IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010 HCV 0204

BETWEEN	CITY OF KINGSTON CO-OPERATIVE CREDIT UNION LIMITED	APPLICANT
AND	REGISTRAR OF CO-OPERATIVES SOCIETIES AND FRIENDLY SOCIETIES	1ST RESPONDENT
AND	YVETTE REID	2ND RESPONDENT

IN CHAMBERS

Mrs. Marvalyn Taylor-Wright instructed by Marvalyn Taylor-Wright and Company for the Second Respondent.

Mr. Emile Leiba instructed by DunnCox for Applicant.

September 24 and October 8, 2010

APPLICATION TO SET ASIDE GRANT OF LEAVE TO APPLY FOR JUDICIAL REVIEW - WHETHER COURT HAS POWER - RULES 11.16 (1), (2), (3), 11.18 (1), (2), (3), 56.4 (12), 56.6 (1) - EXTENSION OF TIME TO APPLY FOR LEAVE FOR JUDICIAL REVIEW

SYKES J.

1. This is an application by Mrs. Yvette Reid to set aside an ex parte grant of leave to apply for judicial review granted by Daye J. on May 17, 2010 to City of Kingston Co-operative Credit Union Limited ('COK').

2. Daye J. granted leave to challenge the decision of the Registrar of Cooperatives and Friendly Societies ('the Registrar') to award damages to Mrs. Reid for loss suffered by her because of the unjustifiable detention of a registered title of land.

3. The material does not set out the full context of the matter and so I turn to the judgment of Anderson J. This judgment sets out the background to this current application (see ***City of Kingston Co-operative Credit Union Limited v Registrar of Cooperative and Friendly Societies Act*** S.C.C.A. HCV 1658 OF 2006 (February 16, 2007)).

4. Mrs. Reid is a member of COK. In 1991, Mrs. Reid used a registered title in the names of Matthew Henry and Mavis Henry to secure a loan from COK. That loan was repaid. In 1993, a second loan was secured. For reasons not explained (nor indeed necessary to know) the loan was not serviced. Shares (that is, money held by Mrs. Reid in an account at COK) were used to liquidate the second loan.

5. The title used to secure the loan was never returned either to Mrs. Reid or the registered proprietors. According to Mrs. Reid, the non-return of the title prevented her from using the registered land as collateral for loans from other institutions. This in turn prevented her from fulfilling contractual obligations entered into by her because she was unable to borrow the requisite sums that would have enabled her to perform her obligations under those contracts entered into by her. In any event, those contracts were cancelled and she is alleged to have sustained losses. It is these losses that led to her taking action against COK.

6. The matter was referred to an arbitrator who found in favour of Mrs. Reid. This decision was upheld by the Registrar. The Registrar's decision was successfully challenged by COK. It is that challenge that is the subject of Anderson J.'s judgment referred to earlier. His Lordship's judgment was upheld by the Court of Appeal (see ***Yvette Reid v City of Kingston Co-operative Credit Union Ltd*** (S.C.C.A. No 32 of 2007) (dated July 31, 2008)).

7. The matter was remitted to the Registrar who again found in favour of Mrs. Reid. COK again decided to challenge this decision. Daye J. granted leave, ex parte, to COK to challenge this second decision by the Registrar in favour of Mrs. Reid.

8. The award now in question was delivered in a document dated January 21, 2010. The affidavit of Mrs. Velma Brown-Hamilton, filed on behalf of COK, states that COK 'received notice of the 1st (sic) Respondent's (sic) decision on February 8, 2010 and by inadvertence only forwarded the same to its Attorneys-at-law (sic) under cover of letter dated February 25, 2010 which was received on March 1, 2010 and the application is being made as soon as possible having obtained advice from the Applicants (sic) Attorneys-at-law (sic).'

The Submissions

9. Under rule 56.6 (1) of the Civil Procedure Rules ('CPR'), the application for judicial review '*must be made promptly and in any event within three months from the date*

when grounds for the application first arose.' Mrs. Taylor-Wright submits that '*the date when grounds for the application first* arose is January 21, 2010. She further submits that COK's application for leave to apply for judicial review was made on April 26, 2010, well outside the outer time limit of three months. Learned counsel strongly submitted that not only was COK out of time but the particular nature of this case demanded that there ought to have been an application for extension of time within which to apply for leave.

10. Mrs. Taylor-Wright's point was that it is hornbook law that an application for judicial review must be made '*promptly*'. The rule says so. Although '*promptly* is not defined, it really means extremely close to the time of the decision. As I understood her position, the three month period is really an outer boundary and not a time limit for applications for leave to apply for judicial review. Counsel urged that it is well known for courts to hold that a person who applies within the three months is late because he did not apply promptly. In effect, counsel was submitting that it is not true to say that an applicant for judicial review has three months within which to apply; what the applicant must do is act promptly but, in any event, not later than three months. The conclusion of counsel's arguments was that if an applicant can be held not to have acted promptly if the application is within the three month period, then if the applicant is outside the three month period, then he is not just late; he is very late and out of time. Being out of time, the submission flowed, means that the applicant must apply for an extension of time. Mrs. Taylor-Wright backed up her point by stating that there is authority for the proposition that an applicant for extension of time must serve the intended respondents to the judicial review. From these major and minor premises, Mrs. Taylor-Wright concluded thus: given that COK was out of time, an application for extension of time to apply for leave to apply for judicial review was an absolute necessity.

11. Mrs. Taylor-Wright reinforced her submission by stating that the mechanism set up by Part 56 which governs judicial review proceedings is predicated on important public policy considerations. She prayed in aid Lord Diplock's important judgment in ***O'Reilly v Mackman*** [1983] 2 AC 237, 280F-281D. From these passages, Mrs. Taylor-Wright, deduced the following propositions. First, the leave requirement is not a mere formality but an important screening device to bar unmeritorious applications. Second, there is a strong rule of practice that applications for leave for judicial review should be made '*promptly* - within days and not weeks. This strong rule of practice is buttressed by the well known fact that courts have held, in some cases, that applications for leave to apply for judicial review failed the promptness requirement even when they were made within three months. Third, so strong is the rule promptness requirement that an applicant who is out of time must apply for an extension of time failing which a court cannot grant leave to apply for judicial review. Fourth, the principle of not keeping the decision maker and the

beneficiary of the decision in suspense was thought to be so important that the pre-order 53 period of six months to apply for judicial review was reduced to three. According to learned counsel, these considerations apply with equal force today to Part 56 of the CPR.

12. Mrs. Taylor-Wright also submitted that the underlying reason for these propositions is that public authorities and beneficiaries of the decisions of public bodies must not be kept in suspense unduly long. Good administration requires that if the challenge does not come '*promptly*', then the decision maker and others (particularly beneficiaries of the decision) should be able to act on the decision without fear. As Lord Diplock in ***Mackman*** said at page 280H - 281A:

> *The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision.*

13. I now turn to the submission which emphasized why Mrs. Taylor-Wright was so forceful in her view that, in cases of this nature, good practice suggests that notice be given to Mrs. Reid, and if the applicant is out of time, notice of application for an extension of time must be given. Learned counsel submitted that the person ultimately affected would be Mrs. Reid and not the Registrar. All that Registrar would suffer is a decision of his being set aside if the challenge is successful. On the other hand, Mrs. Reid was now the holder of an award of damages made by the Registrar in her favour. She has something of value. It is this thing of value that would be set aside if COK's challenge is successful. This, in her view, meant that Mrs. Reid ought to have been served with the application for leave so that Mrs. Reid could have pointed out matters relevant to the exercise of Daye J.'s discretion.

14. In support of the submission that an out of time application for leave to apply for judicial review demands that notice be given to the intended respondents, Mrs. Taylor-Wright relied on the judgment of Lord Goddard C.J. in ***R v Ashford, Kent Justice Ex parte Richley*** [1955] 1 W.L.R. 562. In that case, the applicant for judicial review applied for leave, ex parte, outside the time limit set by the extant rule. At the application, the respondent was not present and neither was she represented. Leave was granted. It is not clear from the report how this was possible but, sometime later, there was an application for extension of time within which to apply for leave. It was in this context that Lord Goddard observed at page 563:

> *...where a person intends to apply to the court for an extension of time he must give notice to the person whom he would serve in the ordinary way as one who would be affected if the order challenged were quashed, that he intends to apply for an extension of time because the person affected has a right to be heard and to object to such an extension. He very likely has what I will call a vested interest in the upholding of the order. In the same way as if you go to the Court of Appeal out of time you have to give notice of motion for the time to be extended and as you have to so in this court when the justices have not stated a case within the requisite time, so, if you are going to move for certiorari out of time, you must give notice to the person who would be made in the ordinary way a respondent to the motion in order that he may be heard as to whether or not it is a fit case in which to extend the time.*

15. The Lord Chief Justice was saying that where a person has a vested interest in the decision made in their favour and the challenger intends to seek an order quashing the decision, then the beneficiary of the decision must be given notice of an application for extension of time because such a person has an interest in upholding the order.

16. By parity of reasoning, the argument goes, Mrs. Reid has a vested interest in upholding the order made in her favour. Thus it was incumbent on COK not only to apply for leave promptly (using January 21, 2010 as the date of the decision) but in any event was outside of the three months and so was under a mandatory obligation to give notice to Mrs. Reid.

17. Mr. Leiba has no quarrel with these propositions. His point is that time began on February 8, 2010 and so there was no need to apply for an extension of time. Mr. Leiba submitted that the expression '*from the date when grounds for the application first arose*' in rule 56.6 (1) means the date on which the decision was known to the affected party. Learned counsel submitted that since the decision of the Registrar was first known by COK on February 8, 2010, the three months begin to run from that date.

18. Unfortunately for Mr. Leiba and COK, all the cases of which I am aware all point in one direction, namely, that the date of the decision (and not the date the applicant acquires subjective or actual knowledge of the decision) is the date from which time begins to run against the applicant.

19. I now turn to the authorities to support the point. Hayton A.J. (as an Associate Justice of the Supreme Court of the Commonwealth of the Bahamas now Judge of the Caribbean Court of Justice) in the case of ***Securities Commission of the***

Bahamas ex parte Petroleum Products Limited BS 2000 SC 24 (delivered July 4, 2000) (Suit No. 1440 of 1999) laid out the position quite clearly. His Lordship, in the passage I am about to cite, summarized the facts and reasoning in a number of cases that are relevant to this issue. His Lordship said at pages 5 to 8:

> *Was the application made promptly and in any event within six months? No. Is there good reason for extending time? No.*
>
> *Counsel for the Commission submitted that the date when "grounds for the application first arose" was 1 June 1999 when the Commission registered the FOHCL prospectus in respect of which the applicants seek relief. Counsel for the applicants submitted that it was 5 July 1999 when the applicants first acquired knowledge of the public offering of shares (as apparent from their letter of 6 July to lawyers acting for FOHCL). Failing that, it was the day the prospectus was published. The application forms indicated the offer ran from 1 July 1999 to 5 p.m. on 30th July 1999 (the declaration therein acknowledging "receipt of the prospectus dated 1 July 1999"), while the offer was given full publicity on Friday 2 July 1999 in the Freeport News and in a full page advertisement in the Nassau Guardian. After all, was it not the very publication of the prospectus to the world that caused the alleged detriment to the applicants?*
>
> *The applicants' ex parte application for judicial review was filed on 21 December 1999, more than six months after 1 June 1999 but fewer than six months after the period 1 to 5 July 1999.*
>
> *Authority for 1 June 1999 being the key date is found in the English Court of Appeal's decision in R v. Secretary of State for Transport ex p Presvac of 25 June 1991 published in (1992) 4 Admin LR 121. In that case the applicant submitted that time did not run until he knew of the issue of a certificate indicating that a competitor's valves complied with certain Regulations or, rather, did not run until he had enough admissible "ammunition" to enable him to formulate his application with reasonable confidence in its success. In response, Purchas, L.J. (with whom the other Lord Justices simply concurred) stated (pp 122-134)*

"In my judgment the words of the order are perfectly clear and do not admit of any implication of the kind which would be necessary to support [the applicant's submission. In my judgment Order 53, r.4 provides that (a) the application should be made promptly (b) that in any event it should be made within three months [the English period] from the date when the grounds for the application first arose. Therefore the subjective experience and state of knowledge of [the applicant] upon which [hey relied for his submission that time did not run until mid April or May 1988 are not relevant. They may, however, be relevant when the Court comes to consider the proviso sunless the Court considers that there is good reason for extending the period'."

A similar approach was adopted by the English Court of Appeal in R v. Stratford-on-Avon DC ex p Jackson [1985] 1 W.L.R. 1319 at 1324. On 30 August 1984 the respondent planning authority passed a resolution granting planning permission. Giving the judgment of the Court Ackner, L.J. stated,

"it was on 30 November that the three month period referred to in Order 53, r.4 ran out."

Similarly, the English Divisional Court in R v. London Borough of Redbridge ex p G (Judicial Review pp 394 - 400, 1991 Crown Office Digest 347 - 434) held that time ran from the date the Borough's Education Committee made its decision on 2 July 1990, not when the child's father received notification on 8 November 1990.

I respectfully concur that the date when time begins to run cannot be the date that the applicant acquires knowledge which could be two months, two years or twenty years after the impugned event which he now claims to affect him. The date must be objective, not subjective (although in Rey v. Attorney General of The Bahamas, No. 1351 of 1999, which I decided on 27 June 2000, counsel were content, in presenting that particular case, to act as if the time of Rey's knowledge of Notes by the Bahamian government to the Swiss government was the crucial date

and, even on that basis, the application was held to be out of time).

In the present circumstances, is the key objective date the date the Commission registered the prospectus of which the applicants complain or the date FOHCL publicly published the prospectus, thereby allegedly detrimentally affecting the applicants' interest (by making known to the world the information contained therein, which ought to have been better slanted towards the applicants if the Commission had investigated matters in proper fashion, having afforded the applicants the opportunity to make representations, as claimed by the applicants)?

In my view, "when grounds for the application first arose" was on 1 June 1999, when the prospectus was registered, being the complained of conduct of the Commission, not on 1 July 1999 when FOHCL inevitably took advantage of such registration to market itself to the public. Thus, the application is even beyond the six month limit, quite apart from the fact that, as the English Court of Appeal stated in R v. Stratford-on-Avon DC ex p Jackson [1985] 1 W.L.R. 1391 at 1322,

> *"The essential requirement is that the application must be made promptly."*

If such essential requirement is not satisfied in any event within the objective six month period, the question arises whether or not "the Court considers that there is good reason for extending the period." It is here, in my view, that the Court should take account of the time the impugned matter came to the knowledge of the applicant. It should consider whether the applicant, ***after acquiring such knowledge****, made the application promptly, there being a greater need to act promptly the greater the period since the objective date of the grounds for the application. If the applicant did then apply promptly the period should be extended to that necessary to make the application timely.*

The "essential requirement" then becomes that the applicants must here show that they acted promptly after 5 July 1999.
(my emphasis)

20. Hayton A.J. was speaking in the context where the relevant rules had six months as the outer limit to apply for leave for judicial review.

21. This decision was applied by Evans J. (Ag) of the Supreme Court of the Commonwealth of the Bahamas in ***R v Director of Physical Planning et al ex parte Save Guan Cay Reef Association Limited and Clarke*** BS 2008 SC 98 (Suit No. PUB/JRV/FP 3 of 2007 (delivered September 18, 2008). Counsel for the applicant in that case submitted that time did not begin to run until his client had knowledge of the decision. Her Ladyship rejected the submission. No less a person than the Chief Justice (Burton C.J.) of the Commonwealth of the Bahamas, in ***West Bay Management Ltd. (trading as 'Sandals Royal Bahamas') et al v The Attorney General BS 2008 SC 101*** (Suit No. Public Law Division PUB/JRV 37 of 2006) (delivered September 24, 2008), approved the reasoning of the two cases just cited.

22. Finally, if further authority is needed I cite a passage from Keane J. of the High Court of England and Wales in ***R v Cotswold DC Ex Parte Barrington Parish Council*** (1998) 75 P & C.R. 515. Keane J. stated at page 523:

> *It follows that the first question to be considered is whether this application was made "promptly", there being no dispute that it was made within three months. It is well established that an application may be made within three months and yet not be made "promptly": See ex p. Jackson. A vivid example of that is to be found in Regina v. Independent Television Commission, ex p. TV Northern Ireland Limited and Another, where leave was refused on applications made well within the three month period. Great emphasis has been placed by Mr Lindblom in his submissions on the fact that the Parish Council did not know until December 10, 1996 that the planning permission, which is the subject matter of these proposed proceedings, had been granted. Thereafter, it is said, the Parish Council did act promptly, given its limited resources, the need to hold a parish meeting and the intervention of the Christmas bank holiday period. The application was lodged on December 31, 1996, and even though that was about eight weeks after the grant of permission the applicant cannot be said to have acted other than promptly.*
>
> ***The underlying assumption to that argument is that promptness is to be judged solely by what an applicant does, once a decision comes to its attention. At first sight, that might seem to be a well-founded assumption,***

> ***and certainly in many cases the court will only need to consider how quickly an applicant has acted from the time when he first knew of the decision sought to be challenged. But I do not accept that Order 53 rule 4 is solely concerned with what the applicant did once he knew of the decision which it is sought to challenge. The wording of that rule is not expressed by reference to the applicant's personal behaviour; it is more objective in tone: "An application ... shall be made promptly." That suggests that the passage of time by itself from the making of the decision is a relevant and important consideration.*** (my emphasis)

23. As these cases show, Mr. Leiba's submissions have not borne fruit in other jurisdictions. It is my view that time began to run from January 21, 2010 and not February 8. My reasons are that the affidavit for Mrs. Brown-Hamilton did not challenge the date of the decision as being January 21. What she said was that COK got notice of it only on February 8. The fact that COK only got notice of the decision in February does not say that the decision was not made on January 21. Further, rule 56.6 (1) deliberately avoided any reference to the subjective state of mind of the applicant for leave for judicial review.

24. Mr. Leiba's submissions have their origins in natural justice. What is remarkable about this submission is its longevity and resilience. It has been made in England, the Commonwealth of the Bahamas and now Jamaica. The answer I give in Jamaica is exactly what other judges have given in the other jurisdictions: the argument is to be rejected.

25. I wish to point out that the rejection of Mr. Leiba's argument does not mean that they were inherently bad. Indeed, as the cases show, Mr. Leiba is in illustrious company. In some of the cases, lawyers have even argued that the challenge could not have been made before that time that it was because it was only then that the applicant has sufficient powder shot to launch his assault on the decision. One can immediately see how far removed from the actual decision date one can get with arguments of this nature. With this in my mind I am firmly of the view that the best solution is an objectively determined date with power to extend time in appropriate cases.

26. Natural justice has not closed her eyes to these difficulties, and they are real problems given the poor communication that sometimes takes place between decision makers and those affected by the decision. The solution for the out-of-time applicant is to apply for an extension of time to apply for judicial review. As Hayton A.J. has pointed out: apply for an extension of time and use the date of

knowledge acquisition to persuade the court that time should be extended. This is the position too of Keane J. in ***Cotswold*** when he said at page 525:

> *It would to my mind be strange indeed if the criterion of "promptly and in any event within three months" were to be judged by reference to the applicant's state of knowledge when the permission had been granted ... when that forms no basis for the time limit which operates in relation to challenging a planning permission granted .... None of this means that the date when an applicant learnt of a decision and his behaviour thereafter is irrelevant on an application for judicial review. It may sometimes confirm that the application was not made promptly, but it will in any event often be relevant in deciding whether there is good reason to extend time, as the Court of Appeal indicated in Presvac, where such an extension is required. But in the present case I take the view that this application for leave, made as it was some eight weeks after the grant of permission, was not made promptly.*

27. I am aware that some of the cases which I have cited are planning cases which of themselves suggest a rather strict approach to the question of promptness but there is nothing to suggest the principle that time begins to run at the date of the decision is peculiar to planning cases. It is a general principle and applicable to all applications for leave to apply for judicial review.

28. If the applicant for leave makes a formidable case that the application could not be made before the time that it was, then he is well on his way to persuade the court to exercise its discretion in his favour. Indeed, had the Rules Committee in Jamaica intended to make the date referable to the date of acquisition of actual knowledge by the applicant it would have been so stated. The conventional meaning of the words used in rule 56.6 (1) does not readily lend itself to the construction proposed by Mr. Leiba. There is no policy reason which commands an unnatural reading of the provision.

29. Having decided that the application for leave to apply for judicial review was indeed out of time, the next question is whether another judge of the Supreme Court can set aside an ex parte grant of application for leave to apply for judicial review?

30. Mrs. Taylor-Wright relied on the case of ***R v Governor of Pentonville Prison Ex parte Herbage (No. 2)*** [1987] Q.B. 1077 for the proposition that a judge of the Supreme Court can set aside an ex parte grant of leave to apply for judicial review. This case was decided under the old Rules of the Supreme Court, Order 53.

However, the source of the power was not the rules but the inherent power of the court. May L.J. (pp 1084-1085) and Purchas L.J. (p 1092) were clearly of the view that an ex parte grant of leave by its very nature was provisional only and was itself subject to being set aside either by the judge who granted the leave or by another judge. It is important to note that this case was expressly approved by the Judicial Committee of the Privy Council in the case of ***Ministry of Foreign Affairs and Foreign Trade v Vehicles and Supplies Ltd and another*** (1989) 39 WIR 270, 282. There the Board held that under the then English Ord. 32 rule 6 of the RSC, the courts in England had the express power to set aside a grant of leave for judicial review. However, before noting this power, the Board observed that an ex parte order, by its nature, is provisional only. The Board went on to hold that an ex parte order can be set aside. This was so even though the then Civil Procedure Code did not have any express provision relating to setting aside an ex parte order. In the event, the Board was confirming the inherent power of the Supreme Court to set aside an ex parte order in appropriate cases. This power has not been taken away from the court. I, therefore, agree with Mrs. Taylor-Wright that an ex parte order is provisional only and can be set aside by judge who granted it or another judge. However, such a jurisdiction should be exercised cautiously, very cautiously.

31. In addition to the inherent power of the court, the CPR provides remedies for setting aside orders made on without notice applications. Rule 11.16 proclaims:

> *1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.*
>
> *2) A respondent must make such an application not more than 14 days after the date on which the order was served on the respondent.*
>
> *3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule.*

32. Rule 11.16 (1) permits the court to do one of three things on an application under this provision. The court may (a) set aside or (b) vary or (c) rehear the application. I appreciate that the rule reads '*set aside or varied and for the application to be dealt with again*' and so it may be argued that the 'and' between '*varied*' and '*and for the application to be dealt with again*' is a conjunctive one. However, it seems to me that the '*and*' really means '*or*'. A rehearing is to hear again the initial application that led to the order in the first instance. To set aside an order is just that. There

is no rehearing of the initial application. To vary an order is just that. There is no rehearing. It is not a natural use of language, in civil procedure to say that a court is rehearing an application and also varying it at one and the same time.

33. That the application for leave was made without notice to Mrs. Reid is not in dispute. It is also common ground that Mrs. Reid was not served with the order of Daye J. and it necessarily follows that she was not told of her right to make an application under rule 11.16. Indeed, it was not until Mrs. Reid made this application that COK served her with its without notice application. This omission by COK was a clear breach of rule 11.15 which reads:

> *After the court had disposed of an application made without notice the applicant must serve a copy of the application and any evidence in support on all other parties.*

34. The question that now arises is whether the power to set aside the ex parte order should be exercised in the instant case? It would seem that my discretion should be exercised to set aside the ex parte leave. It is a well established practice that an applicant on an ex parte application should bring to the fore front of the judge's mind all information that is relevant to the exercise of the judge's discretion. It is not sufficient to have the information in the body of the material before the judge. The ex parte applicant has an onerous job. He must not only advance his case but must point out to the judge relevant matters that may undermine his (the applicant's) case. The reason for this onerous obligation is that an ex parte application is an exception to the audi alteram partem principle which requires the adjudicating tribunal to hear both sides before making a decision. The courts have recognized that there are some instances where it is not possible or even desirable to hear both sides before making an interim decision. However, in recognition of the undeniable fact that an ex parte hearing is a fundamental departure from natural justice requirement, the courts have devised two primary methods of reducing the risk of serious injustice. These are (a) requiring the ex parte applicant to make full, complete and accurate disclosure and (b) having an inter partes hearing within the earliest possible time. The full disclosure requirement sometimes is breached innocently. To say that a person has not made full disclosure does not necessarily involve any moral judgment. It is an objective exercise. There is no requirement of sharp practice before the court will find that the full disclosure requirement was not me. It is important to make this point because it seems to me that COK made an honest mistake when it used February 8 as the relevant date when deciding the date of the decision for determining 'the date when grounds for the application first arose.'

35. In this particular case, it does not appear that Daye J. was told that the applicant was actually out of time and needed to have applied for an extension of time within which to apply for judicial review. The application before Daye J. proceeded on the basis that the application was being made promptly, or, at any rate, within the three month period. Now that the matter has been fully explored in an inter partes hearing, it is plain that COK is indeed out of time and in the absence of a successful application for extension of time (and there must be an application for extension of time) the leave would not have been granted. The application for leave is therefore set aside.

36. There is another matter that came to light after oral submissions were made. It was brought to the attention of the parties who appeared before me and I have received written submission on the matter from Mr. Emile Leiba and from Mrs. Taylor-Wright. The matter is this: leave was granted by Daye J on May 17, 2010. Under rule 56.4 (12) which reads:

> *Leave is conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave.*

37. In the case before me, the claim was filed on June 1, 2010. Mr. Leiba endeavoured to say that COK filed its claim within time. Regrettably, I cannot agree. A similar situation occurred in ***Golding v Miller*** S.C.C.A. 3 of 2008 (delivered April 11, 2008). Leave was granted to apply for judicial review on December 13, 2007. The claim was not filed. Instead the applicant for judicial review elected, on January 10, 2008, to apply for an extension of time to file the claim. The first instance judge granted the extension. This was reversed by the Court of Appeal. In coming to its decision the court was of the view that the claim should have been filed by December 27, 2007. The Court of Appeal is therefore saying that the expression 'within 14 days' means not later than the fourteenth day beginning on the day following immediately the date the grant of leave was given. In other words, within fourteen days does not mean fourteen clear days (see rule 3.2). If this is so, then it means that COK's claim form is out of time. To put it another way, the leave granted has now lapsed. The Court of Appeal also pointed out that the CPR prohibits an extension of time to file the claim form. If this is correct, then this application to set aside the grant of leave has become academic since the entire process has now come to an end for the reasons just stated.

Conclusion

38. The application to set aside the leave for judicial review is granted. If I am wrong on this, then on the authority of the ***Golding*** case, I declare that the omission of COK to file, the claim form within the fourteen days, means that it cannot proceed any further on this current application. The result, in either case, being that the decision of the Registrar still stands. Cost of the application to Mrs. Reid.