BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION

No. 1519 of 2016

BETWEEN:

JEAN DELANGIS
OXY TRADING CORPORATION **CLAIMANTS**

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS **DEFENDANT**

No. 1520 of 2016

BETWEEN:

ROBERT RICHARDSON **CLAIMANT**

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS **DEFENDANT**

Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court

Dates of Hearing: 2017 October 9th, December 13th
Date of Decision: 2018 February 16th

Appearances:

Mr. Satcha S-C.S Kissoon Attorney-at-Law for the Claimants
Ms. Donna Brathwaite Q.C. and Ms. Gayle Scott of the Attorney-General's Chambers Attorney-at-Law for the Defendant
Mr. Barry L.V. Gale Q.C. and Mrs Laura Harvey-Read Attorneys-at-Law for the Proposed Defendants

RULING

Introduction

[1] There are two Applications before this Court in identical terms, being heard at the same time, seeking the same relief.

[2] They are both requesting this Court to exercise its jurisdiction under the **Supreme Court (Civil Procedure) Rules 2008 Part 19**, and its inherent jurisdiction to make the following Order, namely that,

> "1. Barry Dueck and Barbara Dueck be added as a Second and Third Defendants in this matter respectively."

[3] Suit #1519/2016 was filed on May 9th 2017 and the Affidavit in Support of Barry Dueck filed July 4th 2017. Suit #1520/2016 was filed June 1st 2017 and the Affidavit in Support of Barry Dueck filed July 4th 2017.

Background to this Matter

[4] The substantive claims behind these two applications relate to a judicial review application under the **Administrative Justice Act Cap. 109B** filed November 17th 2016 against the decision of the Director of Public

Prosecutions (hereinafter referred to as the "DPP") to discontinue criminal charges brought against Barry Dueck and his wife Barbara Dueck, the applicants herein and Proposed Second and Third Defendants.

[5] The Duecks were criminally charged with offences under the **Theft Act Cap. 155, Exchange Control Act Cap. 71 and Securities Act Cap. 318A**.

[6] The application for Judicial Review filed November 17th 2016, sought the following relief:

> "1. A declaration that the decision or administrative act of the Defendant acting in his capacity as the Director of Public Prosecutions of Barbados whereby on or about the 30th day of September 2016 he directed the Commissioner of Police and the Magistrate for District E Holetown to dismiss 8 charges laid by the Commissioner of Police on or about the 14th day of June 2014 against accused persons Mr. Barry Dueck and Mrs. Barbara Dueck in the District E Magistrate's Court Holetown for offences including (i) Theft (ii) contravention of the Exchange Control Act and (iii) contravention of the Securities Act, was invalid or *ultra vires* and/or void and/or contrary to law and/or breached the principles of natural justice and/or was an unreasonable or irregular or improper exercise of discretion and/or was based on an error of law.
> 2. An order or *certiorari* quashing the said decision of the Defendant effected on the 30th day of September 2016, acting in his capacity as the Director of Public Prosecutions of Barbados to dismiss the said 8 charges brought by the Commissioner of Police against accused persons Mr. Barry Dueck and Mrs. Barbara Dueck in the District E Magistrate's Court Holetown.
> 3. An order or *mandamus* requiring the Defendant to cause the said 8 charges to be re-laid against Mr. Barry Dueck and Mrs. Barbara Dueck.
> 4. An order that the costs of and incidental to this application be paid by the Defendant.
> 5. Such further and/or other relief as may be deemed fit.
>
> AND FURTHER TAKE NOTICE that the grounds of this application in accordance with Section 4 of the Administrative Justice Act CAP 109B of the Laws of Barbados are:
>
> (a) that the said decision or administrative act was and is contrary to law;
> (b) that in arriving at the disputed part of the decision, the Defendant took into account irrelevant considerations;

(c) that in arriving at the disputed part of the decision, the Defendant failed to take into account relevant considerations;
(d) that the said decision or administrative act was in breach of the principles of natural justice or was otherwise unfair;
(e) that the said decision was made in circumstances where there was an absence of procedural fairness;
(f) that the said decision was made in circumstances where there was procedural impropriety;
(g) that the Defendant misdirected himself on the relevant law in relation to the offences and thereby fettered his discretion unreasonably;
(h) that the said decision was irrational and unreasonable in all of the circumstances of the case;
(i) that the said decision or administrative act was an abuse of power; and
(j) For the reasons more fully set out and particularised in the Affidavit of Robert Richardson filed herewith."

[7] The factual circumstances relate to contractual relations (business relationship) between the Duecks and the Claimants, as a consequence of which they (the Claimants) are alleging, inter alia, theft and fraud.

The Content of the Affidavits of Barry Dueck

[8] He deposes that he and his wife Barbara Dueck are interested and directly affected parties in these proceedings, as they are the persons against whom the DPP directed the Commissioner of Police and the Magistrate for District E Holetown to dismiss eight [8] charges. This action challenges that decision by the DPP.

[9] The Duecks submit that they will be directly affected and prejudiced should the decision of the First Defendant be set aside or quashed in these proceedings, inter alia, their liberty and reputations could be affected. They submit that they should be joined so that this Court "can resolve all the

matters in dispute in these proceedings". At paragraph 7 of the Affidavit filed on July 4th 2017 in suit #1520/2016 he states as follows:

> "7. My wife and I are in the unique position to provide this Honourable Court with evidence to defend against the setting aside or quashing of the First Defendant's decision to dismiss the 8 charges brought by the Commissioner of Police against us and we would like the opportunity to be heard so as to ensure that our legitimate interests, that is our liberty and reputations, are protected. Much of the evidence in the Affidavit of the Claimant relates to matters the First Defendant would have no knowledge of or information on and my wife and I would be the only persons who could assist the Court in providing evidence in relation to same so that this Court can make a proper determination of all the issues in these proceedings which issues are based on the evidence presented to this Court." See further paragraphs 8 to 23 thereof."

[10] These affidavits show clearly that the Duecks have an undeniable private and very personal, interest in these proceedings, but is that sufficient to justify their inclusion in these judicial review proceedings?

[11] The Claimants in both actions are objecting to the Applications.

[12] A neutral position is being taken by counsel for the First Defendant, who declined to make any submissions in this matter.

Issue[s] Arising

[13] This matter raises issues of joinder of parties generally, but more specifically, it invites an examination of the principles applicable in determining the proper parties/locus standi and/or joinder in Judicial Review Proceedings.

The Case for the Proposed Defendants

[14] The case for the Applicants/Proposed Defendants is set out under the heading "Grounds" at paragraph 2 of their Written Submissions dated July 2017, set out hereunder, seriatim:

> "2. The grounds of the application are:
>
> 2.1 The proposed Second and Third Defendants are interested parties in these proceedings.
> 2.2 The proposed Second and Third Defendants are the persons against whom the First Defendant directed the Commissioner of Police and the Magistrate for District E Holetown to dismiss 8 charges against.
> 2.3 This Action challenges the decision of the Defendant to dismiss the 8 charges brought by the Commissioner of Police against the proposed Second and Third Defendants.
> 2.4 The proposed Second and Third Defendants will be directly affected and prejudiced if the decision of the First Defendant is set aside or quashed in these proceedings, in that, *inter alia,*:
> 24.1 Their liberty will be affected should this Court grant the orders sought by the Claimant.
> 2.5 It is desirable to add the proposed Second and Third Defendants to these proceedings so that the court can resolve all the matters in dispute in these proceedings.
> 2.6 The proposed Second and Third Defendants have an interest connected to the matters in dispute in these proceedings and it is desirable to add the proposed Second and Third Defendants so that the court can resolve all the issues in dispute in these proceedings.
> 2.7 Applying the just and convenient test it is only right that the proposed Second and Third Defendants have the opportunity to defend against the setting aside or quashing of the First Defendant's decision to dismiss the 8 charges brought by the Commissioner of Police against the proposed Second and Third Defendants.
> 2.8 The rules of natural justice dictate that the proposed Second and Third Defendants be given an opportunity to be heard in these proceedings given that any order or judgment given will directly affect their liberty.
> 2.9 The proposed Second and Third Defendants should be joined as parties to these proceedings given the prejudice which the proceedings could cause to them and the need for them to protect their legitimate interests.
> 2.10 Given the wide discretion which the Court has in deciding whether or not to allow a party to be joined as a party in proceedings justice

clearly demands or dictates that it would only be fair that the proposed Second and Third Defendants be allowed to intervene and joined as Defendants in these proceedings so as to protect their legitimate interests and/or to avoid significant prejudice and loss and expense.

2.11 This Court in giving effect to the Overriding Objective to deal with this case justly and fairly should in exercising its discretion under CPR Part 19 permit the proposed Second and Third Defendants to be joined as Defendants to these proceedings because justice demands such an order being made in all the circumstances as set out hereinbefore."

The Response of the Claimants

[15] The Claimants strongly object to the inclusion of the Applicants as parties for the reasons, inter alia, below:

1. This is a public law matter (judicial review proceedings) and **Part 19** of the **CPR** does not apply to public law matters. Counsel referenced the case of **River Thames Society v First Secretary of State [2006] EWHC 2829**, where the court held that **Part 19** of that jurisdiction's **Civil Procedure Rules** was drafted with private civil law claims in mind and was not intended to cover public law cases . This Court spoke of the Court's inherent jurisdiction as being the power to substitute parties;
2. Judicial review in Barbados is circumscribed by the **Administrative Justice Act, Chap 109B**. The definition of administrative act or omission in that Act does not involve private defendants at all;
3. The remedies of Judicial Review under the AJA are limited to those remedies set out in Section 5 of the Act. There can be no cause of action against private defendants for any of those matters. Reliance is placed on the opinions of Professor Eddy Ventose in his treatise **"Commonwealth Caribbean Administrative Law Chap 4"**;
4. Alternatively, should the Court find that it has an inherent jurisdiction to add parties, these circumstances do not satisfy the requirements of Part 19; there is no issue to be determined in relation to the Duecks which is connected" "to the matters in dispute", which would justify the prejudice of adding parties as defendants to expose the Claimants to further costs." (paragraph 20 of the Written Submissions filed July 11th 2017);
5. A Court will likely not grant joinder in circumstances where such joinder may embarrass or delay the trial: see **Halsbury's Laws of England Volume 37 paragraph 218**. These are such circumstances;

6. The claim complains about the actions of the DPP. There is no issue of the Duecks being a direct party to the DPP's decision in dismissing the charges. This was a decision made by him in his capacity as DPP, being a constitutional office of Barbados.

[16] In conclusion, counsel submits that there is no need for the Duecks to be separate parties. At its highest, if the DPP considers their input important, they can be witnesses in the proceedings in the judgment of the DPP who will have the job of determining whether their evidence is of assistance in defending the case against him.

Discussion

Is Part 19 applicable to Judicial Review Matters?

[17] **Part 56** of the **Supreme Court (Civil Procedure) Rules, 2008**, deals with applications for judicial review under the **Administrative Justice Act, Cap 109B**, granting to the Court a wide array of powers, and is clearly applicable to these proceedings. It provides a clear procedure for Courts to address the issue of parties, and keeps separate the procedural requirements of public and private law matters.

[18] **Part 56.11** is of special significance. It provides as follows:

> "56.11 (1) At the hearing of the application, the judge may allow any person, group or body who appears to have a sufficient interest in the subject matter of the claim to make submissions, whether or not served with the application.
>
> (2) The submissions of such a person, group or body must be made in writing unless the judge orders otherwise."

[19] See also **56.9 (2)(c)** which deals with the giving of directions by the Judge or Master in judicial review applications.

[20] What is made clear by these provisions, therefore, is that persons having a "sufficient interest in the subject matter" (as distinct from the Claimant[s] and Defendant[s] as defined by **section 6** of the **Administrative Justice Act**) can be heard without being made a party to the proceedings. Stated differently, the Court/Judge can exercise its discretion as to what persons can or should be 'heard', and when so doing 'sufficiency of interest' is the primary consideration. The terms 'joinder' or 'intervener' are not used in **Part 56**.

[21] The Applicants have not sought to invoke this provision, but rather the subject applications have been made under **Part 19** titled "Addition and Substitution of Parties", and the Court's inherent jurisdiction.

[22] **CPR Part 19.2 (1)** allows a Claimant to add a new defendant at any time before the first case management conference. **Rule 19.2 (3)** speaks to the Court's powers/discretion on its own motion where (1) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or (2) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue. See **Burgess JA** in

Financial Services Commission and BIPA Incorporated v British American Insurance Company (Barbados) Limited BB 2012 CA11.

[23] An application such as this one is made under **19.3 (2)** which states:

> "An application for permission to add, substitute or remove a party may be made by
>
> (a) An existing party; or
> (b) A person who wishes to become a party."

[24] On the scope of the Court's power under this provision, see **Blackstone Civil Practice 2011** at **paragraph 14.80**; and for the Barbados High Court's application and interpretation, see **Worrell J** in **Wiggins v Abed BB 2015 HC 15**.

The Categories of Persons empowered to seek relief by way of Judicial Review

[25] In the opinion of this Court, two categories of persons arise from the conjoint effect of the **Administrative Justice Act** and the **CPR**.

[26] **Section 6** of the **Administrative Justice Act,** under the rubric "Persons entitled to relief" provides:

> "The Court may on application for judicial review grant relief in accordance with this Act
>
> (a) To a person whose interests are adversely affected by an administrative act or omission;
> (b) To any other person if the Court is satisfied that that person's application is justifiable in the public interest in the circumstances of the case."

[27] **Part 56** of the **CPR** is drafted in similar but wider terms; **Rule 56.2** under the rubric "Who may apply for judicial review" provides;

> "(a) any person, group or body whose interests have been adversely affected by the decision which is the subject matter of the application; or
>
> (c) Any other person, group or body who satisfies the court that an application is justifiable in the public interest and in the circumstances of the case."

[28] It is noted, however (as mentioned above) that **Rule 56.9 (b) (c)** in speaking to the powers of the Court in deciding whether a person should be heard, (the exercise of a discretion to make orders that may be required to ensure the expeditious and just final hearing of an application) uses the term "a sufficient interest". While Barbados, unlike many of our regional colleagues and the United Kingdom, has abolished the two-tier approach to judicial review by abolishing the requirement that it is first necessary to obtain permission for an application for judicial review (the threshold application), it has retained the first tier focus of "sufficiency of interest" in the Court's exercise of its discretion in determining what parties should be heard.

[29] The term "sufficient interest" is defined in **Halsbury's Laws of England 5th ed Vol 61 at paragraph 656** as follows:

> "…The determination of any issue as to whether the claimant has a sufficient interest to bring a challenge in question will depend on consideration of the relationship between the claimant and the matter to which the claim relates, having regard to all the circumstances of the case…"

[30] The case of **River Thames Society v First Secretary of State [2006] A11 ER (D) 105**, (dealing primarily with Court powers to substitute parties in an action) has been cited by both parties for different reasons. Very relevant to the present determination is the observation and ruling by **Underhill J** in the judgment of the Court, that private law 'interest' and public law 'interest' are two different concepts.

[31] In observing that **Part 19** of the **CPR** did not contemplate public law proceedings, he states at paragraph 2 as follows:-

> "While in one sense claimants in public law proceedings – whether in the form of conventional judicial review proceedings or other statutory challenges of the kind with which we are here concerned – are of course required to have an 'interest' in the dispute, it is an interest of a very different kind, and the term is used in a very different sense, from a private law interest; and it is hard to see how such an interest can be passed to another person. Nor, I might add, does a defendant in public law proceedings normally have a 'liability' which can be passed. It is fairly clear to me that what the draftsman had in mind was private law rights and allegations, which are indeed capable of being 'passed' by being devolved or assigned."

[32] In **United States of America v Warner and the AG TT 2016 CA 58**, (considered in greater detail below) the Court of Appeal of Trinidad and Tobago considered whether the Appellant (the United States of America Government) had a "sufficient interest" in the proceedings to be heard at the case management conference and to make submissions at the substantive hearing of the judicial review proceedings. The Court referred to the learning in the Canadian case of **Halpern v Toronto (City) 2000 Carswell**

Ont 4504 (2000), where the Court in considering an application for joinder, noted that in an application to intervene, the Court must determine whether the intervener has a "sufficient direct interest" and what "useful" contribution could the proposed intervenor make to the proceedings.

[33] See also **Morrison JA** in **Jamaicans for Justice (JFJ) v Police Service Commission AG Civ App No. 154/2012,** where the Jamaican Court of Appeal found that JFJ had a sufficient interest in the subject matter to give it standing for judicial review; and the law lords in **R v IRC ex p. National Federation of Self-Employed and Small Businesses Ltd. [1982] AC 617** as to who may properly be considered as having an 'interest' in a matter such as an application for judicial review.

[34] My sister **Richards J** in the recently decided case of **Comissiong v Freundel Stuart and Vision Development Inc. CV No. 426 of 2017**, dealt "in limine" with the issue of 'locus standi' to apply for judicial review. Her Ladyship made the observation in that context that the term "sufficient interest" is inapplicable in our jurisdiction (see her reference to **Ramdeem v Registrar of the Supreme Court of Justice TT 2008 HC 205** where **Alexander J** applied the test of "person[s] whose interests are adversely affected" in answering the question whether an applicant had standing to apply for judicial review). The case at bar does not justify the examination

of the meaning of and case law examining the subject matter of "sufficiency of interest" as undertaken by **Richards J** in **David Comissiong v Freundel Stuart et al**. The central issue in this matter is a different one.

[35] It is recognized that the rationale of such an exercise is, in the words of **Lord Diplock** in the **Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd. [1982] AC 617**, "to insulate the courts against misguided or trivial complaints of administrative error by busybody litigants, while protecting public bodies from gratuitous and burdensome distraction."

[36] It is patently clear, however, that the applicants have a fundamental personal interest, a direct private and material interest. In other words, they are not busybody litigants.

[37] In **R (on the application of Bulger) v Secretary of State for the Home Department and Another [2001] 3 All ER 449**, the Court primarily addressed the issue of the requirement of 'sufficient interest' in judicial review proceedings; the first tier determination. But what this case made clear is, that in making its determination, "sufficiency of interest" is not the only criterion.

[38] This was an application for judicial review in which the court assessed the standing of the Claimant, "the sufficiency of his interest", to challenge a

tariff set by the Lord Chief Justice (Lord Woolf) for juvenile detainees. The Claimant was the father of a two year old boy murdered by two ten year olds. These two boys were firstly sentenced to detention during Her Majesty's pleasure in 1993. In a review by the Lord Chief Justice in 2000, he set a tariff of 10 years, but stated that this figure could be reduced by the taking into account of mitigating (and aggravating) factors such as the progress made by the boys during their detention. The Claimant sought to challenge the tariff in judicial review proceedings, and on his application for permission to apply, the issue arose as to whether he had standing to challenge the tariff.

[39] The Court held, inter alia, as follows: The members of a victim's family had no standing to bring judicial review proceedings challenging a decision by the Lord Chief Justice on the appropriate tariff of a juvenile detainee. Although the threshold for standing in judicial review had generally been set at a low level, that was because of the importance in public law that someone should be able to call decision makers to account, lest the rule of law break down and private rights be denied by public bodies. In criminal proceedings the traditional and invariable parties, namely the Crown and the defendant, were both able to challenge those judicial decisions which were susceptible to judicial review. It followed that in such cases there was no

need for a third party to seek to intervene to uphold the rule of law. Nor would such intervention generally be desirable.

[40] The Court in this case, decided that the Claimant did not have a "sufficient interest" for the purpose of judicial review proceedings. The Court described its role, in circumstances such as these, as an exercise of the Court's discretion: see **paragraph 23** of judgment of **Rose LJ**.

[41] In my view, the approach that should be taken by a Court in circumstances such as the case at bar, is that taken by **Mendonca JA** of the **Court of Appeal of Trinidad and Tobago**, in the case of **United States of America v Warner and the Attorney General TT 2016 CA 58**.

[42] **Mendonca JA** advances that it is a two-step process involving two separate considerations: firstly, considerations as to the sufficiency of interest, followed by, secondly, the exercise of the court's discretion: see paragraph 13 of the Court's judgment where **Mendonca JA** stated as follows:

> "13. It is clear that the rules of the court under which the application of the USA has been made, gives the court the discretion to allow an applicant an opportunity to be heard at the case management conference (56. 12(3)) or to make submissions at the hearing of the judicial review application (56.14(1)). The judge exercised his discretion against the appellant. This therefore is an appeal from the exercise of the judge's discretion."

[43] (It is to be noted that **56.12(3)** is similar to Barbados **56.9** which speaks to a Directions Hearing, while **56.12** speaks to Case Management Conference. **56.14(1)** is 'in pari materia' with Barbados **56.11** except that the Barbados

provision includes ‘a group’ while the Trinidad provision speaks to ‘a person or body’ only).

[44] Stated differently, a finding of a sufficient interest does not automatically entitle an individual or party to be heard; the Court must make an assessment as to whether such individual or party will make a useful contribution to the proceedings, and in addition thereto, the Court will give effect to the imperatives of the CPR.

[45] The exercise of a court’s discretion involves the consideration of an unbounded category of factors in which the application of the Overriding Objective takes centre stage.

[46] **United States of America v Warner and the Attorney General (supra)**, is an appeal from the order of a case management judge refusing the United States of America (the Appellant) permission to be heard at the case management conference and to make submissions at the substantive hearing of judicial review proceedings. The decision was delivered by **Mendonca JA**, in a panel on which **Chief Justice Archie** and **Jamadar JA** sat.

[47] **Mendonca JA’s** interpretation of their CPR (similar in wording and import to the provisions of our Part 56) is as follows:

> “18. The rules under which the application has been made, I do not think provide any difficulty in their interpretation. The judge may allow a person who appears to have sufficient interest in the subject matter of the claim to be heard at the case management conference and/or at the hearing of the

> application for judicial review whether or not he has been served with the claim. Rule 56.10(1) requires that the claim form be served on the defendant. A defendant to the judicial review application has an automatic right to be heard. Rules 56.12(3) and 56.14(1) therefore apply to a person other than the defendant in the judicial review proceedings. If it appears to the court that such a person has a sufficient interest, the court may allow him to be heard. A determination, therefore, that the person appears to the court to have a sufficient interest does not entitle him automatically to be heard at the case management conference and/or at the judicial review application but gives a right to the applicant to have exercised the court's discretionary judgment whether or not to allow him to be heard at the case management conference and/or at the hearing of the application for judicial review. On hearing of an application under the rules for permission to be allowed to be heard, there are **therefore two considerations that should engage the court's mind, namely, (1) does it appear that the applicant has a sufficient interest in the subject matter of the claim, and if so, (2) should the court exercise its discretion to allow him to be heard." (my emphasis)**

[48] **Mendonca JA** from paragraph 26 of the judgment of the Court, examines the factors that should guide the Court as to whether it should exercise its discretion. He submits that in exercising the discretion given to the Court by the Rules, the Court must give effect to the Overriding Objective, which provides as follows:

> "**1.1**(1) The overriding objective of these Rules is to enable the court to deal with cases justly.
>
> (2) Dealing justly with a case includes, so far as is practicable,
>
> *(a)* ensuring that the parties are on an equal footing;
> *(b)* saving expense;
> *(c)* dealing with the case in ways which are proportionate to
> (i) the amount of money involved;
> (ii) the importance of the case;
> (iii) the complexity of the issues; and
> (iv) the financial position of each party;
>
> *(d)* ensuring that it is dealt with expeditiously and fairly; and
> *(e)* allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Application of the overriding objective by the court

1.2 The court must seek to give effect to the overriding objective when interpreting these Rules or exercising any powers under these Rules."

[49] The Court spoke to consideration of matters relevant to procedural fairness, expedition and efficiency (inclusive of the efficient use of time and the proportionate use of resources) as central to the civil legal process, outlined in **Zuckerman on Civil Procedure: Principles of Practice (3rd ed.)** at **paragraph 1.17** as follows:

> "The objective of the civil legal process remains of course the same: enabling the court to decide disputes on their merits and determine the litigants' rights and enforce them. It remains the case that the court must strive to establish the true facts and correctly apply the law to them, thereby giving effect to substantive rights. This is sometimes referred to as doing substantive justice, or justice on the merits. But the CPR now recognize that substantive justice is not the sole aim of the civil process. Substantive justice, it makes clear, must be delivered by means of proportionate use of resources (public and litigant alike) and within reasonable time. To fully appreciate the nature of the CPR system and its practical implications it is essential to realise that it is driven by three imperatives: that judgments follow from the correct application of the law to the true fact; that judgments are reached by means of proportionate resources; and that judgments are delivered in a reasonable time. The overriding objective makes plain that all three imperatives are central components of the civil litigation justice system. It seeks to ensure that considerations of resource and of time receive appropriate attention throughout the adjudication process."

[50] The Court in this case **(Warner/Halpern)** referred to the Canadian case of **Stadium Corp v Toronto (city) (1992), 14 M. P. L. R (2d) 58**, which highlighted what was meant by the term 'useful contribution' in the following way (per **Archie Campbell J**):

> "Proposed intervenors must be able to offer something more than the repetition of another party's evidence and arguments or a slightly different emphasis on arguments squarely by the parties. The fact that the intervenors are prepared to make somewhat more sweeping constitutional arguments does not mean that they will be able to add or contribute to the resolution of the legal issues between the parties."

[51] When considering the criterion of whether the proposed intervenor will make a useful contribution to the proceedings, the court must balance any such contribution against any resulting delay or prejudice to the other parties. In **M v H 171 D.L.R. (4) 577, Asptein J.** helpfully put the balancing of the tension between contribution and delays as follows:

> "Regardless of whether the proposed intervention is under 13.01 or rule 13.02, the court's focus should be on determining whether the contribution that might be made by the intervenor is sufficient to counterbalance the disruption caused by the increase in the magnitude, timing, complexity and costs of the original action…"

[52] In the **United States of America v Warner (supra)**, the Court noted that:

> "although the Halpern case was dealing with an application to add a party to the proceedings, considerations as to whether the applicant will make a useful contribution as discussed in the Halpern case are relevant to the notions of efficiency and expedition to which the court must have regard in giving effect to the overriding objective on this application. As noted in the Halpern case, to be useful contribution the person seeking cannot simply be an additional counsel for the parties already before the court. He must be in a position to offer something that is more than a repetition of the arguments by the parties before the court or that places a slightly different emphasis on points made by their arguments."

[53] I consider the discussion and findings of law in the **Warner Case** relevant to our jurisdiction and to the interpretation of our **CPR**, and accordingly adopt them. In the opinion of this Court, this judgment accords with good law and reason.

Disposal

1. The Application to allow the joinder of Barry Dueck and Barbara Dueck to this action as Second and Third Defendants is dismissed, with costs to the Claimants to be agreed or assessed. There is no sufficient interest in the public law issue to make them a party, but there may be sufficient reason for them to be heard at the discretion of the Court.
2. It must always be remembered that this is a judicial review proceeding. It is not the role of judicial review to protect private (personal) interests: see **R v Secretary of State for Home Department, ex parte Venables**. Nor is it within the scope of judicial review proceedings to settle disputes of fact, allegations of fraud etc. between these parties. Had this been an application for joinder under **Part 19** in a private law proceeding between the Duecks and the Claimants the results would have been different. In such circumstances it would be in keeping with the Imperatives of the Overriding Objective, to "resolve all the matters, in dispute arising between these parties (See page 3 of the Applicant's Written Submissions where he states:

> "The proposed Second Defendant would wish the opportunity to fully respond to this Affidavit in so far as it relates to the interactions that they had and the agreements which were made between them."

3. The issue in the substantive judicial review proceeding is between the Claimant and the office of the Director of Public Prosecutions and concerns

the correctness of the decision of the DPP to discontinue the charges laid against the Applicants/Proposed Second and Third Defendants. The learned authors **Wade & Forsyth** in their text **Administrative Law 9th ed**. succinctly stated the purpose of review at **page 33** as follows:-

> "When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is 'right' or 'wrong'? On review the question is 'lawful' or 'unlawful'?"

While the traditional view of the nature and scope of judicial review has changed over time (broadened), the above observation still speaks to its core objectives. Joining the Applicants to this proceeding will not, without more, provide a useful contribution to its resolution and the Applicants have not so satisfied this Court. The Applicants herein pose the danger of making this process an 'appeal' of the DPP's administrative decision and not merely an examination of the process; or alternatively, turning a judicial review matter into a private rights matter.

4. In view of the scope of judicial review proceedings, the joinder of the Applicants will lengthen and add costs to this proceeding without, in the opinion of this Court, "adding any new perspective to the case or making any useful contribution to its resolution."

5. This Court is of the view that the provisions of **CPR 56.9 (2)(c)** and **(d)** adequately satisfy the needs of this matter. But this Court is reluctant to

grant an Order worded as loosely as requested by the Applicants in the alternative; namely that this Court "make an order under **CPR Part 56.9(2)(c)** and **Part 56.9(2)(d)** allowing both Barry and Barbara Dueck to be heard in these proceedings and allowing them to make both oral and written submissions." An Order in such wide terms poses the danger of fettering the exercise of the judge's discretion.

6. In the premises, therefore, and in view of the fact that this matter is unlikely in the short-term to be continued by this Judge, I consider it premature to make any ruling, but leave it to the Court after settlement of the issue(s) for determination, to give Directions as to what matter/issue (if any) on which it wishes to be heard.

MARGARET A. REIFER
Judge of the High Court