

[2018] SC (Bda) 74 Civ (6 November 2018)

IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION

2017: No. 477

BETWEEN

HAROLD JOSEPH DARRELL

Plaintiff

and

THE HUMAN RIGHTS COMMISSION

Defendant

RULING

Date of Hearing: 16th October 2018
Date of Ruling: 06th November 2018

Kessaram AJ

1. The Plaintiff's claim in this case is against the Human Rights Commission (referred to as "HRC" or "the Commission" or "the Defendant"). It is brought by Mr. Harold Darrell (hereinafter referred to as "the Plaintiff" or "Mr. Darrell") and is the latest effort by Mr. Darrell in a series of legal endeavours over a long period of time to obtain redress for alleged unlawful discrimination against him by the Bank of Bermuda Limited (as it then was) (hereinafter referred to as "the Bank"). At the heart of the matter is the allegation that the Bank discriminated against Mr. Darrell on the grounds of his race. It did so allegedly when it failed to properly investigate his claim that confidential information relating to the state of certain of his loans from the Bank was leaked to third persons. The leak of this information is said to have prejudiced him by causing certain businessmen with whom he was about to enter into a business transaction to cease to deal with him further.
2. It is a lamentable fact that to this day – some 18 years after making his formal complaint to the HRC - Mr. Darrell has not had his complaint against the Bank properly investigated by a board of inquiry convened under the Human Rights Act 1981 (hereinafter referred to as "the HRA 1981"). The history of the matter is described in the many judgments of this Court and the Court of Appeal that have been rendered in a multiplicity of actions and appeals which have gone before this case. It is not the purpose of this Ruling to explain why Mr. Darrell has not been able to obtain the redress he seeks. The application before the Court on which this Ruling is given is an application to strike out this claim as disclosing no reasonable cause of action and for other reasons. I am only concerned with determining whether this action should be allowed to proceed to trial with the consequential expenditure of time and legal costs that the Defendant will be put to in defending the claim; or whether it ought to be dismissed without a full trial on the grounds that the case is a hopeless one or is otherwise frivolous or vexatious or an abuse of the process of the Court.

The Claim

3. The writ in this action was filed on 22nd December 2017. The endorsement on the Writ describes Mr. Darrell's action as follows:

“THE PLAINTIFF’S claim is for:

Damages for the loss and damage suffered by the Plaintiff as a result of the wrongful acts done by the Human Rights Commission that caused the Human Rights claim of this Plaintiff to be unlawfully dismissed through acts of Malfeasance and Misfeasance performed by the Human Rights Commission and its Executive Officer.

PARTICULARS OF CLAIM

1. *At all material times the Plaintiff (hereinafter referred to as P) was the complainant in question of a complaint filed by him against the Bank of Bermuda Limited and the Chief Executive Officer and the Directors of the Bank as Directors of the entity.*
2. *It is not disputed that the P had a complaint that was filed and that Mr. Neville Darrell, the then Investigations Officer, drafted the Terms of Reference (hereinafter referred to as the TOR).*

The Plaintiff also claims interest, pursuant to the Interest and Credit Charges (Regulation) Act 1975 on such sums as may be found to be due to him/her, at such rate or rates and for such periods as this Honorable Court shall think fit”.

The Statement of Claim

4. The Writ was supplemented by a Statement of Claim dated 8th March 2018. The Statement of Claim alleges that the action *“arises out of the failure of the HRC to ensure that the Human Rights Complaint of the Plaintiff was properly dealt with in compliance with s. 6 Human Rights Act, and in accordance with s. 6(8) of the Constitution of Bermuda; thus breaching the fundamental Constitutional Rights of the Plaintiff. Said breach continues to this day as the HRC refuses to proceed on the unheard complaint”.*
5. In the following numbered paragraphs of the Statement of Claim it is alleged that Mr. Darrell's claim was against the Bank, the Chief Executive Officer of the Bank and the members of the Board of Directors of the Bank; that it was the HRC's duty (and that it is still its duty) to deal with the Plaintiff's complaint *“in a conciliatory fashion”*. Then there is a reference to the Particulars of Claim contained in the Writ (which are reproduced in full above) which are said to contain the methods by which the HRC *“through its members, servants and/or agents breached the fundamental Constitutional and Human Rights of this Plaintiff as enshrined in the Constitution along with the spirit and intent of the Human Rights Act and as part of the Social Contract”*. There then follows in the Statement of Claim what are headed *“Particulars of Breach”*. In the first paragraph of the *“Particulars of Breach”* it is alleged that the *“Particulars of Breach are set out in detail in the Particulars of Claim within the Writ”* (which is clearly not the case). It is further alleged that the breaches *“include but are not limited to the mishandling of the complaints”*; and *“The failure to ensure that the Plaintiff's Discrimination Claim is heard”*; and *“The failure to ensure in the portion that was heard*

that the HRC properly held carriage of the complaint before the Board of Inquiry by stopping Mr. Wilson's attendance"; and "Ignoring the recommendations of the Ombudsman in circumstances where the Ombudsman has found multiple counts of Mal-Administration by the HRC through its members, servants and/or agents". The Statement of Claim then proceeds to describe the loss and damage that Mr. Darrell has allegedly suffered under the heading "PARTICULARS OF LOSS AND DAMAGE".

6. In the prayer to the Statement of Claim the Plaintiff sets out the relief he seeks. There are seven items in the Plaintiff's list. They are as follows:

- 1. Damages for Financial Loss of Profits; and*
- 2. Damages for Financial Loss in Legal Fees; and*
- 3. Damages for the Harm done to his personal life and the lives of his family; and*
- 4. Damages for the Emotional Harm suffered by the Plaintiff as well as his children; and*
- 5. Damages for the loss of amenities such as his boat and general enjoyment of life.*
- 6. Any other such loss and damage that the court thinks fit in the circumstances; plus*
- 7. Interest on such sums as spent on legal fees over the years in accordance with the Interest and Credit Charges (Regulation) Act 1975".*

Further and Better Particulars

7. The Defendant sought particulars of the allegations in the Statement of Claim. The relevant particulars that emerged in response to the request are as follows:

a) Mr. Darrell alleges that the HRC through its Executive Officer contravened s. 16(4) of the HRA 1981 in that she *"obstructed the complaint being placed before the board through acts of Misfeasance in Public Office"*. No details of the specific acts of misfeasance are given in this part of the response.

b) Mr. Darrell refers in his response to an *"unheard complaint"*. The relevant part of Mr. Darrell's response to the HRC's request for further and better particulars is as follows:

"The nature of the unheard complaint is that the Respondent [this capitalized term is not defined, but is understood to be the Bank] unlawfully discriminated against this Plaintiff by reason of his race. The claim was investigated and placed before the board which only dismissed the claim on the basis of the Terms of Reference being incorrect. It is a settled fact if not a finding by the Court that the Bank was a proper Respondent along with the other Respondents. Therefore there is no reason to now question the validity of the original complaint".

- c) Mr. Darrell's claim that his constitutional rights have been infringed was explained as follows in his response to the request for particulars:
"The Plaintiff is claiming that his Constitutional Rights under s6(8) of the Constitution Order 1968 have been breached. 'The right to a fair Hearing in a reasonable time as prescribed by the Constitution has been breached.' It is further alleged that up to the present day the Human Rights Commission can place the complaint before the Tribunal assembled to hair [sic] the valid complaint that was referred to the tribunal by the minister".
- d) After setting out the provisions of s. 15 of the Constitution Mr. Darrell states:
"It is the Plaintiff's contention that the Supreme Court could Order that his Discrimination Claim be placed before the Tribunal for its consideration. The claim for damages in this action is brought separately against the defendant the servants and agents of the defendant in their acts of misfeasance in public office perpetrated intentionally that the result would be injury or would likely injure this plaintiff".
- e) Mr. Darrell's claim that the HRC was and is under a duty to and has the power to place his complaint of discrimination before a tribunal under the HRA 1981 is said to be based on s. 18 of the HRA 1981 as it now stands¹.
- f) Particulars of the allegations of misfeasance against the HRC were also requested. The HRC sought particulars as to which *"members, servants and/or agents"* the allegation is made against as the general endorsement on the Writ only mentioned Neville Darrell as the Investigations Officer of the HRC and the person who drafted the Terms of Reference of the complaint. In his response to the request for these particulars Mr. Darrell alleges as follows:
"It is alleged that Mrs. Lisa Lister-Reed, the executive officer of the Human Rights Commission became an accomplice to the obstruction of the plaintiff's complaint being placed before the Tribunal. Moreover, once the Ombudsman had completed her report and her recommendations the Human Rights Commission of 2018 have further refused to place a complaint before the Tribunal although they appear in their correspondence to have admitted that someone committed a wrong to this plaintiff but state, erroneously that it was not the currently sitting members of the commission. This issue was further cleared up by the Ombudsman who pressed upon the committee that the committee is the office and is a continuing body".
- g) In response to the Defendant's request for particulars as to how it has breached Mr. Darrell's constitutional rights, Darrell replied as follows:

¹ This section of the Act has been amended by the Human Rights Amendment Act 2012. The power of the HRC to refer a complaint to a tribunal did not exist when Mr. Darrell's complaint was heard by the board of inquiry in 2005. I deal with this issue of the HRC's powers further below.

“It is alleged that as the executive officer has the authority to refer the matter to the Tribunal the corn [sic] executive officer has refused to exercise that authority upon hearing that her failure to do so amounts to misfeasance in public office. It is further alleged that the executive officer has not worked alone but in concert with others outside the Commission”.

h) Darrell was then asked about his claim for breach of the “Social Contract” referred to in the Statement of Claim. His response was as follows:

“The social contract referred to is the fact that in exchange for the populace vote every citizen is entitled to redress under the law as enshrined in the Constitution and section 6 and 15”.

“In as much as the plaintiff has a right to bring an action under the Constitution the breach of the social contract is actionable as a breach of the Constitution and their [sic] rights under the Constitution”.

i) Mr. Darrell was then asked about the alleged wrongful acts said to amount to malfeasance or misfeasance by the HRC. Mr. Darrell’s response was that the wrongful acts consisted of *“the continued refusal to place the Discrimination claim before the tribunal so they may be lawfully her [sic] with the bank as one of the respondents in the action”.*

j) In his response to a request for particulars as to the alleged unlawfulness of the dismissal of Mr. Darrell’s HR complaint by the (hereinafter referred to as “the BOI”) of Inquiry Mr. Darrell stated in his response:

“The defendant appears to be confused as to the nature of the claim in this action as [sic] the plaintiff’s claim is to have the issues of misfeasance in public office addressed as well as the failure to place his complaint before a Tribunal in breach of his constitutional rights”.

k) When asked about the names of the individuals against whom the allegations of misfeasance and malfeasance were being leveled, Mr. Darrell replied:

“The Executive Officer and the current Human Rights Commission”.

l) When asked for particulars of the acts of malfeasance and misfeasance, Mr. Darrell replied *“The particulars of the misfeasance and malfeasance [sic] all particularized in the Particulars of Claim”.* The only allegations described as such are those contained in the general endorsement of the Writ. The Statement of Claim contains allegations under the heading *“Particulars of Breach”* which I have assumed is what was referred to.

m) When asked for particulars of the allegations of mishandling of the complaint, Mr. Darrell responded:

“The Plaintiff asserts that he had posed a question in his 1st November 2013 letter, and Mrs. Reed acted outside her remit when she answered the said question. He had asked does the Commission accept some responsibility for the incorrect drafting of my complaint. In reply Mrs. Reed stated in paragraph 3 of her 4th November 2013 letter that:- “We wish to inform you

that we have no opinion to offer regarding the drafting of your original complaint and are unable to advise you as none of the 2013-2015 Commissioners were on the 2007 Board of Inquiry panel”. *Further the executive office of Mrs. Reed continues to refuse to place the complaint before Tribunal [sic]*”.

- n) When asked for particulars of the alleged failure of the Defendant to ensure that the Plaintiff’s discrimination claim was heard and whether this referred to his 30th October 2000 complaint², Mr. Darrell replied “*There’s no reference to any other complaint however in light of the fact that the constitutional rights of this plaintiff have been breached there’s no time bar to the bringing of the Constitutional claim in this action*”.
- o) Mr. Darrell was asked for further particulars of the allegation that Mr. David Wilson’s attendance at the BOI hearing was “*stopped*”; including the name of the member or servant or agent of the HRC who it was alleged prevented Mr. Wilson’s attendance at the hearing. Mr. Darrell responded “*It is alleged that the defendant as buddy [sic] Court failed to follow the proper procedure in carriage of the complaint to the Tribunal*”. It was further explained by Mr. Darrell in his response to the request for particulars that preventing Mr. Wilson from attending the hearing of his Human Rights complaint was a breach of Mr. Darrell’s rights under ss. 6 and 15 of the Constitution³. It was further explained in Mr. Darrell’s response that “*It is implied by the rule of law that’s [sic] the proper carriage in the proper administration of justice requires that the proper procedures would also be followed*” and that “*The nun [sic] attendance of Mr. Wilson Committed the Tribunal To reach a decision unguided by the commission*”.
- p) The Statement of Claim alleges that the Commission breached its duties to Mr. Darrell by ignoring the recommendations of the Ombudsman. The Defendant requested particulars as to which of the recommendations were allegedly ignored. Mr. Darrell responded that the recommendations were “*45 and 46*”. These refer to paragraphs in a document dated 15th November 2016 headed “*Final Findings and Recommendations*” signed by the Ombudsman. In Paragraphs 45 and 46 of this document the Ombudsman writes:
“*45. I recommend that the HRC and the Commissioners provide a written confirmation, within a period of 30 business days, that it has implemented the principles set out in my letter of 20th April 2016 and at*

² The Request for Further and Better Particulars incorrectly refers to the initial complaint as being dated 31st October 2000. Other references in the documents are to a complaint dated 30th October 2000.

³ Section 15 of the Bermuda Constitution Order 1968 is concerned with the enforcement of fundamental rights. The substantive rights and freedoms protected by the Constitution are set out in previous sections of the Constitution, i.e., ss. 1-13.

paragraph 26 above and will, at all times, use such principles in its activities

“46. I recommend that the Authority [the HRC and the Commissioners], within 60 business days, research, draft and formally adopt an internal review process to address feedback, grievances and complaints made about the way in which the HRC provides its services”.

q) The Recommendations make it clear that Mr. Darrell’s complaint to the Ombudsman was against the Commission for rejecting a complaint he made to the Commission by letter dated 2nd November 2015 long after his complaint against the Board of Directors and Executive Officer of the Bank had been dismissed.

r) Mr. Darrell was asked for particulars as to how the actions of the Commission caused him to lose business opportunities. His response was: *“If this plaintiff was successful at the tribunal he would have had the opportunity for his business to be the industry leader which would have opened a significant income Revenue [sic] stream as he was the individual as [sic] he was individual [sic] who opened the advent of Internet Services to Bermuda”.*

8. I have set out above in some detail Mr. Darrell’s claim in this action as formulated by his attorneys. It is an understatement to say that it was with some difficulty that this Court sought to make sense of it. The task of this Court was not made easier by Mr. Darrell’s use of unknown legal concepts (such as his claim for breach of a *“Social Contract”*) and his failure to formulate his case in the standard manner i.e., by stating the particular facts on which each claim was built with a legal conclusion arising from such facts which he says justify a remedy in law.
9. At the start of the hearing of this application it was pointed out to the Plaintiff’s attorney that the prayer for relief consisted simply of claims for damages which appeared to be at odds with his client’s position that he was seeking by this action to have his complaint against the Bank heard by the BOI or a tribunal. This resulted in an application by Mr. Darrell’s attorney to amend the prayer which I allowed. The amendment was to add an item of relief to the prayer in the following terms: a declaration that Mr. Darrell’s constitutional rights had been infringed by the HRC’s failure to fully execute the complaint to properly carry out the complaint before the BOI and to intercede in the proceedings before the BOI because of irregularity and/or to complain to the Minister due to the irregularity.

The Relevant Facts

10. I understand Mr. Darrell’s primary complaint in this new action to be that the HRC failed in its duty to ensure that Mr. Darrell’s complaint was *“properly dealt with”*. The history of this matter is amply recorded in the Judgment of Wade-Miller J in the case of *Harold Joseph Darrell v Chief Executive Officer, Board of Directors Bank of Bermuda* [2008] Bda LR 54 and in the judgment of Hellman J in *Harold Joseph Darrell v A Board of*

Inquiry et al [2013] Bda LR 75 and does not need to be extensively repeated here. The Board of Inquiry ruled on 21st September 2005 that the Bank was not a party to the proceedings. It followed this ruling with a ruling on 23rd October 2006 at the conclusion of the evidence and submissions before delivering its formal written decision. It said on that occasion “*At the risk of being repetitive it is our decision that we are not able to amend the remit so as to include the Bank of Bermuda. The exclusion of the Bank of Bermuda is, in our collective view, fatal to this complaint . . . so we’re going to dismiss the complaint and we’ll circulate written reasons within three weeks*”. In its written decision formally dismissing Darrell’s complaint on 17th April 2007 the BOI ruled “*The Tribunal has noted that the preponderance of the Complainant’s submissions relate to institutional racism which – if accepted – would result in a finding against an entity that is not a party to these proceedings*”.

11. The complaint was drafted by Mr. Neville Darrell, who at the time, i.e., on 30th October 2000 (the date of the formal complaint), was the Executive Officer of the HRC. Both he and his successor in office, Mr. David Wilson (who as an Investigations Officer at the time collaborated with Mr. Neville Darrell on the formulation of the complaint), understood Mr. Darrell’s complaint to be against the Bank as well as its Board of Directors and the Chief Executive Officer of the Bank. Mr. Wilson’s affidavit sworn on 8th August 2002 (in the claim by the Bank against the Minister of Community Affairs and Sport, Action No. 236 of 2002) states “*I verily believe that Harold Darrell’s complaint is against the Chief Executive Officer and the Board of Directors of the Bank of Bermuda Limited and the Bank of Bermuda Limited*”. By letter dated 19th December 2005 the HRC advised the BOI that it was always intended that the Bank be a party to the inquiry: see Mr. Darrell’s letter dated 21st August 2006 to the HRC (exhibited to Mr. Darrell’s Fourth Affidavit at p. 36) and the affidavit of Mr. David Wilson sworn on 18th January 2008.
12. As noted above, that was not the finding of the BOI; and, despite Mr. Darrell’s efforts to have that finding overturned, there has been no successful appeal against it⁴. It must accordingly be taken as the position that the Bank was not a respondent in the BOI proceedings.

The Relevant Questions

13. The questions underlying this application, therefore, are (a) is the original complaint against the Bank still alive before the Commission; (b) if so, can or ought the Commission refer it to the Minister or a tribunal⁵; (c) can an order be made by this Court

⁴ Darrell sought leave to appeal out of time against the BOI’s decision but that application was dismissed by Wade-Miller J by a judgment dated 29th September 2008. Proceedings were also commenced by Mr. Darrell (Supreme Court No. 400 of 2010) to quash the decision of the BOI in judicial review proceedings on the basis that there was an appearance of bias on the part of the Chairman of the BOI. That application was dismissed by Simmons J on 21st August 2012. Further proceedings were brought by Mr. Darrell to set aside the said decision of Simmons J on the basis that the decision was procured by fraud (Supreme Court No. 393 of 2012). By her decision of 14th February 2013 Simmons J dismissed the action.

⁵ Prior to the 2012 amendments to the HRA 1981 the Commission could only refer a complaint of unlawful discrimination to the Minister whose duty it was to decide whether to refer it to a board of inquiry. Now, however, the Executive Officer of the Commission has the power to refer a complaint directly to a tribunal.

in this action to compel the Commission to refer the complaint to the Minister or to a tribunal; and (d) is the Commission liable in damages to Mr. Darrell for its failure to ensure that his complaint of unlawful discrimination was properly dealt with.

The Strike-Out Issues

14. One obvious problem for the Plaintiff is that the claim is brought against a body that does not have separate legal personality. The HRC is not a person in law which can sue or be sued. It is a group of individuals who are/were appointed by the Governor and who are now appointed by the Selection and Appointment Committee as defined in the HRA 1981.
15. The issue of the identity of the Defendant was raised by way of defence. There has been no reply to the defence filed by Mr. Darrell. It is to be assumed therefore that the parties have joined issue on the legal question whether the HRC is a legal person and whether a civil claim can exist against such a body without joining the actual members. In his written submissions Mr. Darrell asserts "*It is respectfully submitted that the HRC is now an authority and by virtue of such, is an autonomous body capable of being a party to this cause*". There is no reference in Mr. Darrell's submissions to any section of the HRA 1981 either before or after the 2012 amendments; nor were any submissions made to me orally at the hearing to support the contention that the HRC is a legal person separate from its members; and no application for leave to amend the Writ and the Statement of Claim to join the members of the Commission as a backstop.
16. Mr. Darrell also contends that it is open to this Court to order the Commission to refer the "*unheard complaint*" to a board of inquiry or a tribunal (and/or that its failure to do so amounts to misfeasance in a public office). In his particulars filed in response to the Commission's request for clarification of his case he states "*It is the Plaintiff's contention that the Supreme Court could Order that his Discrimination Claim be placed before the Tribunal for its consideration*". This ignores the fact that no such relief is claimed in the Writ or the Statement of Claim. Leave to amend the Writ and Statement of Claim was given on the application of Mr. Darrell's attorney (at the start of the hearing of the strike-out application) to include a claim for a declaration in the terms referred to in [9] above. No application was made for an amendment to include a claim for an order of mandamus or an injunction.
17. The above objections would not necessarily warrant striking out Mr. Darrell's claim if, despite the ample opportunities he has already had to put his tackle in order, he were given a further opportunity to do so.

18. However, a claim for an order to compel a public authority such as the Commission⁶ to perform a public duty, if it was failing or refusing to do so, is made in judicial review proceedings; not in a writ action. An application for judicial review requires the grant of leave from the Court. An application for leave would have had to be made within a time period of 6 months from the failure or refusal.
19. Hellman J stated in a previous case brought by Mr. Darrell ([2013] Bda LR 75 at [36]):
“However, I accept the Other Parties’ submissions that Mr. Darrell should have challenged the Board’s alleged failure to make a final decision by way of judicial review. It is a public law issue par excellence. It is abusive for him to try to circumvent the requirement of a prompt challenge by bringing some 6 years later what is – presumably – intended to be a private law claim in tort for breach of a statutory duty”.
Those words have a similar resonance in this action; save that the target of the action here is the Commission; not the BOI.
20. Another difficulty relates to the claim for damages for the tort of misfeasance in public office against the Commission. As noted above the endorsement on the Writ is a claim for *“Damages for the loss and damage suffered by the Plaintiff as a result of the wrongful acts done by the Human Rights Commission that caused the Human Rights claim of this Plaintiff to be unlawfully dismissed through acts of Malfeasance and Misfeasance performed by the Human Rights Commission and its Executive Officer”*. Mr. Darrell refers to the drafting of his complaint by Mr. Neville Darrell. He alleges mishandling of the complaint by the Commission; its failure to ensure that the complaint was heard; and its failure to ensure that the HRC *“held carriage of the complaint before the Board of Inquiry by stopping Mr. Wilson’s attendance”*⁷, etc. It is alleged further that Mrs. Lisa Lister-Reed *“obstructed the complaint being placed before the board through acts of Misfeasance in Public Office”*.
21. These allegations (save for the allegation against Mrs. Reed which is dealt with below) refer to events that occurred prior to the BOI’s written decision on 17th April 2007 dismissing the complaint. Even if the acts and omissions of the members of the HRC or the body as a whole can properly be described as acts of misfeasance (as to which it would be necessary to allege conduct amounting to an abuse of power intended to cause injury to Mr. Darrell or recklessness as to whether injury would be caused to him, a case that in my view is contradicted by the evidence presently before the Court) any action for a remedy based on such acts would be time-barred now.

⁶ The power to refer an unlawful discrimination claim to a tribunal under the HRA 1981 (as amended) belongs to the Executive Director. Mrs. Reed, the Executive Officer of the HRC since 1st March 2010, is not a party to this action.

⁷ The specific allegation in the Statement of Claim at Para. 7 that the HRC failed *“to ensure that in the portion [of the complaint] that was heard [i.e., that against the Chief Executive Officer and the Board of the Bank] that the HRC properly held carriage of the complaint before the Board of Inquiry by stopping Mr. Wilson’s attendance”* is difficult to interpret. However, whatever may be the precise meaning of this averment, the evidence before the Court (see the affidavit of Mr. David Wilson sworn on 18th January 2008) shows that the acts to prevent Mr. David Wilson attending the BOI were those of members of the Department of Human Affairs, i.e., the Director, Mrs. Brenda Dale, and the Acting Director, Mrs. Myra Virgil; and not members of the HRC.

22. Mrs. Reed swore an affidavit on 24th January 2018 testifying to the fact that she is the Executive Officer of the HRC and was appointed on 1st March 2010. I understand Mr. Darrell's allegations against Mrs. Reed to be that she obstructed Mr. Darrell's effort to have his "*unheard claim*" referred to a tribunal under the HRA 1981 (as amended) and that this constitutes misfeasance in public office. Mrs. Reed is not a defendant in this action. Under the HRA 1981 (as amended) the Executive Officer has the power and duty to refer a complaint of unlawful discrimination to a tribunal in appropriate circumstances under the HRA 1981. If there is a claim for damages for misfeasance for failing or refusing to refer Mr. Darrell's complaint to a tribunal (as to which it would be improper for me to make any finding) it would lie against the Executive Officer. Likewise, if there is an enforceable duty to refer the unheard complaint to a tribunal (as to which I again am unable to make a finding) it would be on the Executive Officer.
23. Finally, for the sake of completeness I refer to the allegation of a breach by the HRC of Mr. Darrell's rights in failing to ensure that Mr. David Wilson was allowed to attend the BOI hearing. This is a recasting of what is actually stated in the Statement of Claim and the particulars but conforms with what is contained in Mr. Wilson's affidavit sworn on 18th January 2008 and my understanding of what is actually being alleged. The persons who are alleged to have been active in seeking to prevent Mr. Wilson, the Executive Officer, from attending the BOI hearing are Mrs. Brenda Dale and Mrs. Myra Virgil, the Director and Acting Director respectively of the Department of Human Affairs at the time. The implication appears to be (no particulars are given) that the HRC could have taken steps to ensure that Mr. Wilson did attend the BOI hearing; and, if he had been allowed to attend, the result would have been different. This claim for damages faces the same objection as the other claims for damages for misfeasance in public office, namely, that it is statute-barred by the Limitation Act 1984.
24. For the reasons stated above, I find that the claims against the HRC are bound to fail; and accordingly I strike out the Writ and the Statement of Claim. I will hear the parties as to the appropriate costs order; but as presently minded see no reason why costs should not follow the event. Should the parties wish to be heard on costs, I invite them to indicate their wish in writing to the Registrar within 14 days failing which the order will be as I have indicated.

Dated: 6th November 2018

Hon. D. Kessaram, AJ