AUSA receives a fee from C, and then ships the item to Bermuda; after some expenses are deducted, AUSA keeps 50% of the fee for itself and the other 50% is paid to the BPO. Mr. Johnston referred to the Exhibit C of the Agreement, which is the “Price Schedule” which shows per weight amount, in pounds, the gross profit after expenses, and the 50% share of it equally to AUSA and BPO.

25. Mr. Johnston referred to the 2018 Emails. It was on that basis that Mr. Johnston submitted that the Court could now say the Agreement was not a procurement. Thus, if the Court quashed the Agreement today, then the BPO could enter another agreement tomorrow, thus it did not make sense to quash it. Further, the BPO could also put the service out to tender, make three (3) phone calls and choose whomever they wished to contract with. In respect of the thousands of customers who use AUSA, then that relationship would be disturbed and it would be difficult to rebuild it.

26. Mr. Johnston submitted that the Court of Appeal did not make a declaration that the Agreement was a procurement. When the Court canvassed Mr. Johnston that he was asking the Court to now find that the Agreement was not a procurement in order to not quash it, he replied that the Court need not go that far, but that it could rely on the view of the Procurement Office that it was not a procurement, but that it was good administration. When the Court indicated that it would be useful to have affidavit evidence from the Procurement Office to that effect, Mr. Johnston replied that it was not prepared to file an affidavit. He directed the Court’s attention to the exhibited extract from the Code of Practice for Project Management and Procurement section 3.5 ‘Interpretation’ which states “*The Director of OPMP has the authority to resolve any questions on the interpretation of the Code*.” In respect of good administration, Mr. Johnston referred to the Court of Appeal case of *Lawrence & Johnston v the Public Service Commission et al* [2025] CA (Bda) 14

Civ. where Kawaley JA (as he then was) stated that "*Public law relief will usually be informed by the interests of good administration and are discretionary in any event.*"

27. In response to a question from the Court about Estimates 2025/26 [at B-48] the actual 2023/24 figure of $448,000 in respect of MyBermudaPost fees. Mr. Johnston agreed that it meant that both AUSA and BPO each received $448,000 as part of the profit share.

<u>Discussion and Analysis</u>

28. In my view I should grant the relief prayed for by Mailboxes for several reasons as follows.

29. There have been substantive submissions by counsel as to whether the Agreement is a procurement activity. Mr. Brangman stated that now that the Agreement can be scrutinised, there was no need for the procurement process and on that basis there should be no question of invalidating the Agreement [Brangman2 at 21]. On the contrary, Mailboxes argued that there is a high-value procurement because of the revenue figures involved. Despite those submissions, I must remind myself of what I ruled in the SC Judgment as set out above and what my task is at this stage, which is to consider the relief sought. Therefore, I am not inclined to entertain arguments to revisit the SC Judgment as to whether the Agreement required the procurement process, save as to make some comments about the nature and value of the business. To that point, the CA Judgment dismissed the Minister's appeal and it would be improper for this Court to undergo any process that sought to undermine or somehow act inconsistent with the CA Judgment.

30. I take note that Clarke P stated that the Minister should provide the following information: (i) exactly what the nature of the arrangement was; (ii) what was its term; and (iii) how and on what basis the $24,000 figure was calculated, including any estimate of contract value under clause 8.1. of the Code. I understand from the disclosure of the Agreement the following:
    a. The nature of the arrangement – The Agreement sets out that the BPO is entering a partnership with AUSA to offer to BPO's customers, AUSA's business operations which include cross-border e-commerce package consolidation and export services.

AUSA uses its proprietary internet website, MYUS.com and back-end technology systems to do so. BPO's customers appoint AUSA to be their agent to perform routed export transactions on their behalf. For the service provided by AUSA to BPO's customers, USA pays the BPO according to the Price Schedule. AUSA and the BPO will look to the customer for all payment for services provided while the customer's package is under the particular service provider's remit.

b. The term – The Agreement's effective date was 18 May 2021 and the term as set out in Article 8 was for four (4) years. That term ended 17 May 2025 but as set out above, Mr. Johnston stated that the Court could take it that the Agreement was still in existence. He nor Mr. Brangman provided any further evidence on the extended duration of the Agreement or how it came about. Therefore, the Court does not have before it any evidence as to the length of the Agreement or any renewal process and terms. To that point, Article 8 of the Agreement sets out that after three years of the Agreement being in place, renewal is by way of an agreement in writing.

c. How and on what basis the $24,000 figure was calculated, including any estimate of contract value under clause 8.1. of the Code – The Agreement shows that the $24,000 was potentially arrived at when, per Article 4.2 as read with Exhibit C to the Agreement, the minimum TSWM is not met.

31. In my view, the nature of the arrangement is that simply put, the BPO wanted to offer a service to its customers to get their packages from the USA delivered to Bermuda. They could have done the whole process themselves somehow, or they could use a service provider to do some of it. If they performed the whole function, then they would be entitled to the full fee from its customers. If they used a service provider, then some of the customers' fees would have to be paid to the service provider. As it turns out, the BPO entered into an agreement in which its customers use a service provided by AUSA and AUSA's systems, such systems which are also used by BPO (See Agreement Exhibit B Service Level Agreement). Although Mr. Johnston prefers the view that AUSA is providing a service only to BPO's customers, AUSA is also providing services to the BPO, for example, use of AUSA's website and electronic systems. In the present case, the customers pay AUSA which in turn pays BPO its share according to the Price Schedule. I

agree with Mr. Sanderson when he says it does not matter in what order the parties are being paid. To that point, there could have been another model to this Agreement whereby BPO's customers paid BPO, which in turn paid AUSA their share according to the Price Schedule. The significant point is that, AUSA, as selected by BPO, is getting a share of the revenue from BPO's customers as its payment.

32. I now turn to the $24,000 figure. As we have seen, the Agreement reveals that the $24,000 figure is engaged when the minimum TSWM is not met. I note that section 8(3) of the Code sets out that the value of the contract is the expected amount of funds (or something of equal value) that will be received by the contractor. Thus, the reality is that the value of the contract is far greater than $24,000. What can be seen from the Estimates is that as a result of the Agreement, both the BPO and AUSA are receiving revenue in the hundreds of thousands of dollars on an annual basis. For example, I refer to the Estimates 2025/26 where Mr. Johnston confirmed that the actual amount received in 2023/24 by both the BPO and AUSA was $448,000 each. Thus, for that year, the nature of the arrangement, is that BPO's customers paid approximately $900,000, the gross being shared between AUSA and BPO.

33. This conclusion, leads to another point for which the Minister and the PMG, along with their counsel take a view that any procurement process would be a low-value procurement based on the figure of $24,000. This Court and the Court of Appeal alluded to that before the disclosure of the Agreement and the Estimates although Clarke P expressed considerable doubt as to whether there was a correct assessment of total value. As set out above, Mr. Johnston submitted that if the Court quashed the Agreement, then BPO could make three phone calls and choose whomever they wished to contract with. However, in my view, the value of the contract is significantly greater than $24,000. Thus, in any future procurement process, the BPO would be well served to consider the evidence of the Estimates and use the appropriate level procurement process.

34. I now turn to whether the relief should be granted. On the one hand, the BPO has its obligations under the UPU, the Convention and the Guide to venture into this area of package delivery service, even if it means entering into competition with the private sector.

This it has done with some success as evidenced by the revenue and the thousands of customers that have signed up for the AUSA service. Thus, if the Decision was quashed, there would be an unseemly disruption to a profitable service used by a large number of people - at least for a period of time. On the other hand, the Agreement's initial term has expired and according to Mr. Johnston, the Agreement is still in existence, for which there is no evidence before the Court as to its duration or termination. It could run for years without any other entity having a chance to submit a proposal to provide the service. As I set out in the SC Judgment in respect of remedy, if the Agreement was due to end within a reasonable time, then the Court may have been minded to allow it to run its course, on the basis that a procurement process would take place before its renewal. On the contrary, if it was an open-ended contract then the Court may have considered quashing the Decision at some reasonable time in the future to allow for a proper procurement process to be undertaken.

35. In the SC Judgment, I granted leave for the Minister to file affidavit evidence about the end date of the contract. The Agreement was filed for the present hearing but there was no evidence about the end date of the contract, instead Mr. Johnston stated that the Court can accept that it is still in existence. As stated above, Article 8 of the Agreement sets out that after three years of the Agreement being in place, renewal is by way of an agreement in writing. Thus, the end date could have been provided to the Court.

36. I have considered the level of procurement process that should be undertaken as set out above and concluded that this is not a low-value procurement. Thus, the procurement process will not be simply to obtain three phones and then make a selection as Mr. Brangman and Mr. Johnston argue. If that were the case, then it would support not quashing the Decision.

37. I have also considered the non-exclusivity of the Agreement. It is clear that BPO can enter into a similar agreement with other services providers without prejudice to the Agreement with AUSA. On the face of it, I considered whether there was merit only to ordering BPO to perform the procurement process. However, in my view, such an avenue misses the point

that AUSA is enjoying the rewards of the Agreement reached by way of a lack of the procurement process. Thus, that would be an unfair resolution to the matter.

38. In respect of the case of *Lawrence & Johnston* and good administration, in my view, although the actions of the BPO resulted in achieving some of its obligations and indeed increased revenue, I do not accept that the BPO demonstrated good administration by the process it has taken to make the Decision, to not disclose evidence of the Agreement to this Court and to the Court of Appeal at the relevant stages and now to continue the Agreement without informing the Court of its duration or termination. Thus, in the balance, in exercising my discretion, the interests of good administration calls for openness and transparency on the part of the BPO as well as following the correct procedure to arrive at a decision. Further, the procedure calls for fairness – both to BPO and also to the range of service providers in this area of business in Bermuda as beyond. That fairness calls for entities to have an equal opportunity to bid on the service.

39. I have considered the impact on the customers and on AUSA if the relief is granted. The impact on Customers can be mitigated by way of delaying the order for a sufficient time, which I address below. The impact on AUSA will be the loss of the revenue and any time and resources invested in the Partnership. As the Agreement was initially for four years, and has now been renewed, the impact of investment, at least the original investment, is likely to be minimal. I have also considered whether granting the relief will serve a useful purpose. In my view, doing so will achieve fairness to all concerned and an adherence to the Code.

40. In light of the above findings, and considering the respective positions of both parties, and the impact of granting the relief sought, in my view, the justice of this case requires the Court to exercise its decision to grant the relief sought, namely an order for certiorari to quash the Decision and an order of prohibition restraining the Minister from continuing the Partnership.

41. The order for certiorari is effective from the date of the Judgment.

42. In respect of the order for prohibition, I take the view that there should be some leeway to avoid disruption of the service to the BPO, AUSA and the customers, meaning that a reasonable time period should be granted to allow a proper procurement process to be undertaken and a new or existing service provider to be put in place, if desired. Thus, I will allow a time period of ninety (90) days from the date of this Judgment (and Order of the same date) before the order of prohibition is given effect. The parties are at liberty to apply in respect of an issue of time or an application for an extension of time.

Conclusion

43. In summary, I have made the following orders:

    a. An order of certiorari quashing the Decision to execute such contract that has been entered into to give effect to the Partnership, such order effective on the date of this Judgment;

    b. An order of prohibition restraining the Minister from continuing the Partnership, such order stayed until ninety (90) days from the date of this Judgment (and Order of the same date).

    c. There be liberty to apply in relation to any issue of time or application for an extension of time.

44. Unless either party files a Form 31TC within 7 days of the date of this Judgment to be heard on the subject of costs, I direct that costs shall follow the event in favour of Mailboxes against the Minister on a standard basis, to be taxed by the Registrar if not agreed.

Dated 26 August 2026

THE SEAL OF THE SUPREME COURT OF BERMUDA

SIGNED

HON. MR. JUSTICE LARRY MUSSENDEN
CHIEF JUSTICE