

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No. 640 of 2009

BETWEEN

RONALD ALLEYNE-KING

APPLICANT

AND

THE CHIEF PERSONNEL OFFICER

1st RESPONDENT

THE PUBLIC SERVICE COMMISSION

2nd RESPONDENT

ATTORNEY-GENERAL

3rd RESPONDENT

THE NURSING COUNCIL OF BARBADOS

4th RESPONDENT

Before: The Honourable Mr. Justice William Chandler, Judge of the High Court

Date of Decision: 2019 August 16

Appearances:

Mr. Gregory Nicholls Attorney-at-Law for the Applicant

Ms. Sharon Deane Attorney-at-Law for the 1st, 2nd and 3rd Respondents

No appearance for the 4th Respondent

DECISION

INTRODUCTION

[1] This is an application pursuant to the **Administrative Justice Act (AJA) Cap. 109B**, of the **Laws of Barbados** for judicial review of: (1) the decision of the Director of the Psychiatric Hospital (Hospital Director) to interdict the Applicant from duty on the ground of misconduct, (2) the 2nd Respondent's confirmation of the said interdiction and (3) the referral to the 4th Respondent of a complaint for serious breach of nursing ethics and regulations by the Director of the Psychiatric Hospital.

THE PARTIES

[2] Ronald Alleyne-King (the Applicant) is employed in the Public Service and was appointed to the post of male nurse at the Mental Hospital on 31 December 2007.

[3] The First Respondent is the Chief Personnel Officer (CPO), an established post within the Public Service.

[4] The Second Defendant is the Public Service Commission (PSC), established by **section 90** of the **Constitution of Barbados** and is responsible for the management of the public service of Barbados.

- [5] The Third Respondent is the Attorney General of Barbados and is made a party to these proceedings by virtue of the **Crown Proceedings Act Cap. 197** of the **Laws of Barbados**.
- [6] The Fourth Respondent is a council established under **section 3** of the **Nurses Act Cap. 372** of the **Laws of Barbados** and is responsible for regulating persons in the nursing profession.

BACKGROUND

- [7] The facts giving rise to this application relate to an alleged incident of insubordination that occurred on the 28th day of August 2008. It is alleged that the Applicant refused to follow the directives given by two (2) senior nursing officials for him to report to a hospital ward, which was affected by a shortage of nurses for the night shift. Mr. Tennyson Springer (Mr. Springer), the Hospital Director, was informed of the incident and wrote the Applicant the following internal memorandum dated 5 September 2008. It reads:

“Subject: INTERDICTION FROM DUTY

Under the Public Service Act 2007 – 41 paragraph 3(2), you are interdicted from duty effective September 6th, 2008 for “Misconduct”.

2. You may be required to attend a hearing to answer charges in relation to this incident. At that time, you will be given copies of all documentation relevant to the charges and you maybe [sic] represented by a Trade Unionist, lawyer or friend.”

[8] The Applicant thereafter sought legal representation. Under cover of a letter dated 17 September 2008 Mr. Gregory Nicholls of Messrs George Walton Payne & Co. Attorneys-at-Law wrote to Mr. Springer advising that his law firm was the legal representative of the Applicant and requested the particulars of the charges and the reasons for his client's interdiction from duty. The relevant portions of the letter are reproduced below:

“We have advised our client that he is entitled to have full particulars of the charges informing your allegation of misconduct consistent with his right to procedural fairness under law. We also demand a succinct statement of the reasons for the decision to interdict our client from duty. This request for reasons is made pursuant to Section 13 of the Administrative Justice Act, Chapter 109B of the Laws of Barbados. We shall be grateful if you would satisfy our request for particulars of the charges and for reasons for the decision to interdict our client from duty by no later than Friday the 26th ultimo.”

There was no response to that letter and a subsequent letter of 8 October 2008 was sent to Mr. Springer.

[9] On 1 October 2008, Mr. Springer responded as follows:

Your correspondence dated 17th September 2008 has been received. However, the Hospital Director is unable to satisfy your request at this time. The reports have been forwarded to the Personnel Administration Division to decide whether the officer will be charged formally.

Your client will be notified, in due course, of any charges which may be brought against him.”

In an internal memorandum dated 7 October 2008, Mr. Springer wrote the following to the Applicant:

*“Interdiction From Duty
Re: Submission of Statement*

In relation to your interdiction for refusal to perform a lawful instruction from your senior officer, the Permanent Secretary, Ministry of Health has asked that you submit a statement on the incident.

Kindly treat as urgent so that it may be expedited.”

- [10] On 14 October 2008 Mr. Nicholls again requested full particulars of the charges of misconduct laid against the Applicant and the reasons for his interdiction from duty.
- [11] By letter dated 2 December 2008 Ref PZ165/24, the Fourth Respondent advised the Applicant that a complaint had been made against him and requested that he submit a written explanation or make representation in relation to the alleged incident. On 29 December 2008 Mr. Nicholls wrote the Fourth Respondent requesting that it set out the particular charge of misconduct and the relevant rule allegedly breached under the **Nursing Rules 2008**. Mr. Nicholls also indicated that the convening of a complaints committee was premature since the Applicant was not informed of the specific charge he would be called to answer.
- [12] On 5 February 2009 Mr. Nicholls wrote the First Respondent advising that the failure and refusal to satisfy the several requests for reasons and disclosure in relation to the Applicant’s interdiction were unlawful and unreasonable.

[13] By letter dated 24 February 2009 the CPO wrote the Applicant advising of the following:

“Re: Mr. Ronald Alleyne-King and the interdiction from Duty Reference your letter GPBN/srm/5046B dated 2009-02-05 on the above caption.

2. I am directed to inform you that the Public Service Commission has advised that:

(i) The interdiction of Mr. Ronald Alleyne-King should be confirmed with effect from 2008-09-06 in accordance with section 3(2) of the Third Schedule of the Public Service Act 2007-41;

(ii) He be paid half salary in accordance with section 27(3) of the Service Commissions (Public Service) Regulations, 1978 pending an investigation into his alleged failure to perform the duties assigned to his office.

3...

4...

5. Accordingly, Mr. Alleyne is being interdicted with effect from 2009-03-01 and has been informed by letter dated 2009-02-24.

6. The delay in responding is regretted.”

The letter of 24 February 2009 Ref PZ 165/23 informing the Applicant of interdiction reads as follows:

“I am directed to inform you that his Excellency, the Governor-General has accepted the advice of the Public Service Commission that your interdiction should be confirmed with effect from 2008-09-06 in accordance with section 3(2) of the Code of Discipline, Third Schedule of the Public Service Act and you should be paid half salary in accordance with section 27(3) of the Service Commissions (Public Service) Regulations, 1978 pending the outcome of an investigation into your alleged failure to perform the duties assigned to your office.

2...

3. Accordingly, you are hereby interdicted on half your month salary with effect from 2009-03-01.”

[14] By subsequent letter dated 26 February 2009, Mr. Nicholls advised the First Respondent that neither the particulars of the charges nor the reasons that may ground an interdiction had been provided. He again requested the particulars of the charges/allegations which founded the basis for the Applicant’s interdiction and reasons for the decision to interdict him pursuant to the **AJA**.

THE APPLICATION

[15] On 7 April 2009 the Applicant filed an Originating Notice of Motion together with an Affidavit and Statement pursuant to **Rule 2(a)** of the **Judicial Review (Application) Rules 1983 (the 1983 Rules)** setting out the grounds and relief sought. On 1 April 2010, by order of the Court, the Applicant filed an Amended Notice of Originating Motion and an Amended Statement. The Amended Notice of Originating Motion seeks the following orders:

- a. A declaration that the act and/or decision on the part of the Respondents to interdict the Applicant from duty in the Public Service in all of the circumstances is or was premature, unreasonable, procedurally unfair, void and/or contrary to law;
- b. A declaration that the act and/or decision on the part of the Hospital Director, Psychiatric Hospital to forward reports to the Personnel Administration Division to decide whether the Applicant will be charged formally after the Applicant was interdicted was premature, procedurally unfair and/or in breach of the rules of natural justice;

- c. A declaration that the act and/or decision on the part of the Hospital Director, Psychiatric Hospital to forward a complaint to the General Nursing Council without first responding to the lawful requests on the part of the Applicant for the particulars of the charges of misconduct and the reasons for the decision to interdict the Applicant from duty is or was malicious, procedurally unfair, *ultra vires*, void and/or contrary to law;
- d. A declaration that the delay and/or refusal on the part of the Respondents to disclose the particulars of the alleged misconduct in support of the initial interdiction is or was procedurally unfair, in breach of the rules of natural justice, invalid or void and/or contrary to law;
- e. A declaration that refusal on the part of the Respondents to provide the reasons of the decision to interdict the Applicant from duty is or was invalid or void and/or contrary to law;
- f. A declaration that the act and/or decision of the Public Service Commission to advise His Excellency, the Governor General that the interdiction of the Applicant from duty be confirmed with effect from the 6th day of September 2009 is or was unreasonable, invalid or void and contrary to law;
- g. A declaration that the refusal and/or failure of the Respondents to convene a hearing within reasonable time after the interdiction is or was in breach of the principles of natural justice and was void and contrary to law;
- h. An order of certiorari to quash the act and/or decisions of the Respondents in relation to the interdiction of the Applicant from duty within the Public Service of Barbados;
- i. An order of mandamus to the Respondents to restore the Applicant to his post as nurse within the Public Service and to restore all emoluments and benefits associated with his post that were lost as a result of the unlawful interdiction;
- j. An injunction to restrain the General Nursing Council from proceeding with any hearing into the complaint made by

the Hospital Director, Psychiatric Hospital in respect of the Applicant;

k. An order of prohibition to prevent the Respondents from preferring any charges against the Applicant arising out of the alleged incident;

l. An order of restitution in favour of the Applicant to the full amount of his salary from the date of his interdiction on September 6, 2008;

m. An award of damages in such an amount as the Court deems fit.

[16] The grounds for the Application are that:

1. The Hospital Director, Psychiatric Hospital in purporting to exercise functions and/or powers in relation to the Applicant has failed to observe and was in breach of the provisions of the Administrative Justice Act, Cap 109B and/or the principles of natural justice.

2. The process by which the decision was made by the Hospital Director, Psychiatric Hospital to interdict the Applicant from duty within the Public Service without providing the particulars of the charges of misconduct constituted a disproportionate, and unreasonable and improper exercise of discretion.

3. The said decision of the Hospital Director, Psychiatric Hospital to refer a complaint to the General Nursing Council without responding to the requests of the Applicant for the particulars of the charges of misconduct and for the reasons of interdiction was an abuse of power or was made in bad faith.

4. The refusal or failure of the Permanent Secretary, Ministry of Health to prefer formal charges against the Applicant in relation to the alleged misconduct claimed by the Hospital Director, Psychiatric Hospital was a failure to observe and a

breach of the provisions of section 4(3) of the Code of discipline in the Public Service, Third Schedule, Public Service Act, No, 2007-41.

5. The process by which the decision was made by the Public Service Commission to recommend to His Excellency the Governor-General that the initial interdiction be confirmed and that the Applicant be paid half of his salary when no formal charges were proffered against the Applicant or brought to his attention or notice was disproportionate and unreasonable and was an improper exercise of discretion.

6. The Public Service in purporting to reduce the salary of the Applicant by one half in excess of the four (4) months permitted under section 4(6) of the Code of Discipline in the public Service, Third Schedule, Public Service Act, No. 2007-41 was a failure to observe the law.

7. The refusal of the public functionaries to convene a hearing so as to give the Applicant an opportunity to be heard constituted a failure to satisfy or observe the procedures required by law.

THE APPLICANT'S SUBMISSIONS

[17] Mr. Nicholls, Counsel for the Applicant, submitted that the while the Applicant did not challenge the decision to interdict the Applicant, he challenged the process by which the public authorities came to that decision and the decisions that flowed from the interdiction including:

1. The confirmation and extension of the interdiction on the advice of the Public Service Commission;
2. The referral of a separate complaint to the Nursing Council;

3. The failure or refusal of the Permanent Secretary of the Ministry of Health to prefer charges of misconduct against the Applicant;
4. The decision of the Public Service Commission to reduce the Applicant's salary by one-half during the interdiction and
5. The decision to continue the reduction of the Applicant's salary in excess of the minimum period allowed under law.

[18] Counsel submitted that it is first necessary for criminal charges or charges of misconduct to be brought against a public officer in order to properly effect an interdiction from duty. Since the Applicant was interdicted without formal charges, the interdiction was unlawful.

[19] Mr. Nicholls also submitted that it was procedurally unfair for the Hospital Director to deny requests for particulars of the charges of misconduct when he had already addressed his mind to the formulation of specific charges in his memorandum to the Chief Personnel Officer dated 8 September, 2008.

It was counsel's further submission that the Hospital Director had exercised his discretion to interdict capriciously since he had not provided the reasons for the interdiction but yet the interdiction was confirmed and the Applicant's salary reduced.

[20] The failure of the Permanent Secretary of the Ministry of Health to bring formal charges against the Applicant within 7 days of becoming aware of the

alleged breach of the **Code of Conduct** or the **Code of Discipline** in the Public Service, counsel contended, was fatal to the process of interdiction. Counsel relied upon **Mahadeo Singh v The Commissioner of Police et al (unreported 24th November 1992 Trinidad and Tobago (Singh))** in support of the Applicant's right to particulars of the charges.

[21] With respect to the complaint to the Nursing Council, Mr. Nicholls submitted (1) that **section 33** of the **Nurses Rules** established the procedure for laying a complaint of misconduct. The Nurses Council is obliged to refer the matter to a Complaints Committee which shall direct the Registrar to investigate the matter and submit his findings thereon and (2) the complaint to the Nursing Council coupled with the request that the Council take "the strongest disciplinary action in the circumstances" betrayed sinister motives on the part of the Hospital Director in his attempt to seriously prejudice the Applicant's professional career.

[22] It was also contended by counsel that the interdiction effected under the **Public Service Act** could not be contemporaneously governed by the Service Commissions (Public Service) Regulations, 1978 where there is no restriction on the length of time that a public officer's salary could be reduced by one-half while under interdiction.

[23] Finally, Mr. Nicholls argued that the Public Service Commission was at all times complicit in and culpable for the administrative acts or omissions in respect of the unlawful interdiction and the improper reduction of the Applicant's salary for in excess of the statutory 4 month period.

THE RESPONDENT'S SUBMISSIONS

[24] Ms. Sharon Deane, Counsel for the 1st, 2nd and 3rd Respondents submitted that there was no prematurity with respect to the Applicant's interdiction. According to her, the disciplinary procedure for interdiction was followed and the Applicant's interdiction was in the interest of justice. Counsel submitted that interdiction was a mere holding operation until the commission had determined whether disciplinary charges ought to be instituted after having conducted the necessary investigation. Any determination as to whether an officer remained indicted or charges brought against him must be made by the **Public Service Commission**.

[25] Counsel also submitted that the Hospital Director, having reviewed the incident report, acted reasonably by interdicting the Applicant. She argued that the Applicant was advised of the reason for his interdiction via correspondence dated 5 September 2008 and 7 October 2008 respectively. It was her assertion that there was no requirement to advise the Applicant of charges at the time of interdiction.

[26] Counsel also submitted that there was no need to restrain the Nursing Council since it only received correspondence from the Director and two reports of staff members and it did not feel it was in a position to advise regarding breaches of the Nurses Rules.

[27] With respect to the restoration of salary, Ms. Deane conceded that the Applicant's salary ought to be restored since the 4 month period had expired under **Section 4(6) of the Third Schedule of the Public Service Act 2007-41**.

THE ISSUES

[28] The principal issue for determination is whether the interdiction of the Applicant was flawed and in breach of the principles of natural justice in circumstances where:

1. The Applicant was interdicted prior to any charges having been preferred against him and no reasons given for the interdiction by the Hospital Director. This involves a consideration of whether the Hospital Director was duty bound to provide such reasons.
2. The Applicant was interdicted under section **3(2) of the Code of Discipline** and his salary was reduced pursuant to regulation **27(3) of the Service Commissions (Public Service) Regulations, 1978**.
3. The Hospital Director laid a complaint to the Fourth Respondent prior to responding to the Applicant's requests for particulars of misconduct and prior to the completion of the disciplinary

procedure. In this regard, the Applicant alleges malice on the part of the Hospital Director and procedural unfairness.

4. The Applicant's salary was reduced for a period in excess of 4 months consequent upon his interdiction.

Dependent on the resolution of the above matters, I must consider whether the Respondents ought to be restrained from proceeding with the disciplinary proceedings against the Applicant.

THE LAW

The AJA

[29] The **AJA** governs administrative matters in this jurisdiction. **Section 2** provides that:

“‘act’ includes any decision, determination, advice or recommendation made under a power or duty conferred or imposed by the Constitution or by any enactment.

‘administrative act or omission’ means an act or omission of a Minister, public official, tribunal, board, committee or other authority of the Government of Barbados exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or by any enactment.”

Under **section 3 (1)** an application to the Court for relief against an administrative act or omission may be made by way of an application for judicial review in accordance with this Act and with rules of court. **Section 4** provides the grounds upon which the Court may grant relief by way of the remedies mentioned in this **Act**. These grounds include the following:

“(a) that an administrative act or omission was in any way unauthorised or contrary to law;

- (b) excess of jurisdiction;
- (c) failure to satisfy or observe conditions or procedures enquired by law;
- (d) breach of the principles of natural justice;
- (e) unreasonable or irregular or improper exercise of discretion;
- (f) ...

5. S. 5 (1) of the said Act sets out the remedies that the Court may grant

on an application for judicial review, these are:

- “(a) certiorari, for quashing unlawful acts;
- (b) prohibition, for prohibiting unlawful acts;
- (c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.

Subsection (2) provides that the Court may, having regard to the scope of the remedies mentioned in subsection (1), grant in addition or alternatively

- (d) a declaratory judgment;
- (e) an injunction;
- (f) restitution or damages in money; or
- (g) an order for the return of property real or personal.”

S. 6 provides that:

- (a) “The Court may on an application for judicial review grant relief in accordance with this Act to a person whose interests are adversely affected by an administrative act or omission.”

[30] **Part II** of the **AJA** provides the procedures to be followed where reasons are requested and the duties imposed upon a decision maker where a request is made for reasons.

“S. 13. (1) It is the duty of any person or body **making a decision to which this section applies,(emphasis added)** if requested in accordance with section 14 by any person adversely affected thereby, to supply to that person a statement of the reasons for the decision.

(2) ...

14. (1) A request for reasons under section 13 must be made on or before the date of giving or notification of the decision or within 14 days after that date.

(2) A request must be made in writing, except that where an oral hearing is held, the request may be made orally before the conclusion of the oral proceedings.

(3) ...”

THE STATUTORY FRAMEWORK ESTABLISHING THE PUBLIC SERVICE COMMISSION

[31] We now set out the statutory framework for the establishment of the Public Service Commission (PSC) and its functioning. Chapter VII of the Constitution of Barbados governs the public service. Section 90. (1) of the Constitution provides that:

“There shall be a Public Service Commission for Barbados which shall consist of a Chairman and not less than three nor more than five other members, who shall be appointed by the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, by instrument under the Public Seal.”

Section 94 (1) defines the role of the **PSC**. It states:

“Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor-General, acting in accordance with the advice of the Public Service Commission”.

THE PUBLIC SERVICE ACT 2007-41 (PSA)

[32] The preamble to the **PSA** provides that it is: “an Act to revise and consolidate the law relating to the administration of the public service for the purpose of

achieving greater efficiency and effectiveness in the management of that service and for matters related thereto”. Under section 2, the “Service Commission or Commission means the **Public Service Commission** established by **section 90(1)** of the **Constitution**”. **Part II** of the **PSA** relates to the management of the public service. The relevant provisions are set out below.

“4(1) (a) The Public Service shall be managed by the Services Commissions in accordance with their functions under

- (i) the Constitution;
- (ii) Service Commissions (Public Service) Regulations, 1978;
- (iii) Service Commissions (Police Service) Regulations, 1964; and
- (iv) provisions of the Codes as set out in the Schedules to this Act.

5(2) **Each Commission shall, in carrying out its functions under this Act, ensure transparency, fairness and justice**; and shall regard the proper management of the Public Service, including the development of the human resources of the Service, as its primary goal.” **(emphasis mine)**

Section 11 of the **PSA** establishes the **Public Service Codes**. It

states as follows:

“11(1) The following Codes for the Public Service are hereby established:

- (a) the Recruitment and Employment Code that governs the methods to be used in recruitment and promotion in the Service;
- (b) the Code of Conduct and Ethics that establishes standards of conduct in the Public Service; and
- (c) the Code of Discipline that is aimed at enforcing the standards mentioned in paragraph (b).”

Subsection (2) provides penalties for breaches of the Codes.

- “(2) Any person who contravenes any of the provisions of the Codes referred to in paragraphs (b) and (c) of subsection (1) in respect of which a penalty is specified is liable to the penalty so specified.”

THE CODE OF DISCIPLINE (The Code)

[33] We find it convenient to set out here the Code. It is found in the Third Schedule of the **PSA. S.1** provides as follows:

“This Code is aimed at ensuring

- (a) That standards of conduct laid down in this Act, in any Regulations made thereunder or in the Code of Conduct for persons in the Public Service are observed;
- (b) The existence of general principles that guide the disciplinary process including:
 - (i) procedural fairness;
 - (ii) determining each case on its merits;
 - (iii) indicating the factors to be taken into account; and
 - (iv) the powers and responsibilities of the investigating officer.”

Section 2 defines misconduct of a serious nature.

“... misconduct of a serious nature means conduct that warrants the dismissal of the offending person and in addition to the misconduct specified in paragraph 27 of the Code of Conduct and Ethics, include the following: failure to perform the duties assigned to the office.

Misconduct of a minor nature is defined in s. 2 as meaning:

“... conduct that does not warrant dismissal and includes
...
(d) insubordination.”

[34] **Section 3 (2)** of the Code empowers the Permanent Secretary (PS) or Head of Department (HOD) to interdict an officer or recommend interdiction to the Commission and is set out later in this decision at paragraph 42.

[35] **Section 4** of the **Code** provides for the adjudication of misconduct of a serious nature and **section 5** provides for the adjudication of minor offences. **Section 4(6)** states that, the reductions in a person's rate of pay under **sub-paragraph (5)** shall not exceed one half the salary to which the officer would have been entitled had he not been suspended; and the reduction shall be for a period not exceeding 4 months.

THE SERVICE COMMISSIONS (PUBLIC SERVICE) REGULATIONS, (SCR) 1978

[36] The **SCR** were made pursuant to **section 7** of the **Service Commissions Act Cap. 34** of the **Laws of Barbados (SCA)**. **Section 7 (e)** of the **SCA** provides that:

“Subject to Chapter VIII of the Constitution, the Governor-General acting in accordance with the advice of the Commission may make any regulations which he considers necessary or expedient for all or any of the following matters:
the conduct and discipline of the public service.”

Regulation 9 sets out the duties of the Chief Personnel Officer (CPO). It reads:

“The Chief Personnel Officer shall

- (a) submit matters for the decision of the Commission;
- (b) attend meetings of the Commission when required to do so by the Commission;
- (c) give effect to the decisions of the Commission;
- (d) ensure that all documents and papers relating to any matter being or to be considered by the Commission are made available to the Commission.”

[37] Part V of these Regulations provides for the discipline of public officers. The relevant regulations are set out below.

- “23 (1) The power vested in the Commission by section 94 of the Constitution with respect to the removal of officers and the exercise of disciplinary control over them shall be exercised by the Commission.
- (2) Reports of misconduct by officers shall be investigated in such manner as the Commission determines.
- (3) ... where the Commission is of the opinion, after the investigation of a report of misconduct by an officer that disciplinary action ought to be taken against the officer, the Commission shall recommend to the Governor-General the form of disciplinary action to be taken against the officer.
- (4) ...”

[38] Regulation 24 makes provision for the report of misconduct.

- 24 (1) The Permanent Secretary or Head of Department shall, within 7 days of becoming aware of misconduct on the part of an officer, make a report of the misconduct to the Chief Personnel Officer and such report shall be dealt with as soon as possible thereafter.
- (2) ...
- (3) ...”

[39] Under regulation 2, misconduct includes:

- (a) contravention of the General Orders for the public Service of Barbados, 1970;
- (b) contravention of lawful instructions in writing given by or on behalf of Permanent Secretaries or Heads of Department; or
- (c) contravention of these regulations.

Regulation 27 deals specifically with interdiction. It states:

- “(1) Where a report against a public officer for misconduct is being investigated, or criminal proceedings have been or are about to be instituted against that officer, and the Commission is of the opinion that the officer should forthwith cease to perform the functions of his office, the Commission may recommend interdiction.
- (2) Where it is considered essential that an officer should be interdicted before a decision can be obtained, the power exercisable by the Commission under paragraph (1) may be exercised by a Permanent Secretary or Head of Department, and in any such case the interdiction shall be immediately reported to the Commission through the Chief Personnel Officer, and the Commission may confirm or set aside such interdiction.

- (3) Subject to regulation 31, an officer interdicted pursuant to this regulation shall be paid such portion of the salary of his office, not being less than one-half, as the Commission may recommend to the Governor-General, but the officer shall not be entitled to any other emoluments.
- (4) If the investigation result's in the officer's exculpation, he shall be entitled to the full amount of the emoluments which he would have received had he not been interdicted, but if the investigation results in any disciplinary action other than removal from office the officer shall be allowed such emoluments as the Commission may in the circumstances recommend to the Governor-General.
- (5) ...”

[40] **Part B** of the **SCR** provides the procedure for the conduct of investigations in respect of misconduct.

“36 (1) Where it is represented to the Commission that an officer has been guilty of misconduct, the Commission shall cause an investigation to be made into the matter in such manner as it thinks proper.

(2) An investigation carried out pursuant to paragraph (1) may take the form of an oral inquiry or such other form as the Commission determines, and regulation 40 shall apply where the investigation takes the form of an oral inquiry.

37(1) Where a report of misconduct on the part of an officer is made to the Commission, the Commission may request the officer's Head of Department to investigate the matter, and the Head of Department shall investigate the matter, and, not later than three weeks after the date of such request, submit to the Commission a written report of his investigation containing his findings and recommendations, and a copy of all evidence and material documents relating to the matter.

38(1) An officer in respect of whom an investigation is being carried out under regulation 37:

- (a) shall be informed in writing of the charges against him;
- (b) shall be informed in writing-
 - (i) that he is entitled to be represented by an attorney-at-law, a friend, or a representative of an accredited Trade Union;

- (ii) that a written reply to the charges and any observations he may wish to make thereon must be received by the investigating officer within such period, being not less than twenty one days, as may be permitted by the investigating officer;
 - (iii) that he may attach to his written reply statements from witnesses;
- (c) shall, if he so requests, be supplied with copies of the statements of all witnesses and other evidence given during the course of the investigation.”

DISCUSSION

[41] Mr. Nicholls submitted that interdiction of the Applicant was unlawful in the absence of a criminal charge or the proffering of a charge of misconduct against his client. The resolution of this issue depends upon the interpretation of Section 3 (2) of the Code (erroneously called paragraph 3 (2) of the Public Service Act in the memorandum of 5 September 2008 but correctly set out in PZ 165/23 and PZ 165/24 above). Let me state at the outset that the Applicant has not alleged that he has been deceived by the inaccuracy in the memorandum which I have adverted to.

[42] For the purposes of this discussion, I find it useful to set out section 3(2)

Here.

“Where ... an investigation into any other misconduct has been or is about to be instituted, and the Permanent Secretary or Head of Department is of the opinion that the public interest requires that the officer should forthwith cease to perform the

functions of his office, the Permanent Secretary or Head of Department may interdict the officer or recommend to the Commission that the officer be interdicted.”

[43] With respect to the interpretation of Section 3 (2) of the Code, I remind myself that the purpose of statutory interpretation is to ascertain the intention of Parliament within the words of the statute. It seems to me that the words **“Where ... an investigation into any other misconduct has been or is about to be instituted,...”** are quite clear in their meaning and purport. They allow for interdiction where an investigation has (1) been instituted or (2) is about to be instituted and the Permanent Secretary or Head of Department is of the opinion that the public interest requires that the officer should forthwith cease to perform the functions of his office. Having regard to the preamble of the **PSA** and its provisions with respect to the disciplining of public officers, this seems to me to have been the intention of Parliament.

[44] It has not been disputed that an investigation had begun into the allegations of misconduct against the Applicant. Applying the interpretation which I have placed on s **3(2)**, it cannot be said that the interdiction, in these circumstances, is unlawful.

[45] Mr. Nicholl’s further submission that lawful interdiction must be consequent upon criminal proceedings having been instituted or where

they are about to be instituted or where there is an investigation into an alleged misconduct within the **Code** appears to be posited upon **regulation 27 (1)** of the **SCR** set out at paragraph 22 of this decision and now repeated here for the purposes of understanding the interpretation which I have placed upon it.

“(1) Where a report against a public officer for misconduct is being investigated, or criminal proceedings have been or are about to be instituted against that officer, and the Commission is of the opinion that the officer should forthwith cease to perform the functions of his office, the Commission may recommend interdiction.”

I am of opinion that Mr. Nicholls’ submission is misconceived. There is no ambiguity in the reading of **regulation 27 (1)**. The word “or” requires the Regulation to be read disjunctively and not conjunctively as Mr. Nicholls’ submission suggests. This interpretation reveals that there are two circumstances outlined in **regulation 27 (1)** in which the Commission may recommend interdiction. These are (1) Where a report against a public officer for misconduct is being investigated or (2) criminal proceedings have been or are about to be instituted against that officer. In any event, the Applicant’s interdiction is under **section 3 (2)** of the **Third Schedule** of the **Public Service Act** and not **regulation 27** of the **SCR**. There is therefore no requirement that a criminal proceeding has been or is about to be instituted against the

Applicant. Indeed in this case, there is an investigation being launched into an allegation of a breach of the Code.

[46] I turn now to consider further the submission that the interdiction was unlawful in the absence of particulars of the charges against the Applicant. *Clarke v Attorney General Civil Appeal No. 11 of 2008 (unreported decision of 25 February 2011 (Clarke))* is particularly instructive. *Clarke* had not yet been decided when this matter was heard before me. After *Clarke* was decided, counsel for the Applicant requested, and I granted both counsel, the opportunity to address me on its implications for this case. In *Clarke*, the deputy principal of a secondary school was interdicted from duty and he applied for judicial review of that decision. **Kentish J**, in dismissing the application, held that there were three requirements to ground an application for judicial review. First, there must be an administrative act; second, the application must comply with the provisions of the **AJA** and rules of court and third, the person must be aggrieved by that administrative act. **Kentish J** found that the third condition was not established as the appellant had not been aggrieved by the administrative act of interdiction. The judge noted that interdiction was not punishment and that it did not connote guilt. Further, at the interdiction stage, there was no finding of misconduct and that it was possible for the appellant to be fully vindicated by the investigation.

[47] The Court of Appeal held that the decision as to whether or not judicial review would be allowed should not be dealt with at the preliminary stage of proceedings. The Court of Appeal heard the substantive matter rather than refer it back to the High Court. The Court of Appeal upheld the judge's decision and found that the appellant's application for judicial review was premature. The Court was of the view that the appellant's interdiction was not punitive but rather in the interest of good administration, namely to allow the investigative procedure to take place. It further held that no injustice had been done to the appellant where he was neither informed of the charges nor afforded an opportunity to be heard prior to his interdiction. **Waterman JA**, in giving the judgment of the Court, opined as follows:

“[25] In the context of this jurisdiction, it is clear from a reading of the Regulations that interdiction in accordance with regulation 27(1) is conducted to facilitate the investigative process. It removes the officer from the work environment, albeit temporarily, to allow the investigation to take place free from external influence or interference. Interdiction is not meant to be a form of punishment, nor does it connote guilt on the part of the officer. It is intended merely to be a holding operation in the interest of good administration until the Commission can determine, based on the findings of the investigation, whether or not disciplinary charges ought to be instituted against the public officer. There is nothing in regulation 27 which would suggest that by the exercise of its power to interdict an officer without affording the officer an opportunity to be heard amounts to a breach of the rules of natural justice.

This accords with my interpretation of **section 3 (2)** of the **Third Schedule of the Public Service Act** that it allows interdiction of an officer prior to the issuance of charges. The removal of the officer

before charge facilitates the investigative process which may be hindered if the officer remains in office.

[48] **Waterman JA** explained the interdiction process in the context of the administration of the Civil Service and continued:

“[29] Contrary to the submissions of Counsel for the appellant, that the appellant should have been informed of the details of the charges against him prior to his interdiction, it appears from the evidence that at the time of the interdiction, the investigation and drafting of charges still had to be carried out in accordance with the *Regulations*. The reason for the interdiction was to allow the investigation to take place in the absence of the public officer from the workplace.

[30] An examination of *regulation 27* shows that the power of interdiction ought to be exercised only after careful consideration of all the circumstances. The power is to be exercised where (a) a report against a public officer is being investigated or (b) criminal proceedings have been or are about to be instituted against an officer. But, before recommending that the officer cease to perform the functions of his office, the Commission must form the opinion that it is in the public interest so to do. Once the decision to interdict is made, *regulation 27(3)* requires that the officer be paid such portion of his salary, not being less than one-half, as the Commission may recommend to the Governor-General. In the instant case the officer was interdicted on one-half salary.

[31]...

[32] We find that the interdiction of the applicant was not subject to judicial review, and that the respondent was fully within its right to exercise the power of interdiction under *regulation 27(1)*, since the interdiction was a preparatory step to the investigation of misconduct against the appellant.”
(**Emphasis added**)

[49] The Court further held that there is nothing in *Regulation 27* which suggests that the exercise of the PSC’s power to interdict an officer without affording the officer an opportunity to be heard amounted to a breach of the rules of natural justice particularly the rule *audi alteram*

partem: paragraph [25] and [31] of *Clarke (supra)*. **Waterman JA**

said:

“[31] We do not see any injustice being done to the appellant by the Commission’s failure to afford him a right to be heard prior to interdiction. One would expect that the procedure for the conduct of investigations contained in **Part B** of the **Regulations** will in due course be put into effect and the appellant will be afforded the opportunity to be heard. To import into **regulation 27** the right to be heard prior to interdiction would frustrate the scheme of the **Regulations**.”

[50] I am bound by the law established by the Court of Appeal in *Clarke*. In my opinion, it fully explains the rationale behind the process of interdiction which is vital for an understanding of **section 3 (2)** and **Regulation 27**. In the circumstances, I hold that Mr. Springer, the Head of Department was clearly within his power to interdict the Applicant where he formed the opinion that the Applicant should forthwith cease to perform the functions of his office. I further hold that it was not necessary for any formal charges to have been instituted against the Applicant at the stage of interdiction and that he was not then entitled to particulars of any charges. His right to be heard has not been materially affected but has been preserved until charges have been preferred against him. It goes without saying, that the results of the investigation may also exonerate him. The process must be allowed to take its course.

[51] The Court in *Clarke* (supra) considered the issue of the right to be heard in situations where persons had been interdicted. The Court, in holding that “To

import into **regulation 27** the right to be heard prior to interdiction would frustrate the scheme of the regulations.” cited the Privy Council decision of *Rees v Crane* [1994] 2 WLR 476 where **Lord Slynn of Hadley** said as follows:

“It is clear from the English and Commonwealth decisions which have been cited that there are many situations in which natural justice does not require that a person must be told of the complaints made against him and given a chance to answer them at a particular stage in question. Essential features leading the courts to this conclusion have included the fact that the investigation is purely preliminary, that there will be a full chance adequately to deal with the complaints later, that the making of the enquiry without observing the *audi alteram partem* maxim is justified by urgency or administrative necessity, that no serious damage to reputation is inflicted by proceeding to the next stage without such preliminary notice, that the statutory scheme properly construed excludes such a right to know and reply at the earlier stage.”
(Emphasis added)

I am of the opinion that this is a correct statement of the law. I accordingly hold that there has been no breach of the principles of natural justice.

[52] Counsel relied upon **Singh** to support his submission that the Applicant had a right to the particulars of the charges. **Singh** can be distinguished from this case. Singh’s appointment as a special reserve police officer in the constabulary of Trinidad and Tobago, had been revoked in a letter issued by the Commissioner of Police. No reasons were given for the revocation neither was he given an opportunity to resist any allegations against him. This is a clear violation of the natural justice principle of *audi alteram partem*. In this case no charges had been levelled against the Applicant when he was

interdicted. The investigation into alleged misconduct had merely been notified to him.

THE AFFIDAVIT EVIDENCE OF THE PARTIES

[53] The Applicant deposed, in his Affidavit of 7 April 2009, that he was uncomfortable with the re-assignment and feared that his life would be in danger despite the fact that another nurse would be sent to assist him. He deposed to the following at paragraph 11:

“I therefore refused to take up the reassignment to the Annex Ward and went to the “C” Ward. On my return to the Nursing Office, I was given a further directive by Jasper Johnson, Principal Nursing Officer (ag.) to report to duty on the Annex Ward and for the reasons I had explained to Mrs. Bryan, I refused to go.”

[54] Mr. Springer, in his affidavit, deposed to the following: First, the Applicant refused to carry out a directive from a senior officer even though it was a dire emergency as there was a shortage of nurses. Second, the Applicant’s assignment to the Annex Ward was within his trained competence. Third, he dismissed the Applicant’s assertion that the Annex Ward was unsafe because patients on that Ward are violent, aggressive and therefore posed a threat to the Applicant’s safety. In this regard he pointed out that female nurses worked in the Annex Ward both day and night including a pregnant nurse who worked there without any incident. Additionally, he was of the view that the Applicant’s fear for his safety was baseless and exhibited the

hospital's records which showed that the Applicant had worked alone in the "C" Ward eleven times without any complaints as well as the "A" Ward which both have violent persons, and the latter criminally insane persons.

[55] Our purpose on this application is to decide on the lawfulness of the interdiction. It is against this backdrop that the Hospital Director, who is charged with the safety of both patients and staff, interdicted the Applicant. The excursus into what occurred given by the Applicant in his affidavit and responded to by the Hospital Director is irrelevant to my present function. I am not determining whether or not the Applicant's action were right or wrong or whether any complaint has been made out.

[56] *Clarke (supra)* makes it is clear that the purpose of interdiction is to enable the relevant authorities to facilitate the investigative process by removing the officer from the work environment to allow the investigation to take place free from external influence or interference. In addition, the procedure for the conduct of investigations provided under **Part B** of the **SCR** has not been completed. Therefore, the officer may be exculpated or may be subject to further disciplinary action upon the conclusion of the investigation procedure. That is to say, if the Applicant is charged, he must then be afforded an opportunity to be heard and the Commission must consider all of the relevant evidence before coming to a decision. Moreover, the procedure at **Part B** of

the **SCR** undoubtedly affords an officer the opportunity to be heard and to defend himself in accordance with the principles of natural justice at the appropriate time. Having regard to the principles of law above cited, I am of the opinion and hold that no injustice was done to the Applicant in circumstances where he was interdicted before he was informed of the charges.

[57] The failure to complete the investigation procedure pursuant to **Part B** of the **SCR** is in some measure attributed to the Applicant's application for judicial review of his interdiction. The record shows that on 24 February 2009 the Applicant was advised that the Commission confirmed his interdiction of 6 September 2008 pending the outcome of an investigation into his alleged failure to perform the duties assigned to him. These proceedings were instituted on 7 April 2009, mere weeks after the Applicant received confirmation of his interdiction. In the circumstances, this Court also notes like the Court in *Clarke (supra)* that the Commission was prohibited from continuing its investigation of the allegations of misconduct against the Applicant by the commencement of these legal proceedings challenging his interdiction.

[58] The Respondents have also contributed in part to the status of the investigation. The First Respondent, Gail Atkins, deposed at paragraph 15 of

her affidavit that the delay in bringing charges against the Applicant was attributed to delay within the system. According to her, “copies of the charges could not be submitted to the Applicant’s Attorney-at-Law as they were being awaited from the Solicitor General’s Chambers”.

[59] Regrettably, I also take the opportunity to state that there has also been substantial delay in these proceedings which affected the process of the investigation procedure. Some measure of systemic failure must also be acknowledged.

THE COMPLAINT WITH RESPECT TO THE FOURTH RESPONDENT

[60] **On the 13th of March 2019** at the request of counsel for the Applicant, the court convened a Case Management Conference at which it was ordered by consent that the letter dated 2008-09-09 from Mr. Tennyson Springer, Hospital Director to the General Nursing Council, re the complaint against Mr. Ronald Alleyne King, be admitted into evidence and marked exhibit “TSA”. For a substantial period of time this letter, which was referred to in the affidavit in support of the application but was not exhibited, could not be located by the parties who had agreed that it ought to become part of the record. It also was part of the basis upon which Mr. Nicholls grounded his submissions against the Hospital Director. The parties further agreed that there would be no cross-examination of Mr. Springer of the said letter.

- [61] The Claimant seeks orders that the decision of Mr. Springer to forward a complaint to the Fourth Respondent without first responding to the lawful requests on the part of the Applicant for the particulars of the charges of misconduct and the reasons for the decision to interdict the Applicant from duty is or was malicious, procedurally unfair, *ultra vires*, void and/or contrary to law.
- [61] Mr. Nicholls submitted (1) that **section 33** of the **Nurses Rules** established the procedure for laying a complaint of misconduct. The Nursing Council is obliged to refer the matter to a Complaints Committee which shall direct the Registrar to investigate the matter and submit his findings thereon and (2) the complaint to the Nursing Council coupled with the request that the Council take “the strongest disciplinary action in the circumstances” betrayed sinister motives on the part of the Hospital Director in his attempt to seriously prejudice the Applicant’s professional career.
- [62] Mr. Nicholls conceded that the Hospital Director was within his power to lay the complaint to the Fourth Respondent but submitted that the exercise of this discretion was made in bad faith and constitutes an abuse of power because he had initiated disciplinary proceedings under the **PSA**. He also submitted that Parliament did not or could not have intended for concurrent disciplinary processes under the **PSA** and **Nurses Rules**. He therefore argued that it would

be an abuse of power if the Nursing Council is allowed to convene any hearing into the complaint laid by the Hospital Director and urged the Court to grant an injunction to restrain the Nursing Council from proceeding with any hearing into that complaint.

- [63] Ms. Deane submitted that the Nursing Council did not feel that it was in a position to advise regarding any breaches of the **Nurses Rules** since it had only received: (1) correspondence from the Hospital Director and (2) two reports of staff members. Further, that there was insufficient information upon which the Council could act. In all the circumstances there is no need to restrain the Fourth Respondent from proceeding as already the Council felt it did not have sufficient information upon which to base any disciplinary proceedings: (see p. 11 of the Written Submissions filed 26 April 2010).

THE LAW

- [64] **Part IX of the Nurses Rules 2008** provides as follows:

“33. (1) Where a complaint is made to the Council against a person registered or enrolled under the Act alleging professional misconduct or a conviction as mentioned in paragraph (a) or (b) of section 25(1) of the Act, or where such an allegation comes to the notice of the Council, the Council shall refer the matter to a committee appointed in accordance with paragraph 2(a) of the Schedule to the Act (in these Rules referred to as "the Complaints Committee").

(2) On a complaint being referred to it under paragraph (1), the Complaints Committee shall direct the Registrar to investigate the matter and submit the findings thereon.

34. The Registrar shall, within 7 days of the date of submitting the findings to the Complaints Committee, notify in writing the person affected (in these Rules referred to as the respondent) of the nature of the allegation, and request that the respondent submit within 21 days of the date of the request a written statement of such explanations or representations as are necessary.

35. (1) The Complaints Committee, having regard to any explanation or representation made by the respondent, may

- (a) determine that no enquiry shall be held;
- (b) refer the matter in the whole or in part to the committee appointed in accordance with paragraph 2(a) of the Schedule to the Act (in these Rules referred to as the Disciplinary Committee); or
- (c) take such other steps as it considers appropriate in the circumstances.

(2) If the Complaints Committee determines that no enquiry shall be held, the Registrar shall inform any complainant and the respondent of that fact, in such manner as the Complaints Committee directs.”

DISCUSSION AND ANALYSIS

[65] I note Mr. Nicholls’ concession that the Hospital Director was within his power to lay the complaint to the Fourth Respondent. **Part B** of the **SCR** provides the procedure for the conduct of investigations. **Section 25 (1) (c)** of **the Nurses Act** states that a nursing professional who is suspected, on reasonable grounds, to have committed misconduct is subject to disciplinary proceedings. Once charges have been preferred and served on an officer, the rules of natural justice provide that the officer must be given an opportunity to be heard. In the landmark case of *Ridge v Baldwin* [1964] AC 40 the House of Lords held that the chief constable’s dismissal was in breach of the principles of natural justice because it was contrary to the express provisions

governing police discipline which, in the case of misconduct, required notice of the charge and an opportunity to defend oneself. In *O'Reilly v Mackman* [1983] 2 AC 237 at 276 Lord Diplock said that the right of a man to be given, “a fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental that Parliament intended that a failure to observe it shall render null and void any decision reached in breach of this requirement”.

[66] The Nursing Council is duty bound to refer a complaint to the Complaints Committee for its investigation. That Committee directs the Registrar of the Council, who is responsible for the administration of the Council under **Section 6** of the **Nurses Act**, to investigate the matter and submit its findings. The Registrar is obligated, within seven days of the date of submitting the findings to the Complaints Committee, to notify the person affected of the nature of the allegation and request that person to submit a written statement of such explanations or representations as are necessary. Rule 35. (1) clearly establishes that the Complaints Committee, having regard to any explanation or representation made by the respondent, may either:

- “(a) determine that no enquiry shall be held;
- (b) refer the matter in the whole or in part to the committee appointed in accordance with paragraph 2(a) of the Schedule to the Act (in these Rules referred to as the Disciplinary Committee); or
- (c) take such other steps as it considers appropriate in the circumstances.”

[67] The above procedure clearly shows that the Hospital Director's role is limited to referring the complaint to the Council. The investigation into the complaint and subsequent procedures are within the jurisdiction of independent bodies who have a statutory duty to perform. I deem it necessary to set out the text of his referral letter. This is the letter which the parties were unable to find until 26 February 2019.

“Ref. No: 04/NUR

2008-09-09

The Chairman
General Nursing Council
Jemmotts Lane
St. Michael

Dear Sir

The Psychiatric Hospital is reporting a serious breach of nursing ethics, regulations and proper practice by Mr. Ronald Alleyne-King.

The attached reports from Principal Nursing Officer (Ag. L Mr. Jasper Johnson and Senior Sister, Ms. Victoreen Bryan outline the officer's dereliction of duty and refusal to obey legitimate directions of two senior officers to take up his assignment on the Annex Ward.

The General Nursing Council is asked to perform the necessary investigations and take the strongest disciplinary action in the circumstances.

Yours faithfully
Tennyson Beckles
Hospital Director”

[68] While I find that the language used by the Hospital Director in making the referral was quite unfortunate, I cannot uphold Mr. Nicholls' submissions for the following reasons. Whether or not the Hospital Director has shown bias

is a matter of fact for the tribunal which will hear the allegation. It is unnecessary for me to make that decision at the stage of interdiction. The Hospital Director is entitled to due process including the right to be heard.

[69] The decision as to whether the complaint has been made out is not for the Hospital Director. To hold that any alleged bias or predetermination of the complaint on the part of the Hospital Director vitiates the disciplinary process is to impugn the impartiality of the Registrar and the Complaints and Disciplinary Committees against which entities there are no allegations of bias. Furthermore, this court will not make any such findings without those persons or bodies being heard in their own defence. Further, having regard to my ruling on the submission that the interdiction was premature, it would be counter to that ruling to halt this process and so undermine the interdiction of the Applicant. In the circumstances, I decline to grant an injunction against the Nursing Council.

THE DUTY TO PROVIDE REASONS

[70] Mr. Nicholls submitted that it was procedurally unfair and improper for the Hospital Director to deny the Applicant's request for particulars of charges and the reasons for the interdiction when it was clear that he had already addressed his mind to the formulation of specific charges of misconduct in his memorandum of 8 September 2008 to the Chief Personnel Officer. He also

submitted that no properly directed public authority would have spurned the request for reasons why the interdiction was in the public interest while confirming the interdiction for an indefinite period.

[71] The requests for reasons in the letter of 17 September 2008 was in accordance with section 16 of the **AJA**. Ms. Deane argued that it was completely erroneous to state that the Respondents failed to respond to the requests. She asserted that counsel for the Applicant may not have liked the response, but he was advised that the reports had been forwarded to the Personnel Administrative Division, the department responsible for responding to administrative matters of that nature. However, the statutory duty to provide reasons as required by s. 13 of the **AJA** could not be met where a disciplinary procedure had already commenced under the other statutory provisions. In all the circumstances it was reasonable for the Hospital Director to inform the Applicant that he was unable, at that time, to satisfy his request for reasons.

[72] Under regulation 28, the officer is entitled to copies of evidence of the investigations only after the enquiry is closed. That regulation provides that:

“28(1) An officer in respect of whom a report of misconduct is being investigated shall be entitled to receive free copies of, or access to, any documentary evidence (including statements of witnesses) used for the purposes of the investigation, and shall be given at his request a copy of the evidence (including copies of documents tendered in evidence) **after the inquiry is closed.**”(emphasis added.)

Sections 13 and 14 of the AJA set out above in this decision impose a duty on decision makers to supply a statement of reasons for their decision. This must be interpreted in the light of the decision in *Clarke*.

DISCUSSION AND ANALYSIS

[73] Having regard to my ruling that there is no obligation for charges to be proffered prior to the interdiction of the Applicant, I am of the view that to provide reasons without conducting an investigation in accordance with the **SCR** would be to by-pass and disregard the disciplinary procedure essential to the good administration and functioning of the public service as set out in *Clarke*. I agree with the view expressed in *Clarke* that, at this stage of the proceedings, whether or not interdicting the officer is in the public interest is not a matter for the Court to enquire into. It is a matter for the Commission. Accordingly, the Hospital Director was under no obligation to provide reasons.

[74] However, I wish to make a crucial observation. The Applicant seeks orders in respect of alleged unlawful acts of the Hospital Director. The post of Hospital Director is created under section 14 of the **Mental Health Act Cap. 45**. He has not been made to these proceedings. Having regard to the role of the Hospital Director outlined in this decision, I do not think it appropriate to grant the relief sought.

[75] In these circumstances, this Court will not grant the Applicant the relief he seeks in relation to the actions of the Hospital Director of the Mental Hospital.

THE REDUCTION AND RESTORATION OF THE APPLICANT'S SALARY

[76] On 20 March 2019, both counsel informed the court that the Applicant had been restored to his full salary pursuant to an undertaking given to the court, and that a letter had been sent to his employers to that effect. However the parties were unable to state the exact date of restoration of salary. It was agreed that the court should take notice of this fact without the need to call further evidence. As previously noted, Ms. Deane conceded that the Applicant's salary ought to be restored and later confirmed its restoration. In the circumstances, there is no longer any issue to be resolved. In any event. This would have been a matter to be ventilated at the full trial of the substantive matter. I note, however, this issue goes to the consequences of interdiction where salary reduction is concerned and not to the procedure which will be adopted after interdiction.

[77] It must be noted that **section 35 (4)** of the **PSA** provides that the provisions of the **Service Commissions (Public Service) Regulations, 1978** are revoked to the extent that they are inconsistent with the provisions of the **PSA**. To that

extent, therefore, the provision under which the Applicant's salary was reduced was repealed by **Section 4(6)** of the *Code*.

[78] On the said Case Management Conference, Mr. Nicholls handed up an extract from the text *Commonwealth Caribbean Administrative Law: Ventose, Eddy Oxon, 2013. Print*). He submitted that his researches revealed that compensatory damages would not be available to the Applicant since his client had been restored to his full salary. However, if the court found in the Applicant's favour, damages for embarrassment and hurt feelings would still be available. The court commends Mr. Nicholls for making his researches available and conceding the impact of these researches upon his client's claim. This is in keeping with the highest standards of ethical conduct expected of members of the legal profession. Having regard to my disposal of this matter, however, it will not be necessary to rule on the question of damages.

[79] In the circumstances, the Court is of the view that the Applicant's interdiction is not subject to judicial review proceedings.

DISPOSAL

[80] Accordingly, the Applicant's application is dismissed.

[81] Having regard to the fact that the Applicant has been restored to his full salary, it is unnecessary to make an order to this effect.

[82] Each party shall bear their own costs.

William J. Chandler
Judge of the High Court