



[2026] JMSC Civ 04

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN CIVIL DIVISION**

**CLAIM NO. SU 2025 CV 03316**

**BETWEEN**

**WAYNE CAMERON  
(CHAIRMAN OF JAMAICA POLICE OFFICERS'  
ASSOCIATION)**

**APPLICANT**

**AND**

**COMMISSIONER OF POLICE**

**RESPONDENT**

**IN CHAMBERS**

**Mr Lemar Neale instructed by Messrs. NEA|LEX for the Applicant**

**Messrs. Peter Champagnie KC, Neco Pagon and Sayeed Bernard instructed by  
the Law Office of Peter C. Champagnie for the Respondent**

**Heard: 8 and 11 December 2025 and 9 January 2026**

**Judicial review – Application for leave to apply for judicial review – Threshold test – Whether the applicant has an arguable ground with a realistic prospect of success – Whether the threshold for leave to apply for judicial review is a low one**

**Incorporated and unincorporated associations – Whether the police officers' association is an incorporated or an unincorporated association – Whether the police officers' association is an entity which is known to law**

**Illegality – Whether the decision of the commissioner of police to direct that the position of the chairman of the police officers' association be vacated was in breach of the articles of incorporation of the association or of the rules of the association – Whether the decision of the commissioner of police was illegal**

**Ultra vires – Doctrine of ultra vires – Whether ultra vires in the narrow sense – Whether the commissioner of police is authorized by statute to direct that the position of the chairman of the police officers' association be vacated – Whether the commissioner of police acted ultra vires his statutory authority – Whether the decision of the commissioner of police is susceptible to judicial review**

**Natural justice – Whether there can be a procedural legitimate expectation that the rules of natural justice will be followed – Whether the decision of the commissioner of police was made in breach of the principles of natural justice and procedural fairness – Whether the decision of the commissioner of police is arbitrary and unreasonable and irrational**

**Judicial review – When proceedings appropriate – Availability of suitable alternative means of raising issue**

**Injunction – Application for the grant of an interim injunction – Application for injunctive relief made against the background of an application for leave to apply for judicial review – Whether jurisdiction to grant interim injunctive relief to preserve status quo pending the final determination of a claim for judicial review – Threshold test – Whether there is a serious issue to be tried – Balance of convenience – Whether the balance of convenience lies in favour of the grant of injunctive relief – Whether damages would be an adequate remedy**

**Remedies – Whether grant of injunctive relief – Whether award of damages**

**Costs – Whether a cost order should properly be made in the circumstances – The appropriate cost order to be made in the circumstances – The Constabulary Force Act, section 3(2)(a), The Judicature (Supreme Court) Act, section 49(h), Civil Procedure Rules, 2002, as amended, rules 17.1(1)(a) and 17.4, 56.15(4) and (5), 64.3, 64.6(1), 64.6(3), 64.6(4)(a),(b),(d)(i) and (ii), (e)(i), (ii) and (iii), 64.6(4)(f) and 64.6(4)(g)**

## A. NEMBHARD J

### INTRODUCTION

*“Judicial review is intended to secure the constitutional value of the rule of law, to which public authorities, and the other parties to judicial review proceedings, are or should be committed.”<sup>1</sup>*

- [1] This matter raises the imperative consideration of the proper interpretation to be applied to section 3(2)(a) of The Constabulary Force Act and the application of the same in the circumstances of this case. Significantly, this matter highlights the crucial issue of whether the Commissioner of Police of Jamaica, pursuant to section 3(2)(a) of The Constabulary Force Act, is empowered to direct that the position of the Chairman of the Jamaica Police Officers’ Association be vacated. Equally of importance is the issue of whether, in directing that the position of the Chairman of the Jamaica Police Officers’ Association be vacated, the Commissioner of Police acted in breach of the rules of the Jamaica Police Officers’ Association and ultra vires his statutory authority.
- [2] These proceedings originated with a Notice of Application for Court Orders, which was filed on 10 September 2025. By virtue of the Notice of Application for Court Orders, which was filed on 10 September 2025, the Applicant, Wayne Cameron, in his capacity as Chairman of the Jamaica Police Officers’ Association, seeks the leave of the Court to apply for judicial review of the decisions of the Respondent, the Commissioner of Police, which are contained in a letter dated 8 September 2025, to wit:
  - i. directing that the Chair of the Police Officers’ Association be vacated;
  - ii. directing that the Applicant is not permitted to represent the Jamaica Constabulary Force outside of official duties;

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<sup>1</sup> Per Lord Reed and Lady Rose in **National Bank of Anguilla (Private Banking and Trust) Ltd (in Administration) and another (Appellants) v Chief Minister of Anguilla and 3 others (Respondents) (Anguilla)** [2025] UKPC 14, at paragraph 89

- iii. directing the remaining members of the Police Officers' Association Executive to appoint a Chairman pro tem; and
- iv. directing the Chairman pro tem to call a Special General Meeting for the purpose of electing a new Executive in accordance with the established conventions,

by way of an order of Certiorari to quash the said decisions.

**[3]** Additionally, the Applicant also seeks the following relief: -

- i. an interim injunction restraining the Respondent, whether acting in concert, by himself, his servants and/or agents or otherwise howsoever from directing or causing to be convened any meeting of the Police Officers' Association for the purposes of removing the Applicant as Chairman and appointing a Chairman pro tem or otherwise, pending the determination of the claim for judicial review or further orders of the court.
- ii. an interim declaration that the Chair of the Police Officers' Association has not been vacated and that the Applicant remains the Chairman of its Executive pending the determination of the claim for judicial review or further orders of the court.
- iii. A stay of implementation of the decisions of the Respondent pending the determination of the claim for judicial review or further orders of the court.
- iv. Costs to be costs in the claim.
- v. Such further or other relief as this Honourable Court may deem necessary or appropriate.

**[4]** The grounds on which the Applicant is seeking these Orders are set out as follows: -

## Leave for Judicial Review

1. Rule 56.3 of the Civil Procedure Rules, 2002 (as amended) ("the CPR"), provides that a person wishing to apply for Judicial Review must first obtain leave.
2. The Applicant is the Chairman of the Police Officers' Association.
3. The Police Officers' Association is a voluntary association consisting of police officers above the rank of Inspector. The Police Officers' Association currently represents the interest of over 300 police officers in the Jamaica Constabulary Force ranging in rank from Assistant Superintendents of Police to the Deputy Commissioner of Police.
4. The Respondent is the Commissioner of Police and a public authority.
5. On 8 September 2025, the Respondent issued or caused to be issued a letter to all officers of the Jamaica Constabulary Force in which he made certain decisions and gave certain directives concerning the Applicant and his position in the Police Officers' Association.
6. The said letter directed, among other things, that the Chair of the Police Officers' Association be vacated and that the remaining members of the Executive appoint a Chairman pro tem who will lead the Police Officers' Association into a Special General Meeting for the purpose of electing a new Executive.
7. The Respondent acted ultra vires the Articles of the Jamaica Police Officers' Association in making the impugned decisions as the Respondent has no jurisdiction under the Police Officers' Association to interfere with or intervene in the internal affairs of the Association.
8. Prior to the decisions and directives in the Respondent's letter, particularly to declare the Chair of the Police Officers' Association vacated, there was no communication or consultation with the Applicant, and he was not given an opportunity to be heard, in

keeping with the principles of natural justice and procedural fairness.

9. Further, the decisions and directives made and given by the Respondent, in addition to being in breach of the principles of natural justice and procedural fairness, are arbitrary, Wednesbury unreasonable and irrational.
10. Still further, the decisions and directives made and given by the Respondent were done in bad faith and for an improper purpose. The Respondent is abusing his power and authority to coerce the other members of the Executive of the Police Officers' Association to implement his decisions.
11. The Applicant has a legitimate expectation that the Respondent would have acted fairly in making a decision adverse to his interest.
12. In the circumstances, the Applicant has an arguable ground for judicial review with a realistic prospect of success.
13. The Applicant has sufficient interest in the matter as he is directly affected by the Respondent's actions about which the application is made.
14. The time limit for making this application has not been exceeded. This application is made promptly.
15. There is no alternative form of redress available to the Applicant.

### **Interim Injunction and Declaration**

16. The court has inherent jurisdiction to grant the injunction sought.
17. Further, section 49(h) of the Judicature (Supreme Court) Act provides that the court may grant an injunction before a hearing of any cause or matter where it appears just or convenient to do so.
18. Rules 17.1(1)(a) and (b) of the CPR empower the court to grant interim injunctions and interim declarations, respectively.
19. The Applicant has a strong *prima facie* case against the Respondent, which demonstrates that there is a serious issue to be tried.
20. The Applicant fears that unless restrained, the Respondent will proceed to direct or cause the Executive of the Police Officers'

Association to convene a general meeting for the purpose of removing the Applicant as Chairman and appointing a new Chairman.

21. The decisions of the Respondent have resulted in confusion among the members of the Police Officers' Association as to the Applicant's status and the Applicant is unable to effectively represent the interest of the members, which his status is in limbo.
22. The matter is therefore extremely urgent.
23. In the circumstances, damages would not be an adequate remedy for the Applicant.
24. The Applicant undertakes to abide by any order the court may make as to damages in the event that the court is hereafter of the opinion that the Respondent or any third party given notice of this order has suffered any damages that the Applicant ought to pay.

## THE ISSUES

[5] Having considered the relevant material which was filed in relation to this matter together with the respective submissions which were advanced on behalf of the parties, the salient issue which arises for the Court's determination may be distilled as follows: -

- i. Whether the Applicant has met the threshold for the grant of leave to apply for judicial review.

[6] With respect to the central issue as to whether the Applicant has met the threshold for the grant of leave to apply for judicial review, three (3) questions arise. They are posited as follows: -

- (i) Whether the Respondent acted illegally and ultra vires his statutory authority by virtue of the decisions which he made and which are contained in a letter dated 8 September 2025, to wit:
  1. directing that the Chair of the Police Officers' Association be vacated;

2. directing that the Applicant is not permitted to represent the Jamaica Constabulary Force outside of official duties;
3. directing the remaining members of the Police Officers' Association Executive to appoint a Chairman pro tem; and
4. directing the Chairman pro tem to call a Special General Meeting for the purpose of electing a new Executive in accordance with the established conventions.

(ii) Whether the decisions made by the Respondent and which are contained in letter dated 8 September 2025 are irrational and unreasonable and in breach of the principles of natural justice and procedural legitimate expectation;

(iii) Whether there is an alternative remedy that is available to the Applicant.

## **THE LAW**

### **The role of the court in matters of judicial review**

[7] Part 56 of the Civil Procedure Rules, 2002, as amended (“the CPR”), is entitled Administrative Law and deals with applications such as this. The role of the court in judicial review is to provide supervisory jurisdiction over persons or bodies that perform public law functions or that make decisions that affect the public.

[8] The approach of the court is by way of review and not of an appeal. The grounds for judicial review have been broadly based upon illegality, irrationality or impropriety of the procedure and the decision of the inferior

tribunal. These grounds were explained in the case of **Council of Civil Service Unions v Minister for the Civil Service**.<sup>2</sup>

[9] Roskill, LJ stated as follows: -

*“...executive action will be the subject of judicial review on three separate grounds. The first is where the authority concerned has been guilty of an error of law in its action, as for example purporting to exercise a power which in law it does not possess. The second is where it exercises a power in so unreasonable a manner that the exercise becomes open to review on what are called, in lawyers' shorthand, Wednesbury principles (see Associated Provincial Picture Houses Ltd v Wednesbury Corp [1947] 2 All ER 680, [1948] 1 KB 223). The third is where it has acted contrary to what are often called 'principles of natural justice'.”*

[10] Judicial review is the courts' way of ensuring that the functions of public authorities are executed in accordance with the law and that they are held accountable for any abuse of power, unlawful or ultra vires act. It is the process by which the private citizen (individual or corporate) can approach the courts seeking redress and protection against the unlawful acts of public authorities or of public officers and acts carried out that exceed their jurisdiction. Public bodies must exercise their duties fairly.

[11] The requirement for leave is one aspect of the courts' function to act as a filter in relation to these types of claims. The starting point is rule 56.3(1) of the CPR, which provides that a person wishing to apply for judicial review must first obtain leave. Whilst the rule provides that leave must first be obtained in order to claim judicial review, it is silent as to the threshold that must be met, in order to obtain leave. It has been accepted that, the test as enunciated by the Privy Council in **Sharma v Brown-Antoine**,<sup>3</sup> is the applicable test.

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<sup>2</sup> [1984] 3 All ER 935

<sup>3</sup> [2007] 1 WLR 780

### The threshold test

[12] Satnarine Sharma was the Chief Justice of Trinidad and Tobago, and the case concerned an application by him to review the decision of the Deputy Director of Public Prosecutions to proceed with a charge of Attempting to Pervert the Course of Justice against him. The central issue to be determined was whether the decision to prosecute the Chief Justice should be the subject of judicial review or whether the criminal process should be allowed to run its course. The Privy Council summarized the test in such a compelling way that this dictum has been used time and time again by this court as the benchmark for the guidance of judges when considering whether or not to grant leave to apply for judicial review.

[13] In **Sharma v Brown-Antoine**,<sup>4</sup> Lords Bingham and Walker stated in their joint judgment, at paragraph 14(4), as follows: -

*“(4) 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: R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628; Fordham, Judicial Review Handbook, 4<sup>th</sup> 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) [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mutandis to arguability:*

*‘...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*

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<sup>4</sup> (supra), per Lord Bingham and Lord Walker, page 787 D-H, at paragraph 14(4)

*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."*

[14] The Privy Council, in **Attorney General of Trinidad and Tobago v Ayers-Caesar**,<sup>5</sup> confirmed that the threshold for the grant of leave to apply for judicial review is low. Lord Sales, in giving the judgment of the majority of the Board, said at paragraph 2: -

*"The test to be applied is the usual test for the grant of leave for judicial review. The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether the respondent has an arguable ground for judicial review which has a realistic prospect of success: see governing principle (4) identified in Sharma v Brown Antoine [2006] UKPC 57; [2007] 1 WLR 780, para. 14. Wider questions of the public interest may have some bearing on whether leave should be granted, but the Board considers that 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, it would usually be appropriate for the court to dispose of the matter at that stage."*

[15] As Lord Sales said, this is a low threshold. It operates as a filter to exclude cases which are unarguable.

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<sup>5</sup> [2019] UKPC 44

- [16] This test has been adopted and applied in decided cases in Jamaica such as **Digicel (Jamaica) Limited v The Office of Utilities Regulation**,<sup>6</sup> **Coke v Minister of Justice et al**<sup>7</sup> and **Tyndall et al v Carey**.<sup>8</sup>
- [17] In **R v IDT (Ex parte J. Wray and Nephew Limited)**,<sup>9</sup> Sykes J (as he then was) describes the threshold test as being a new and higher test than that which had previously obtained. At paragraph [58] Sykes J opined that the application for leave to apply for judicial review is no longer a perfunctory exercise that turns back hopeless cases alone. Cases without a realistic prospect of success are also turned away. Judges are required to assess whether leave should be granted in the light of the now stated approach.
- [18] What is meant by an arguable case with a realistic prospect of success is quite clearly set out by Mangatal J (as she then was) in the case of **Hon. Shirley Tyndall, O.J. et al v Hon. Justice Boyd Carey (Ret'd) et al**.<sup>10</sup> At paragraph [11], Mangatal J is quoted as follows: -

*“It is to be noted that an arguable ground with a realistic prospect of success is not the same thing as an arguable ground with a good prospect of success. The ground must not be fanciful or frivolous. A ground with a real prospect of success is not the same thing as a ground with a real likelihood of success. The Court is not required to go into the matter in great depth, though it must ensure that there are grounds and evidence that exhibit this real prospect of success.”*

- [19] Finally, in **National Bank of Anguilla (Private Banking and Trust) Ltd (in Administration) and another (Appellants) v Chief Minister of Anguilla**

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<sup>6</sup> [2012] JMSC Civ 91

<sup>7</sup> Claim No. 2010 HCV 02529, unreported, judgment delivered on 9 June 2010

<sup>8</sup> Claim No. 2010 HCV 00474, unreported, judgment delivered on 12 February 2010

<sup>9</sup> Claim No. 2009 HCV 04798, unreported, judgment delivered on 23 October 2009

<sup>10</sup> [2010] HCV 00474, unreported, judgment delivered on February 12, 2010

**and 3 others (Respondents) (Anguilla),<sup>11</sup>** the Privy Council, in the joint judgment of Lord Reed and Lady Rose, opined, in part, at paragraphs 84, 89 and 92 as follows: -

“84. *Deciding whether there is an arguable ground for judicial review is not an exercise of discretion. Accordingly, when the judge in the present proceedings refused leave to apply for judicial review on the ground that there was no arguable ground for judicial review with a realistic prospect of success (or, as she put it, possibly pitching the test somewhat higher, “a good arguable case with a reasonable prospect of success”), he was not exercising a discretion.*

89. *Judicial review proceedings are not conducted in the same way as ordinary disputes between private parties concerned to protect their competing interests. The supervisory jurisdiction is designed to protect the public interest in the lawful use of the powers conferred under public law, as well as the private interests of those who may be affected by the abuse of those powers. It is intended to secure the constitutional value of the rule of law, to which public authorities, and the other parties to judicial review proceedings, are or should be committed.*

92. *At the same time, the leave stage is not intended to be a full consideration of the application for judicial review: its purpose, as explained earlier, is to filter out cases which are unarguable, or which on other grounds should not be permitted to proceed.”*

### **The approach of the court in matters of judicial review**

**[20]** Since the range of authorities and the circumstances of the use of their power are almost infinitely various, it is of course unwise to lay down rules for the application of the remedy which appear to be of universal validity in every type of case. It is important to remember that, in every case, the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected. It is no part of that purpose to substitute the

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<sup>11</sup> [2025] UKPC 14

opinion of the judiciary or of individual judges for that of the authority, constituted by law, to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt the task entrusted to that authority by the law. Judicial review is concerned, not with the decision but with the decision-making process. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be guilty of usurping power.

**The grounds on which administrative action is subject to control by judicial review**

[21] Volume 61A (2023) of the Halsbury's Laws of England states: -

*"The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers. The grounds upon which administrative action is subject to control by judicial review have been conveniently classified as threefold. The first ground is 'illegality': the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. The second is 'irrationality', namely Wednesbury unreasonableness. The third is 'procedural impropriety'. What procedure will satisfy the public law requirement of procedural propriety depends upon the subject matter of the decision, the executive functions of the decision-maker (if the decision is not that of an administrative tribunal) and the particular circumstances in which the decision came to be made.*

...

*On an application for judicial review the court has power to grant a quashing order (formerly known as an order of certiorari), a prohibiting order (formerly known as an order of prohibition) or a mandatory order (formerly known as an order of mandamus)."*

[22] In **Latoya Harriott v University of Technology Jamaica**,<sup>12</sup> the Court of Appeal revisited the grounds on which administrative action is subject to control by judicial review. Brooks P, who delivered the judgment of the court, had the following to say: -

*“Lord Diplock’s judgment in **CCSU v The Minister** is also important for his exposition of the classification of the grounds upon which administrative action is subject to judicial review. He said, in part, at page 410 of the report:*

*‘...Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that the further development on a case by case basis may not in course of time add further grounds...’*

*In addition to these three headings, Lord Diplock also considered that proportionality would be an important category. Professor Albert Fiadjoe, at page 27 of his work, *Commonwealth Caribbean Public Law* (third edition), further suggests that for the Commonwealth Caribbean, a heading of “unconstitutionality” would also be an appropriate addition to Lord Diplock’s classification.”*

### **Certiorari**

[23] Certiorari will not lie unless something has been done that a court can quash.<sup>13</sup> It is an order which quashes decisions of an inferior court or tribunal, public authority or other body and this decision is one which is susceptible to judicial review. Such an order may be made where the decision-maker has

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<sup>12</sup> [2022] JMCA Civ 2

<sup>13</sup> See – Paragraph 16-017 of the 5<sup>th</sup> edition of De Smith, Woolf and Jowell’s **Judicial Review of Administrative Action**. See also, paragraphs 2-028 and 7-022 respectively; “*In summary, it can be said where an application is for an order of certiorari, logic may require that there be some “decision” or “determination” capable of being quashed. Certiorari (and prohibition) would issue to “anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially.”*

acted in breach of one of the principles of public law; for example, where there has been a breach of the rules of natural justice or procedural fairness, or where there has been a breach of a legitimate expectation in the absence of overriding public need, or where the decision-maker has made an error of law.<sup>14</sup>

[24] In the 8<sup>th</sup> edition of the text, Garner's Administrative Law, the effect of the remedy of certiorari is described. At page 307, the learned authors state: -

*"The effect of the grant of an order of certiorari is to quash the decision or order in question, thus rendering it null and void. The consequences of such action may potentially be quite serious."*<sup>15</sup>

[25] Paragraph 109 of Volume 61A (2023) of the Halsbury's Laws of England reads as follows: -

*"The effect of a quashing order is that the unlawful decision or order is set aside and deprived of all legal effect since its inception. If the decision is quashed, the court may remit the matter to the decision-maker for them to reconsider the matter. The decision-maker may, as long as the error of law is not repeated and no other error committed, reach the same decision."*

[26] In the authority of **Danville Walker v The Contractor-General**,<sup>16</sup> Campbell J (as he then was) is quoted as follows: -

*"[30] Certiorari is one of three prerogative writs which form the trilogy of certiorari, prohibition and mandamus. It is of significant importance in administrative law. Its foundation lies in the governance of the sovereign's realm. It is an instrument to ensure the efficient administration of government. It was meant to bring up the records of inferior courts for an examination for any errors on their face. The sovereign, wishing to be certified of some matters, would order that the necessary information be provided for him."*

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<sup>14</sup> See – Paragraph 104 of Volume 61A (2023) of the Halsbury's Laws of England

<sup>15</sup> At footnote number 5 on the same page, it is noted: "Note that the Court quashes a decision but does not substitute its own decision in its place (as an appellate body normally does). See, however, the power in Ord 53, r 9(4) to direct that the inferior Court, tribunal or authority shall reconsider the matter and reach a decision in accordance with the Court's findings."

<sup>16</sup> [2013] JMFC Full 1

*Certiorari would move to quash decisions and orders on the grounds of illegality, procedural impropriety and irrationality. The supervising court could not impose its own version of the impugned order. The remedy being discretionary, the court would refuse the remedies at its disposal on the basis of delay, or that the applicant did not make full and frank disclosure, or that there was an adequate alternative remedy available or that to make the remedy would be pointless.”*

## **ANALYSIS AND FINDINGS**

1. *Whether the Respondent acted illegally and ultra vires his statutory authority by virtue of the decisions which he made and which are contained in a letter dated 8 September 2025*

### **Submissions advanced on behalf of the applicant**

#### **Illegality and ultra vires**

[27] The Applicant contends that, whether the Court accepts that the Jamaica Police Officers’ Association Limited (“the POA”) is an unincorporated association, notwithstanding its registration at the Companies’ Office of Jamaica as a company limited by guarantee without a share capital, the Respondent has no jurisdiction to interfere in its internal governance and affairs.

[28] The Applicant asserts that the POA is a self-regulating voluntary association which comprises gazetted officers. The Applicant further asserted that:

- (i) the Respondent is not a member of the POA;
- (ii) the executive of the POA is elected at an Annual General Meeting (“AGM”) by the general membership of the gazetted officer corps and that the tenure of each Executive expires at an AGM, where those officers are eligible for re-election; and
- (iii) the POA is governed by Articles/Rules.

- [29] To the extent, therefore, that the Respondent made the impugned decisions affecting the inner workings of the POA and the Applicant, he [the Respondent] acted illegally and ultra vires. Furthermore, the Applicant submitted, the Respondent purports to have acted pursuant to section 3(2)(a) of The Constabulary Force Act and would therefore have been purporting to exercise a statutory power. To that extent, the Respondent acted without jurisdiction and his actions are illegal.
- [30] On that basis, the Applicant asserts that he has established that there is an arguable ground for judicial review with a realistic prospect of success.

### **Submissions advanced on behalf of the respondent**

#### **The nature of the challenged decisions**

- [31] For his part, the Respondent asserts that this is not a ground for judicial review which has a realistic prospect of success.
- [32] It was submitted on behalf of the Respondent that the impugned decisions are entirely operational and managerial and do not disclose any public law element which renders them reviewable.
- [33] The Respondent maintains that The Constabulary Force Act establishes the office of the Commissioner of Police and grants the officeholder “sole operational command and superintendence of the Force”. That power, it was submitted, includes giving all the necessary directions and making all the necessary decisions regarding the management and operations of the Jamaica Constabulary Force (“the JCF”) and its members.
- [34] The Respondent contends that the challenged decisions were directions relative to the management and operations of the JCF. In particular, the challenged decisions concerned: -
  - (i) the involvement of an officer of the JCF in activities relating to his employment;

- (ii) the manner in which representations are made to the High Command on matters of importance for members of the JCF; and
- (iii) the capacity to represent the JCF as a government entity.

These matters, it was submitted, fall squarely within the broad managerial mandate given to the Commissioner of Police by virtue of section 3(2)(a) of The Constabulary Force Act.

**[35]** It was further submitted that these types of managerial decisions are not subject to review by way of judicial review for the reason that they do not involve the discharge of a public law function. To buttress this submission, the Court was referred to **R (Arbab) v Secretary of State for the Home Department**.<sup>17</sup>

#### **Whether a public law right has been asserted**

**[36]** The Respondent contends that the Applicant's proposed judicial review claim does not engage any statutory or other public law right to which he [the Applicant] is entitled.

**[37]** On the Applicant's case, the POA is a registered company which is independent of the JCF. The Constabulary Force Act does not govern the POA, nor does it have any statutory underpinning. In the absence of any statutory foundation, the Respondent asserted, there can be no public law right or entitlement to serve on the POA, to hold a leadership position within the POA, or, to represent the JCF as a member of the leadership of the POA. Any right to serve on the POA is not a right in public law. It is a private law right which arises under the Articles of Incorporation of the POA.

**[38]** This, the Respondent contends, is evidenced by the grounds which are set out in the application for leave to apply for judicial review. The Applicant asserts, in ground 7 of the application for leave to apply for judicial review,

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<sup>17</sup> [2002] EWHC 1249 (Admin)

that the Respondent acted ultra vires the Articles of the Jamaica Police Officers' Association in making the impugned decisions as the Respondent is not authorized by the POA to interfere with or intervene in its internal affairs. This, it was further submitted, clearly raises a question of the compatibility of the Commissioner's actions with the Articles of Association of the POA and does not raise an issue of public law.

[39] The Respondent further submitted that the absence of a right or entitlement in public law is even more apparent when one examines the provisions of The Constabulary Force Act in relation to the Police Federation. The Constabulary Force Act establishes the Police Federation. The Federation has a statutory mandate to address matters "affecting the welfare and general efficiency" of sub-officers and constables (section 67(1)); its composition is fixed by statute (Second Schedule, section 1); it has statutory independence (section 67(3)); it has the power to make regulations to maintain a fund prescribed by statute (section 72(2)); it has statutory obligations to report its accounts to the Minister of National Security (section 72(3)); it has provisions for elections to high ranking positions (Second Schedule, sections 7, 8 and 9). When these provisions are examined together, the Respondent submitted, there is an arguable public law right or entitlement to participation in the Federation based on the wording of The Constabulary Force Act. There are, however, no provisions creating a parallel or comparable scheme in relation to the POA.

[40] It is for those reasons that the Respondent posits that it is evident that the challenged decisions were not made in the exercise of a public law function and that the Commissioner of Police was not performing a public duty which was owed to the Applicant. Consequently, it was submitted, the challenged decisions are not susceptible to judicial review.

### **Discussion and findings**

#### **The legal status of the POA**

[41] The POA is said to be a voluntary association consisting of police officers above the rank of Inspector. It currently represents the interests of over Three

Hundred and Fifty (350) gazetted officers in the JCF, ranking from Assistant Superintendent of Police to Deputy Commissioner of Police. It has existed since in or around 1980 with its core function being to represent the interests of the Officer corps of the JCF.<sup>18</sup>

**[42]** The objects of the POA are said to include, though they are not limited to, the following:

- (i) enabling the Officer corps of the JCF to consider and to bring to the attention of the Commissioner of Police and the Government of Jamaica matters affecting their welfare and interest;
- (ii) facilitating the professional development of the Officer corps of the JCF;
- (iii) promoting within its competence the national security interest of the people of Jamaica;
- (iv) providing support within its means to the general health and wellness of its members;
- (v) establishing and maintaining relationships with other local, regional and international law enforcement associations;
- (vi) aiding members to defend suits and actions arising from the performance of their duties as members of the JCF, in accordance with the POA's guidelines from time to time regulating the provision of such assistance.<sup>19</sup>

**[43]** The business of the POA is carried out by an Executive, which consists of at least seven (7) persons, including a Chairman, Vice-Chairman, Secretary-Treasurer, Assistant Secretary-Treasurer and three (3) other executive

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<sup>18</sup> See – Paragraphs 4 and 5 of the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

<sup>19</sup> See – Paragraph 6 of the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

members. The Executive of the POA is nominated and elected on their own ballot by a simple majority at an AGM.<sup>20</sup>

- [44] The Applicant avers that he was elected Chairman of the Executive of the POA in July 2019, at an AGM. He remained in this position until he was re-elected at the next AGM, which was held in 2022. Since 2022, no AGM has been held.<sup>21</sup>
- [45] The Applicant further avers that after he was re-elected in 2022, he gave effect to the intention of the members of the POA to have its status formalized by incorporating the POA at the Companies Office of Jamaica.<sup>22</sup> Accordingly, on 11 September 2023, the POA was registered as a company limited by guarantee without a share capital, under the name Jamaica Police Officers' Association Limited.<sup>23</sup> The objects and articles of the Constitution of the POA prior to incorporation were refined and included in the Articles of Incorporation of the POA, which were registered upon incorporation.<sup>24</sup>
- [46] The Articles of Incorporation: Company limited by guarantee and not having a share capital, in the name of the Jamaica Police Officers' Association Limited has as its exclusive purpose the promotion of the representation of the interests of the gazetted officers of the JCF. The section entitled "Particulars of Directors" names the following officers as Directors, each of whom has signed to the said Articles of Incorporation: -

- (i) Wayne Washington Cameron;

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<sup>20</sup> See – Paragraph 7 of the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

<sup>21</sup> See – Paragraph 11 of the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

<sup>22</sup> See – Paragraph 16 of the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

<sup>23</sup> See – Exhibit "WC-1" to the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

<sup>24</sup> See – Paragraph 18 of the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

- (ii) St. George Jackson;
- (iii) Maldria Antonette Jones-Williams;
- (iv) Christopher Shalin Phillips;
- (v) David Anthony White;
- (vi) Richard Anttonia Hylton; and
- (vii) Eron David Walford Samuels.<sup>25</sup>

**[47]** The POA has as its objective:

- (i) to represent and promote the interests of its members;
- (ii) to conduct negotiations and consultations on behalf of its members to secure the best possible conditions of service in the areas of remuneration, medical and legal assistance and other such areas of welfare;
- (iii) to aid and give advice to members regarding their job performance and the preservation of their health and wellness, to promote and facilitate the professional development of its members and to secure benefits from service providers such as insurance companies and financial institutions, for and on behalf of its members.

**[48]** Finally, the rules of the POA (prior to incorporation) provide for the following:

- (i) the administration and management of the POA;
- (ii) the membership of the Association, which expressly excludes the Commissioner of Police;

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<sup>25</sup> See – Exhibit “WC-3” **Articles of Incorporation: Company Limited by Guarantee and not having a Share Capital**, which is exhibited to the Affidavit of Wayne Cameron in Support of Notice of Application for Court Orders, which was filed on 10 September 2025

- (iii) the termination of membership of the POA;
- (iv) the meetings of the POA;
- (v) the accounts and audits of the POA;
- (vi) the establishment of the powers of the Executive Committee of the POA;
- (vii) the establishment of bylaws of the POA;
- (viii) the provisions for the winding up of the POA;
- (ix) the additions, amendments and repeal of the rules of the POA; and
- (x) the service of notices.

**[49]** In the present instance, the documentary evidence clearly discloses that the POA was incorporated on 11 September 2023, as a Limited Company (a company limited by guarantee and not having a share capital). It is equally clear from a careful review of the documentary evidence, that this was after the impugned decisions were made. As such, it could not be said that the Commissioner of Police acted in accordance with or pursuant to the Articles of Incorporation of the POA, at the time that he made the impugned decisions.

**[50]** If the POA was not a Limited Company (not incorporated), at the time of the impugned decisions, the issue of its legal status at that time then becomes a live one.

#### **The status of the POA as an unincorporated association**

**[51]** The Court accepts the submissions of the Applicant that, prior to its incorporation, the POA would have been an unincorporated association, recognized by the common law.

**[52]** Unincorporated associations of a non-business and non-gainful nature are not prohibited by statute. They exist in innumerable forms, such as lawn tennis

clubs, football clubs, associations of a charitable, literary, benevolent, athletic, social, religious, political, scientific and other non-business character. Contracts are entered into in their names, credit is extended to them, and they hold themselves out or are held out by their collective membership to the public by collective names as representing their membership. The common law, concerned as it is with every day reality, does not attempt to deny the existence of such associations and because such voluntary associations are not incorporated, it does not follow that they do not exist in law.<sup>26</sup> <sup>27</sup>

- [53] The Court equally accepts the Applicant's submission that the POA's failure to hold an AGM does not automatically mean that the members of the Executive Committee of the POA vacated their respective office or are deemed to have vacated their respective office or that their term of office is terminated.
- [54] The Court is strengthened in this position by its examination of the rules of the POA, prior to its incorporation. Those rules provide that the management of the Association shall be carried out through an Executive Committee elected at an AGM. The Executive Committee shall consist of seven (7) members who are all eligible to be nominated and to stand elections for successive two (2) year terms as long as they remain members of the Association.
- [55] The rules of the POA (prior to incorporation) plainly envisage a member's eligibility to be nominated and to stand elections for successive two (2) year terms. The unchallenged evidence in the present instance is that the Applicant was re-elected to the position of Chairman of the Executive Committee of the POA in 2022. In accordance with the rules of the POA, the Applicant would therefore have been eligible to serve in that capacity for a period of two (2) years, commencing at the time of his re-election in 2022.
- [56] It therefore stands to reason that, at the time of the incorporation of the POA as a Limited Company (limited by guarantee and not having a share capital),

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<sup>26</sup> See – **Yue Shan Society v Chinese Workers' Protective Association** [1944] 2 D.L.R. 287

<sup>27</sup> See also – **Dato' Sri Andrew Kam Tai Yeow v Grandfoods SDN BHD & Anor** (heard with two other appeals), Civil Appeal No.: W-02 (NCC)(A)-602-04/2022, judgment delivered on 14 March 2025

on 11 September 2023, the Applicant was the duly elected Chairman of the Executive Committee of the POA and would have been well within the two (2) year period allowed him by the rules of the POA.

- [57] There is no evidence before this Court that the Applicant acted against the wishes of the membership of the POA in the incorporation of the same. Nor is there any evidence before this Court that there was a request by the membership of the POA for a Special General Meeting to be held for the removal of the Applicant, as the Chairman of the Executive Committee of the POA, as is contemplated by the rules of the POA.
- [58] More substantially, the documentary evidence in the present instance reveals that the Articles of Incorporation of the POA were duly signed by six (6) members of the POA, other than the Applicant, as Directors.
- [59] In those circumstances, the Court is constrained to agree with the submissions of the Applicant that the Respondent trespassed on the democratic processes of the POA by virtue of the decisions which he made.
- [60] To that extent, the Court finds that, in this regard, the Applicant has demonstrated that he has an arguable ground for judicial review with a realistic prospect of success, in respect of the legality of the impugned decisions.

**The proper interpretation to be applied to section 3 of The Constabulary Force Act and the application of the same**

- [61] The Respondent asserts that he acted pursuant to section 3(2)(a) of The Constabulary Force Act.
- [62] Section 3 of The Constabulary Force Act, in so far as it is relevant for present purposes, reads as follows: -

*“3.- (1) It shall be lawful for the Governor-General to constitute a Police Force which shall be called “The Jamaica Constabulary Force” which shall be partially under Military Organization and Discipline.*

(2) *Subject to the provisions of subsection (3) the Force shall consist of –*

(a) *a Commissioner who shall have sole operational command and superintendence of the Force;*

..."

- [63] The section falls under the general heading “Constitution of the Force” which enables the Governor-General to constitute a police force and to appoint officers and constables of the force.
- [64] This Court is of the view that when the words which are used in the section are given their natural and ordinary meaning, the intent of the section is clear and unambiguous. The use of the words “operational command” in the context of the statute refers to the authority and control to direct resources, assign tasks and make critical decisions in relation to the management of specific incidents or ongoing police operations. It encompasses both strategic oversight and tactical execution for public order or disaster response, ensuring clear direction and resource deployment for public safety.
- [65] The term “superintendence of the force”, in the context of the statute, refers to the high-level management, direction and oversight by the Commissioner of Police, to ensure adherence to law and ethics, to manage major operations and to control the overall functioning and command structure of the JCF, distinguishing it from day-to-day policing and investigation. It involves strategic planning, upholding standards and directing subordinates while being accountable for the entire force.
- [66] That does not give the Commissioner of Police the power to make the impugned decisions.
- [67] On the issue of ultra vires, the following statement of the learned authors of the Textbook on Administrative Law, 7<sup>th</sup> Edition, at page 178, is uncontroversial: -

*"If an authority acts outside or abuses its powers, or fails to perform a public duty, it will thus act in a manner that is ultra vires and the courts may grant a remedy to the aggrieved citizen (although...the remedies are discretionary)."*

[68] The Halsbury's Laws of England/Judicial Review (Volume 61A (2018))/2 states that:

*"The courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. The term 'jurisdiction' has been used by the courts in different senses of the word. A body will lack jurisdiction in the narrow sense if it has no power to adjudicate upon the dispute, or to make the kind of decision or order in question. It will lack jurisdiction in the wider sense if, having power to adjudicate upon the dispute, it abuses its power, acts in a manner which is procedurally irregular, or in a **Wednesbury** sense, unreasonable, or commits any other error of law. In certain exceptional cases, the distinction between errors of law which go to jurisdiction in the narrow sense and other errors of law remains important.*

*A body which acts without jurisdiction in the narrow or wide sense may also be described as acting outside its powers or ultra vires. If a body arrives at a decision which is within its jurisdiction in the narrow sense and does not commit any of the errors which go to jurisdiction in the wide sense, the court will not quash its decision on an application for judicial review even if it considers the decision to be wrong.*

*There is a presumption that the acts of public bodies, such as orders, decisions and byelaws, are lawful and valid until declared otherwise by the court. Although some acts or measures may be described as being 'void ab initio' or as 'nullities', the modern view is that it is for the court to determine both whether an act is unlawful and what the consequences of that finding of unlawfulness should be.*

*An inferior court, administrative tribunal or public decision-making body will also lack jurisdiction and act ultra vires in the narrow sense where it has no power to adjudicate upon the dispute or to make the kind of decision or order in question. A public body will lack jurisdiction or vires in this sense where it is improperly constituted, or the proceedings have been improperly constituted, or authority to decide has been delegated to it unlawfully.”*

[69] In this regard, the Court finds that the Applicant has demonstrated that he has an arguable ground for judicial review with a realistic prospect of success, in respect of whether the Commissioner of Police had the statutory power to make the kind of decisions in question and whether he lacked the jurisdiction or vires in the narrow sense.

2. *Whether the decisions made by the Respondent and which are contained in letter dated 8 September 2025 are irrational and unreasonable and in breach of the principles of natural justice and procedural legitimate expectation*

#### **Submissions advanced on behalf of the applicant**

##### **Breach of the principles of natural justice and procedural legitimate expectation**

[70] The Applicant complains that prior to the decisions and directives contained in the Respondent's letter, and in particular the declaration that the Chair of the POA be vacated, there was no communication or consultation with him and that he was not given an opportunity to be heard, in keeping with the principles of natural justice and procedural fairness.<sup>28</sup>

[71] The Applicant complains further that the decisions and directives which were made and which were given by the Respondent, in addition to being in breach

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<sup>28</sup> See – Ground 8 of the Notice of Application for Court Orders, which was filed on 10 September 2025

of the principles of natural justice and procedural fairness, are arbitrary, Wednesbury unreasonable and irrational.<sup>29</sup>

- [72] The Applicant submitted that the decisions and directives which were made and which were given by the Respondent were done in bad faith and for an improper purpose. It was further submitted that the Respondent is abusing his power and authority to coerce the other members of the Executive of the POA to implement his decisions.<sup>30</sup>
- [73] The Applicant contends specifically that the Respondent's decision to direct that the position of the Chairman of the POA be vacated and that the Applicant will no longer have audience with the police high command was made in breach of the principles of natural justice. This, the Applicant submitted, is assuming that he [the Respondent] had the authority which he claims to have over the POA. The Applicant contends that he ought to have been afforded the opportunity to make representations, whether before or after the impugned decisions were made and that he has a legitimate expectation that the Respondent would have acted fairly.<sup>31</sup>

#### **Submissions advanced on behalf of the respondent**

- [74] Conversely, the Respondent submitted that the requirements of procedural fairness were not engaged in the instant case.
- [75] The Respondent contends that the Applicant has not applied for leave to apply for judicial review of the decision that the Applicant will no longer have an audience with the police high command.
- [76] It was further submitted that there are decisions by public authorities which do not invoke the observance of the principles of natural justice. To buttress these submissions, the Respondent relied on the authorities of **Robert Ivey v**

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<sup>29</sup> See – Ground 9 of the Notice of Application for Court Orders, which was filed on 10 September 2025

<sup>30</sup> See – Ground 10 of the Notice of Application for Court Orders, which was filed on 10 September 2025

<sup>31</sup> See – Ground 11 of the Notice of Application for Court Orders, which was filed on 10 September 2025

**Firearm Licensing Authority,<sup>32</sup> Raymond Clough v Superintendent Greyson and another,<sup>33</sup> Karen Thames v National Irrigation Commissions Limited.<sup>34</sup>**

### **Discussion and findings**

- [77] A careful examination of the application for leave to apply for judicial review in its entirety supports the Respondent's contention that the Applicant has not applied for leave to apply for judicial review of the decision that the Applicant will no longer have an audience with the police high command. For that reason, the Court is unable to find that there is an arguable ground for judicial review with a realistic prospect of success, in respect of the Respondent's decision in that regard.
- [78] That notwithstanding, the Court must determine whether the principles of natural justice were observed when the Respondent made the impugned decisions, which are encapsulated in letter dated 8 September 2025.
- [79] Fairness in the context of administrative actions was explained by the Privy Council in **R v Secretary of State for the Home Department, Ex parte Doody**.<sup>35</sup> There, Lord Mustill opined at page 560D-G as follows: -

*"What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application of decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in*

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<sup>32</sup> [2021] JMCA App 26

<sup>33</sup> (1986) 26 JLR 292

<sup>34</sup> [2015] JMCA Civ 43

<sup>35</sup> [1994] 1 A.C. 531

*every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer."*

- [80] Applying the principles enunciated by Lord Mustill in the present instance, the Court finds that the principles of natural justice demand that the Respondent ought properly to have afforded the Applicant an opportunity to make representations on his own behalf. This could have been either before the impugned decisions were made, with a view to producing a result which is favourable to the Applicant, or, after those decisions were made, with a view to procuring a modification of those decisions. The Applicant was entitled to have been informed of the factors or considerations which weighed against his interest. Finally, the Applicant ought to have been told of the gist of the concerns which the Respondent had, which led to the decisions which he [the Respondent] made.
- [81] On this basis, the Court finds that the Applicant has demonstrated an arguable ground for judicial review with a realistic prospect of success in respect of whether the Respondent observed the principles of natural justice when he made the decisions which are contained in the letter dated 8 September 2025.

## Submissions advanced on behalf of the applicant

### Irrationality, unreasonableness and procedural legitimate expectation

- [82] The Applicant maintains that the Respondent acted irrationally and unreasonably in making the impugned decisions on the basis that the Respondent, who is not a member of the Executive Committee of the POA or of the POA at all, sought to make decisions which concern the internal governance and operation of the POA.
- [83] Additionally, the Applicant maintains, the Respondent abused his power and discretion and acted for an improper purpose when he [the Respondent] sought to use his position as the Commissioner of Police and the provisions of section 3(2)(a) of The Constabulary Force Act to “inject himself into the governance of the POA and [to] influence the other members of the Executive to elect a chairman pro tem and to call a Special General Meeting for the purpose of electing a new executive.”
- [84] Furthermore, the impugned decisions are irrational and unreasonable because those decisions were made in breach of the principles of natural justice. To buttress these submissions, the Court was referred to the authorities of **Council of Civil Service Unions and Others v Minister for the Civil Service**,<sup>36</sup> **Associated Provincial Picture Houses, Limited v Wednesbury Corporation**,<sup>37</sup> and **Aston Reddie v The Firearm Licensing Authority & Ors.**<sup>38</sup>
- [85] Finally, the Applicant submitted that, in all the circumstances, fairness demands that the Applicant ought to have been afforded an opportunity to be

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<sup>36</sup> [1985] 1 A.C. 374

<sup>37</sup> [1948] 1 K.B. 223

<sup>38</sup> Claim No. HCV 1681 of 2010, judgment delivered on 24 November 2011

heard and that he [the Applicant] could legitimately expect that the principles of procedural fairness would have been observed by the Respondent.<sup>39</sup>

### **Submissions advanced on behalf of the respondent**

- [86] In this regard, the Respondent submitted that the standard for irrationality or unreasonableness applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided would have arrived at it.<sup>40</sup>
- [87] In examining the Commissioner's reasons, the Respondent asserts that the Court must bear in mind the caution that judicial review is not intended to take away from public authorities the powers and discretion which is properly vested in them by law and to substitute the courts as the bodies making the decisions. The Respondent asserts that his reasons are clearly set out in his affidavit evidence in opposition to the application for leave to apply for judicial review. It was submitted that there is a clear, logical and rational connection between the Applicant's history of concerns and the Respondent's decision to withdraw him [the Applicant] from service on the POA.
- [88] It was further submitted that the Applicant has not pointed to any irrelevant factor to which the Commissioner of Police had regard in arriving at his decisions and that his decisions were neither irrational nor unreasonable.

### **Discussion and findings**

#### **Irrationality and unreasonableness**

- [89] The Court finds that the Applicant has demonstrated an arguable ground with a realistic prospect of success in respect of whether or not the Respondent acted irrationally and unreasonably in making the impugned decisions.

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<sup>39</sup> To substantiate this submission, the Applicant relied on the authority of **Legal Officers' Staff Association & Ors v The Attorney General & Anor** [2015] JMFC Full 3, per McDonald-Bishop J (as she then was), at paragraph 44

<sup>40</sup> See – **Council of Civil Service Unions v Minister for the Civil Service** [1985] AC 374

[90] Lord Diplock, in the authority of **Council of Civil Service Unions and Others**, observed that irrationality (or 'Wednesbury' unreasonableness) applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it. Unreasonableness in the context of administrative law means that a public official, public body or public authority must direct itself properly in law.

[91] In the present instance, the Respondent had a duty to ensure that he did not contravene the law by acting in breach of the rules of the POA or in excess of the powers conferred on him by virtue of The Constabulary Force Act. The Respondent had a duty to ensure that he did not act irrationally and unreasonably in arriving at the impugned decisions and that he acted in accordance with the principles of natural justice. Ultimately, the Respondent has, by his conduct, demonstrated that he failed to call attention to the matter of affording the Applicant a hearing, whether before or after arriving at the impugned decisions.

### **Procedural legitimate expectation**

[92] In **R v Devon CC ex p Baker**,<sup>41</sup> Lord Simon Brown LJ commented on the doctrine of legitimate expectation as follows: -

*"Perhaps more conventionally the concept of legitimate expectation is used to refer to the claimant's interest in some ultimate benefit which he hopes to retain (or, some would argue, attain). Here, therefore, it is the interest itself rather than the benefit that is the substance of the expectation. In other words, the expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness – the law recognizes that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision."*

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<sup>41</sup> [1995] 1 All ER 73, 88-89

- [93] Whether or not the Applicant can legitimately expect procedural fairness will depend on the court's view of what fairness demands in all the circumstances of the case.
- [94] In **Bhatt Murphy (a firm), R v (on the application of) the Independent Assessor**,<sup>42</sup> Laws LJ maintained that broadly speaking, the doctrine of legitimate expectation encompasses two kinds: procedural legitimate expectation and substantive legitimate expectation.
- [95] On the basis of these pronouncements, the Court is prepared to make a finding that the Applicant has demonstrated that he has an arguable ground for judicial review with a realistic prospect of success in respect of whether he has a procedural legitimate expectation that he would be treated fairly.

3. *Whether there is an alternative remedy that is available to the Applicant*

**Submissions advanced on behalf of the applicant**

- [96] On this issue, the Applicant asserts simply that there is no alternative form of redress which is available to him and that, in any event, judicial review is the most expedient, appropriate and suitable remedy in the circumstances of this case.

**Submissions advanced on behalf of the respondent**

- [97] On the other hand, the Respondent maintains that the Applicant has an alternative remedy available to him under section 213A of the Companies Act, to prevent his removal as Chairman or to prevent unfair or oppressive removal from the company.

**Discussion and Findings**

- [98] In this regard, the Court accepts the Applicant's submission that there is no alternative form of redress which is available to the Applicant. The alternative remedy must be an adequate remedy. Having regard to the findings which the

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<sup>42</sup> [2008] EWCA Civ 755 (9 July 2008)

Court has made above, this Court is of the view that judicial review is the appropriate and suitable remedy to challenge the decisions of the Respondent and that section 213A of the Companies Act does not provide the Applicant with an alternative remedy.

### **The application for injunctive relief**

**[99]** The Applicant seeks an interim injunction restraining the Respondent, whether acting in concert, by himself, his servants and/or agents or otherwise howsoever from directing or causing to be convened any meeting of the Police Officers' Association for the purposes of removing the Applicant as Chairman and appointing a Chairman pro tem or otherwise, pending the determination of the claim for judicial review or further orders of the court.

### **The court's power to grant an interim injunction**

**[100]** Section 49(h) of the Judicature (Supreme Court) Act governs the granting of an injunction. The section reads as follows: -

*"49(h) A mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just, and if an injunction is asked for either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable."*

**[101]** Rules 17.1(1)(a) and 17.4 of the Civil Procedure Rules, 2002, as amended ("the CPR"), also empower the court to grant interim injunctive relief. These rules, in so far as they are relevant, provide as follows: -

"17.1

(1) *The court may grant interim remedies including –*

(a) *an interim injunction;*

(b) ...

17.4

(4) *The court may grant an interim order for a period of not more than 28 days (Unless any of these Rules permit a longer period) –.”*

### **The purpose of the grant of an interim injunction**

**[102]** The purpose of an interlocutory injunction is to preserve the status quo although it is, of course, impossible to stop the world, pending trial. The court may order a defendant to do something or not to do something but such restrictions on the defendant's freedom will have consequences, for him as well as for others, which a court must take into consideration.

**[103]** The grant of such an injunction serves the additional purpose of improving the court's ability to do justice after a determination of the merits at trial. At the interlocutory stage, the court is required to assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in **American Cyanamid Co v Ethicon Ltd**,<sup>43</sup> that means that, if damages will be an adequate remedy for the claimant, then there are no grounds for interference with the defendant's freedom of action, by the grant of an injunction.

**[104]** Likewise, if there is a serious issue to be tried and the claimant could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy, if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

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<sup>43</sup> [1975] AC 396

### The threshold test for the grant of an interim injunction

[105] In **American Cyanamid Co v Ethicon Ltd**,<sup>44</sup> the court developed a set of guidelines to be followed in seeking to determine whether an applicant's case warrants the granting of an interlocutory injunction. The main guidelines are: -

- (i) Whether there is a serious question to be tried (whether the claim has a reasonable prospect of succeeding).
- (ii) What would be the balance of convenience of each party should the order be granted, in other words, where does that balance lie?
- (iii) Whether there are any special factors to be considered; and what Lord Diplock referred to as the governing principle.
- (iv) Whether an award of damages would be an adequate remedy.

[106] The basis for these guidelines was explained by Lord Diplock as follows: -

*“...the governing principle is that the court should first consider whether, if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable would be an adequate remedy and the defendant would be in a financial position to pay them, no interim injunction should normally be granted, however strong the plaintiff's case appeared to be at that stage.”*

*[Emphasis added]*

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<sup>44</sup> supra

### Whether there is a serious issue to be tried

[107] The law set out by Slade J in **Re Lord Cable (deceased) Garratt and others v Walters and others**,<sup>45</sup> is, respectfully, accepted as being correct. At page 431, Slade J is quoted as follows: -

*“...Nevertheless, in my judgment it is still necessary for any plaintiff who is seeking interlocutory relief to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at trial. If the facts adduced by him in support of his motion do not by themselves suffice to satisfy the court as to this, he cannot in my judgment expect it to assist him by inventing hypotheses of fact on which he might have a real prospect of success...”*

[108] This reasoning was accepted by the Jamaican Court of Appeal in **Reliance Group of Companies Limited v Ken's Sales and Marketing and another; Christopher Graham v Ken's Sales and Marketing and another**,<sup>46</sup> which is consistent with that of Lord Diplock in **American Cyanamid Co v Ethicon Ltd**.<sup>47</sup> At page 408, Lord Diplock stated: -

*“...So, unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief sought...”*

[109] The failure to establish that there is a real question to be tried means that the application for the grant of injunctive relief ought properly to be denied. Such a failure also obviates the need to consider the issue of whether damages would be an adequate remedy and the balance of convenience.<sup>48</sup>

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<sup>45</sup> [1976] 3 All ER 417

<sup>46</sup> [2011] JMCA Civ 12

<sup>47</sup> [1975] AC 396

<sup>48</sup> See – **Brian Morgan (Executor of the Estate of Rose I Barrett) v Kirk Holgate** [2022] JMCA Civ 5

### **The grant of injunctive relief in public law cases**

[110] In determining whether to grant interim injunctive relief in public law cases, the court should be guided by the principles which were established in the seminal case of **American Cyanamid** but with the modifications appropriate to the public law element of the case, which is one of the ‘special factors’ referred to by Lord Diplock. This position is supported by the pronouncements of the Privy Council in **Baongo Department of Environment of Belize (Practice Note)**.<sup>49</sup>

[111] The court must assess whether the balance of convenience or justice favours the grant of the interim injunctive relief and choose the course which in all the circumstances appears to offer the best prospect that an eventual injustice can be avoided or minimized.

[112] Having found that the Applicant has demonstrated that there are arguable grounds for judicial review with a realistic prospect of success, the Court finds that:

- i. the Applicant has demonstrated that there is a serious issue to be tried;
- ii. the balance of convenience lies in favour of the grant of the interim injunctive relief restraining the Respondent, whether acting in concert, by himself, his servants and/or agents or otherwise howsoever from directing or causing to be convened any meeting of the POA for the purposes of removing the Applicant as Chairman and appointing a Chairman pro tem or otherwise;
- iii. the question of the adequacy of Damages is not relevant in the present instance.

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<sup>49</sup> [2003] 1 W.L.R. 2839

[113] Further, the Court is prepared to make an Order that there be a stay of the implementation of the decisions of the Respondent, which are contained in letter dated 8 September 2025, until the final determination of the claim for judicial review.

### Costs

[114] In civil proceedings, the general rule is that costs follow the event. That is that the successful party is generally entitled to recover his costs from the unsuccessful party.<sup>50</sup> <sup>51</sup> The court has, however, a discretion to depart from the general rule where the circumstances so warrant.

[115] The principles espoused by the Court of Appeal in the recent authority of **The Public Service Commission & Anor v Dale Austin**<sup>52</sup> illustrate the factors to be considered by a court in determining the appropriate cost order on an application for leave to apply for judicial review. There, the learned judge at first instance awarded costs in favour of the respondent [Mr Dale Austin] but granted the appellants permission to appeal that Order.

[116] One of the determinative issues addressed by the learned judges of the Court of Appeal was whether there was a consistent practice regarding the deferral of making an award for costs at the leave stage in matters of judicial review. The Court of Appeal acknowledged that the general approach taken by the Supreme Court is consistent with the public interest dimension of judicial review, which is not to make an award of costs at the leave stage; ordering that there be no order as to costs or that costs be costs in the claim. This approach, the Court of Appeal pronounced, is likely due to the fact that the leave stage is 'preliminary and non-determinative, designed primarily to screen out unmeritorious applications'.<sup>53</sup>

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<sup>50</sup> See – Rule 64.6 of the Civil Procedure Rules, 2002 (as amended)

<sup>51</sup> See – **Kingsley Chin v Andrews Memorial Hospital Limited** [2022] JMCA Civ 26, per Brown JA (Ag) (as he then was), at paragraph 116

<sup>52</sup> [2025] JMCA Civ 34

<sup>53</sup> See – **The Public Service Commission & Anor v Dale Austin** [2025] JMCA Civ 34, per G. Fraser JA (Ag), at paragraph 42

[117] The following pronouncements of G Fraser JA (Ag), at paragraphs [42] to [45], bear repeating: -

*[42] Notably, Jamaican case law reveals no consistent or uniform practice regarding the award of costs at the leave stage. The prevailing understanding, reflected in a line of first instance and appellate authorities, is that the leave stage is preliminary and non-determinative, designed primarily to screen out unmeritorious applications. Accordingly, the usual order has been that there be no order as to costs, or that costs be costs in the claim. Thus, the appellants' statement that costs at the permission stage are awarded only at the end of the proceedings and only in exceptional cases reflects a cautious but fairly accurate view of Jamaican judicial review practice. So, although not a rule of law, the statement aligns with practical judicial restraint and the public-interest function of judicial review in Jamaica.*

*[43] The Court of Appeal commented on this inconsistent practice in the decision of *Kingsley Chin v Andrews Memorial Hospital Limited* [2022] JMCA App 3, per Brooks P at para. [24]:*

*'The issue of an award of costs at the leave stage has been the source of some disagreement in the court below. The cases of **Danville Walker v The Contractor General** [2013] JMFC Full 1A and **Gorstew Limited v Her Hon Mrs Lorna Shelly-Williams and Others** [2016] JMSC Full 8 demonstrate the disagreements. That disagreement was recognized, but not resolved, by this court in **Gorstew Limited v Her Hon Mrs Lorna Shelly-Williams and Others** [2017] JMCA App 34. This case gives an opportunity for resolution of the issue.'*

[44] ...

*[45] Accordingly, while it remains open to a Jamaican court, in the exercise of its discretion under rule 64.6, to defer or reserve costs at the leave stage where the justice of the case so requires, such deferral is not a procedural entitlement nor a necessary corollary of the English approach. It is instead a measure to be applied only where fairness and the particular circumstances justify it."*

**[118]** Additionally, the Court of Appeal also examined the applicability of rules 56.15(4) and (5) of the CPR to public law proceedings, including applications for leave to apply for judicial review. Rules 56.15(4) and (5) of the CPR are indicative of another departure from the general rule in relation to costs. The rules provide as follows: -

*"56.15 (4) The court may, however, make such orders as to costs as appear to the court to be just including a wasted costs order.*

*(5) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."*

**[119]** Having regard to the foregoing as well as:

- i. the underlying rationale that costs should not deter genuine public interest litigation;
- ii. the principle that judicial review engages sensitive public law considerations to which the traditional rule that "costs follow the event" is not automatically applicable;
- iii. the fact that rule 56.15(5) of the CPR does not confer an automatic right to costs in favour of successful applicants; and
- iv. the principle that an application for leave to apply for judicial review is preliminary and non-determinative and is designed primarily to screen out unmeritorious applications;

this Court is of the view that the costs of this application for leave to apply for judicial review are to be costs in the Claim.

## **DISPOSITION**

**[120]** The Court makes the following Orders: -

1. The Applicant is granted leave to apply for judicial review of the decisions of the Respondent, which are contained in letter dated 8 September 2025, to wit:

- i. directing that the Chair of the Police Officers' Association be vacated;
  - ii. directing that the Applicant is not permitted to represent the Jamaica Constabulary Force outside of official duties;
  - iii. directing the remaining members of the Police Officers' Association Executive to appoint a Chairman pro tem; and
  - iv. directing the Chairman pro tem to call a Special General Meeting for the purpose of electing a new Executive in accordance with the established conventions,
- by way of an order of Certiorari to quash the said decisions.
2. The grant of leave to apply for judicial review is conditional upon the Applicant making a claim for judicial review within fourteen (14) days of receipt of the order granting leave.
3. An interim injunction is granted restraining the Respondent, whether acting in concert, by himself, his servants and/or agents or otherwise howsoever from directing or causing to be convened any meeting of the Police Officers' Association for the purposes of removing the Applicant as Chairman and appointing a Chairman pro tem or otherwise, pending the determination of the claim for judicial review or further orders of the court.
4. The Court declines to grant the Order sought at paragraph 3 of the Notice of Application for Court Orders, which was filed on 10 September 2025.
5. The implementation of the decisions of the Respondent, which are contained in letter dated 8 September 2025, is hereby stayed pending the determination of the claim for judicial review or until further orders of the court.
6. Costs to be costs in the Claim.

7. Messrs. NEA|LEX are to prepare, file and serve these Orders.