IN THE SUPREME COURT **CL115/23**

TURKS AND CAICOS ISLANDS

BETWEEN:

In the Matter of an Application for Leave to Apply

for Judicial Review

AND IN THE MATTER OF

Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023

and the Destination Management Fee Ordinance 2023

THE QUEEN

- AND -

(1) THE ATTORNEY GENERAL
(2) THE HON. WASHINGTON MISICK, PREMIER OF THE TURKS AND CAICOS ISLANDS
(3) THE HON. JOSEPHINE OLIVIA CONNOLLY MINISTER RESPONSIBLE FOR GAMING
(4) THE HON. GORDON BURTON THE SPEAKER OF THE HOUSE OF ASSEMBLY OF THE TURKS AND CAICOS ISLANDS

RESPONDENTS

Ex parte

(1) THE HON. EDWIN ASTWOOD
(2) THE HON. ALVIN GARLAND

APPLICANTS

For the Applicants: Mr. George C. Missick

For the Respondents: Ms. Clemar Hippolyte and Ms. Khadija Mac Farlane

Date of decision: 11th December 2023

DECISION

Background

1. This matter arose as a result of the government of the Turks and Caicos Islands dissolving the Tourist Board in favour of a Destination Management Organisation. The Applicants are seeking leave of the Court to challenge certain decisions made by the Respondent by way of judicial review.

2. The First and Second Applicants, being the Leader of the Opposition in the House of Assembly and the Opposition member of the House of Assembly respectively, have challenged the following decisions:

i. The decision of the Third Respondent, Minister responsible for Tourism in respect of the decision to present two Bills, namely the Turks and Caicos Islands Tourist Board (Dissolution) Bill 2023 and the Destination Management Fee Bill to the House of Assembly without first holding public consultation contrary to the Statement of Governance Principles and the rules of natural justice.
ii. The decision of the Fourth Respondent, Speaker of the House of Assembly, to allow all three readings of the Bill in one sitting contrary to the Standing Orders of the House of Assembly (in each case).
iii. The decision of the Minister to conclude as she did without giving the general public a proper opportunity to be heard and the decision by the Speaker to allow all three readings which infringe on the rights of the Applicants.
iv. The decisions of the Second Respondent who purportedly accepted recommendations on behalf of the Government to dissolve the Tourist Board in favour of a Destination Management Organization without first holding public consultation contrary to guiding principles and to move the two bills presented by the Third Respondent.

3. The reliefs being sought are as follows:

i. A Declaration that the purported consultation process, if any, by the Second and Third Respondents was fundamentally flawed and did not constitute proper or meaningful consultation.

ii. An Order of Certiorari to remove to the Supreme Court and to quash the First, Second and Third Respondents' decisions.
iii. An Order of Mandamus directing the First Respondent to consider her decision to present a Bill to the House of Assembly which is of great public interest without first holding public consultations, and the decision of the Third Respondent to allow all three readings of the Bill which is contrary to the Standing Orders of the House of Assembly.
iv. A Declaration that the Speaker of the House was wrong to allow all three readings of the bill in the same sitting.
v. An order of Certiorari to quash the decisions by the Respondents in relation to the purported consultation.
vi. An Order of Mandamus requiring the Respondents or each or any of them to provide them with copies of any unredacted reports together with any appendices and reference material submitted therewith to the government recommending changes to the structure of the Tourist Board to a DMO forthwith including but not limited to the KPMG Strategy Report of 2015.
vii. An Order of Mandamus requiring the Respondents or each or any of them to conduct a fresh consultation process and or ensure that a fresh consultation process is conducted according to law; in which the Applicants and all Interested Parties are given reasonable and sufficient time in which to consider all relevant reports relating to dissolving the Tourist Board in favour of a Destination Management Organization ("DMO") and any other relevant document or information and to formulate a meaningful and informed contribution to the fresh consultation process.
viii. An order quashing the Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023 and the Destination Management Fee Bill 2023.
ix. Costs.

4. The Application for leave was supported by a narrative affidavit deposed to by the First Named Applicant, the Honourable Edwin Astwood, Leader of the Opposition.

5. The Court, upon consideration of the Application, ordered that the Applicants appear before the Court on 12th September 2023. On that date, the Court indicated that it wished to hear the Respondents on the issue of whether leave should be granted and ordered that all documents filed together with a copy of the Court's Order be served on the Respondents on or before 4:00 p.m. on the 14th day of September 2023 with the parties to appear before the Court on 28th September 2023 at 10:00 a.m. for further directions.

6. On 28th September 2023, the parties appeared before the Court and junior counsel for the Respondents, Ms. Khadija Mac Farlane, indicated that the Respondents would be resisting the application for leave. The Court made the following Orders:

a. Applicants are at liberty to file any further affidavit evidence on or before 4:00 p.m. on Friday 6th October 2023.

b. Respondents to file any affidavits in response on or before Friday 20th October 2023.

c. Applicants to file any affidavit in reply to new issues raised on the Respondents' affidavit on or before Friday 27th October 2023.

d. Submissions to be filed and exchanged on or before Friday 3rd November 2023.

e. Any reply to Submissions to be filed and exchanged on or before Friday 10th November 2023.

f. Costs in the cause.

g. Matter is adjourned to Friday 17th November 2023 at 10:00 a.m. for hearing.

7. Detailed affidavits were deposed to and filed on behalf of the Respondents by Mr. Wesley Clerveaux, Permanent Secretary in the Ministry of Tourism, Environment, Fisheries, Marine Affairs, Culture and Heritage and Agriculture and Mr. Gordon J Burton, the Speaker of the House of Assembly in the Turks and Caicos Islands. Submissions were also filed on behalf of the Respondents.

8. On 17th November 2023, the Court heard the Application, with oral submissions being made by Mr. George Missick on behalf of the Applicants and Ms. Clemar Hippolyte on behalf of the Respondents.

Summary of the Applicant's Submissions in support of leave being granted

9. Counsel for the Applicants, Mr. George C. Missick, argued that it was in the public interest for leave to be granted. His submissions focused on what he said was the

lack of consultation on the part of the government in arriving at the decision to dissolve the Tourist Board in favour of a Destination Management Organisation. Instead, he claimed that the purported consultations took the form of the interviewing of a list of stakeholders and questioned whether the stakeholders had proper information before them to make the correct decision. He further contended that the consultees were not told that the government was considering the dissolution of the Tourist Board with the termination of all employees.

10. He submitted that the decisions of the Speaker of the House of Assembly were subject to judicial review and that the court had the power to quash the *Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023*.

11. On the issue of whether the Applicants had delayed in filing the Application, Mr. Missick stated that the matter was filed within the three-month timeframe and that there was no undue delay, with it being filed two weeks after a letter before action had been sent.

12. On the issue of whether the Applicants had sufficient interest to bring the Application, Mr. Missick argued that in the Turks and Caicos Islands, tourism was 'everyone's business', so the Applicants had the necessary interest in their personal capacities to bring the action and that the fact that they are in the House of Assembly enhances this.

13. Mr. Missick also contended that the argument advanced on behalf of the Respondents that there was an alternative remedy was nonsensical, since it would involve going to the Speaker to remedy a situation that he created.

Summary of the Respondents' opposition to leave

14. Counsel for the Respondents, Ms. Clemar Hippolyte, opposed the granting of leave on the following grounds:

i. The Applicants do not have sufficient interest to bring the Application.

ii. The Court lacks the jurisdiction to review decisions taken by the Speaker of the House of Assembly during proceedings in the House.

iii. The Applicants have been guilty of inordinate delay in bringing this application and if the reliefs sought are ultimately granted, it will have a detrimental effect on third parties.

iv. In respect of the challenge to the decisions of the Speaker of the House of Assembly, there was an alternative remedy available to the Applicants which was not utilised.

v. The Application has no realistic prospect of success in light of the evidence presented on behalf of the Respondents.

15. Counsel for the Respondents has further contended that the Attorney General should not have been named as a party to these proceedings since none of her decisions have been called into question and judicial review proceedings are not 'civil proceedings' for the purposes of *the Crown Proceedings Ordinance*. In this regard, reference was made to the case of *Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd [1991] 1 WLR 550*, in which there was an issue as to whether the Minister or the Attorney General was the proper party in an application for leave for judicial review of a decision taken by the Minister. Lord Oliver, in examining Jamaica's Civil Proceedings Act (which contained a similar provision to section 13 of the *Crown Proceedings Ordinance* of the Turks and Caicos Islands) stated, at page 555:

> *"The Court of Appeal was correct in concluding that the proceedings were not "civil proceedings" as defined by the Crown Proceedings Act, and that the minister and not the Attorney General was the proper party to proceedings instituted for the purpose of reviewing the exercise of his statutory powers."*

Analysis of the Court

a. The test for leave

16. In ***Sharma v Brown- Antoine [2006] UKPC 57*** the Privy Council at paragraph 14 outlined the following test for leave:

"The ordinary rule is now that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy."

17. In the Privy Council case of ***The Central Bank of Trinidad and Tobago (Appellant) v Maritime Life (Caribbean) Ltd (Respondent) (Trinidad and Tobago) [2002] UKPC 37***, Lord Stephens said, inter alia, at paragraph 2:

"… It is well settled that the threshold for the grant of leave to apply for judicial review is low. The Court is concerned only to examine whether the applicant has an arguable ground for judicial review that has a realistic prospect of success and is not subject to a discretionary bar such as delay or an alternative remedy: see governing principle (4) identified in Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14. The low threshold would usually not be met "if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed": see Attorney General v Ayers-Caesar [2019] UKPC 44 at para 2…"

b. Should the Attorney General have been made a party to these proceedings?

18. During the oral arguments, it was essentially conceded by the Applicants that the Attorney General should not have been party to these proceedings. As such, this is no longer an issue in this matter.

c. Do the Applicants have sufficient interest to bring this action?

19. The Respondents have contended that the Applicants do not have sufficient interest to bring this action and that there are better placed challengers, being members of the Tourist Board.

20. *Order 53 Rule 3(7)* of the *Rules of the Supreme Court* provides that the Court shall not grant leave unless it considers that the applicant has sufficient interest in the matter to which the application relates.

21. Counsel for the Respondents referred to a number of authorities in support of her arguments, including:

i. *R v Inland Revenue Commissioners ("IRC"), ex parte (1) National Federation of Self-Employed and (2) Small Businesses Ltd [1982] AC 617*, where the House of Lords held that a wide range of factors may be taken into account in answering the sufficient interest test, including the duties in question, the nature of the alleged breaches, the proper construction of any relevant statutory material and the whole legal and factual context.

ii. *The Queen (on the application of (1) Good Law Project Limited (2) Runnymede Trust v (1) The Prime Minister (2) Secretary of State for Health and Social Care [2022] EWHC 298* (Admin) where it was held that the Applicant must show that he was affected by the decision or has a reasonable concern in it or that it is in the public interest to have the conduct complained of reviewed by the Courts.

22. Counsel for the Applicants argued that in the Turks and Caicos Islands, tourism was 'everyone's business', so the Applicants had the necessary interest in their personal capacities to bring the action and that the fact that they are in the House of Assembly enhances this.

23. In ***Wylde and Others v Waverley Borough Council (2017) [2017] EWHC 466 (Admin)***, Dove J addressed the issue of 'sufficient interest' in judicial review proceedings and said at paragraph 20 of his judgment:

20. It is important to note that mere interest alone in the matter in issue or the decision in question is not enough. The interest which must be established must be "sufficient" so as to entitle a claimant to invoke the court's jurisdiction. Not every member of the public will have a right to bring a claim in relation to a breach of a statutory duty or an exceedance of a statutory power or other public law error (see for example R v Secretary of State for the Environment Ex Parte Rose Theatre Company[1990] 1 QB 504at page 520B-E and 522 C-E; R v Tower Hamlets LBC ex parte Thrasyvalou (1990) 23 HLR 38 at page 47.) In

Walton v The Scottish Ministers[2012] UKSC 44 Lord Reed expressed himself in the following terms:

"94. In many contexts it will be necessary for a person to demonstrate some particular interest in order to demonstrate that he is not a mere busybody. Not every member of the public can complain of every potential breach of duty by a public body. ***But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority's violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no-one was able to bring proceedings to challenge it."*** (Emphasis mine).

24. I am inclined to agree with the Applicants on this issue. The tourism industry is the life and breath of the economy of the Turks and Caicos Islands and a decision such as the dissolution of the Tourist Board and its replacement with a Destination Management Organisation is one that affects the public generally. The fact that there may be better placed challengers, whist relevant, is not determinative of this issue. When viewed within the wider context of the importance of the tourism industry to the economy of the Turks and Caicos Islands and, by extension, to the general public of the Turks and Caicos Islands, neither Applicant can be viewed as a mere busybody in pursuing this action.

25. The Applicants are therefore entitled to bring this action in respect of the complaints about the lack of proper consultations.

26. In respect of the complaints against the Speaker, whilst this Court considers same to be misplaced for reasons which are outlined below, the Applicants as Members of the House of Assembly were directly affected by the decisions taken and they therefore have the necessary standing in this regard.

27. I am therefore not in agreement with the Respondents that the Applicants lacked sufficient interest to bring this action.

d. Power of the Court to quash an Ordinance

28. The Applicants seek, inter alia, an Order quashing the *Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023.*

29. Counsel for the Respondents has submitted that the Court does not have the power to quash an Ordinance. The following are extracts from her written submissions on this issue (paragraphs 12, 14, 15, 16 and 17):

> Paragraph 12:
>
> *What is critical in the instant proceedings and worthy of note is that the challenge to the legislation is not in respect of its alleged inconsistency or incompatibility with the constitution and even if it were the remedy available would be a declaration that the legislation or certain provisions therein are inconsistent with the constitution. A declaration does not automatically change the law. Instead, it places the responsibility of Parliament to decide whether to change the law or not. The remedy being sought in the instant proceedings is the quashing of the Legislation which the Respondents maintain the Courts do not have the power to do.*
>
> Paragraphs 14-17:
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> *14. However, the Ordinances under challenge in the instant proceedings are primary and not secondary or delegated legislation made by the Executive branch of Government. As such the Courts power to interfere is restricted and it does not extend to the quashing of legislation.*
>
> *15. Alongside the principle of Parliamentary Sovereignty, is the principle of the separation of powers, reflecting the different constitutional areas of responsibility of the courts, the Executive and Parliament. This is also a fundamental principle of our written constitution. The interpretation of legislation is for the courts which seek to give effect to the intention of Parliament derived from the statutory language, examined in accordance with established principles of statutory interpretation. However, the power to make, amend and repeal legislation lies squarely within the purview of the legislature. See Jackson v Attorney General [2006] 1 AC 262.The concept of Parliamentary Sovereignty and the inextricable link to the separation of powers doctrine was discussed in by Lord Bingham at [9] and Lady Hale at [159].*
>
> *16. Moreover, the Court does not act in vain. Counsel for the Applicants submitted that the ultimate objective of these judicial review proceedings is to obtain the quashing of the Ordinances. The authorities are clear that this Court, respectfully, does not have the power to quash Ordinances in the context of judicial review proceedings particularly where there are no constitutional challenges. In addition to the procedural bars and the justiciability issue dealt with in the Respondents'*

submissions, the fact that the Court does not act in vain is another compelling reason for the Court to refuse to grant leave.

17. Furthermore, a quashing order immediately renders a decision or measure invalid from the time at which it was made and so also has retrospective effect. The retrospective effect of quashing orders can have wider consequences. For example, quashing a statutory instrument could invalidate all of the actions and decisions taken under the authority of that statutory instrument. This can cause administrative difficulties.

30. This is one of the most critical issues that the court has to rule on at this stage since if the Applicants cannot obtain this relief, they have, for practical purposes, failed in achieving their objectives.

31. In ***Jackson v Attorney General [2006] 1 AC 262***, Baroness Hale of Richmond said at paragraph 159:

"…The argument that the procedure cannot be used to amend itself has rather more substance, although in the end it too must be rejected. The question of the legislative competence of the United Kingdom Parliament is quite distinct from the question of the composition of Parliament for this purpose. The concept of parliamentary sovereignty which has been fundamental to the constitution of England and Wales since the 17th century (I appreciate that Scotland may have taken a different view) means that Parliament can do anything. The courts will, of course, decline to hold that Parliament has interfered with fundamental rights unless it has made its intentions crystal clear. The courts will treat with particular suspicion (and might even reject) any attempt to subvert the rule of law by removing governmental action affecting the rights of the individual from all judicial scrutiny. Parliament has also, for the time being at least, limited its own powers by the European Communities Act 1972 and, in a different way, by the Human Rights Act 1998. It is possible that other qualifications may emerge in due course. In general, however, the constraints upon what Parliament can do are political and diplomatic rather than constitutional…"

32. In ***Methodist Church of the Bahamas v Symonette (2000) 59 WIR 1***, Lord Nicholls of Birkenhead examined the power of the Court in respect of primary legislation both in the United Kingdom (where there is an unwritten Constitution) and the Bahamas (where there is a written constitution) and said the following at pages 12-14:

"..The first issue to be considered is the issue raised by the defendants' primary submission in the main action. Mr Beloff QC submitted that the main action failed in limine. The action was aimed exclusively at the Bill. In general, it is no part of a court's function to restrain the legislature from making unconstitutional laws, as distinct from declaring such laws invalid after enactment. The plaintiffs had no cause of action at the Bill stage, since it was not unlawful for the two Houses to consider the Bill. The perpetuation of a claim against the Bill which had become an Act invited the court to rule, inappropriately, on an academic matter.

This prematurity argument raises questions concerning the relationship of the courts and Parliament. Two separate, but related, principles of the common law are relevant. They are basic, general principles of high constitutional importance. The first general principle, long established in relation to the unwritten Constitution of the United Kingdom, is that the Parliament of the United Kingdom is sovereign. This means that, in respect of statute law of the United Kingdom, the role of the courts is confined to interpreting and applying what Parliament has enacted. It is the function of the courts to administer the laws enacted by Parliament. When an enactment is passed, there is finality unless and until it is amended or repealed by Parliament; see the well-known case, Pickin v British Railways Board [1974] AC 765.

The second general principle is that the courts recognise that Parliament has exclusive control over the conduct of its own affairs. The courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions; see Prebble v Television New Zealand Ltd [1995] 1 AC 321 at 332, where some of the earlier authorities are mentioned by Lord Browne-Wilkinson. The law-makers must be free to deliberate upon such matters as they wish. Alleged irregularities in the conduct of parliamentary business are a matter for Parliament alone. This constitutional principle, going back to the 17th century, is encapsulated in the United Kingdom in art 9 of the Bill of Rights 1689: 'that … proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'. The principle is essential to the smooth working of a democratic society which espouses the separation of power between a legislative Parliament, an executive Government and an independent judiciary. The courts must be ever sensitive to the need to refrain from trespassing, or even appearing to trespass, upon the province of the legislators; see R v Her Majesty's Treasury, ex parte Smedley [1985] QB 657 at 666, per Sir John Donaldson MR.

In the United Kingdom these two basic principles must now be considered in the light of constitutional developments such as the enactment of the European Communities Act 1972. The extent to which these developments have affected the

application of the general principles in the United Kingdom is not a matter which is germane to the issues arising on the present appeals.

That is the basic position in the United Kingdom. In other common-law countries their written Constitutions, not Parliament, are supreme. The Bahamas is an example of this. Article 2 of its Constitution provided that 'This Constitution is the supreme law of the Commonwealth of the Bahamas'. Article 2 further provided that, subject to the provisions of the Constitution, if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void. Chapter V of the Constitution made provision for a Parliament of the Bahamas, comprising Her Majesty, a Senate and a House of Assembly. Article 52 provided that 'subject to the provisions of this Constitution' Parliament may make laws for the peace, order and good government of the Bahamas. Thus, in the Bahamas, the first general principle mentioned above is displaced to the extent necessary to give effect to the supremacy of the Constitution. The courts have the right and duty to interpret and apply the Constitution as the supreme law of the Bahamas. In discharging that function the courts will, if necessary, declare that an Act of Parliament inconsistent with a constitutional provision is, to the extent of the inconsistency, void. That function apart, the duty of the courts is to administer Acts of Parliament, not to question them.

Likewise, the second general principle must be modified to the extent, but only to the extent, necessary to give effect to the supremacy of the Constitution. Subject to that important modification, the rationale underlying the second constitutional principle remains as applicable in a country having a supreme, written Constitution as it is in the United Kingdom where the principle originated…"

33. The authorities clearly reinforce the doctrine of Parliamentary sovereignty as it relates to the issue of whether the courts can quash primary legislation.

34. In a jurisdiction like the Turks and Caicos Islands where there is a supreme written constitution the Court can, at best, make a declaration that a statute or statutory enactment is inconsistent with the Constitution.

35. However, the relief being sought by the Applicants is not a declaration that the *Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023* is inconsistent with the Constitution but rather that it should be quashed, a relief which the Court plainly does not have the power to grant.

e. <u>Delay</u>

36. The issue of whether there has been delay is pivotal to determining whether the Application should be granted since it is one of the discretionary bars to the granting of leave.

37. *Order 53 Rule 4* of *the Rules of the Supreme Court* provides that:

> *An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.*

38. However, even when the Application is made within the three-month period, there is still an obligation to act promptly.

39. In ***A1 Veg Ltd v Hounslow London Borough Council (Western International Market Tenants Association AFI and others, interested parties); R (on the application of Agnello and others) v Hounslow London Borough Council (Kier Property Developments Ltd and another, interested parties) [2004] LGR 536*** it was held that although claimants in judicial review claims were under an obligation to issue proceedings promptly, where proceedings were brought within the prescribed three-month period, there was a rebuttable presumption that they had been brought promptly. In that case, that presumption had not been rebutted because it had not been shown that any prejudice had been caused by the claimants' delay in issuing proceedings: there were no third parties whose rights would have been adversely affected by the delay, and the authority itself had not been prejudiced.

40. Having carefully examined the affidavit evidence and the submissions of the parties, the Court has come to the conclusion that the Applicants have been guilty of inordinate delay in bringing this Application. This delay is sufficient to prevent the granting of leave for the following reasons:

i. The *Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023* which the court is being asked to quash is now law. As previously held, the Court does not have the power to quash this Ordinance in these proceedings.

ii. The decision to allow the *Destination Management Fee Bill 2023* and the *Tourism and Licensing Regulation Bill 2023* to be read three times in one sitting was made on 28th June 2023. The Notice of Application for leave to file for judicial review was not filed until two months later even though the Applicants, as members of the House of Assembly, would have been aware of the Bills.

iii. Even if the Court had the power to quash the *Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023,* which it does not, to grant leave to challenge it would cause serious prejudice to third parties. The Respondents have submitted that the Tourist Board has already been dissolved in accordance with the Ordinance, its ex-employees have already been compensated, the new destination management organisation has already come into existence and steps have been taken to begin the collection of the destination management fees. This has not been challenged by the Applicants. It is therefore clear that if the Applicants eventually obtain the reliefs sought, the delay in bringing this action will adversely affect stakeholders and contractual obligations.

iv. The Applicants have failed to advance any suitable reason for their delay in bringing this action and in particular for waiting until the *Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023* had already become law and the new destination management organisation had already come into existence.

f. <u>Alternative Remedy</u>

41. Judicial review is considered to be a remedy of last resort and the court will not ordinarily entertain a claim for judicial review if a suitable alternative remedy is available.

42. In ***Lambeth London Borough Council and another v Kay and others; Leeds City Council v Price and others [2006] 4 All ER 128*** Lord Bingham said at paragraph 30:

"…if other means of address are conveniently and effectively available to a party they ought to be used before resort to judicial review.."

43. Counsel for the Respondents has submitted that there was an alternative remedy available to the Applicants which they failed to avail themselves of, with the said remedy being to report the matter to the Privileges Committee of the House of Assembly, which she contends is well equipped to deal with the issues raised. Paragraph 48 of the affidavit of Mr. Gordon Burton is relevant in this regard*:*

> *"Additionally, I wish to draw to this Honourable Court's attention the existence of the Privileges Committee. The Privileges Committee is appointed by the House at the commencement of each session of the House. The Privileges Committee is*

empowered by the Standing Orders of the House to consider and report on any matter that appears to affect the powers and privileges of the House including any alleged breach of those privileges by a member that is referred to it by the House. By virtue of Standing Order 113 the Privileges Committee shall consider and report on any matter that appears to affect the powers and privileges of the House including any alleged breach of those privileges by a member that is referred to it by the House."

44. The Applicants are seeking to challenge a decision taken by the Speaker of the House of Assembly during proceedings. However, it would seem that the Constitution has already provided a mechanism for Parliament to regulate its proceedings. *Section 63* of the Constitution provides as follows:

Standing Orders of House of Assembly

63. *– (1) Subject to this Constitution and to any Instructions under Her Majesty's Sign Manual and Signet, the House of Assembly may make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings, and for the passing, intituling and numbering of bills and their presentation to the Governor for assent, but such Standing Orders shall not have effect until approved by the Governor.*

(2) Standing Orders made under this section may provide for the establishment of committees of the House of Assembly (in addition to the Standing Committees to be established under section 64) and for the proceedings and conduct of business before any such committee.

45. *Standing Order 113(2)* provides as follows:

"The Privileges Committee shall consider and report on any matter that appears to affect the powers and privileges of the House including any alleged breach of these privileges by a member that is referred to it by the House."

46. The Court is of the view that resort to the Privileges Committee for the alleged infringement of the rights of minority members would have provided an adequate and, indeed, more expeditious remedy to the Applicants.

47. However, the Applicants face another hurdle, it being whether the actions of the Speaker and, by extension, the internal affairs of Parliament are subject to scrutiny by the Court.

48. *Section 27* of the *House of Assembly (Powers and Privileges) Ordinance* provides:

"The Speaker or an Officer of the House is not subject to the jurisdiction of any court in respect of the lawful exercise by him or her of a power conferred on him or her by or under this Ordinance or the Standing Orders."

49. The following extract from the judgment of Lord Nicholls of Birkenhead in the case of ***Methodist Church of the Bahamas v Symonette (supra)*** is worth repeating:

"…The second general principle is that the courts recognise that Parliament has exclusive control over the conduct of its own affairs. The courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions; see Prebble v Television New Zealand Ltd [1995] 1 AC 321 at 332, where some of the earlier authorities are mentioned by Lord Browne-Wilkinson. The law-makers must be free to deliberate upon such matters as they wish. ***Alleged irregularities in the conduct of parliamentary business are a matter for Parliament alone.*** *This constitutional principle, going back to the 17th century, is encapsulated in the United Kingdom in art 9 of the Bill of Rights 1689: 'that … proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'. The principle is essential to the smooth working of a democratic society which espouses the separation of power between a legislative Parliament, an executive Government and an independent judiciary. The courts must be ever sensitive to the need to refrain from trespassing, or even appearing to trespass, upon the province of the legislators; see R v Her Majesty's Treasury, ex parte Smedley [1985] QB 657 at 666, per Sir John Donaldson MR.."* **(Emphasis mine).**

50. It is therefore clear that the Courts do not have the power to enquire into the decision of the Fourth Respondent, being the Speaker of the House of Assembly, to allow all three readings of the Bill in one sitting (which the Applicants contend is contrary to the Standing Orders of the House of Assembly).

51. In any event, the Respondents have provided an explanation for this alleged procedural breach, to which the Applicants have not properly responded. Reference is made to paragraph 36 of the affidavit of Gordon Burton:

"…However, it is not contrary to the Standing Orders for a member of the House of Assembly to move a motion to have a particular Bill read three times in one meeting as the Applicants assert. In fact the Leader of the opposition has on several occasions in this

session of the House, supported the motion of the Premier to have three readings of Bills in one meeting of the House of Assembly. I verily believe that given his lengthy experience in the House of Assembly for well over ten years, the Leader of the Opposition understands quite well that the Standing Orders make provision for this process because he has seconded the motion to proceed in that manner on every other occasion such applications for a suspension motion has arisen under this administration. The Leader of the Opposition has seconded suspension motions, even in circumstances where he has gone on to object strenuously to a Bill or parts of a Bill, which he is entitled to do but he has never asserted to me in the House of assembly that such suspension motions were not permissible under the Standing Orders or were in breach of the Standing Orders."

The adequacy of the consultations

52. In respect of the contention that there had been insufficient consultation, counsel for the Applicants placed great reliance on the decision of the Supreme Court of the Commonwealth of Bahamas in *In the matter of an Application for Judicial Review between R v (1) The Rt. Hon. Perry Christie (Prime Minister and Minister of Finance) (1st Respondent), (2) The Rt.Hon. Michael Darville (Minister for Grand Bahama) (2nd Respondent), (3) Dr. Marcus Bethel (in his capacity as Chairman of The Hawksbill Creek Agreement Review Committee) (3rd Respondent) Ex Parte (1) Frederick Smith QC (1st Applicant) and (2) Carey Leonard (2nd Applicant) And The Grand Bahama Port Authority (Intervenor) (2015)/PUB/jrv/FP/00005*, where the Hon. Madam Justice Indra H. Charles addressed the issue of Proper and meaningful consultation at paragraphs 64 and 65:

"64. It is not disputed that the Respondents voluntarily engaged in a public consultation exercise in relation to, among other things, the concessions and exemptions from the payment of business licence fees and real property tax under the HCA that was due to expire on 4 August 2015 and later renewed for a further period of six months. The court is uninformed of the present position since the further extension of six months had expired on 4 Februay 2016.

65. Once public consultation has been embarked upon, there is a legal requirement that it be done properly. In R v North and East Devon Health Authority, ex parte Coughlan [2001] QB 213, Lord Woolf MR said at paragraph 108:

"It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted t give intelligent consideration and an intelligent response; adequate time must be given

for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken: R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168.""

53. Counsel for the Applicants also referred the Court to paragraphs 72 and 74 of the decision to make the point that proper and meaningful consultation does not relate only to the extent of the consultations but also to whether those who have a legitimate interest in its outcome had all the information necessary for such consultation:

> *"72. The Committee met with some 120 stakeholders including civil society, manufacturers, developers, tourism operators, present and former Parliamentarians and other professional. Additionally, four town meetings were held across the island, in which more than 250 persons participated, and the Committee received numerous positions papers and submissions…*
>
> *74. At first blush, it appears that the Committee did a fair bit of consultative work. However, proper and meaningful consultation cannot only be measured by how many stakeholders participated, how many meetings were held and how long it lasted but crucially, whether those who have a legitimate interest in its outcome, had all the information necessary for such consultation."*

54. The Applicants further referred this court to paragraph 6 of the judgment of Mottley JA in *Governor of the Turks and Caicos Islands, Minister of Infrastructure, Housing and Planning v The Proprietors, Strata Plan #108 and The Proprietors, Strata Plan #62 Civil Appeal No. CL 38/15*, where the conclusion of the Chief Justice was referenced:

> *"6. On the second ground that no or no proper consultation had taken place, the Chief Justice concluded:*
>
> *'I consider the fact that there was some consultation to be an acknowledgment by the Respondent that they were under a duty to consult. I construe the fact of the second consultation to be an admission that the first consultation was insufficient. Even if consultation were not required as Ms. Linton contends, the principle is "once embarked upon, it must be carried out properly". R v North and East Devon HA ex p Coughlan [2001] QB 213 para 108. The Applicants succeed under this head of review as well'."*

54. It was contended by Mr. Missick that the tasks undertaken by the government, for example meeting with the Advisory Committee and interviewing stakeholders, cannot amount to proper consultation.

55. A large portion of the affidavit evidence in this matter canvassed matters relating to the consultations which were undertaken, with the Respondents presenting evidence to demonstrate that there was extensive consultation.

56. At this stage, the court is not required to delve into a deep fact-finding exercise in respect of whether the consultations which were undertaken were adequate. The Applicants need only establish that there is an arguable ground for judicial review having a realistic prospect of success. In respect of the adequacy of consultations, it would seem that this low threshold may have been met. However, the issue of delay returns to haunt the Applicants, and is especially important on this point. The Respondents have submitted that as far back as January 2023 the consultants had met with the House of Assembly, which included the Applicants. In addition, as previously stated, the Ordinance is now in effect and third-party rights would be significantly affected if this challenge were to succeed.

57. Quite apart from the issue of delay, if leave is granted to challenge the decision of the Minister to present the Bills in the House of Assembly without first holding public consultations, it is difficult to see what objective could be achieved having regard to the fact that the Court does not have the power to quash the *Turks and Caicos Islands Tourist Board (Dissolution) Ordinance 2023*.

Decision of the court:

58. In the circumstances, leave to apply for judicial review in these proceedings is refused.

Costs

59. Upon the delivery of its oral decision on 11th December, 2023, the Court invited the parties to address it on the issue of costs.

60. Counsel for the Respondents submitted that the Applicants should pay the Respondents' costs, since she was of the view that the matter was devoid of merits and should not have been filed.

61. Counsel for the Applicants responded that since the matter was one of public importance, the Applicants should not be penalized by a costs award against them.

62. The Court has considered these submissions and is in agreement with counsel for the Respondents that the Applicants, having been unsuccessful, should bear the costs of these proceedings.

63. However, having regard to the public interest element in the matter as well as the fact that Court found that there may have been some merit in the Applicants' arguments about the lack of proper consultation, the Court will award the Applicants two thirds of the costs incurred by the Respondents to be taxed in default of agreement.

Dated 11th day of December 2023

Justice Chris Selochan