In The Supreme Court of Bermuda

CIVIL JURISDICTION

2019: No. 201

BETWEEN:

LEYONI JUNOS

Applicant

-and-

THE GOVERNOR OF BERMUDA

Respondent

Before: **The Hon. Mr. Justice Juan P. Wolffe, Puisne Judge**

Appearances: LeYoni Junos appears unrepresented
Ms. Lauren Sadler-Best for the Respondent

Dates of Hearing: 2nd February 2023
Date of Ruling: 10th March 2023

RULING

Renewed application for leave to apply for judicial review – Order 53, Rule 3(4) of the Rules of The Supreme Court 1985 – The Governor referring judicial complaints to the Judicial Legal Services Committee ("JLSC") – Constitutionality of the JLSC

WOLFFE J:

1. Pursuant to Order 53, rule 3 of the Rules of the Supreme Court 1985 (the "RSC") the Applicant filed a Notice of Application dated the 17th May 2019 seeking leave to judicially review a decision of the Respondent which required the Applicant to resubmit a complaint against The Hon. Chief Justice Narinder Hargun (the "Chief Justice") to the Judicial and Legal Services Committee ("JLSC"). The relief sought by the Applicant was (and still is) as follows:

    (a) A Declaration that the JLSC is an unconstitutional body which has no statutory existence and therefore has no legal authority to vet, investigate or hear complaints against judges and/or the judiciary;

    (b) An Order of Mandamus – that the Governor appoint a Tribunal in accordance with section 74(4) of the Bermuda Constitution Order 1968 (the "Bermuda Constitution") to investigate the Applicant's complaint against the Chief Justice.

    (c) A Protected Costs Order in favour of the Applicant and the Civil Justice Advocacy Group ("CJAG")[1].

2. In determining the Applicant's application for leave without a hearing being conducted (which is permitted under RSC Ord. 53, rule 3(3)), and by way of a written ruling dated the 8th July 2022, Assistant Justice Delroy B. Duncan KC (then "QC") refused leave for the Applicant to apply for judicial review[2]. In his decision Duncan AJ stated that:

> *"The Applicant seeks a declaration that the Judicial Legal Services Committee has no legal authority to carry out its stated functions, including hearing complaints against judges. However, such a declaration in isolation would not achieve the stated ultimate purpose of the application, which is to secure an investigation into*

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1 The Notice of Application gives the name of the Applicant as "LeYoni Junos (for Civil Justice Advocacy Group)".

2 In paragraphs 5 to 7 of his Ruling Duncan AJ sets out the reasons for the delay between the filing of Notice of Application in May 2019 and the delivery of his decision in July 2022.

the conduct of the Chief Justice. The application for an order of Mandamus asserts that such an investigation can only be carried out by the 1st Respondent[3] appointing a tribunal under section 74(4) of the Bermuda Constitution Order 1968.

The Judicial Legal Services Committee is yet to decide how to respond to and address the Applicant's complaint. That Committee has a range of options, one or more of which may satisfy the Applicant's complaint. Further, the Judicial Legal Services Committee is empowered to make recommendations to the 1st Respondent which address the complaint. Only after the Judicial Legal Services Committee has made a decision can the Applicant determine whether it will obtain the ultimate relief it seeks. If the Applicant is not satisfied with the response from the Committee, at that juncture it can reconsider its application for judicial review. For this reason, in my judgment, this application for judicial review is premature. R. (on the application of Paul Rackham Ltd) v Swaffham Magistrates Court [2004] EWHC 1417 (Admin). (at paragraph 16)."[4]

3. With leave having been refused by Duncan AJ, on the 15th July 2022 the Applicant filed a "Notice of Renewal of Application for leave to apply for Judicial Review" pursuant to RSC Ord. 53 rules 3(4) and 3(5)[5], thereby renewing her application to bring judicial review proceedings against the Respondent's decision.

4. It should be noted that on or about the 2nd September 2022 the Applicant filed a "Summons for Recusal" (supported by an affidavit) asserting that Duncan AJ should recuse himself from this matter. In a written *ex tempore* ruling dated the 21st September 2022 Duncan AJ acceded to the Applicant's application. In doing so he made it clear that he unequivocally denied each and every allegation contained in the Applicant's affidavit but that he should "err on the side of caution" and grant the Applicant's recusal application.[6]

5. Before turning to the substantive issues in this matter I should also deal with the Applicant's suggested time frames within which she repeatedly stated that I should have heard the issues in dispute and render my decision on her renewed application. By reference to a document entitled "The Administrative Court – Judicial Review Guide 2022"

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3 In the Notice of Application filed in May 2019 the Governor was the "1st Respondent" and a "Sara Smalley" was the "Respondent". However, on the 28th December 2022 I ordered, by consent between the parties, that Sara Smalley should be removed as a party to these proceedings.

4 Paragraphs 10 and 11 of Duncan AJ's Ruling.

5 The Applicant filed the notice well within the ten days of Duncan AJ's refusal as required by RSC Ord. 53 rule 3(5).

6 Paragraphs 6 and 7 of Duncan AJ's *ex tempore* ruling.

(the "Guide"), which seemingly was produced by the Courts and Tribunals Judiciary in October 2022, the Applicant submitted that the standard time for the hearing of a renewed application is 30 minutes and that this includes the time needed by the judge to give an oral judgment (as set out in paragraph 9.5.1 of the Guide). By this, the Applicant presumably suggested that I should strictly follow suit and constrain the hearing of submissions and the delivery of my decision to 30 minutes.

6. To this I make two points. Firstly, whilst the Guide is of some assistance, and may have some persuasive value, it is not binding on judicial review applications heard in Bermuda.

7. Secondly, whilst it is vitally important to observe the overriding objective of dealing with matters "expeditiously" there is the concomitant overriding objective of dealing with matters "fairly" (see RSC Ord. 1A rule 1(2)(d)). Therefore, one must be careful not to slavishly abide by suggested times frame, such as those set out in the Guide, at the risk of not affording the parties sufficient time to fully ventilate their respective positions.

8. Of course, at the commencement of the hearing it was my intention to provide an *ex tempore* decision at the end of the parties' submissions if the circumstances permitted. However, the manner in which the hearing unfolded did not permit such. The Applicant commenced her oral submissions to the Court at approximately 10.21.53am and concluded them at 10.55.35am. Therefore, although the Applicant exercised brevity in laying out her position she still required approximately 34 minutes to do so. By my calculations, the Applicant therefore exceeded the 30 minutes which is suggested by the Guide to take for the entirety of a judicial review application (inclusive of the Respondent's response and the Court rendering a decision). This is not a criticism of the Applicant as I am genuinely of the view that she acquitted herself well in economically putting forth her arguments, but it is necessary for me to illustrate how achieving a 30 minute time constraint in a judicial review hearing can be impractical and may even offend the overriding objective of ensuring fairness to the parties. Had I hurried the Applicant and/or Ms. Lauren Sadler-Best along so that I may not encroach past the suggested 30 minutes then either of them would have

had a legitimate gripe that I did not afford them ample time and opportunity to advance their arguments or that I rushed to judgment.

9. It is for this reason that at the conclusion of the hearing that I deemed it necessary for me to reserve my decision so that I may fully consider the submissions and authorities presented by the Applicant and Ms. Sadler-Best (I explained to the parties that I would not be able to do so until now due to jury trial commitments).

The Law

10. There is no dispute that in accordance with the RSC that the Applicant can renew her application for leave to apply for judicial review. Nor is there any dispute that the test to be applied on an application for leave to claim judicial review is that which is set out in the Privy Council authority of *The Hon. Satnarine Sharma v. Carla Browne Antoine et al [2007] 1 WLR 780* (which is also referred to in the Bermuda authority of *Harold Joseph Darrell v. A Board of Inquiry (under the Human Rights Act 1981) and the Minister of Cultural and Social Rehabilitation [2010] Bda L.R. 48* that was cited by Ms. Sadler-Best). Speaking about the governing principle for judicial review leave applications Lord Bingham and Lord Walker in *Sharma* stated that:

> *"The ordinary rule now is 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:* see *R v Legal Aid Board, Ex p Hughes* (1992) *5 Admin LR 623, 628 and Fordham, Judicial Review Handbook 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R (N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468, para 62, in a passage applicable, mutatis mutandis, to arguability:*
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> > *"the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more*

serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."

It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen": Matalulu v Director of Public Prosecutions [2003] 4 LRC 712, 733."

11. Therefore, following the guidance of *Sharma* the contested issue is whether I am satisfied that the Applicant has advanced an "arguable ground for judicial review" which has "a realistic prospect of success". It is that issue to which I will now direct my attention.

Decision

12. The factual basis for the Applicant's claim for judicial review is that on the 4th February 2019 she submitted a complaint against the Chief Justice to the Respondent. On the 15th February 2019 the Applicant was advised by the Executive Officer of Government House (the name of the residence and administrative offices of the Respondent) that her application should be resubmitted to the JLSC. It was this direction from Government House that precipitated the Applicant's application for leave for judicial review which was filed in May 2019 and eventually determined by Duncan AJ in July 2022, and, which is now the basis of her renewed application before me.

13. The crux of the Applicant's stance is that the JLSC is not a body which is constituted by the Bermuda Constitution and therefore it has no legal authority to vet, investigate or hear her complaint against the Chief Justice. Therefore, she submits, the procedural direction from the Respondent that she resubmit her complaint to the JLSC was not rooted in the Bermuda Constitution and that the proper process would be for the Respondent to appoint a "tribunal" in accordance with section 74(4) of the Bermuda Constitution to determine her complaint. By extension, the Applicant asserts that any requirement that members of the

public submit their judicial complaints to the JLSC and be bound by a "made-up protocol"[7] has no legal standing.

14. The Applicant is of the view that she is fortified in her position by virtue of a pronouncement which was apparently made by the Chief Justice in February 2020 at the Opening of the Legal New Year in which he purportedly stated that the JLSC lacks any statutory basis and that it is important that the issue should be resolved. She also relies on two authorities out of the Privy Council, namely the following: *Hearing on the Report of the Chief Justice of Gibraltar, Privy Council No. 0016 of 2009 [2009] UKPC 43* (the "Gibraltar case") and *Report of the Tribunal to the Governor of The Cayman Islands – Madam Justice Levers (Judge of the Grand Court of The Cayman Islands), Privy Council Appeal No. 0092 of 2009 [2010] UKPC 24* (the "Cayman case"). For some reason the Applicant did not provide all of the pages of her cited authorities in her bundle. Specifically, pages 17 to 85 of the Gibraltar case (which also included 206 pages of the Report of the Tribunal which was the subject of the Privy Council complaint); and, pages 19 to 45 of the Cayman case. This may have been pure inadvertence by the Applicant or genuine efforts by the Applicant to be succinct and I therefore cast no aspersions upon her.

15. I will first address the Gibraltar case and the Cayman case as it is my view that they do not assist with my determination as to whether the Applicant's grounds for judicial review are arguable and have a realistic prospect of success. It is correct that in both the Gibraltar and Cayman jurisdictions that the hearing of judicial complaints by a tribunal has constitutional underpinnings. In Gibraltar there is the Gibraltar Constitutional Order 2006 (the "Gibraltar Constitution") and in Cayman there is the Cayman Islands (Constitution) Order 1972 (the "Cayman Constitution"). However, although the determination of judicial complaints by an independent and impartial tribunal is governed by the respective constitutions of Gibraltar and Cayman those authorities primarily addressed whether the relevant tribunal's decision had legal and factual footing (in the Gibraltar case the complaint to the tribunal was against their Chief Justice and in the Cayman case the complaint was against a Judge of the Grand Court). Therefore, as Ms. Sadler-Best posited, neither of those authorities

[7] The words used by the Applicant in her written submissions.

assist me with the ultimate issue in this matter i.e. whether the JLSC is unconstitutional, has no statutory foundation, or has no legal standing.

16. Having said this, the Applicant does make an understandable inquiry as to whether the JLSC has a constitutional or statutory foundation and the Applicant would not be alone in this regard as others have made similar comments about this from the inception of the JLSC. The Applicant and others concerns are brought into focus when one looks at how the JLSC came to be.

17. It was in November 2013 when then Governor His Excellency Mr. George Fergusson saw fit to put together a Standing Committee to advise the Governor of Bermuda "on their Constitution responsibilities in relation to the Judiciary" which included "the power to appoint judges and magistrates and to make decisions concerning complaints about judicial conduct…" (taken from the Government of Bermuda website). No doubt the constitutional responsibilities to which Governor Fergusson was referring to were those set out in section 74 of the Bermuda Constitution which states:

> *"Tenure of office of judges of Supreme Court*
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> *74 (1) Subject to the following provisions of this section, a judge of the Supreme Court shall vacate his office when he attains the age of sixty-five years:*
>
> *Provided that*
>
> *(a) the Governor may permit a judge who attains the age of sixty-five years to continue in office until he has attained such later age, not exceeding the age of seventy years, as may have been agreed between the Governor and that judge; and*
>
> *(b) a judge who has attained the age at which he would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceeding commenced before him before he attained that age.*
>
> *(2) A judge of the Supreme Court may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of*

body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of subsection (3) of this section.

(3) A judge of the Supreme Court shall be removed from office by the Governor by instrument under the Public Seal if the question of the removal of that judge from office has, at the request of the Governor, made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(a) the Governor shall appoint a tribunal, which shall consist of a Chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;

(b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and

(c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(5) The provisions of the Commissions of Inquiry Act 1935 [title 28 item 19] of Bermuda as in force immediately before the coming into operation of this Constitution [2 June 1968] shall, subject to the provisions of this section, apply as nearly as may be in relation to tribunals appointed under subsection (4) of this section or, as the context may require, to the members thereof as they apply in relation to Commissions or Commissioners appointed under that Act.

(6) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (4) of this section the Governor may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

(a) if the tribunal advises the Governor that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred upon the Governor by this section shall be exercised by him acting in his discretion."

18. On the 1st January 2014, approximately one (1) month after the formation of the JLSC by Governor Fergusson, then President of the Court of Appeal of Bermuda Justice Edward Zacca and then Chief Justice of Bermuda Dr. Ian Kawaley penned a document entitled "Judicial Complaints Protocol for Bermuda" (the "Protocol"). This is presumably the document which the Applicant characterized as being "made-up" but it is a comprehensive read particularly as it relates to the thrust behind the formation of the JLSC. Some of which supports the Applicant's argument that the JLSC does not have constitutional or statutory backing.

19. In particular, the Protocol recognized that:

(i) "Bermuda is the only British Overseas Territory in the Atlantic and Caribbean region whose judges are not appointed by a constitutionally-established Judicial Service Commission" (which is unlike jurisdictions such as the Cayman Islands and Turks and Caicos).[8]

(ii) Prior to the creation of the JLSC the Governor relied on *ad hoc* Judicial Appointment Committees but that they "lacked continuity and institutional memory in terms of administrative processes".[9]

(iii) "The absence of any transparent and formal procedure for complaints against judges leaves no clear channel for public dissatisfaction and, arguably, exposes the Judiciary to avoidable and unjustifiable 'wildcat' public attacks".[10]

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8 Paragraphs 1 and 2 of the Protocol.
9 Paragraph 5 of the Protocol.
10 Paragraph 6 of the Protocol.

(iv) There is no constitutional or legislative support for the disciplinary process which should be followed including where removal of a judge is being considered.[11]

20. Appreciating that there was an "identified gap" in the Bermuda Constitution in respect of giving constitutional or statutory credence to a body which appoints judges and deals with complaints of judicial misconduct the Protocol stated the following in paragraph 7:

> *"But meanwhile, the Governor has appointed a standing, non-statutory group to advise him on matters relating to both judicial appointments and complaints against the judiciary. Within a non-statutory framework, it broadly follows the pattern of the Cayman Islands, but includes the Chief Justice and two senior overseas judges."*

21. So the Applicant is perfectly correct that the JLSC is not enshrined in the Bermuda Constitution or any statute. The Applicant, and this is not a criticism, rightly spent time at the hearing asserting that because Gibraltar and Cayman saw fit to create judicial services commissions within their respective constitutions that the absence of such specific provisions in the Bermuda Constitution makes the JLSC legally ineffective. I do not accept this line of argument for a number of reasons.

22. Firstly, although jurisdictions such as Gibraltar and Cayman sought fit to put their judicial service commissions in the infrastructure of their respective constitutions, other jurisdictions such as Australia and the Isle of Man, like Bermuda, have designed non-statutory frameworks to afford members of the public a means by which they can make complaints against judicial officers. Therefore, one cannot definitively state that the JLSC, and its procedures, must have constitutional or statutory origins for them to have legal and procedural import. To this point, I refer to and follow the words of President Zacca and Chief Justice Kawaley who having accepted that the JLSC did not emanate from the Bermuda Constitution or any statute they went on to explain why it still has legal and procedural validity. I will recount verbatim their words in the Protocol in this regard as

[11] Paragraph 13 of the Protocol.

they are pertinent to the Applicant's renewed application. Paragraphs 3 and 4 of the Protocol state:

> *"3. The current trend is clearly in the direction of creating a framework for members of the public to be able to make complaints about the conduct of judges which relates to the propriety of their ethical conduct in cases where no suggestion of serious misconduct calling for removal from office arises. A few examples illustrate this shift in the direction of increasing the accountability of the Judiciary to the public in a way which supports judicial independence:*
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> *(a) in England and Wales a legislative scheme for judicial complaints was introduced in 2006, the same year our own Guidelines for Judicial Conduct were adopted;*
>
> *(b) in Australia non-statutory judicial complaints procedures have been developed at the Federal and State level in recent years; 7*
>
> *(c) the Cayman Islands 2009 Constitution obliges the Judicial and Legal Service Commission to both create a code of judicial conduct and a procedure for making complaints of judicial misconduct;*
>
> *(d) the Isle of Man Judiciary introduced non-statutory 'Procedural Notes in Respect of Complaints of Personal Misconduct against Members of the Judiciary of the Isle of Man' in October, 2012.*
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> *4. A unifying feature of all of these judicial complaints procedures is that complaints will not be entertained where in substance a litigant is dissatisfied with whether or not a decision made by a judicial officer is right or wrong. The remedy for such a complaint lies in the appeals process. This non-statutory Protocol is designed to provide members of the public who consider that a judge has acted in a way which is inconsistent with the standards set in the Guidelines for Judicial Conduct with a clear pathway for having their concerns heard. This not only makes the Judiciary accountable to the public. It also affords judges against whom unmeritorious complaints are made with a mechanism through which they can be vindicated. Consistent with international best practice, the Protocol is also designed to preserve judicial independence by ensuring that the Executive is not directly involved in imposing penalties on serving judicial officers."*

23. It may very well be aspirational to eventually follow the lead of Gibraltar and Cayman and give the JLSC constitutional and/or statutory viability and no doubt this was the spirit

behind the words of Chief Justice Hargun at the Opening of the Legal New Year in 2020. However, as was/is in Australia and the Isle of Man constitutional or statutory support is not necessary, and therefore the absence of such is not fatal to the existence of the JLSC.

24. Secondly, the overall impact of the judicial complaint regime governed by the Protocol and implemented by the JLSC provides members of the public with a far wider layer of redress which the Bermuda Constitution does not expressly allow. The Bermuda Constitution is confined to questions which only involve the "removal" of a judge. Sections 74(3) and 74(4) of the Bermuda Constitution, as read with section 89, are solely concerned with the removal of a judge of the Supreme Court from office for inability or misbehavior, and this is only after a constituted tribunal recommends removal, and, only after the Privy Council recommends removal. The Bermuda Constitution is silent on the disciplinary process to be followed for the plethora of other types of judicial complaints which do not call for the ultimate penalty of the removal of a judge. As the Protocol states, under the Bermuda Constitution "the Governor's disciplinary powers for matters other than removal are implicit rather that explicit".[12]

25. What the "Guidelines for Judicial Conduct" (published by the Chief Justice Richard Ground on the 21st July 2006), the formation of the JLSC, and the content of the Protocol collectively do is to fill the glaring lacuna in the Bermuda Constitution as it relates to the public's recourse when they are confronted with all manner of judicial misconduct. So while there may be no express provisions in the Bermuda Constitution for the creation of the JLSC its existence actually bolsters and gives strength to section 74(4), and most importantly gives the Applicant an avenue for redress which she would not have ordinarily had.

26. This leads me to my third point. I agree with the submissions of Ms. Sadler-Best that in the absence of explicit constitutional or legislative guidance the Governor is entitled to formulate processes and procedures as to how judicial complaints are to be handled. I would even conclude that the Bermuda Constitution permits the Governor to do so. Section

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[12] Paragraphs 10 and 11 of the Protocol.

89 of the Bermuda Constitution instills in the Governor not only the power to remove a judicial officer but to also "exercise disciplinary control" over judicial officers. The ability to exercise this disciplinary control over judicial offices must reasonably involve the Governor devising written guidance by which aggrieved persons who are seeking to have judicial officers disciplined, and those judicial officers who are facing a complaint, would have consistency and certainty in how judicial complaints are resolved. The promulgation of the Protocol through the JLSC does this.

27. Moreover, paragraphs 16 and 20 of the Protocol makes it pellucid that the work of the JLSC is limited in that it goes no further than to recommend, not dictate, a course of action to be taken by the Governor when determining a judicial complaint. As to the remit of the JLSC paragraph 16 of the Protocol stipulates that it is to:

> *"(a) advise the Governor on judicial and legal appointments and discipline;*
> *(b) develop and maintain a database of precedents and operational principles for judicial selection and promotion;*
> *(c) develop and maintain a database of precedents and operational principles for judicial disciplinary matters."*

28. As to what should be done thereafter paragraph 20 of the Protocol provides that the JLSC shall report its findings to the Governor and can make recommendations to the Governor as to what action can occur if the complaint of judicial misconduct is substantiated. In this regard, paragraph 20 of the Protocol states:

> *"The Governor upon receipt of such a recommendation may either:*
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> *(a) accept the recommendation;*
> *(b) decide that no action be taken; or*
> *(c) decide that some other action should be taken,*
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> *and, in either case, shall as soon as practicable communicate his preferred course of action to the Chief Justice or (where the respondent to the complaint is the Chief Justice or a member of the Court of Appeal) to the President of the Court of Appeal."*

29. Therefore, the functions of the JLSC does not in any way whatsoever usurp or erode the final decision making power of the Governor. As Ms. Sadler-Best states, the JLSC is nothing more than an advisory body to the Governor on matters relating to the disciplining of judicial officers. The Governor still retains the exclusive power to make the final say as to what is to happen to the judicial complaint and what penalty, if any, would be imposed on a judge if the Governor deems that their behavior amounts to judicial misconduct. There is nothing in the Protocol which, expressly or impliedly, delegates to the JLSC the decision-making power which is vested in the Governor to discipline or sanction judicial officers.

30. Essentially, a complaint against a judicial officer starts with the Governor and ends with the Governor. This is evidenced by the fact that the genesis of a judicial complaint is the filing of the required documentation set out in Annex C of the Protocol by the complainant (paragraph 7 of the Protocol) and the resolution of the judicial complaint ending with the Governor communicating to the Chief Justice what action is to be taken, or not taken, against the judicial officer (paragraph 20 of the Protocol). Colloquially speaking, the buck stops with the Governor.

31. It is also necessary to note that the composition of the JLSC and the route that a judicial complaint may take under the Protocol is similar to that which is stated in the Bermuda Constitution. As referred to earlier, in relation to an investigation into the removal of a judge section 74(4) of the Bermuda Constitution provides that: (a) the Governor shall appoint a "tribunal" which shall consist of a Chairman and not less than two other members who hold or have held high judicial office; and (b) the tribunal shall inquire into the matter and report the facts to the Governor and advise the Governor as to whether the Governor should refer the matter to the Privy Council. The current iteration of the JLSC is far broader than what the Bermuda Constitution calls for in terms of numbers and the caliber of those who sit on it. The JLSC is made up of: the President of the Court of Appeal of Bermuda, the Chief Justice (who is the subject of the Applicant's complaint), the President of the Bermuda Bar Association, a former Chief Justice of the Prince Edward Island Court of Appeal, a former Chief Justice of the Eastern Caribbean Supreme Court, a former Ombudsman of Bermuda, a former Vice President of the Senate of Bermuda, and a

Member of the Most Excellent Order of the British Empire (MBE). It could therefore be sustainably argued that the JLSC has stronger checks and balances that those which are required by the Bermuda Constitution.

32. Further, bearing in mind that section 74(4) of the Bermuda Constitution deals solely with questions involving the removal of a judge which is the penalty of last resort, the job of the JLSC to inquire into a judicial complaint and report its findings to the Governor is not dissimilar to what a tribunal is required to do under the Bermuda Constitution.

33. So even though the JLSC may not have constitutional or legislative underpinnings its composition, mandate, and procedures in dealing with judicial complaints not only bear the hallmarks of section 74 of the Bermuda Constitution but goes farther and has more clarity and certainty for those who are complaining and those who are complained of.

34. I therefore find that the direction of the Governor for the Applicant to resubmit her complaint to the JLSC is not unreasonable as it is the JLSC which would eventually investigate her complaint against the Chief Justice and thereafter report its findings to the Governor who will then decide what, if any, sanctions should be imposed. It did not seem to me that the Governor, by directing that the Applicant resubmit her complaint to the JLSC, was in any way whatsoever relinquishing her power or disciplinary control over judicial officers to the JLSC. The direction to resubmit appeared to me to be more of an effort towards administrative expediency particularly in light of the fact that paragraph 7 of the Protocol makes it clear that the first port-of-call for all judicial complaints is that they are to be made in writing to the Governor. I suppose the Governor, through her Executive Officer, could have physically received the Applicant's complaint and then sent it via mail or otherwise to the JLSC. I have the impression though that this would not have assuaged the Applicant as her issue is that the JLSC does not exist constitutionally or legislatively to even be in receipt of any complaint whether directly or indirectly from the Governor.

Conclusion

35. In consideration of the above paragraphs I am not satisfied that the Applicant has advanced an arguable ground for judicial review having a realistic prospect of success. Accordingly, I hereby refuse the Applicant's renewed application for leave to apply for judicial review.

36. Costs normally follow the event however given that the Applicant was unrepresented and because I am of the view that the issues raised were of general public importance I make no order as to costs. This is of course subject to any submissions which the parties wish to make.

Dated the 10th day of March , 2023

THE SEAL OF THE SUPREME COURT OF BERMUDA

The Hon. Mr. Justice Juan P. Wolffe
Judge of the Supreme Court of Bermuda