

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
PUBLIC LAW AND ADMINISTRATIVE LAW DIVISION
Case No. 2012/PUB/JRV/00030

BETWEEN

CARLA OUTTEN-MINNIS

Applicant

AND

MICHELE FIELDS

In Her Capacity as

SUPERINTENDENT OF INSURANCE COMMISSION OF THE BAHAMAS

Respondent

BEFORE: His Lordship The Honourable
Mr Senior Justice Jon Isaacs

APPEARANCES: Mr Dywan Rodgers for the Applicant

Mrs Lorna Longley Rolle and Miss Yolande Rolle
for the Respondent

HEARING DATES: 4th and 17th October and 8th November 2012

DECISION

Isaacs, Sr J

1. On 8 November 2012 I adjourned this matter with the promise of delivering my decision in writing at a later date; I do so now.

History

2. The Applicant, Carla Outten-Minnis, was an insurance agent for Clico (Bahamas) Limited (hereinafter referred to as "**Clico**"). She left Clico sometime in 2004. Four years later she received a letter dated 6 March 2008 from Ms. Denise Knowles, Human Resources Officer of Clico. The letter advised the Applicant that as it had been discovered that she had become connected with another insurance company without Clico's consent, Clico considered that to be in contravention of the agreement between the Applicant and itself. Hence, Clico terminated the Applicant's Managing General Agent Agreement with immediate effect. The Applicant must have found this letter bewildering since she says she had ceased working for Clico years before.

3. The letter went on to claim "***You are also advised that to date your outstanding debt to the company is (\$158,957.24) which will be forwarded to the Registrar of Insurance to ensure prompt repayment***". This raised a number of concerns in the mind of the Applicant none the least was how this alleged indebtedness was incurred. She instructed Counsel, Mr. Richard Boodle; and he wrote to Ms. Knowles on 26 March 2008. I produce the first four paragraphs of his letter:

"This is to advise that we are the Attorneys for the above-captioned. Our instructions are based on a letter dated the 6th day March, 2008. We have been instructed that the outstanding figures as outlined in your letter of March, 2008 as quoted (\$158,957.24) is grossly inaccurate.

According to our instructions and based on the terms of Mrs. Outten-Minnis' General Agent Agreement and based on our

own review of the said agreement, Mrs. Outten-Minnis would have terminated her contract more than four (4) years ago.

In the circumstances, we would require a proper accounting to substantiate your claim. Further, any agreement to settle her outstanding accounts should be based on a proper accounting to the date when she would have ceased producing for the company.

Please be advised that our client is amenable to settling any outstanding debt once we are satisfied that the outstanding figure is accurate and pursuant to the General Agent Agreement.

Please forward all correspondence to these chambers, regarding Mrs Carla Outten-Minnis. As time is of the essence we would be most appreciative of you supplying us with the requested information as soon as possible."

4. The letter was copied to Mr Lennox McCartney, Registrar of Insurance, Insurance Commission of the Commonwealth of The Bahamas (***hereinafter referred to as "the Registrar"***).

5. It seems the Applicant harboured the view that she did not owe Clico anything; but if she was provided with evidence of a debt she would be willing to discharge same.

6. On 29 March 2010 Mr Boodle wrote to the Registrar advising that the Applicant "is desirous of renewing her licence as an Insurance Agent. I set out the second through fourth paragraphs of the letter:

"Mrs. Carla Outten-Minnis is desirous of renewing her license as an Insurance Agent. We write further to an issue between Mrs. Outten-Minnis and her former company CLICO (BAHAMAS) LIMITED.

It is our further instruction that Clico has never responded to our client's letter of the 26th of March A.D., 2008. Subsequently Clico has gone into liquidation and has not sought to substantiate any allegations made regarding our client. In the

assistance in having her license renewed will be greatly appreciated."

7. Mrs Longley-Rolle responded for the Superintendent of the Insurance Commission (hereinafter referred to as "***the Superintendent***") to Mr Boodle's letter via a letter dated 23 April 2010. In the letter Mrs Longley-Rolle expressed the following opinion:

"Pursuant to the provisions of the Insurance Act, 2005 and based on information received from Clico (Bahamas) Ltd., the above-mentioned person does not appear to meet the requirements of a 'fit and proper' person."

8. She referred to a letter dated 7 April 2010 written by her office but that letter never formed a part of these proceedings; and I did not have sight of it.

9. By April 2010 the Applicant had retained new Counsel, Mr Damian Gomez, and he wrote a letter dated 1 April 2011 to the Registrar. I produce those paragraphs comprising the body of the letter:

"On April 23, 2010, you wrote me indicating that "based on information received from Clico (Bahamas) Ltd." Carla Outten-Minnis "does not appear to meet the requirements of a 'fit and proper' person". You also referred me to correspondence between your office and Richard Boodle and in particular, of a letter between your office and Richard Boodle dated April, 2010 by which you invited our client to approach the liquidators of Clico (Bahamas) Ltd. for a resolution on our client's matter. Moreover, by the last sentence of the letter dated April 7, 2010, you invited our client to advise your office of the liquidator's decision.

Following your response, we corresponded with the liquidators of Clico (Bahamas) Ltd. by writing to him and his attorney both electronically and by hand delivered mail. To date, we have not been furnished by the liquidator with any particulars of allegations made by Clico (Bahamas) Ltd. against our client. Indeed, we have requested accounts and or financial documents to support any allegations emanating from Clico (Bahamas) Ltd.

against our client. Indeed, we have requested accounts and or financial documents to support any allegations emanating from Clico (Bahamas) Ltd.

In the circumstances, our client is in the same predicament that she was in on April 14, 2010 when I wrote to you and complained that our client had not been informed of any reason which might prevent the renewal of her license to practice as an insurance agent. We therefore request that you provide to us the information to which you referred in your letter of April 23, 2010 to me wherein you stated "pursuant to the provisions of the Insurance Act, 2005 and based on information received from Clico (Bahamas) Ltd., the above-mentioned person does not appear to meet the requirements of a 'fit and proper' person". In the event that by the close of business on Monday, the 4th day of April, 2011, you are unable to furnish our firm with the information to which you referred, we are instructed to issue proceedings to compel you to hear and determine our client's application for the renewal of her license as a 'life' insurance salesman."

10. At this juncture I revert to the affidavit of the Applicant filed on 25 September 2012 to provide the remainder of the background to this action. I set out paragraphs 19 to 29 below:

"(19). Thereafter a meeting was held between me, my council and persons from the Insurance Commission of The Bahamas regarding my matter. However, without providing any proof of the claim against me, the Insurance Commission of The Bahamas continued to refuse to issue my license based on the unsupported allegations made against me.

(20). I am informed and verily believe that in the normal course of operating business, Colina Insurance, my present employer, applied on my behalf for the renewal of my license and according to an email dated 12th day of May, A. D. 2011, received from Ms. Karen Sweeting, Manager, Agency Services of Colina Insurance Limited, "As you are aware, ICB will not provide us with a current renewal license for you due to your file being under investigation by that unit...". There is now produced and shown to me and marked exhibit "COM 6" a true copy of the May 12, 2011, email from Ms. Karen Sweeting.

(21). As my circumstances were becoming more desperate due to the Insurance Commission of the Bahamas' baseless

decision not to issue my license, I wrote a letter dated 24th day of January, A. D. 2012, to the Superintendent of the Insurance Commission of The Bahamas stating:

“The position taken and the information contained in your records during our last meeting on the 7th day of April, 2011 at your office should reflect our legal position which dictates “he who asserts must prove”. To this end, I nor my attorney have been provided with any evidence of this proposed claim. In this regard, it is most unfortunate and illegal for your office to continue to withhold my licence without proper justification and documentation which is causing me much undue stress “Emphasis mine.

There is now produced and shown to me and marked exhibit Copy of my letter dated January 24th, 2012.

(22). Ms. Tiffany Rolle-Moss, Administrative Assistant to the Insurance Commission of The Bahamas wrote an email dated 12th day of April, A. D. 2012, almost a year since Colina's attempt to procure my license, stating “Our office is currently working on a policy to cover debit balances. Once this is completed we will contact you regarding Carla Minnis' matter”. There is now produced and shown to me and marked exhibit “COM 8” a true copy of the April 12, 2012, email from Ms. Tiffany Rolle-Moss.

(23). Mrs. Vandera Woods-Carey of Chilcott Chambers by letter dated the 16th day of April, 2012 also wrote to the Liquidators on my behalf, stating:

“Mrs. Minnis' insurance career is in jeopardy as a result of Clico's report to the Insurance Commission...there has been no accounting information provided to substantiate such a claim...Our client maintains her position that she does not owe Clico any outstanding debts, yet if the same can be proven, we request on her behalf, any records that Clico may have bearing such information “Emphasis mine.

There is now produced and shown to me and marked exhibit “COM 9” a true copy of the April 16, 2012, letter from Mrs. Woods.

(24).In response to a letter dated the 18th day of June, A. D. 2012 was received from Mr. Craig Gomez of Baker, Tilly & Gomez, the Liquidators for Clico, stating:

"As a matter of information, two (2) meetings were scheduled by the Insurance Commission of The Bahamas with Mr. Damian Gomez was unable to attend either of those meetings. He did advise us that other commitments arose".

"As this is a matter that I inherited, I would be pleased to once again schedule a meeting with your client to gain an understanding as to why she would feel that this claim is unsupported".

There is now produced and shown to me and marked exhibit "COM 10" a true copy of the June 18, 2012, letter from Mr. Craig Gomez.

(25). As a consequence of Mr. Damian Gomez' commitment to politics Mr. Dywan Rodgers took over carriage of the matter on my behalf. In response to Mr. Craig Gomez' letter a meeting was fixed for the 11th day of July, A. D. 2012 and Mr. Rodgers attended on my behalf. Mr. Rodgers met with the Liquidators as well as representatives of the Insurance Commission of The Bahamas.

(26). I am informed by Mr. Rodgers and verily believe that at the meeting, despite the (2) years that have elapsed since Mr. Boodle's request for my license by letter dated 29th day of March, A. D. and the Insurance Commission of The Bahamas' refusal to process and/ or grant same, neither the Liquidators or the Insurance Commission of The Bahamas had in their possession any evidence to substantiate the claim that I owed Clico \$158,957.24.

(27). Mr. Rodgers further informs and I verily believe that he put to the Liquidators and the representatives of the Insurance Commission of The Bahamas that even if a this late stage the Liquidators were to locate proof to substantiate a claim for the amount of \$158,957.24, it was too late in the day as any such claim would be 'statute barred'. The time for any such action would have ended 2010.

(28). Despite the lack of proof against me, despite the Insurance Commission of The Bahamas' admission that there is no clear policy in place regarding my matter, and despite the possibility that any claim against me would be statute barred, the Insurance Commission of The Bahamas has to date

continued to refuse to process and/ or grant me a license – not even a “temporary” or “probationary” license to carry on my livelihood as an insurance agent.

(29). Although Insurance Commission of The Bahamas has not given a written communication definitively stating that they have refused my application, it is clear from the chronology of events set out above that the Insurance Commission of The Bahamas has made a conscious decision not to grant my license so that I may lawfully work as an insurance agent (Life Insurance Salesman).

The Action

11. On 4 October 2012 I heard the Applicant's application for leave to apply for judicial review pursuant to Order 53 of the Rules of the Supreme Court (Amendment) Rules. She claimed the following reliefs:

“(1) Mandamus and/ or alternatively and order that the Superintendent of the Insurance Commission of The Bahamas do forthwith exercise her powers set out in the Insurance Act, Cap 347 to consider and process Ms Carla Outten-Minnis' application for renewal of her license in a fair and judicial manner and render a formal written decision in respect of same.

(2) An Order granting an injunction restraining the Superintendent of the Insurance Commission of The Bahamas the servants and/ or agents from interfering with Ms Carla Outten-Minnis in the performance of her job function as an insurance agent (life insurance salesman) with Colina or any other until the determination of this Action or further Order of the Court.”

The grounds on which she relied were contained in the Applicant's affidavit filed in support of the application.

12. I granted leave; and an injunction to prevent the Respondents from interfering with the Applicant in her employment while the action was pending. I set an early date for the inter parties hearing due to my concern for the interest the Commission must have in ensuring all who work within the insurance industry are fit to engage in it.

13. When the matter came on for hearing on 17 October 2012, Mr Rodgers referred the Court's attention to paragraphs 37 and 38 of an affidavit sworn by Marcian Mortimer dated 16 October 2012. Those paragraphs state:

(37) "That the policy will allow all salespersons who owe debts to their previous employers to renew their registration, where the debt developed as a result of salary advances.

(38) That given the electronic mail of Official Liquidator, marked as exhibit "MM 3", among other considerations, the Applicant will be granted the renewal of her registration by the Superintendent of Insurance.

14. This seemed to satisfy Mr Rodgers that the relief the Applicant sought was being granted by the Respondent and he need do nothing further in pursuit of the action save for the award of costs.

15. Mrs Longley-Rolle began the defence to the action by making two preliminary points. First she took issue with what she characterised as short service; and second, with the apparent contradictory effect of the injunction I granted. She submitted the time between the granting of leave and the hearing was shorter than the Rules prescribed. Inasmuch as I had set the trial date and the Rules allow for a shorter time to be fixed by the Court, I found no merit in this point. It should be noted however that she took this point mainly as a pre-emptive strike on the issue of costs should it arise.

16. I disposed of the second objection with equal dispatch because the injunction did not prevent the Respondent from making a decision in respect to the Applicant's registration as an insurance agent. It merely prevented the Respondent from interfering in the Applicant's performance as an insurance agent as she carried out her day to day functions until the Court rendered its decision.

17. Mrs Longley-Rolle resisted the application by endeavouring to demonstrate that the Respondent had taken a decision not to register the Applicant when it was communicated to her that she was not a ***“fit and proper person”***. I infer from this argument that while the Applicant was not told ***“we will not issue you a certificate”***, she could have been under no illusions that the Respondent had indeed taken a decision not to register her.

18. Mrs Longley-Rolle relied on the letter of 23 April 2010 to demonstrate that not only had the Superintendent made a decision on the Applicant's request to be registered, but also gave the reason for the decision, to wit, information received from Clico. She submitted therefore that the application for mandamus was misconceived. She went on to elaborate that although the Respondent had decided not to register the Applicant no steps were taken to revoke or cancel the Applicant's licence despite the Respondent's knowledge that the Applicant was gainfully employed in the insurance industry.

19. Mrs Longley-Rolle put the Insurance Act (hereinafter referred to as ***“the Act”***) and the genesis of the Insurance Commission into context vis a vis the Applicant's application for renewal of her licence. She explained that the Insurance Commission is a new body having come into existence on 2 July 2009. The result of this new dispensation was that hundreds of licensees had to be re-registered. Over the course of this exercise it became clear there were many persons in the same position as the Applicant. A decision seems to have been made by the Commission to address these persons en bloc; and so efforts were made to create a policy for that purpose.

20. She went on to say that as regards the Applicant's particular circumstances, her situation arose in 2008 and she did not apply for registration until March 2010. Thus, the Respondent could not make a decision until after an application was received from the Applicant. By 2010 however, the Commission was already investigating similarly circumstanced persons. Also, Mrs Longley-

Rolle spoke to the meetings that were held between the Applicant , her Counsel and the Commission's officers; and to the e-mails which passed between Tiffany Moss, an employee of the Commission and Karen Sweeting, a manager with Colina Insurance Limited, the Applicant's employer. All of which ought to have reassured the Applicant her licence was not about to be revoked.

21. It appears that the Commission was working out a policy on how to deal with all of the persons who like the Applicant, may have owed money to their employers through salary advances. Mrs Longley-Rolle advised that the policy is to allow these persons to be registered; and it is likely to crystallize in the near future once it has been circulated among those in the industry. The Commission's about face in the Applicant's case in particular seems to stem from the view arrived at by the Commission that the debt owed between the agents and their employers was a contractual matter.

22. Since the policy was not in place and the Applicant continued to work without the benefit of a licence, I maintained the injunction and adjourned the case to 8 November 2012 for mention. On the adjourned date a matter of housekeeping was resolved when by agreement of the parties, I acceded to an application to remove Mrs Michelle Fields as a party to the action and replace her with ***"the Insurance Commission of The Bahamas"***. I ordered that each party bear their own costs of the application.

23. Much of what is contained in the Applicant's affidavit is supported by that of Marcian Mortimer as he appears to accept a number of facts asserted by her. I refer to paragraphs 27 to 31 of his affidavit as they are of some moment to my decision. He averred:

"27. That on 7th April 2011, the Insurance Commission convened a meeting to hear the concerns of the Applicant, and the meeting was attended by the Applicant, her Counsel Damian Gomez, the Deponent, Counsel for the Insurance Commission, Lorna Longley-Rolle and Yolande Rolle.

28. That the Insurance Commission stated that its position of non-renewal was based on the letter from Clico dated 8th March 2008 and the subsequent response to that letter by Counsel for the Applicant, Richard Boddle & Co. dated 26 March 2008, where the Applicant appeared to only to be disputing quantum of a debt owed to Clico.

29. That the Insurance Commission then requested that the Applicant indicate whether the Applicant was operating from a premise that no funds were owed or whether the Applicant was disputing quantum of funds owed.

30. That the Applicant stated that there may be a debt owed to Clico, but that Clico had never given any evidence of the debt owed.

31. That the Insurance Commission indicated that in the circumstances, an agreement must be made between the Applicant and the Official Liquidator of Clico and in the interim, the Insurance Commission was reviewing its policy on outstanding funds”.

The Insurance Act

24. As the Commission is expected to perform its function of overseeing the insurance industry pursuant to the Act, I set out those provisions I consider of some relevance to the issues raised in this case.

25. Section 8 of the Act sets out the functions of the Commission:

- “8. (1) The functions of the Commission shall be —
- (a) to supervise compliance with the provisions of this Act;
 - (b) to maintain surveillance over the insurance market;
 - (c) to promote and encourage sound and prudent insurance management and business practices;
 - (d) to advise the Minister responsible for insurance matters regarding the insurance market;
 - (e) to ensure that the provisions of the Financial Transactions Reporting Act, and other anti-money laundering legislation are being complied with; and
 - (f) to do such other things as may be prescribed by this Act or any other written law.
- (2) The Commission shall have power to do anything

which is calculated to facilitate or is incidental or conducive to the proper discharge of its functions under subsection (1) and in particular shall have power to —

- (a) impose any condition, limitation or restriction on companies or intermediaries, their operations or their investments;
- (b) amend or revoke any registration, authorisation, permission, condition, restriction or limitation;
- (c) require that companies and intermediaries, or their directors, officers, employees, shareholders or policyholders, take or refrain from taking any action the Commission deems necessary;
- (d) require the filing of any document or information, and determine the form and content of any document;
- (e) require the production of any information, documentation or explanation from any company or insurance intermediary, including the directors, officers, auditor, actuary and any former auditor or actuary employees, shareholders or policyholders of such company or insurance intermediary;
- (f) require an appraisal of the real property of a company, the cost of which shall be borne by the company;
- (g) substitute the appraised value of an asset in place of the value stated by the company;
- (h) specify additional classes of insurance business in which a company is authorised to engage;
- (i) treat insurance business of a specified class as if it were insurance business of another unspecified class;
- (j) extend any period of time specified in the Act or the regulations;
- (k) exempt any person or class or persons, or any class or part of any class of insurance business from any provision of this Act or the regulations, subject to such terms and conditions, as may in the Commission's opinion be appropriate;
- (l) assist and cooperate with local and overseas regulatory authorities;
- (m) make rules and issue directives providing for such matters as may be necessary or expedient for the carrying out of its responsibilities;
- (n) delegate any of its powers as it sees fit."

26. Section 123 sets out what matters the Commission is to take into account when considering whether or not a person should be registered under the Act. Section 123 says inter alia:

"123. (1) Where the Commission is satisfied in respect of the applicant —

(a) that the requirements of section 120 have been complied with;

(b) that the restrictions contained in section 121 do not apply;

(c) that the applicant is sufficiently competent and knowledgeable to carry on business as an insurance intermediary in respect of any class or classes of insurance;

(d) in the case of a person who was, before the commencement of this Act, carrying on business in The Bahamas as an insurance intermediary, that he conducted such business in a sound and proper manner;

(e) that where the applicant is an individual —

(i) the applicant is a person of good character and is otherwise a fit and proper person to be an insurance intermediary and that each of the persons, if any, with whom he is associated, whether as a partner or otherwise in his business as an insurance intermediary, is a fit and proper person; and

(ii) having regard to the knowledge and competence of the applicant and such staff as the applicant may employ, the applicant is, in relation to any class or classes of insurance business in respect of which the application is made, capable of carrying on business efficiently as an insurance intermediary;"

and:

"the Commission shall, either unconditionally or subject to such conditions as the Commission may specify, register the applicant as an insurance intermediary in respect of such class or classes of insurance business as it shall specify and shall notify the applicant accordingly."

Subsection (2) provides:

"(2) Where the Commission is not satisfied, in relation to all or any of the classes of insurance business in respect

conditions set out in subsection (1), it shall notify the applicant in writing that it proposes to refuse to register the applicant or, that it proposes to refuse to register the applicant in respect of one or more of the classes of insurance business applied for, giving its reasons for so doing, and notifying him of his rights of appeal to the Commission for reconsideration under section 228."

Observations

27. The Commission is given extensive powers of oversight of the insurance industry and may deem a person not to be a fit and proper person to be engaged in the industry. However, a decision not to renew a licence or not to register an individual must be taken with consideration of the principles of natural justice and fairness at the forefront of the decision maker's mind. This is fundamental to any decision making process by a body established by statute and impacting on the livelihood of members of the public. Further, I do not think that the large number of persons to be licensed excuses the Commission from addressing each application on its individual merits in a timely manner.

28. Having made those general observations I must agree with Counsel for the Respondent that a "**decision**" was communicated to the Applicant. I do not find, however, that the decision was in full compliance with what is required by section 123(2) of the Act. To say a person is not a fit and proper person does not meet what the Commission is required to do when communicating a rejection of a request for renewal of a licence or registration: See section 123(2). Had the Commission followed the provisions of the Act, the Applicant could have been left in no doubt that she could appeal the decision to the Supreme Court pursuant to section 228 of the Act instead of having to resort to the prerogative writs. Section 228 reads:

"228. Any person aggrieved by a decision of the Commission on any matter pursuant to this Act may appeal to the Supreme Court in accordance with rules of Court."
(Underlining is mine)

29. Nevertheless, there has been a communication of **“a decision of the Commission on [a] matter pursuant to the Act”** in the letter dated 23 April 2010 to the Applicant. The issue of whether or not it was in full or partial compliance with the Act could have been ventilated on appeal; also, were there grounds to substantiate the **“decision”**.

30. The forbearance of the Commission in not moving to inhibit the Applicant in the performance of her employment would have been no answer to her complaint if she had not received an answer to her request for the renewal of her licence. It would continue to lie within the discretion of the Commission to act upon its view the Applicant **“does not appear to meet the requirements of a fit and proper person”**.

31. My view that the Commission failed to fully comply with the Act is bolstered by the submissions of Mrs Longley-Rolle made on 22 November 2012 when at pages 2 and 3 of the transcripts at lines 24 to 32 and 1 to 16 it is recorded:

***“With regards to the letter that we had sent the applicant dated April 23, where we said that she did not appear to meet the requirements of a fit and proper person at that time, as I stated previously, we had decided that we were not renewing. We didn’t specifically tell the applicant that. To tell her that she would not get a renewal meant to take her down the path of actually canceling her registration. But given the situation at the time, when we were reconsidering what to do with persons including her who were alleged to have owed these large sums of money, we did not go down the path of cancellation of her insurance. So we made a decision not to renew, but we did not send her through the process of cancellation. If we had written her and told her that she would not be renewed, her license would be cancelled, because that is actually the effect of a decision not to renew.*”**

The Court:

Yes

Ms. Longley-Rolle:

***“That her license would be cancelled, then we would have taken her through the process of giving her the notice in*”**

reconsideration of she wished, and through that process her license actually would have been canceled."

32. The Applicant may have experienced a high level of anxiety due to the Commission's failure to make a clear decision as this led to uncertainty about her employment with Colina. The uncertainty can be illustrated by Karen Sweeting's e-mail to the Applicant dated 12 May 2011 wherein appears: ***"As you are aware, ICB will not provide us with a current renewal license for you due to your file being under investigation by that unit."*** Added to this e-mail was Public Notice No. 7 of 2012 dated 30 August 2012 which notified the public and the industry of a deadline for registration of insurance salespersons with the Commission and that solicitation of insurance business by unregistered salespersons is a criminal offence.

33. Nevertheless, as there is a statutory right of appeal, recourse to a Writ of Mandamus ought not to be granted: *Medical Council of Guyana v Dr Muhammad Mustapha Hafiz* (2010) 77 WIR 277. This is not to say that in an appropriate case an applicant cannot seek an Order of Mandamus, Certiorari or Prohibition even if a statutory right of appeal exists. If the Court is satisfied that the appeal would not offer a full ventilation of the issues or provide the applicant with an adequate alternative relief but that one of the Writs would, then recourse may be had to the Writs notwithstanding the existence of the statutory right of appeal: *Calvey, et al v Merseyside Police* [1986] 1 All ER 257.

34. I am satisfied that the Applicant could have appealed the Commission's decision that she may not have been a fit and proper person; and the Supreme Court would have the power to grant her the appropriate relief. Thus, on this narrow ground I have decided that the application for mandamus must be denied; and the injunction I granted, must be discharged.

35. On the issue of costs, I hold the view that although costs follow the event, the costs of this action should be borne by the respective parties. Had the

Commission fully complied with section 123 of the Act the confusion which resulted from the "**decision**" would not have arisen and the Applicant would not have undertaken this application.



Laacs, Sr J