[2013] JMSC CIVIL 1

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2010HCV00400

BETWEEN GEORGE ANTHONY LEVY APPLICANT

AND THE GENERAL LEGAL COUNCIL RESPONDENT

IN CHAMBERS

P. Alexander Beswick and Kayode Smith instructed by Ballantyne, Beswick and Co. for the Applicant

Charles E. Piper and Wayne Piper instructed by Charles E. Piper & Associates for the Respondent

Heard: December 10, 2012 & January 8, 2013

JUDICIAL REVIEW – APPLICATION FOR LEAVE FOR JUDICIAL REVIEW FILED OUT OF TIME- APPLICATION TO EXTEND TIME TO APPLY FOR LEAVE – UNDUE DELAY – WHETHER THERE IS A DECISION FOR THE PURPOSES OF JUDICIAL REVIEW – WHETHER GOOD REASON EXISTS FOR EXTENSION TO BE GRANTED – CONSIDERATIONS FOR EXERCISE OF COURT'S DISCRETION TO EXTEND TIME- CPR, 56.2; 56.6(1); 56.6 (2); 56.6 (3) 56.6(5)

McDONALD-BISHOP, J

[1] Mr. George Anthony Levy, the applicant, has brought this Notice of Application for Court Orders, filed on 22 May 2012, in which he is seeking the following orders:

(1) An order for extension of time to file application for judicial review.

(2) An order for the documents which were filed and served in the application for leave for judicial review to stand.

(3) An order for the judicial review application to continue.

The background

[2] In order to render this application more intelligible, an insight into the circumstances attendant on it becomes highly necessary. The factual background and chronology of events leading to it are summarized as follows.

[3] Mr. Levy is a practicing attorney-at- law in Jamaica. The respondent, The General Legal Council ("the GLC"), through its Disciplinary Committee, deals with complaints from the public concerning the conduct of attorneys-at- law who practise within the jurisdiction.

[4] On or around 17 March 2005, Mr. Charles H. Crooks, by letter, initiated a complaint against Mr. Levy alleging professional misconduct. Some time, In April, 2005, the letter of complaint was sent by the GLC to Mr. Levy at his offices on record at 22 Melmac Avenue, Kingston 5, for his comments. There was no reply from Mr. Levy.

[5] At a general meeting of the Disciplinary Committee held on 25 June 2005, it was decided that there was a *prima facie* case for Mr. Levy to answer and that the complaint should be set for hearing. A notice of hearing for the matter to commence was sent to Mr Levy at the Melmac Avenue address but again there was no response from Mr. Levy and he failed to attend the hearing.

[6] Following that, there were numerous adjournments until 23 February 2008. Up to then, Mr. Levy had never attended and had not responded to the GLC concerning the complaint and he had no one representing him. It must be pointed out that up to that date, all correspondence from the GLC concerning the matter was sent to Mr. Levy at his Melmac Avenue address. According to the secretary of the GLC, its affiant, Ms. Althea Richards, there is no indication on the record of any mail sent to that address being returned.

[7] On that date, 23 February 2008, when the matter came up before the panel comprising Mrs. Pamela Benka-Coker, Q.C., Mrs. Gloria Langrin and Miss

Beryl Ennis, Mr. Levy was absent and there was no communication from him. No one appeared on his behalf.

[8] According to the notes of the proceedings for that day, the attorney-at-law appearing for Mr. Crooks, Mr. Seymour Stewart, who was holding for Mr. Gittens, applied for an adjournment citing a parallel matter in the Supreme Court between Mr. Levy and Mr. Crooks which was set for mediation. The panel refused the application for adjournment.

[9] During the course of refusing the application for adjournment certain utterances were made by the panel which included an assertion that Mr. Levy had been served but had never attended. Mr. Levy has taken issue with the assertions of the panel on that date concerning his attendance which now form part of the subject matter of his complaint in his application for leave for judicial review. I will re-visit this aspect of his complaint in short order.

[10] Suffice it to say, that the panel saw it fit to commence the hearing that day in the absence of Mr. Levy on the premise that he was duly served. The examination - in -chief of Mr. Crooks began. The hearing was then part-heard and adjourned for continuation on 15 March 2008. The notice of the adjourned hearing, as well as the notes of the proceedings, was again sent to Mr. Levy at the Melmac Avenue address.

[11] On 15 March 2008, the hearing continued with the examination-in-chief of Mr. Crooks. Again, Mr. Levy was absent with no communication to the panel. The matter was further part-heard and adjourned to 10 May 2008, the operative date for the purposes of this application. The Disciplinary Committee, by then, had received information that Mr. Levy had changed address from Melmac Avenue to 72B Old Hope Road. Based on that information, the correspondence pertaining to the hearing set for 10 May 2008 was sent to three addresses to include the Old Hope Road and the Melmac Avenue addresses.

[12] On 10 May 2008, Mr. Levy appeared with his counsel, Mr. Beswick. Mr. Beswick advised the panel that Mr. Levy had only received the notice of the hearing for that day which was addressed to the Old Hope Road address. The panel was also advised that Mr. Levy was not notified of the complaint and that he had not received proper notices of any hearing of the matter prior to his receipt of the notice of hearing for 10 May 2008.

[13] It was also brought to the attention of the panel by Mr. Beswick that on 19 April 2007, Mr. Levy had delivered a letter dated 18 April 2007 to the GLC advising of his change of address to Old Hope Road. It does appear from the evidence that it is not disputed that the letter was received at the GLC. The explanation given for it not coming to the attention of the Disciplinary Committee was that the personnel who received it was a new member of staff and she never placed the letter or a copy of it on the file concerning the matter before the Disciplinary Committee. It was dealt with as being connected to payment of fees. The Secretary of the GLC and of the Disciplinary Committee, Ms. Althea Richards, deposed that she was not aware of the letter up to May 2008 and that it was upon enquiries later conducted by her that she became aware that the letter was, in fact, received by the GLC in April 2007.

[14] At that hearing, Mr. Beswick also indicated to the panel that based on the notes of the proceedings of 23 February 2008, when the matter commenced in Mr. Levy's absence, he was making an application that the entire panel recuses itself. This objection to the panel was taken based on the following statement as reported:

> *"Panel: We are not going to be held on a contingency basis and in any event he would need our leave.* ***We are not concerned with our time we are concerned with the protection of your client. Mr. Levy has never dignified us with his presence. We are treated with contempt by the Respondent. This panel was specifically formed to hear this matter."*** *(Emphasis supplied)*

The thrust of Mr. Levy's case on this limb is that the panel had demonstrated bias against him.

[15] Mr. Beswick went further to point out, as part of his objection to the matter proceeding before the panel as constituted, that Mrs. Benka-Coker, Q.C., the chairperson, “is unsuitable to sit” due to her involvement in the “Barry Frankson matter”.

[16] Learned counsel also raised the additional complaint of abuse of process as a basis for the hearing not to continue. He noted that that there was a concurrent claim in the Supreme Court, brought at the instance of Mr. Crooks against Mr. Levy, in the same matter. He argued that it was the same claim that is before the GLC. He said both proceedings ought not to proceed at the same time as there was duplicity. In essence then, the GLC's proceedings should, at least, be stayed pending the Supreme Court decision or *vice versa*.

[17] The record shows that after Mr. Beswick made his submissions, the panel called upon Mr. Gittens to respond. Mr. Gittens was asked to address it on the last point of objection concerning the proceedings in the Supreme Court. Mr. Gittens commenced his submissions by indicating that he had no notice that such issue would have been taken, and that it would have been fair to the complainant (Mr. Crooks) to have his attorney given a chance to give a full response.

[18] Mr. Gittens then started to comment on the submissions of Mr. Beswick and asserted that it was true that Mr. Levy had never dignified the panel with his presence. Mr. Beswick asked him to withdraw that remark which Mr. Gittens refused to do. Mr. Beswick and Mr. Levy immediately walked out of the hearing with Mr. Beswick voicing his displeasure with the panel.

[19] The record of the proceedings shows that after Mr. Levy and Mr. Beswick left, Mr. Gittens did not complete his submissions in response to Mr. Beswick’s application and the matter was adjourned to 9 July 2008 at 2:00 p.m. There was

no decision of the panel concerning the application. The only action or reaction from the panel was to adjourn the hearing for another date.

[20] By a letter dated 12 May 2008, being two days later, Mr. Levy wrote to the GLC requesting notes of the proceedings of May 10 and advised that his counsel was contemplating pursuing judicial review proceedings. Notes of the proceedings were delivered to Mr. Beswick on 4 July 2008.

[21] On 9 July 2008, the date set for hearing, Mr. Beswick, by letter of that date, wrote to the GLC requesting an acknowledgement of the letter of April 2007 sent to it by Mr. Levy advising of his change of address. He was requesting it, he said, in the light of Mr. Gitten's submissions concerning service on Mr. Levy. On the same date, Mr. Gittens, by E-mail, forwarded his written submissions to the GLC, in response to Mr. Beswick's application, for the hearing scheduled for that afternoon. There is no record that there was continuation of the hearing on that date.

[22] There were many adjournments after July 2008 on account of several variables to include the illness of Mr. Levy and settlement of representation for him. By a letter dated 13 October 2008, Mr Beswick had written to the GLC indicating that he no longer appeared for Mr. Levy.

[23] There is evidence before me showing that as late as 14 July 2009, the GLC was writing to Mr. Levy for his response to be filed in response to Mr. Gitten's written submissions. There is nothing before me to show that up to the end of 2009, that the submissions had been completed concerning the application of Mr. Beswick.

[24] On 29 January 2010, Mr. Levy filed a notice of application for leave to apply for judicial review of, what he terms, the GLC's decision made on 10 May 2008 to continue hearing the complaint. On 3 February 2010, Daye, J ordered

that there be a stay of the proceedings before the GLC pending the hearing of the application for leave for judicial review. Since then, the matter had been fixed for mention before the GLC on several dates pending the outcome of the application before this court.

[25] When the application for leave came up before Cole-Smith, J on 11 May 2012, counsel for the GLC raised the point that the application for leave was out of time. The learned judge then made an order that leave was granted to Mr. Levy to make the application for extension of time by 21 May 2012. The application was made one day later but with no objection from the GLC, relief from sanction was granted and the application was permitted to stand as if filed within time. It is this application for extension of time with which I am presently concerned.

The Application

[26] This application for extension of time is based primarily on the following grounds which have been paraphrased in the interest of time.

(1) The application is made opposing the respondents decision to proceed with the hearing of complaint despite the numerous and varied challenges which have been made to the propriety of the decision-making panel.

(2) The decision being complained of is not only the decision of 10 May 2008 but also subsequent decisions made by the GLC to proceed with the matter in the light of the irregularities highlighted on 10 May 2008. The subsequent decisions being complained of are those dated 12 February 2010, 28 April 2010, 31 May 2010, 8 July 2010, 7 February 2011 and, in particular, the last decision on 4 May 2011.

(3) If the court does not extend time for the application, Mr. Levy will face severe hardship as he will be left with no other option but to face a Disciplinary Committee which has shown itself to be biased against him. Additionally, as this bias has been uncovered, sending Mr. Levy

back to face the similarly constituted panel would be substantially prejudicial.

(4) Refusal of the application to extend time would be antithetical to good administration, as the matter is simply gong to be brought back to court three months after the GLC's next decision to pursue the claim against Mr. Levy.

(5) The application is subject to the overriding objective. In the circumstances, it would not be fair, cost effective, or just to refuse the application in circumstances where Mr. Levy will have no option but to challenge the GLC's subsequent decision to proceed with the matter against him and will therefore be back in court in a relatively short space of time.

The GLC's response

[27] This application is vigorously opposed by the GLC on two fundamental limbs. Mr. Piper submitted, on behalf of the GLC, firstly, that the court has no jurisdiction to entertain an application for leave for judicial review in the circumstances where there has been no decision that is properly the subject of an administrative order. He relied for this contention on the decision of the **Full Court in R. v. the Disciplinary Committee of the General Legal Council *ex parte* Barrington Frankson** (unreported) Suit N. C.L. M047 of 1998 delivered July 8, 1998.

[28] Secondly, learned counsel maintained that even if the adjournment of the hearing was a decision contemplated by the Rules, which he does not accept it to be, the application for leave for judicial review was not filed promptly and is excessively outside the maximum prescribed period. As such, the delay in the circumstances should stand as a bar to the application being allowed to proceed. On the question of delay, learned counsel relied on the unreported judgment of Sykes, J in **City of Kingston Co-operative Credit Union Limited v Registrar**

of Co-operative Societies and Friendly Societies & Yvette Reid 2010HCV0204 delivered October 8, 2010.

Issue

[29] The basic issue for consideration in this proceeding is whether Mr. Levy has produced sufficient ground, in fact and in law, for the time to be extended for the filing of his application for leave for judicial review. Central to the resolution of that question is the determination of the points raised by the GLC as to whether there is a decision of the Disciplinary Committee that can properly be made the subject of judicial review and whether delay should act as a bar to the grant of an order extending time for leave to apply for judicial review to be pursued. Of course, the issues thrown up for deliberation are considered against the background of the submissions advanced by learned counsel on both sides and the applicable law.

Analysis of the facts and the applicable law

[30] Mr. Piper has raised as a point of objection that there is no decision that was made on 10 May 2008, or on any subsequent date stated in the application, that could properly be the subject of judicial review. I will consider this submission first given the primacy of it in resolving this application.

Whether there is a decision amenable to judicial review

[31] Rule 56.2 provides for an application for judicial review to be made by any person with a sufficient interest in the subject matter of the application. That includes someone who has been adversely affected by the decision which is the subject matter of the application.

[32] In his application for leave for judicial review filed on 29 January 2010, Mr. Levy has presented himself as a person adversely affected by what he said is the decision of the Disciplinary Committee made on 10 May 2008 to proceed

with hearing of the complaint. There is no mention of any other date on which a decision was made as is now being contended in this application.

[33] The subsequent dates Mr. Levy has identified in the notice of application presently under consideration, as being dates of a continuing decision of the Disciplinary Committee, is an obvious deviation from the application for judicial review he wishes to pursue. These are all dates that fall after the filing of the application of January 2010, the only application before the court for which time has to be extended before it can be pursued.

[34] As such, any decision made on those dates would not form part of the application for which leave for judicial review is being sought, in the absence of an amendment to that application. So any decision relating to such dates that would have been after the application cannot properly be made the subject of an application for extension of time when such decision (if any) bears no relationship to the application for which extension is being sought.

[35] This hearing is concerned with whether time should be extended for proceeding with the application for leave for judicial review as filed. There cannot be a change in mid-stream as to the subject matter of the substantive application without proper amendment. I have found it necessary to take time to point this out given the terms of the present application and the tenor of the argument advanced in support of it. This view, will, in the end, affect my treatment of Mr. Levy's case concerning the additional dates identified as marking decisions made by the Disciplinary Committee to proceed with the hearing.

[36] The question for me in this proceeding is whether time should be extended to permit the application for leave that has been filed which relates only to one decision, the one purportedly made on 10 May 2008. This decision, Mr. Levy is contending, was made despite the grounds raised by him for the hearing of the complaint not to continue.

[37] In order to get a true picture and a clearer understanding of what transpired on 10 May 2008, I have carefully examined the transcript of the proceedings tendered into evidence and all the affidavit evidence presented in support of each party's case. I have taken as a material starting point, the proceedings before the panel on 23 February 2008 when the decision was made to commence hearing the complaint. I have noted that that decision is not the subject of these proceedings.

[38] In relation to the proceedings on10 May 2008, the record does show that up to the point when Mr. Levy and Mr. Beswick left the hearing, the panel had not given a response to the application of Mr. Beswick concerning the continuation of the matter. The record shows that after they left, no decision whatsoever was handed down on any of the issues raised on Mr. Levy's behalf. All that the panel did was to hear further submissions from Mr. Gittens that were incomplete and then it adjourned the hearing for another date being 9 July, 2008. Mr. Crooks was not called upon to continue giving his evidence and so the substantive hearing in respect of the complaint did not proceed at all on that date.

[39] Clearly, the panel was contemplating the submissions made by Mr. Beswick when it called on Mr. Gittens to respond. The adjournment was taken at a time when Mr. Gittens had not completed his submissions in response. It is clear that Mr. Levy did not await any decision or ruling of the panel on 10 May 2008. He himself said in his affidavit of 29 January 2010 that he "left the panel and Mr. Gittens to their deliberations." He gave no evidence of the terms of any decision made on that date concerning his application.

[40] There is evidence before me that shows that on 9 July 2008, Mr. Gittens sent his written submissions by E-mail to the GLC in response to Mr. Beswick's application on behalf of Mr. Levy. No decision was made on that date. In fact, the record shows a continuous stream of adjournments after that date.

[41] The record of 14 July 2009 shows that up to that date, being a year later, the submissions on the issues had not continued beyond 10 May 2008. The panel, by the terms of the minutes of order of that date, had up to then, returned no ‘judgment” on the matter but threatened to do so if there was no response from Mr. Levy to the submissions of Mr. Gittens by September 2009.

[42] It is seen that up to the date Mr. Levy filed his application for leave for judicial review in January 2010, there is no evidence presented that he had filed any written submissions in response to Mr. Gittens submissions as requested by the GLC. Neither is there any evidence showing that the threatened ‘judgment’ of the panel was handed down concerning either Mr. Beswick’s application for the hearing not to continue or the substantive complaint of Mr. Crooks. In fact, up to then, Mr. Crooks had not re-commenced giving evidence. There were just repeated adjournments for one reason or another.

[43] What constitutes a decision for administrative law purpose was explained by Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service** [1985] A.C. 374, 408. Therein, his Lordship stated that the subject matter of every judicial review is a decision made by some person (or body of persons), the "decision-maker", or else a refusal by him to make a decision. His Lordship opined that for a decision to qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect the decision maker too.

[44] In examining the facts of this case to determine whether a decision was made, I have noted, in particular, that part of the objection raised by Mr. Beswick was bias in the tribunal and on that basis the entire panel was asked to recuse itself. Bias is a ground Mr. Levy has also raised as a basis for judicial review. The authorities have all established that where an objection on the ground of bias is

made, it is the duty of the judge or tribunal before whom such a charge is made to consider it, giving full weight to the considerations laid down in such cases as **Ansar v Lloyd's TSB Bank Plc.** [2006] EWCA Civ. 1462 and **Porter v McGill** [2002] 2 AC 359.

[45] These authorities established that a mere complaint about the conduct of a tribunal does not give rise to an automatic decision to recuse. The substance of the allegations must be addressed and analysed by the particular tribunal with the operative question being "whether a fair-minded and informed observer, having considered the facts not conclude that there was a real possibility that the tribunal is biased." According to these cases, "it is the duty of the tribunal before whom objection is made to consider the objection and exercise its judgment upon it." See too **West LB AG (London Branch) v Pan UK EAT 19 July 2011.** A tribunal that has been asked to recuse itself must, therefore, be given the opportunity to respond to such a request before proceedings are taken to disqualify it.

[46] Having considered the transcript of the proceedings for 10 May 2008, and the records of subsequent adjournments, I have found no determination of the panel pointing to such consideration of the issue as to recusal or of any other issue raised, for that matter. The panel did not get an opportunity to indicate its decision on any aspect of the hearing on 10 May 2008 before proceedings were brought to review its actions. I do agree with Mr. Piper that there is no decision whatsoever that was made on 10 May 2008 for the hearing of the complaint to proceed despite repeated request of Mr. Levy for it not to proceed.

[47] With respect to the additional dates cited as being dates of the continuing decision to proceed, I have already expressed my views on the inclusion of these dates as being improper in this application when they do not form part of the substantive application for leave for judicial review. I will say, however, that even if they were a part of that application, I accept on all the evidence that those were dates when the matter was set for mention for the GLC to ascertain the outcome

of the application for judicial review. Those were not, as being contended by Mr. Levy, dates when decisions were taken by the Disciplinary Committee to proceed with the hearing.

[48] I find that there is no decision, properly so called, emanating from the Disciplinary Committee on 10 May 2008 and/or on subsequent dates that adversely affected Mr. Levy in a manner to provide him with the *locus standi* to apply for judicial review. In the circumstances, extension of time to bring application for leave to apply for judicial review would not at all be warranted. I find on this limb alone that the application should fail. I will go further however.

The effect of delay

[49] I will go further to state that even if there was a decision that could properly be the subject of judicial review, Rule 56.6 (1) provides that such application for leave for judicial review must be made promptly and, in any event, within three months from the date when the grounds for the application first arose.

[50] The CPR provides further that where leave is sought to apply for an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date on which grounds for the application first arose shall be taken to be the date of the judgment, order, conviction or proceedings: (Rule 56.6 (3).

[51] In this case, there is application for certiorari to quash the decision of the GLC made on 10 May 2008 to proceed with the hearing of the complaint in question. It follows that the operative date for the application for leave to have been made would have been the first date on which the grounds for the application first arose which would have been 10 May 2008, if Mr. Levy's contention is accepted.

[52] The settled law is that the operative time for the ground to have arisen, and which set the timeline within which the application is to be made, is the date

of the judgment, order or decision and not the date that the applicant became aware of the decision: see judgment of Sykes, J in the **City of Kingston Co-operative Credit Union Limited** case (supra) paragraphs 18-21 and the cases cited therein. By 10 May 2008, Mr. Levy would also have known that the hearing had started so that would have been the date he would have been aware of the proceedings against him, in any event.

[53] It follows from this that Mr. Levy would have to act promptly after 10 May 2008, the date of the impugned 'decision', or, in any event, within three months of that date. The latest date for the application to be made within the ambit of the rule would have been on or around August 11, 2008. The application for leave was not made until 29 January 2010. That was more or less one year and eight months after the ground would have first arisen on 10 May 2008. In any event, it would have been one year and eleven months (almost two years) since the commencement of the proceedings on 23 February 2008. It is undeniable that the application was far out of time.

[54] Mr. Beswick's contention is that there was a belief, or misapprehension, if you will, on their part that each time the GLC had set the matter for hearing, it constituted a decision for the purpose of the application and so he filed the application within three months of the last adjournment. This, of course, is not accepted as a plausible reason for the application to have been filed the time it did. Therefore, I would hold that the application was filed out of time and can only be permitted if good reason is shown for it to proceed. This is in keeping with Rule 56.6(2) which provides that the court may extend the time for the application to be made if good reason for doing so is shown.

Whether good reason exists to permit application

[55] The issue now is whether there is good reason for the application to be allowed having been filed out of time. The GLC's contention that there is unreasonable delay that should act as a bar is not without merit on this issue. The effect of rule 56.6 (1), which provides for the application to be made

promptly, or in any event, within three months, is to limit the time for making the application.

[56] It is well established that public law remedies must be pursued with dispatch and so, time is usually of the essence. In the text, **Civil Procedure, 2010, Volume 1,** popularly called "the White Book" at paragraph 54.5.1, it is stated:

> *"The courts have always recognised that public law claims are unlike ordinary civil litigation and require strict adherence to the time limits contained in the rules governing judicial review (**R.v. Institute of Chartered Accountants in England and Wales Ex p. Andreou** (1996) 8 Admin L.R 557."*

[57] Solid support for this view that applications in administrative law matters should be brought with expedition is to be found in the oft-cited words of Lord Diplock in **O'Reilly v. Mackman** [1983] 2 A.C. 237, 280,281. That dictum is to the effect that the public interest in good administration requires that the public authorities and third parties should not be kept in suspense for any longer period than is reasonably necessary in fairness to the person affected by the decision.

[58] It is on this basis of the requirement for expeditious disposal of such matters that the relevant authorities have established that whenever the application is not made promptly, it may still be dismissed for delay even if made within the three month period: **R. v Greenwich LBC exp. Cedar Transport Group Ltd**. [1983] RA 173. See too the authorities cited by Sykes, J in the **City of Kingston Co-operative Credit Union Limited** case (supra).

[59] The authorities have demonstrated the point that the failure to file the application within the prescribed time constitutes undue delay that might result in the refusal of judicial review notwithstanding that there is good reason for the delay. This is said to be applicable even in cases where leave to apply out of time is granted. See **R.v. Stratford-Upon-Avon ex parte Jackson** [1985] 1

W.L.R. 1319; **R.v. Secretary of State for Health ex parte Furneaux** [1994] 2 All ER 652.

[60] As far as I am concerned, Mr. Levy had failed to file his application for leave within the prescribed time. I find that there was undue and inordinate delay on his part. I have not, at all, ignored the fact, however, that even though he had come outside the stipulated period and is thus guilty of undue delay, that he could, nevertheless, be permitted to bring his application. He must, however, show good reason for that to be facilitated in accordance with the requirements of the rule.

[61] The authorities have established that the critical consideration on this issue is not so much whether there is good reason for the delay but rather whether there is good reason for the time to be extended. In **R. (Young) v. Oxford City Council** [2002] EWCA Civil 240, June 27, 2001, the court indicated that good reason to extend time is not synonymous with good reason for the delay. It is established that leave may be refused even where the delay is "perfectly explicable." The question as to whether there is good reason is also an objective one.

[62] Having examined all the evidence presented by Mr. Levy, along with the history of the proceedings, I find nothing on which I am satisfied that Mr. Levy had a good reason for failing to file his application within time. There is nothing advanced by him to show that he had a good reason, or any reason at all, for that matter, for failing to file the application promptly. Just simply saying that he had met the three months' stipulation based on the belief that the operative date was when the matter was last fixed for hearing is neither good nor sufficient.

[63] Rule 56. 6 (5) states that the court, when considering whether to refuse leave or to grant relief because of delay, must consider whether the granting of leave or relief would be likely to cause substantial hardship, or to substantially prejudice the rights of any person, or be detrimental to good administration. This

rule does not speak expressly to the applicability of such considerations when the court is considering an application for extension of time within which to make the application for leave. I still believe, however, that those same considerations are appropriate in determining whether time should be extended for the application to be brought.

[64] In the **White Book 2010, paragraph 54.5.1**, the learned authors in dealing with the issue of extension of time within which to apply for judicial review, opined:

> *"The courts are likely to require that there is a good reason or adequate explanation for the delay and that extending the time limit will not cause substantial hardship or substantial prejudice or be detrimental to good administration."*

[65] In **R. v. Dairy Produce Quota Tribunal for England and Wales Ex p. Caswell** [1990] 2 A. C. 738, it was said that even if the court considers there was good reason for the delay, it might still refuse leave, or if leave had been granted, refuse substantial relief, where in the court's opinion, the granting of such relief was likely to cause hardship or prejudice or would be detrimental to good administration.

[66] As far as I see it, the likelihood of hardship and prejudice to the rights of all interested parties, Mr. Levy included, and what is in the best interest of good administration, must be relevant considerations in determining whether good reasons exist for extending the time within which to apply for leave for judicial review.

[67] In looking at whether good reason exists for extension of time to be granted on the premise that there was a decision of the Committee that could be the subject of the review, I have examined the available evidence of the conduct of the proceedings and of the parties up to the filing of the application for leave to apply for judicial review. I have also looked carefully at the grounds on which the applications for extension of time and for leave are based. I have taken into

account too the helpful submissions of counsel on both sides. I will refrain from indicating any view as to the merit or demerit of the intended claim although I was invited by Mr. Beswick to consider the merits of the claim being advanced by Mr. Levy in determining whether any good reason exists to allow the application for leave to be brought.

[68] Having taken everything into account, it has not escaped me that the hearing of the complaint before the GLC has been plagued by delays at every conceivable step of the way due to one reason or another. The complaint was filed as far back as 2005 and, to date, the complainant, Mr. Crooks, has not had his complaint determined.

[69] As far back as 12 May 2008, two days after the impugned action of the Disciplinary Committee, Mr. Levy, by letter, requested notes of the proceedings and indicated that his counsel was considering pursuing judicial review remedies. Despite expressing such intention at such an early stage, nothing was done to advance his complaint until more than one year and a half later. During all that time, the hearing did not proceed until it was stayed by the order of Daye, J.

[70] I will simply say that having assessed all the evidence and the arguments advanced by Mr. Beswick in favour of an extension of time within which to seek leave, that I cannot find any good reason in favour of extension that would outweigh the prejudice and substantial hardship that would be caused, particularly to Mr. Crooks, in having his matter proceed to judicial review for no good and apparent reason in fact or law.

[71] I must note at this juncture that Mr. Crooks was not a party to this application although I believe that he should have been served as an interested party being the person who would most likely to have been affected by the decision to extend time. I accept as good law the dicta of Lord Goddard, C.J. in **R.v. Ashford, Kent Justice ex parte Richley [1955] 1 W.L.R. 562, 563** relied

on by Sykes, J in the **City of Kingston Co-operative Credit Union Ltd.** case at paragraph 14 of that judgment.

[72] In **R. (Young) v. Oxford City Council** [2002] EWCA Civ. 990, it was stated that if the court considers that the intended respondent or any other person interested should have an opportunity of resisting an extension of time, then it may adjourn the application for leave so that notice can be given and the other parties given the opportunity to be heard. Although I have considered that option, I found it unnecessary to adjourn the matter to allow Mr. Crooks to attend in the light of the conclusion that I have arrived at. His absence would not be detrimental to his interest in the circumstances.

[73] Finally, I must say that to also allow an extension of time in the circumstances that prevail in this matter would, in my view, be detrimental to good administration. It would be a usurpation of the function of the quasi-judicial body to properly adjudicate on the questions that were put before it, including the application for recusal, without any proper basis to do so, in fact or law. The panel must decide what it will do in the light of the arguments raised by Mr. Levy as to non-service of notice of the complaint, the hearing having been commenced in his absence, recusal and duplicity of the proceedings. It must be in the interest of good administration for inferior tribunals to be afforded the opportunity to make decisions or to refuse to make a decision in matters before them before they are subject to the supervisory role of the Supreme Court.

[74] It is also in the interest of good administration for matters to be dealt with expeditiously and fairly. To allow an extension of time after such inordinate and inexcusable delay, and within the context of what transpired on 10 May 2008 and thereafter, would be detrimental to good administration and would surely not augur well for the proper conduct of similar proceedings in the future.

Conclusion

[75] Mr. Levy has failed to prove to my satisfaction that there was a decision made on 10 May 2008 that is one that could properly be the subject of judicial review. A far as I see it, the application filed for leave for judicial review on 29 January 2010 was rather pre-mature as there was no decision of the Disciplinary Committee to proceed with the hearing of the complaint of Mr. Crooks as alleged.

[76] Mr. Levy, in any event, has been guilty of undue and inexcusable delay in seeking to obtain leave for judicial review with no good reason shown for the delay as well as no good reason shown for the grant of permission to extend time. The grant of extension of time, in all the circumstances, would be substantially prejudicial to the interest of the complainant, Mr. Crooks, in having his complaint fairly determined according to law and it would be inimical to good administration.

Order

[77] (1) The Notice of Application for Court Orders filed on 22 May 2012 is dismissed.

(2) The stay of the proceedings before the Disciplinary Committee of the GLC pursuant to the order of Daye, J dated 3 February 2010 is discharged.

(3) Costs to the GLC to be agreed or taxed.