[2025] JMSC 152

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2025CV02766

BETWEEN	**SPECTRUM MANAGEMENT AUTHORITY**	**1ST APPLICANT**
AND	**DR. MARIA MYERS-HAMILTON**	**2ND APPLICANT**
AND	**KEVON STEPHENSON**	**1ST RESPONDENT**
AND	**THE INTEGRITY COMMISSION**	**2ND RESPONDENT**

IN CHAMBERS

Georgia Gibson Henlin K.C., Stephanie Williams, Lemar Neale and Vasheney Headlam instructed by Henlin Gibson Henlin, Attorneys-at-law for the Applicants

Annalise Lindsay instructed by Lindsay Law Chambers, Attorneys-at-law for the Respondents

Heard: September 25, November 13 and December 19, 2025

Application for injunction - evidentiary requirements on oral application for interim injunction - whether threshold test for interim injunctive relief met

Application to extend time to apply for judicial review - Whether time should be extended where execution of entry and production notice under the Integrity Commission Act were allowed by applicant

Leave for judicial review - Whether there are arguable grounds for judicial review with a realistic prospect of success - Whether order of mandamus can lie for the return of documents - Return of items seized incidental to power to quash

C. BARNABY, J

BACKGROUND

[1] This matter concerns steps taken by the 1st Respondent in respect of investigations into the 1st Applicant - an incorporated public body established pursuant to the **Telecommunications Act**, engaged in the monitoring and inspection of Jamaica's radio spectrum network and the making of recommendations to the relevant Minister on the grant of spectrum licences, among other things - under the **Integrity Commission Act** (the ICA). The 2nd Applicant, whose personnel file was taken by the Respondents is the Managing Director of the 1st Applicant.

[2] The matter first came before me on 16th July 2025 when the 1st Applicant approached the court on an urgent oral application for interim injunctive relief against the Respondents. The application proceeded as an *"opposed hearing without notice"* as the Respondents though present and heard, had short notice of the application. On conclusion of that hearing it was ordered *"by and with consent, [that] each party to the "application", whether by themselves, their servants and/or agents or otherwise is prohibited from taking any step or action whatsoever which would disturb in anyway the status quo, until further order of the court."*

[3] The 1st Applicant was directed to reduce its application to writing, and file and serve the same. The Respondents were permitted to file and serve affidavit evidence in

response to the application with a right to reply to the 1st Applicant. Written submissions and authorities were also ordered to enable the court to further consider the application for interim injunction on 25th September 2025.

[4] The Applicants filed a Notice of Application for Court Orders for Permission to Apply for Judicial Review on 25th July 2025 supported by evidence on affidavits (the Application), to which the Respondents filed evidence in response. The hearing into the application commenced on 25th September 2025 and was part heard to 13th November 2025 on discovery that affidavit evidence filed in reply by the Applicants and sought to be referenced in oral submissions, had not been properly served.

[5] The hearing continued on 13th November 2025 and on close of oral arguments, a decision was reserved to today's date. That decision and the reasons for it, are now produced.

THE APPLICATION

[6] The first relief sought on the Application is for leave to apply for a judicial review in relation to *"decisions and/or actions of the Respondents whereby they purported to issue notices, summonses and seize documents purportedly under the provisions of the [ICA]."* The observation of the court that the relief was too broadly stated to be the subject of relief was conceded by learned King's Counsel for the Applicants. The Application accordingly proceed in respect of the following relief.

(a) Permission to extend time to apply for leave for judicial review in relation to the Notice and Events of 11th April 2025.

(b) Leave to apply for an order of Prohibition to prevent the Respondents from acting on or continuing to act on:

i. Notice of the 11th April 2025 to the 2nd Applicant (the 11th April Notice);

ii. Notice of the 9th July 2025 (the 9th July Notice);
iii. Notice of the 15th July 2025 to the Acting Manager of the 1st Applicant's Public Procurement Unit (15th July Notice); and
iv. Notice of the 15th July 2025 to the Acting Manager of the 1st Applicant's Director of Finance and Accounts (15th July Notice).

(c) Leave to apply for an order of Prohibition to prevent the Respondents from acting on or continuing to act on the Summons the 1st Applicant's Director of Corporate Services dated the 14th July 2025 (the 14th July Summons).
(d) Leave to apply for an order of Certiorari to quash the Notices of 11th April, 9th July and 15th July 2025.
(e) Leave to apply for an order of certiorari to quash the 14th July Summons.
(f) Leave to apply for an order of Mandamus to compel the Respondents to release and return all documents, files and articles seized during the entry and search and/or seizure from the 1st Applicant's offices including but not limited to the personnel file of the 2nd Applicant and those listed in two Evidence Acquisition Forms dated 11th April 2025 and another dated 16th July 2025.
(g) An injunction to restrain the Respondents whether by themselves their servants and/or agents or otherwise howsoever from entering the premises of the Applicant and /or examining, inspecting and/or taking copies of the personnel or any files or documents of the Applicants which are the subject of the purported investigation, and the 11th April, 9th July and 15th July Notices, pending determination of the claim for judicial review.
(h) An injunction to restrain the Respondents whether by themselves their servants and/or agents or otherwise howsoever from entering the premises of the Applicant and inspecting and/ or taking copies of the personnel or any files or documents of the Applicant which are the

subject of the Notices dated the 9th July 2025, and the 14th July Summons pending determination of the claim for judicial review.

(i) An injunction to compel the Respondents to return and/or seal the personnel or any files or documents of the Applicants which are the subject of the 9th July Notice and the 14th July Summons pending determination of the claim for judicial review.

(j) Such further or other relief as the Court may deem necessary or appropriate.

[7] The Applicants rely on forty-four (44) grounds for the various relief, which I will not reproduce here. I have nevertheless sought to summarise and make reference to them in the discussion which follows. The court expresses its gratitude for being so permitted and for the assistance offered by Counsel by way of submissions and authorities. I have not found it necessary to refer to each of the authorities in disposing of the Application, but all were duly considered.

DISCUSSION AND ANALYSIS

ORAL APPLICATION FOR INTERLOCUTORY INJUNCTION

[8] On the 16th July 2025 when injunctive relief was granted with the consent of the parties to it, I indicated that I would reduce to writing my views on the evidentiary requirements on an oral application for interim injunction. I now do so in fulfilment of that promise.

[9] It is beyond dispute that interlocutory injunctions can be granted in judicial review claims or that such an application can be made before the application for leave. The Applicants have nevertheless cited the decision of the Eastern Caribbean Supreme Court in **Hon Shawn Richards et al v the Constituency Boundaries Commission et al** SKBHCV2013 /0241, 25th November 2013 where rules of court

identical to those appearing at Parts 17 and 56 of our Civil Procedure Rules (the CPR) came on for consideration on an urgent *ex parte* application for interim order. This holding appears at page 3 of the judgment.

> 1. *An application for leave to apply for judicial review marks the point of commencing proceedings under Part 56 of the Rules. Where an applicant intends to commence judicial review proceedings, he may in an appropriate case, before filing his application for leave to apply for judicial review, or on filing such an application for leave, apply under Part 17 for an ex parte order. There is nothing in the Part 56 which states that the provisions of Part 17 of the Rules do not apply to judicial review proceedings; in fact CPR 2000 by Part 2.2(1) expressly defines 'civil proceedings' to include 'judicial review' proceedings…*

[10] The power to grant interim interlocutory relief, including interlocutory injunctions is codified in the CPR at rule 17.1.

[11] Under rule 17.2, where no claim has been issued, an application for an interim remedy must be made in accordance with the general rules about applications which are contained in Part 11. Rule 11.6 provides that

> *(1) The general rule is that an application must be in writing.*
>
> *(2) An application may be made orally if -*
>
> *(a) this is permitted by a rule or practice direction; or*
>
> *(b) the court dispenses with the requirement for the application to be made in writing.*

[12] Rule 17.3 also goes on to prescribe that

> *(1) An application for an interim remedy must be supported by evidence on affidavit unless the court otherwise orders.*

> *(2) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.*
>
> *(3) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.*

[13] Although the access to the court for interim remedies is regulated by the rules of court, as submitted by learned King's Counsel for the Applicants, the authority of the court to grant interlocutory injunctions is given by section 49(h) of the **Judicature Supreme Court Act** (the JSCA) which states:

> *With respect to the law to be administered by the Supreme Court, the following provisions shall apply, that is to say -*
>
> *(a) …*
>
> *(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 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.*
>
> *[Empasis added]*

[14] When the JSCA and the rules of court are read together, it is clear that the court reserves the discretion to grant an interlocutory injunction where there is no written application and in the absence of evidence on affidavit, on the ground that it

appears just or convenient that such relief should be granted. I can see no reason that the discretion should not apply to claims where judicial review is the substantive relief in the same way that it would apply to other claims, to enable the an application for interlocutory injunctive relief to be made before the application for leave is made.

[15] Considering the possible impact of an interlocutory injunction on the rights of others however, particularly in circumstances where no claim has been made, it is my view that the discretion should only be exercised in cases of urgency.

[16] I am assisted by extracts from **Blackstone's Civil Practice** (2016) which was cited by the 1st Applicant. The learned editors observe at paragraph 37.4 that procedural requirements are usually relaxed in urgent cases so far as is necessary to do justice between the parties. By way of example, they reference the ability to make applications before process is issued and without notice or less notice than is ordinarily required, in appropriate circumstances; to rely on informal evidence such as unsworn draft affidavit or witness statement, correspondence or facts related to the court by counsel on instructions; to proceed without drafts having been prepared as a last resort; to interrupt a judge's list; to see a judge out of normal hours; or to make applications over the telephone.

[17] As to what constitutes an *"urgent case"*, I accept as stated in **Blackstone's** that it is a case

> *… where there is true impossibility in giving the requisite three clear days' notice or in arranging for the issue of process. There has to be an element of threatened damage, requiring the immediate intervention of the court, which may occur between the without-notice hearing and the hearing of an effective application (Mayne Pharma (USA) Inc v Teva UK Ltd [2004] EWHC 3248 (Ch), LTL 3/12/2004). An "impossibility" resulting from delay on the part of the claimant will not suffice (Bates v Lord Hailsham of St Marylebone [1972] 1 WLR 1373).*

[18] It was also observed by Sir John Donaldson MR at page 591 of **WEA Records Ltd v Visions Channel 4 Ltd and others** [1983] 2 All ER 589, cited by the Applicants, that while the procedure of considering an application for interim remedy without the production of affidavit evidence and without counsel having been able to produce unsworn draft affidavits, but armed only with a draft writ and instructions as to the nature and results of a plaintiff's injuries was unusual, it was not without precedent in a situation of appropriate urgency.

[19] In the instant case, there was no written application or evidence on affidavit before me on the 16th July 2025. The 1st Applicant's Counsel had produced a draft of the application proposed to be pursued, documents sought to be challenged including the 9th July Notice and 14th July Summons. Correspondence which had passed between the 1st Applicant and the Respondents relative to its inability to comply with the 9th July Notice on account that legal advice was being sought on it, and objections to compliance with the said notice.

[20] Facts on instructions were also advanced by Counsel who indicated to the Court that over the objections of the 1st Applicant to the production of the documents requested on the 9th July Notice, the 1st Respondent via the 14th July Summons required the same documents to be produced by an employee of the 1st Applicant under pain of punishment; had prevailed upon the said employee who was at a hearing before the 1st Respondent on the 16th July 2025 to produce the documents; and that officers from the 2nd Respondent were at the 1st Applicant's office where the documents the subject of objection and others were taken, including the 2nd Applicant's personnel file.

[21] In the above circumstances, the case was indeed one of urgency, which warranted the approach taken by the 1st Applicant in making the oral application for injunction on the afternoon of 16th July 2025, which was granted by and with consent.

FURTHER CONSIDERATION OF THE APPLICATION FOR INTERLOCUTORY INJUNCTION

[22] The considerations which guide the court on an application for interlocutory injunction in public law cases are those established in **American Cyanamid Co. v Ethicon Ltd.** [1975] A.C. 396, with appropriate regard for the public law elements of the case. Generally, the considerations are whether there is a serious question to be tried; the adequacy of damages to either or both parties; and where there is doubt as to the adequacy of damages, whether the balance of convenience lies in favour of the grant or refusal of the interlocutory relief.

[23] As observed by Lord Walker in **Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment of Belize and another; (Practice Note)** [2003] 1 WLR 2839, page 2850 however, owing to the breadth of the range of public law cases *"… the court has a wide discretion to take the course which seems most likely to produce a just result (or to put the matter less ambitiously, to minimise the risk of an unjust result)."*

[24] The public law remedy being judicial review for which leave of the court is required, whether there are serious questions to be tried is appropriately considered in the context of the threshold requirement for leave to apply for judicial review, that is, whether there are arguable grounds with a realistic prospect of success. For reasons set out below, it is my judgment that the threshold requirement has been met to enable the Applicants to be granted leave to apply for orders of certiorari and prohibition in respect of the 9th July and 15th July Notices, and the 14th July Summons. There are accordingly serious questions to be tried in these regards.

[25] There is no suggestion that damages would be an adequate remedy for any of the parties, and if there was I would be inclined to reject it having regard to the functions of the Respondents under the ICA, and the matters of which the Applicants complain. In the circumstances, whether the balance of convenience

lies in favour of the grant or refusal of the interlocutory injunctions sought comes on for consideration.

[26] The Applicants claim two prohibitory and one mandatory interlocutory injunction which impact the 9th July and 15th July Notices as well as the 14th July Summons, and actions taken in their purported execution by the Respondents.

[27] It is submitted by the Applicants that the balance of convenience lies in favour of the grant of the reliefs. It is their submission that if the Respondents are allowed to *"complete"* their investigations the court would be stripped of the jurisdiction to make any order of real significance, and in effect interfere with their right of access to the courts.

[28] To the extent that the refusal of interlocutory injunctive relief would enable the Respondents to *"complete"* their investigations on the basis of documents, information or other material in the possession of the Respondents in purported execution of the 9th July Notice and 14th July Summons; or documents, information or other material to be produced in purported execution of the 15th July Notices, there is merit in the Applicants' submissions.

[29] Mindful of the Respondents' duties to investigate in *"the manner specified by and under [the ICA]"* which is not challenged; the relief the Applicants will be permitted to pursue by way of judicial review; the fact that the grant of leave does not determine the Applicants' claim; and that the role of the court in judicial review proceedings is supervisory, I find that the Applicants should be granted interlocutory injunctions in the terms set out in the Orders herein. It is my view that their scope minimise the risk of an unjust result for the parties pending determination of the claim for judicial review.

APPLICATION TO EXTEND TIME TO APPLY FOR LEAVE FOR JUDICIAL REVIEW

[30] CPR 56.6(1) requires applications for leave to apply for judicial review to be made promptly and within three (3) months from the date when grounds for the application first arose, in any event. The Applicants concede in submissions that there has been a delay of fourteen (14) days in making the application for leave in respect of the 11th April Notice. This prompts the application for permission.

[31] Delay only operates as a discretionary bar, the court being permitted to extend time on being shown good reason for doing so as prescribed by rule 56.6 (2). In considering whether to refuse leave or grant relief because of delay, rule 56.6(5) requires the court to consider whether the granting of leave or relief is likely to cause substantial hardship, substantially prejudice the rights of any person, or be detrimental to good administration.

[32] The Applicants rely on the decision of Dunbar-Green J (Ag.) (as she then was) in **Constable Pedro Burton v the Commissioner of Police** [2014] JMSC Civ 187 where the dictum of Maurice Kay, J in **R v Secretary of State for Trade and Industry, *ex parte* Greenpeace** [1999] Lexis Citation 3405 was cited, relative to extension of time to apply for judicial review. The learned judge regarded the material questions as being whether there was a reasonable excuse for applying late; damage which would be occasioned in terms of hardship or prejudice to third party rights, or detriment to good administration if permission is granted; and whether the public interest requires that the applicant should be allowed to proceed.

[33] As observed by Dunbar-Green J (Ag.) at paragraphs [24] to [25] of the **Burton case**

> *The question which arises is whether this delay should act as a bar if it were found that there are good reasons to allow the application. The import of rule 56.6 is that it is not so much a question of whether there are good*

> *reasons for the delay as good reasons to extend time (See R (Young) v Oxford City Council (2002) EWCA Civil 240). Albeit, the existence of unexplained delay could be decisive in an exercise of discretion whether to grant leave for extension of time (see R v Secretary of State ex p Furneaux [1994]] 2 ALL ER 652, 658. It is my view that the applicant's pursuit of a statutory remedy is good reason for the delay. But that is not the end of the matter. The court must … decide whether good reason exists to extend time… It is also recognised that a good reason for extending time may also be found in the reasons for delay as well as the strength of the merits of a particular case.*

[34] The Applicants contend that the reason for delay is that they sought legal advice on the entry into the 1st Applicant's offices, made a report to the relevant Ministry, had no contact from the Respondents since the 11th April 2025, and thought the investigation was at an end. For organizational convenience, I will start with the last of the proffered reasons.

[35] It is the evidence of the 1st Applicant's Director of Legal Affairs that on conclusion of interactions with her on 11th April 2025, the 2nd Respondent had promised to return on 14th April 2025 to take formal statements and retrieve additional documents but had not done so. She goes further to indicate that certain documents were only returned to the 1st Applicant on 26th June 2025 at her request in order to complete an annual report.

[36] A Senior Investigator of the Commission gives affidavit evidence that while she is not in a position to admit or deny those averments, she is aware that officers attended the 1st Applicant's offices on the 15th April and 4th June 2025 to record witness statements from a Manager and Acting Manager respectively. While the 2nd Applicant has given evidence in response to the Senior Investigator's affidavit she does not deny these averments. In fact, she offers no response to them.

[37] The evidence before me does not support the allegation of no contact with the Respondents since 11th April 2025 to lead the court to conclude that there was any reasonably held belief that the investigation was at an end.

[38] Further and in any event, section 54 of the ICA expressly provides for the communication of outcomes of investigations by the Director of Investigation and the Commission. There being no evidence of any such communication, any view that the investigation was at an end because the Respondents had not communicated with the Applicants could not have been reasonably held. In these circumstances I do not regard as a good reason for the delay, the Applicants' view that they thought the investigation was at an end.

[39] In respect of correspondence to the Ministry, it is observed that it is by way of a brief dated 16th April 2025. There is no evidence that any response was required from the Ministry to inform how either of the Applicants would proceed. In fact, it concludes with the indication that all requests made by the 1st Respondent on 11th April 2025 were complied with by the 1st Applicant. This latter indication also belies the contention that the reason for the delay is that the Applicants sought legal advice on the entry on 11th April 2025, and the execution of the notice of the same date.

[40] Additionally, on the evidence for the Applicants, it was not until 9th July 2025 that legal advice was sought by telephone and the right to counsel under the ICA invoked orally. The advice was sought in respect of a notice dated 9th July 2025 which was issued to a Director of the 1st Applicant which relates to the review and copy of personnel files. Later on the said date, the Attorneys-at-law for the Applicants wrote to the Senior Investigator of the 1st Respondent in reference to the said notice and advised that the right to Counsel was being invoked pursuant to section 45(2) of the ICA, and that consent to enter the premises of the 1st Applicant was being withdrawn. A request was made to permit the said Attorneys-at-law until 16th July 2025 to give advice to the 1st Applicant.

[41] On the evidence the legal advice did not relate to the entry on 11th April 2025, the events of that day or steps taken by the Respondents thereafter, up to 9th July 2025. In any event, the Respondents were granted entry into the premises on 11th April 2025 to execute the notice of the said date. As evidenced by the brief to the Ministry dated 16th April 2025, all requests made by the 1st Respondent on the occasion were complied with by the 1st Applicant. The 9th July 2025 communication cannot retroactively withdraw consent to entry on 11th April 2025 or compliance with the 11th April Notice.

[42] In all the foregoing circumstances, no good reason for the delay in applying to the court for leave for judicial review in respect of the 11th April 2025 Notice has been shown by the Applicants.

[43] While the absence of an explanation for delay could be decisive of the exercise of the discretion whether to grant an extension of time to apply for leave, I believe it is well settled that the absence of a good reason for delay does not disentitle an applicant to the favourable exercise of the court's discretion.

[44] The Applicants submit that subsequent to the events of 11th April 2025 and *"at some point*", the Respondents indicated they were investigating sanitation contracts but that they were unaware of their legal right to object to the *"seizure"* of the documents in the circumstances where no search warrant or stated grounds for the investigation were produced by the Respondents, who attended with the police. They argue further that the ground is meritorious and is a good reason to extend time; and that the grant of leave in the circumstances of the case augers well for good public administration. I do not find merit in these submissions.

[45] The 11th April Notice which was directed to the 2nd Applicant in her capacity as Managing Director of the 1st Applicant requested access to the 1st Applicant's premises, and to be permitted to examine documents and records pertaining to the investigation. It asks that the requested documents be made available by the Applicants for review and/or custody by an investigation team on the same day, a

"here and now" notice. The notice goes on to say that all documents and records relating to all contracts awarded by the 1st Applicant for provision of steam cleaning and sanitation services for the period stated in the notice would be examined. While the Applicants say that they were advised by the Respondents sometime after 11th April 2025 that sanitation contracts were being investigated, it is evident on the face of the 11th April Notice that sanitation contracts for the stated period were being examined in furtherance of the Respondents' investigation.

[46] The notice then goes on to indicate by class some of the documents which would be reviewed in those regards, including all contracts, invoices, purchase orders, requisition slips and proof of payment receipts, purchase orders, requisition and other information as determined in the sole discretion of the investigation team of the 2nd Applicant.

[47] In order to facilitate the review process, a request was made for access to a photocopier and/or photocopying services, and for a designated and secure room at the 1st Applicant's premises during the course of the review. The notice also sets out a process for communicating inability to comply with the notice. The evidence of the Director of Legal Affairs is that she read, completed and signed the said notice which she collected on behalf of the 2nd Applicant who was out of office at the time.

[48] The Respondents' investigation team was permitted the access requested and as I will endeavour to show later, there is no arguable ground with a realistic prospect of success that a warrant was required for this purpose. Additionally, the ICA sets out the parameters within which documents may be requested for production, and the rights afforded and or preserved to the person notified, including a defence to prosecution for failure to comply with a request of the Director of Investigations - that what was requested for production or asked to be answered is not relevant to the investigation. Ignorance of the law and the rights it afforded the Applicants does not avail.

[49] Further and in any event, the 11th April Notice having been executed with consent, save as a matter of academic interest, I can see no utility in granting leave to challenge that notice by way of judicial review. As submitted by Counsel for the Respondents, it is trite that the court will not act in vain.

[50] In all these premises the application for extension of time to apply for leave for judicial review of the 11th April Notice is refused.

ARGUABILITY AND PROSPECTS OF SUCCES OF THE GROUNDS FOR JUDICIAL REVIEW

[51] The Applicants also seek to challenge the 9th and 15th July Notices and the 14th July Summons, to which the enquiry now turns.

[52] Pursuant to rule 56.3, a person who wishes to apply for judicial review must first obtain leave of the court. While an application may be made without notice, it must be verified by evidence on affidavit which includes a short statement of all the facts being relief upon.

[53] As observed by Lord Sales in delivering the judgment of the Board in **Attorney General of Trinidad and Tobago v Ayers-Caesar** [2019] UKPC 44 at paragraph 2,

> *…[t]he threshold for the grant of leave to apply for judicial review is low. The [court] 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.

[54] The referenced principle in **Sharma v Brown-Antoine** [2006] UKPC 57 has been adopted and consistently applied in our courts. It is this.

> *The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: see R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628 and Fordham, Judicial Review Handbook 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R (N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468, para 62, in a passage applicable, mutatis mutandis, to arguability:*
>
> > *"the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*
>
> *It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen": Matalulu v Director of Public Prosecutions [2003] 4 LRC 712, 733.*

[55] As to the grounds for judicial review, the Applicant relies on the following observations of Brooks, P in **Latoya Harriott v University of the Technology, Jamaica** [2022] JMCA Civ 2, [42]:

> *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 further development on a case-by-case basis may not in course of time add further grounds…"*
>
> *In addition to those 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.*

[56] No authority has been provided, and this court is unaware of any decision where proportionality and unconstitutionality have been recognized as discrete grounds for judicial review in this jurisdiction. No arguments were advanced before me that they ought properly to be so regarded.

[57] It is my own view in any event that caution is to be exercised to avoid elevating the "suggested grounds" as "established grounds" for judicial review, particularly in the context of our written constitution where the rights guaranteed thereby are applied

horizontally, and derogations permitted on the ground that they are demonstrably justified in a free and democratic society. Our courts have regarded the test for constitutionality in **R v Oakes** [1986] 1 S.C.R 103 as being applicable in determining questions of breach of constitutional rights. By this test, where there is an allegation of constitutional breach, the party who argues that derogation is permissible must show that the means adopted are reasonable and demonstrably justified, a form of proportionality test.

[58] There are three well established grounds for judicial review: illegality, irrationality and procedural impropriety which Lord Diplock described as follows in **Council of Civil Service Unions and ors. v Minister for the Civil Service** [1984] 3 WLR 1174, p. 1196.

> *… By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.*
>
> *By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system…*
>
> *I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head*

covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice…

Procedural Impropriety

[59] The Applicants' submission which cannot be resisted, is that section 6(3)(b) of the ICA imposes a duty of fairness on the 2nd Respondent. The section provides that the 2nd Respondent in exercise of its powers and in performance of its functions *"shall act independently, impartially, fairly and in the public interest."* The Commission being authorised pursuant to section 30(1) of the Act to carry out its functions through its various divisions including that which is headed by the 1st Respondent, it is my view that the duty of fairness would also extend to the 1st Respondent. Further, outside of any statutory requirement for fairness, the common law recognises that in taking administrative action a statutory functionary should act with procedural fairness towards the person who will be affected by his decision.

[60] The Applicants rely on **R v Secretary of State for the Home Secretary, *ex parte* Doody** [1994] 1 AC 531, 560 where Lord Mustill says this of fairness in the context of administrative actions,

(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 to decisions of a particular type.

(3) The principles of fairness are not to be applied by rote identically in 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.

Failure to consider and respond to request for time and objection to notices

[61] It is the Applicants' evidence that that the 1st Applicant had requested time to consult with counsel and had provided lawful objections to complying with the notices sought to be impugned, to which there has been no response. It is accordingly submitted that in failing to consider and respond thereto, there is an arguable ground with a realistic prospect of success that the Respondents have breached the principles of procedural fairness in respect of the notices and the summons.

[62] Save that I do not find that the referenced request for time or the objections are applicable to the 11th April Notice - which were earlier addressed - I find that there is merit in the Applicants' submission.

[63] All the notices in contention advise the persons to whom they are directed that the 2nd Respondent Commission is investigating allegations of corruption, irregularities and impropriety at the 1st Applicant, but each is issued for a specific purpose in furtherance of the said investigation.

[64] The Respondents' evidence is that on 9th July, the date of and expected execution of the 9th July Notice, its investigation team which was at the 1st Applicant's office and in the process of photocopying documents the subject of the notice were orally asked to halt the process. The request was said to have been made on account that legal advice was being sought and on the ground that legal professional privilege was being invoked. The evidence is that the investigation team left the premises.

[65] On the said 9th July, the 1st Applicant's counsel wrote a letter to the Senior Investigating Officer. There is a dispute as to whether the letter was given to its intended recipient at the 1st Applicant's offices or whether it was delivered thereafter but nothing turns on it. It suffices for present purposes to say that the letter was received by the officer of the 2nd Respondent on 9th July. The correspondence refers to the 9th July Notice and does several things. It

(i) advised that the 1st Applicant was invoking the right to counsel pursuant to section 45(2) of the ICA;

(ii) withdrew the consent given to enter the 1st Applicant's premises;

(iii) advised that if consent was granted *"in relation to the provision of complete file(s), inclusive of electronic records, as a well as database(s) and system(s) pertaining 'to the referenced matter",* it too was withdrawn;

(iv) indicated that the 1st Applicant and counsel are mindful of the duty to comply with the lawful and valid authority of the Commission but that in relation to the matter, the 1st Applicant was not given sufficient time

to consult with counsel and make an informed decision as to the validity or lawfulness of the request;

(v) advised that the 1st Applicant is consulting counsel who was unable to give the advice sought at that time as the notice was issued at the time of its execution;

(vi) requested that the counsel be permitted to 16th July 2025 to provide the advice sought;

(vii) indicated that if there was any area of the Respondents' request that was urgent or for which there are imminent risks, the same should be communicated to counsel so that advice on those areas could be expedited; and

(viii) asked for the Respondents' kind cooperation and response as necessary.

[66] The correspondence articulates the 1st Applicant's position and its inability to comply, and arguably makes reasonable requests of the Respondents. While not addressed to the 1st Respondent as directed in the notice, it having been received by the Respondent's Senior Investigating Officer, the Respondents are properly regarded as having notice of it.

[67] The 9th July Notice was directed to the 2nd Applicant. It requested access to the 1st Applicant's premises, and asked that documents and records pertaining to the investigation be made available for review and/or custody by an investigation team on the same day. It notifies that all files, documents and records related to seven named persons who are or were employed to the 1st Applicant during a period specified in the notice would be reviewed, specifically, their employment contracts and other information as determined in the sole discretion of the investigation team.

[68] Without responding to the reasons given for the inability of the 1st Applicant to comply with the notice, and before the date asked by counsel for the provision of legal advice, the Summons dated 14th July 2025 hereinafter called "the 14th July Summons" under the hand of the 1st Respondent was issued. It is directed to the 1st Applicant's Director of Corporate Services who was required to appear before the 2nd Respondent Commission on 16th July 2025 to give evidence in respect of *"allegations of Corruption, Irregularities and Impropriety"* at the 1st Applicant. The recipient was to bring with her copies of all personnel files, inclusive of employment contracts of the persons named in the 9th July Notice of which counsel wrote in her letter of the said date. In these circumstances the Applicants are of the opinion that the summons was issued with a view to circumventing the reasons given on behalf of the 1st Applicant for its inability to comply with the 9th July Notice.

[69] The witness attended at the 2nd Respondent's office in response to the summons on 16th July 2025. On the Respondents' evidence she did not bring the requested files and indicated reasons for the failure, including that she was not the custodian of the files and that the 1st Applicant was objecting to producing the documents and had sent correspondence in that regard.

[70] On being so advised the 1st Respondent is said to have outlined the provisions under the ICA with respect to relevance and advised the witness of the consequences for breaches or non-compliance with requests of the Commission. The court observes that the failure to comply with requests of the Commission without good reason constitute criminal offences punishable by fine or imprisonment.

[71] On the Respondents' own evidence, the 1st Respondent also indicated that the witness must provide the necessary documentation by 2:00 p.m. whereupon she asked if members of the Commission's team could accompany her to the 1st Applicant's office to retrieve and hand over the requested documents, to which the 1st Respondent eventually agreed.

[72] Counsel for the 1st Applicant sent a second letter dated 16th July 2025 (the Second July 16th letter) addressed to the Senior Investigating Officer and the 1st Respondent. It was sent and forwarded by email to each of them at 2:02 p.m. and 3:35 p.m. respectively on the said date. It is stated to be further to the letters of 9th and 15th July 2025. There is not letter bearing the latter date before the court. The only other letter before the court is that dated 14th July 2025 which I believe might have been intended to be referenced. In any event, Counsel places on record that the Respondents have not responded to their letters, the fact that the witness was held over to 2:00 p.m., and that the Commission's officers were in fact in attendance at the 1st Applicant's office together with armed guards notwithstanding reasons supplied for noncompliance. The addressees were advised that in the circumstances, Counsel was in the process of applying to this court for orders to quash the Notice of 9th July 2025 and the 14th July Summons, and for the urgent hearing of an application for injunction. The oral application for injunction came on for hearing before me on 16th July 2025.

[73] An important feature of each of the notices are the *"Prescribed Notes"* to the respective recipients. The paragraph below is extracted from those notes.

> *Inability to Comply With Notice*
>
> *4. If you are unable to comply with this notice kindly write to the Director of Investigation, Integrity Commission indicating your reasons. Correspondence may be hand delivered, sent by facsimile transmission, electronic mail or registered post. Save in the case of registered post, where the letter must be registered prior to the final day when this statement is due, all other correspondence(s) must be received at the I.C. prior to the final day when this statement is due.*

[74] This notification is not merely gratuitous, the ICA itself appears to contemplate an opportunity to provide reasons for an inability or failure to comply with a request from the Respondents. I so conclude in light of the provisions at section 48 (5) and (6) which respectively provide that for the purposes of an investigation no person

can be compelled to give evidence or produce documents which are subject to legal professional privilege, or which he could not otherwise be compelled to give or produce in proceedings in a court of law; and that none of the powers given to the 1st Respondent to obtain information is deemed to remove the right of a person against self incrimination.

[75] Outside of what I regard as implied by the ICA, the extracted notification arguably creates an expectation on the part of the recipient of a notice that inability to comply could be communicated in writing by any, or a combination of any of the suite of stated methods. That being the case, the recipient should be permitted sufficient time to avail himself of the options. I observe that both the 11th April Notice and the 9th July Notice were executed on the very date of issue, with no due date given for the statement. Such an approach leaves little to no time to engage the methods prescribed for communicating an inability to comply.

[76] Unless the Respondents intended to give the option with one hand and take it with the other, the referenced notification also appears to create an expectation that when those reasons are supplied they would be duly considered. Given the consequences for failure to comply with the requests of the Respondents, fairness also appears to dictate that they would communicate whether or not the failure to comply is excused and in so doing provide a gist of their own position on the reasons proffered. The party to whom the notice is issued being required to reduce the reasons for the inability to comply in writing, it is arguable that the Respondents' position should also be so reduced not only in fairness but to ensure that the process remains transparent.

[77] Before the Second 16th July letter, two letters setting out the reasons for the 1st Applicant's inability to comply with the 9th July Notice were received by the Commission. There was no response to either letter. Considering the expectations which are arguably created by the Respondents' referenced note, their failure to consider and communicate a response to communications of inability to comply, and the issue thereafter of the 14th July Summons calling for production of the

same files requested in the notice, I come to the view that the Applicants have demonstrated that there are arguable grounds for judicial review with realistic prospects of success relative to the 9th July Notice and the 14th July Summons.

[78] Compliance with the 15th July 2025 notices was not due until 30th July 2025. There is no correspondence relative to inability or otherwise of the 1st Applicant to comply with them but that is entirely understandable having regard to the interim prohibitive injunction ordered on 16th July 2025 and the filing of the application for leave to apply for judicial review in respect of them. This conveniently takes me to the other submissions advanced by the Applicant in respect of the allegation of procedural impropriety.

Notices and Summons vague and lacking in specificity

[79] Although the Applicants have raised these concerns to ground their complaint of irrationality in written submissions, at their core the complaints go to the fairness of the process engaged by the Respondent in issuing the 9th and 15th July Notices and the 14th July Summons.

[80] The Applicants say that the notices and the summons fail to state whether the Respondents were investigating government contracts or prescribed licences and are accordingly non-compliant with section 51(a) of the ICA, which they contend prescribes specific purposes for which government contracts are investigable, distinct from those for the investigation of prescribed licences. In failing to state which is being investigated, the Applicants say they were *"left in the dark"* and characterise the Respondent's approach as a *"fishing expedition".*

[81] They also complain that the notices and summons are overbroad and disproportionate in any event, and do not enable them to make an informed decision on questions of relevance of the documents requested and taken,

including personnel files which contain personal, confidential and sensitive information including medical records.

[82] The Applicants also protest the decision of the Respondents to seize the 2nd Applicant's personnel file which was not included in the notices or summons. They contend that this action demonstrates that the Respondents acted in bad faith and for an improper purpose in taking her file, that is, in retaliation for the invocation of the right to counsel.

[83] The only cohesive thread in the notices, so far as a ground for investigation is concerned, is that

> *… [t]he Integrity Commission is investigating allegations of corruption, irregularities and impropriety at the [1st Applicant] to determine, inter alia, whether there are reasonable grounds to suspect that any member of the [1st Applicant] or any other related Public Body, officer or person has contravened the law and whether recommendations ought to be made…*

[84] Each notice asks for the production of disparate documents and require attendance before the 1st Respondent to be interviewed in different regards. In addition to identifying specific documents and classes of documents, the notices also require any other information as determined in the sole discretion of the 2nd Respondent's team.

[85] The 14th July Summons requires the witness to attend to give evidence in respect of *"allegations of Corruption, Irregularities and Impropriety at the [1st Applicant]"* and requires all personnel files, inclusive of employment contracts to be brought for persons identified. The 2nd Applicant was not among the persons identified. The witness is also directed to take with her *"any other correspondence and/or other pertinent document/thing concerning the ["allegations of Corruption, Irregularities and Impropriety at the [1st Applicant]."*

[86] While the 11th April Notice made clear that sanitation contracts for a certain period were being examined in furtherance of the investigation, there is no nexus between

that subject matter or notice is made in the 9th July and 15th July Notices and the 14th July Summons, which very broadly state what is being investigated.

[87] Allegations of corruption, irregularities and impropriety at an entity can cover a plethora of subject matters, including but not limited to one or any combination of the award, implementation or termination of government contracts, and the grant, issue, variation and suspension or revocation of prescribed licences. Where a gist of the subject matter of the investigation is not stated in a notice or summons, the relevance of what is required to be produced in furtherance of it, or answered on questions asked at an interview or in the course of giving evidence will be difficult if not impossible to determine by the person notified or summoned. It also leaves open the suggestion - as is made here in respect of the taking of the 2nd Applicant's personnel file - that documents and or information is sought and obtained for some improper purpose.

[88] In all these circumstances I find that the Applicants have arguable grounds with realistic prospects of success in respect of the complaints of vagueness and lack of specificity in respect of the 9th July and 15th July Notices, and the 14th July Summons.

Illegality

[89] The Applicants cite in aid an extract from **Halsbury's Laws of England** Vol. 61A (2018), paragraph 11 relating to jurisdiction and *ultra vires* which reads thus, so far as is material.

> *The courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. Such a body will not act lawfully if it acts ultra vires or outside the limits of its jurisdiction. The term 'jurisdiction' has been used by the courts in different senses. 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 wide*

> *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…*
>
> *[Emphasis supplied]*

Non-compliance with section 17J of the ***Revenue Administration Act*** *(RAA)*

[90] In contending that there is an arguable ground for judicial review with a realistic prospect of success on the basis of illegality, the Applicants submit in the first instance that in removing files from the 1st Applicant's office, including the 2nd Applicant's personnel file when her name was not included in the notices or the summons, was an abuse of power, process and authority and was done to intimidate the 2nd Applicant.

[91] They also contend that in removing the documents in the Evidence Acquisition Forms issued by officers of the Respondents on 11th April and 16th July 2025, the Respondents acted in contravention of the RAA, section 17J of which required the 1st Respondent to obtain a warrant to "seize" the documents. Having failed to do so, it is submitted that the Respondents acted unlawfully and *ultra vires* the ICA. I do not regard the Applicants as having any arguable ground with a realistic prospect of success in this regard.

[92] In respect of investigations generally, the 1st Respondent has the power to summon witnesses, compel production of documents or any other information and do all such things necessary for the purposes of conducting an investigation under the Act, pursuant to section 45(1)(a) of the ICA.

[93] While section 45(1)(b) goes on to state that the 1st Respondent also has such power, authority and privileges as are given to an authorised person under Part VIC of the RAA - which is concerned with enforcement of tax collection including the gathering of information etc for that purpose via search and seizure pursuant

to section 17J) - incorporated provisions of the RAA are not said to apply to the 1st Respondent *mutatis* mutandis. In the circumstances it is my view that the incorporated provisions of the RAA apply exactly as written without adaptation or modification for the context of the ICA. There being no evidence or suggestion that enforcement of tax collection is engaged here, the incorporated provisions would not apply. Accordingly, the Respondents were not required to obtain a warrant pursuant to section 17J of the RAA.

[94] The approach to incorporation of provisions of the RAA is to be contrasted with the approach taken with certain provisions of the **Commissions of Enquiry Act** (the CEA) at section 48(3) of the ICA which provides:

> *For the purposes of an investigation, the Director of Investigation shall have the same powers as a Commissioner pursuant to the provisions of the Commissions of Enquiry Act in respect of the attendance and examination of witnesses and the production of documents, and the provisions of sections 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 11K, and 11L of that Act shall apply,* mutatis mutandis*, in relation thereto:*
>
> *Provided that no prosecution for an offence as stated herein shall be commenced, except by the direction of the Director of Corruption Prosecution.*

[95] The provisions of the CEA incorporated by express reference prescribe offences relative to the failure of a witness to attend or produce documents without reasonable excuse or without being excused or released from attendance by the Director of Investigations; obstructing the police; refusing to take oath or answer questions without reasonable excuse; knowingly giving false or misleading evidence; improper dealing with documents; intimidation of witnesses; dismissal of witnesses from employment for attending before the Director; preventing the attendance of witnesses; bribery of witnesses; fraud on witnesses; and for contempt of the commission. The provisions are expressly stated as being applicable *mutatis mutandis,* that is, with such changes as are necessary.

[96] With the exception of matters to which Part VIC of the RAA applies, the mechanism for gathering information in furtherance of an investigation under the ICA is set out in sections 48 and 51(2) of the ICA.

[97] In addition to section 48(3) which was earlier reproduced, section 48 provides thus.

> *(1) Subject to the provisions of subsection (5), and section 50 [which deals with the duty and privileges of witnesses], the Director of Investigation may, by notice in writing, require a person who is the subject matter of an investigation or any other person who in the opinion of the Director of Investigation, is able to give assistance in relation to the investigation of a matter to -*
>
> *(a) submit such information and produce any document or thing in connection with such matter which may be in the possession or under the control of the person;*
>
> *(b) attend on the Commission, at such time as may be specified in the notice, to be heard by the Director of Investigation on any matter relating to the investigation.*
>
> *(2) The Director of Investigation may summon before him and examine on oath -*
>
> *(a) a person who has made a complaint, given information or a notification about a matter before the Commission; or*
>
> *(b) any public official, parliamentarian or other person who in the opinion of the Director of Investigation is able to provide information relating to the investigation,*
>
> *and the examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the* Perjury Act*.*
>
> *(3) …*
>
> *(4) Subject to the provisions of this Act, any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or thing, imposed on any person –*

(a) by or under the Official Secrets Act*, 1911, 1920 and 1939 of the United Kingdom in its application to Jamaica; or*

(b) by any other law,

shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Director of Investigation for the purpose of an investigation; and accordingly, no person shall be liable to prosecution for an offence under the Official Secrets Act*, 1911, 1920 and 1939 or any other law, by reason of his compliance with a requirement of the Director of Investigation under this Act.*

(5) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce documents which are subject to legal professional privilege or which he otherwise could not be compelled to give or produce in proceedings in any court of law.

(6) Nothing in this section shall be deemed to remove the right of a person against self incrimination.

[98] Two tools of general application are given to the 1st Respondent for obtaining information etc. under section 48, written notices which may be willingly complied with, and summonses to which criminal sanctions for non-compliance apply.

[99] In discharge of the 2nd Respondent's functions in relation to government contracts and prescribed licences, the 1st Respondent is entitled on its behalf, pursuant to section 51(1) of the ICA, to enter premises occupied by any person in order to make such enquiries or to inspect such documents or other property as the Commission considers necessary to any matter being investigated by the Director of Investigation. This right exists among other rights relating to entry, access, enquiries, inspection and retention of documents, records or other property. In their exercise the 1st Respondent is required as specified in the section, to obtain a warrant from a Judge of the Parish Court or a Justice of the Peace before entering any premises, save an except for *"government-owned premises".*

[100] There is no dispute that the 1st Applicant is a public authority, and the Applicants do not allege any breach on the basis that its premises are not *"government-owned premises"* nor has it presented any evidence in this regard which would take them outside of the section 51(2) exception.

Usurpation of court's power to determine whether objections reasonable

[101] Although raised by the Applicants in written submissions in advancing procedural impropriety, it is my view that the complaint in this regard is grounded in illegality. Accordingly it is considered here.

[102] The Applicants submit that the Respondents were obliged to consider the objection and respond to them, and if they were not agreed, it would be for the court to decide in accordance with the CEA whether the objections were reasonable. In failing to consider and indicate their position, and without withdrawing the notices they argue that the Respondents circumvented and usurped the jurisdiction of the court under section 11B of the CEA in attending on the 1st Applicant's offices where they *"seized"* documents.

[103] The Applicants rely on the decision in **Harold Brady v R** [2013] JMCA Crim 4 in these regards. In that case the appellant, being a witness before a commission of enquiry was charged and convicted under the CEA with the offence of refusing without sufficient cause, to answer questions put to him by the commission. This was in circumstances where his notice of objection and affidavit of his reasons therefor were known to the prosecution at the time, but were not brought to the attention of the judge. The appeal was allowed and the conviction quashed. Among other things, the Court of Appeal found that the prosecution should have placed the notice of objection and affidavit before the judge to consider whether there was refusal to comply without sufficient cause.

[104] Pursuant to section 48(3) of the ICA, section 11B of the CEA applies in respect of the attendance and examination of witnesses and the production of documents. By operation of both provisions, a person served with a summons to appear and give evidence before the Director of Investigations shall not fail to appear without reasonable excuse or without being excused or released from further attendance by him; or fail to produce documents required to be produced by the summons, without reasonable excuse. A person who contravenes either provision commits an offence and is liable on conviction by a Judge of the Parish to a fine or imprisonment in default. It is a defence to such a prosecution that the documents were not relevant to the matter into which the Director of Investigation is enquiring.

[105] In making the referenced defence available to the person summoned on a criminal prosecution for failure to comply without reasonable cause, it is evident that the relevance of the documents required to be produced by the summons to the investigation is a permissible consideration for compliance.

[106] By counsel's 9th July Letter on behalf of the 1st Applicant, the Respondents were advised of the inability to comply with the 9th July Notice on account that legal advice was being sought as to the validity or lawfulness of the request, and the time given for compliance (the same day) did not enable that to be done. Some time to the 16th July 2025 was requested to return the legal advice. Without responding, the 1st Respondent proceeded to issue the 14th July Summons to an employee of the 1st Applicant for attendance before him as a witness on 16th July 2025 at 10:00 a.m. and to produce the very same documents sought by the 9th July Notice, under pain of penalty.

[107] The witness attended before the 1st Respondent as directed by the summons, but she did not produce the requested documents. As earlier indicated she told the 1st Respondent that she was not the custodian of the files and that the 1st Applicant, her employer, was objecting to production of the documents and had sent correspondence in that regard.

[108] The 1st Respondent admits that the letter from Counsel on behalf of the 1st Applicant was received at the hearing - indicating the objection to providing the information "*on the basis of data protection principles, vagueness and reasonable cause"* - it having been received by the 2nd Respondent at 10:00 a.m. on 16th July 2025

[109] The 1st Respondent nevertheless reminded the witness of the "*chargeable offence in regard to her failure to provide the requested files… and she then agreed to provide the requested files immediately…"* The 1st Respondent together with a team from the 2nd Respondent went to the offices of the 1st Applicant to retrieve and did retrieve personnel files from the witness. The Applicants' evidence is that the 2nd Applicant's personnel file which was not among those listed on the 9th July Notice or 14th July Summons or other notice or summons was taken on the occasion.

[110] It is the 1st Respondent's evidence that notwithstanding the withdrawal of consent to access the 1st Applicant's premises, the Respondents were not precluded from using avenues available to them to proceed in the investigation as they are not subject to the direction of any other person or authority except the court by way of judicial review. Whatever the Respondents' view of the scope of their authority, they are both creatures of statute and must act within the four corners of their enabling legislation.

[111] Where a summons has been issued for the production of documents, and the documents are not produced by the witness, where the witness has offered an excuse for the failure to comply - which was done at the hearing - the remedy offered by the CEA is for the defaulting witness to be charged with the relevant offence and for a Judge of the Parish Court to determine the sufficiency of the reasons given for non-compliance.

[112] A not insignificant fact is that the summoned witness was not the custodian of the files and was herself an employee of the 1st Applicant. The personnel files were

also those of other of the 1st Applicant's employees or former employees to which the said applicant would have certain responsibilities in law. In these circumstances it appears to me that the 1st Applicant's position on the production of the personnel files would extend to the summoned witness. Whether the Respondents could request the files from the witness when her employer had indicated that it was not in a position to comply with the request and gave reasons therefor, which were not responded to, is indeed questionable.

[113] In these premises I find that in respect of the 9th July Notice and 14th July Summons, the Applicants have an arguable ground of illegality which has a realistic prospect of success.

Irrationality

[114] The Applicants advance a number of complaints in contending that they have arguable grounds with realistic prospects of success on the basis of irrationality. They appear to me to be conveniently discussed under two general heads, the absence of any reasonable ground for suspicion for an investigation and the failure to take relevant considerations into account.

Absence of reasonable grounds for suspicion

[115] The gravamen of the first complaint is that the notices and summons do not contain any reasonable grounds for the investigation, or for suspecting that an offence has been committed, or irregularities, impropriety or breach of any law. The complaint is unmeritorious.

[116] The Applicants rely on three authorities for their position, **Assets Recovery Agency (Ex-parte) (Jamaica)** [2015] UKPC 1, **R (Rawlinson & Hunter Trustees) v Central Criminal Court (DC)** [2013] 1 W.L.R. 1634 and **Noel King and ors v**

Commissioner of Customs and anor. 2005 HCV 00120, 19th June 2006. These cases were concerned with the statutory requirements for reasonable grounds or cause for believing or suspecting certain facts as a predicate for obtaining Customer Information Orders, warrants and a special warrant under criminal and customs legislation respectively.

[117] When regard is had to the bases for and outcomes of investigations by a Director of Investigation under the ICA, the authorities are clearly inapplicable and the articulated ground for challenge cannot be said to be arguable with any real prospect of success.

[118] The bases or grounds for an investigation by a Director of Investigation are stated at section 33 of the ICA. Broadly, they are: (a) on any allegation that involves or may involve an act of corruption or allegation relating to non-compliance with provisions of the ICA, based on *"any complaint, information or notification"*; (b) where necessary in the course of monitoring the award, implementation or termination of government contracts and the grant, issue, variation, suspension or revocation of prescribed licences for prescribed purposes and subject to limitations imposed on investigations into these matters at section 52(2) of the Act; and on his own initiative but subject to the general direction of the 2nd Respondent, any matter which may involve an act of corruption or non-compliance with the provisions of the ICA.

[119] Among other things which are not immediately relevant, pursuant to section 54 of the Act, if there are insufficient grounds for continuing an investigation, the Director of Investigation is required to terminate the investigation and issue a report of his findings to the Commission. On the completion of an investigation if he "*is satisfied that there are reasonable grounds for suspecting"*:

(a) That there has been a breach of any code of conduct by a public official or parliamentarian, the Director of Investigation is mandated to make recommendations to the Commission in his report for referral to the

relevant public body, the Speaker of the House of Representatives or the President of the Senate as relevant, for appropriate action.

(b) That an act of corruption or an offence under the ICA has been committed, he is required to recommend in his report to the Commission that the matter be referred to the Director of Corruption Prosecution who may take such action that is deemed appropriate.

[120] Where he finds that the matter which gave rise to the investigation does not constitute an act of corruption or wrongdoing, the Director of Investigation is also required to recommend to the Commissioner that the person who was the subject matter of the investigation be publicly exonerated of culpability unless the person requests in writing that the Commission not do so.

[121] Considering the provisions of sections 33 and 54 of the ICA, the Respondents are not required to have reasonable grounds to suspect breach of conduct, an act of corruption or an offence under the Act in order to investigate, and are in fact permitted to investigate to determine whether there are reasonable grounds for findings in those regards.

Failure to take into account matters which ought to be taken into account

(a) Reasons for inability to comply and objections to compliance

[122] The Applicants submit that their communicated inability to comply and abjections to compliance with the 9th and 15th July Notices and 14th July Summons were relevant matters which the Respondents ought to have considered before attendance at the 1st Applicant's premises to seize documents and issue the 14th July Summons to the said Applicant's employee to compel their production. Not having done so, the Respondents are alleged to have acted irrationally,

unreasonably and engaged in conduct which amounts to an abuse of power and discretion in the circumstances.

[123] As earlier indicated, the notices specifically notify the persons to whom the Notices were directed that they are to communicate inability to comply in writing. The ICA also offers protections for persons to whom notices and summonses are issued, whether through representation by an attorney-at-law, preservation of legal professional privilege and the right against self incrimination, providing defences to criminal prosecution or otherwise. When the Applicants' complaints are considered in the context of these statutory safeguards, I find that they have an arguable ground for irrationality which has a realistic prospect of success.

*(b) Applicability of the **Data Protection Act** ("the DPA")*

[124] As I understand it, the Applicants' complaint in this regard is that the latter were required to and failed to take into account the DPA in requesting production of employment contracts and personnel files by the 9th July Notice, and in seeking to compel production of the said personnel files via the 14th July Summons.

[125] Pursuant to section 48(4) of the ICA, subject to the provisions of the Act, any obligation to maintain secrecy or any restriction on the disclosure of information or production of any document or thing which is imposed on any person by or under the *Official Secrets Act 1911, 1920 and 1939* of the UK in its application to Jamaica, or *"by any other law"*

> *shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Director of Investigation for the purpose of an investigation; and accordingly, no person shall be liable for prosecution for any offence under the Official Secrets Act, 1911, 1920 and 1939, or any other law, by reason of his compliance with a requirement of the Director of Investigation under [the Act].*

[126] The DPA is premised on compliance with eight (8) prescribed data protection standards which are the fair and lawful processing of personal data; processing of such data for specified and lawful purposes; adequacy, relevance and necessity for the purpose for which the data is processed; accuracy; storage of personal data for no longer than is necessary; processing in accordance with the rights of data subjects under the Act; the taking of appropriate technical and organizations measures against unauthorised and unlawful processing, accidental loss, destruction or damage to personal data; and non-transference of personal data to a State or territory outside of Jamaica unless adequate levels for protection for the rights and freedoms of data subjects in relation to processing of personal data is taken by the State or territory. Accordingly, while it undoubtedly has disclosure or production components, it goes much further in that it establishes a specific framework for the *"processing"* of personal data. It therefore appears arguable that the legislation goes beyond the disclosure and production exemptions at section 48(4) of the ICA and is applicable to investigations by the 1st Respondent in issuing the notices and summons which request or compel production of personal data. The legal position is not entirely clear to the effect that a claim on this ground could not succeed so as to refuse leave to apply for judicial review.

THE PREROGATIVE RELIEFS

Certiorari and Prohibition

[127] In all the foregoing premises I find it appropriate to grant leave to the Applicants to apply for orders of certiorari and prohibition in respect of the 9th July and 15th July Notices, and the 14th July Summons. For reasons below, I arrive at a contrary view of the application to pursue the order of mandamus in respect of them.

Mandamus

[128] The purpose of an order of *mandamus* is succinctly and aptly stated by Jarrett, J in **Andrew Holness and Anor. v Craig Beresford and Ors.** [2024] JMSC Civ. 154, which is cited by the Respondents. It compels a public body or public officer to perform a statutory duty.

[129] It is recalled that the order of mandamus which the Applicants seek to pursue is aimed at compelling the Respondents to release documents, files and articles listed in Evidence Acquisition Forms as well as the personnel file of the 2nd Applicant. The court was not directed to the duty imposed on the Respondents to return the items, to which the remedy of mandamus would attach. The application for leave to apply for this prerogative relief is accordingly refused.

[130] The foregoing notwithstanding, it is an incident of the power to quash a record to also direct the return of items seized under colour of it, including on terms, as appropriate. The matter being at the leave stage, the exercise of that incidental power is not a concern of the court at present.

ORDER

1. The application for an extension of the time to apply for leave for judicial review in relation to the Notice dated 11th April 2025 is refused.

2. Leave to apply for orders of Prohibition to prevent the Respondents from acting on or continuing to act on the Notice dated 9th July 2025 to the Managing Director of Spectrum Management Authority; the Notice dated 15th July 2025 to the Manager (Acting), Public Procurement Unit, Spectrum Management Authority: and the Notice dated 15th July 2025 to the Director, Finance and Accounts, Spectrum Management Authority is granted.

3. Leave to apply for an order of Prohibition to prevent the Respondents from acting on or continuing to act on the Summons to Witness dated 14th July 2025 is granted.

4. Leave to apply for orders of Certiorari to quash the Notice dated 9th July 2025 to the Managing Director of Spectrum Management Authority; the Notice dated 15th July 2025 to the Manager (Acting), Public Procurement Unit, Spectrum Management Authority: and the Notice dated 15th July 2025 to the Director, Finance and Accounts, Spectrum Management Authority is granted.

5. Leave to apply for an order of Certiorari to quash the Summons to Witness dated 14th July 2025 is granted.

6. Leave to apply for an order of mandamus to compel the Respondents to release and return all documents, files and articles seized during the entry and search and/or seizure from the 1st Applicant's offices, including but not limited to the personnel file of the 2nd Applicant and those listed in Evidence Acquisition Forms dated 11th April 2025 and Evidence Acquisition Form dated 16th July 2025 is refused.

7. An injunction is granted to restrain the Respondents whether by themselves their servants and/or agents or otherwise howsoever from entering or further entering the premises of the Applicant and/or examining, inspecting and/or taking copies of personnel or any files or documents of the Applicants in purported execution of the Notice dated 9th July 2025 to the Managing Director of Spectrum Management Authority; the Notice dated 15th July 2025 to the Manager (Acting), Public Procurement Unit, Spectrum Management Authority; the Notice dated 15th July 2025 to the Director, Finance and Accounts, Spectrum Management Authority; and the Summons to Witness dated 14th July 2025, pending the determination of the claim for judicial review or as otherwise ordered by the court.

8. An injunction is granted mandating the Respondents to seal the personnel files including of the 2nd Applicant or any files or documents of the Applicants which are the subject of the Notice dated 9th July 2025, and the Summons to Witness dated 14th July 2025 pending determination of the claim for judicial review or as otherwise ordered by the court.

9. The First Hearing of the Fixed Date Claim Form is scheduled for 19th February 2026 at 11:00 a.m. for one (1) hour.

10. Costs of the application to be costs in the claim.

11. The Applicants' Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge