



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025: No. 127

BETWEEN:

JUSTICE NICOLE STONEHAM

Applicant

- and -

THE ATTORNEY GENERAL

First Respondent

- and -

HIS EXCELLENCY THE GOVERNOR

Second Respondent

- and -

THE CHIEF JUSTICE OF BERMUDA

Third Respondent

RULING

Date of Hearing: 27 – 29 July 2026

Ruling Delivered: 16 October 2026

Appearances:

Dan Squires KC instructed by *Victoria Greening* of Resolution Chambers Ltd for the Applicant
Keith Robinson and *Siobhan Boys* of Carey Olsen Bermuda Ltd for the 1st and 2nd Respondents
Sir James Eadie KC instructed by *Ben Adamson* of Conyers for the 3rd Respondent.

HEADNOTE

The Court of Appeal breached the rights of the Applicant safeguarded by section 1(a) of the Constitution. All other aspects of the Applicant's application are dismissed.

Introduction

1. These proceedings were commenced by originating summons. The amended originating summons essentially alleges that the Applicant suffered a breach of her constitutional rights under section 6(8) of the Bermuda Constitution (enacted by schedule 2 to the Bermuda Constitution Order (BX182/1968)) ('the Constitution'). According to the amended originating summons, that breach was said to have been the result of:

... being subjected to unwarranted allegations of serious misconduct, including of corruption and other unlawful abuse of judicial office, which were not properly put to her and to which she did not have a fair chance to respond.

2. A re-amended summons was subsequently issued. This relied on *Corporation of Hamilton v AG Bermuda* [2025] 1 WLR 5218 to argue that there was a breach of the 'protection of law' limb in section 1(a) of the Constitution. There was no objection to this amendment.
3. I am very grateful to all involved in the written and oral submissions made in this case. They provided great assistance in a complex and important case.

Factual background

4. The Applicant is a Puisne Judge of the Supreme Court of Bermuda appointed in 2016. Previously she had a legal career in private practice and as a magistrate. Her 2nd affidavit states in relation to her judicial appointments that:

All these roles are a position of service. They are not a position for individual agendas. I was appointed on merit. So I was humbled that all of the sacrifices of my parents, grandparents, and those within the profession, had come to something, and that I was able to represent all of that. It was an honour. Throughout all these judicial appointments I was 100% committed to doing right by all manner of people.

5. In the course of the Applicant's duties as a Puisne Judge, she sat in family law proceedings that form the background to these proceedings. Those proceedings were *VSE v TRT* 2018 No 190. In the course of those proceedings

an application was made for the Applicant to recuse herself. That application was heard on 4 August 2022. The basis for the application was that the Applicant (or at least a person said to have been her brother) was close to the father in the family proceedings. The Applicant was also said to have intervened in proceedings for a breach of a Domestic Violence Protection Order ('DVPO') to obtain the release of the father on bail. Other matters were also relied upon as being the basis of the recusal application but they are not relevant to these proceedings.

6. Although the Applicant's role in the DVPO proceedings was raised, it would appear that at no stage during the hearing to determine the recusal application was there any allegation that the Applicant had improperly contacted the Director of Public Prosecutions ('the DPP') or more generally that the Applicant had behaved inappropriately. These are matters that were subsequently raised by the Court of Appeal in its judgment as is set out below. That is important because it is said by the Applicant that, although she could have said more in response to the recusal application, she was not fully aware of the concerns ultimately raised by the Court of Appeal.
7. On 12 August 2022 the Applicant dismissed the recusal application. Her judgment stated:

The Mother's perception of the Judge's connection to the retired Police Inspector and his relationship with the Father's family is just that - her perception. The Mother's perception must not be confused with the fair-minded and informed observer, having considered the facts, "connections" and the issue before the Court in the context of Bermuda's geography, population size, cultural and social history. [44]

8. The mother in the family law proceedings appealed to the Court of Appeal against the dismissal of the recusal application. The grounds of appeal stated that:

*GROUND 2 - The Judge failed to properly consider or give sufficient weight to the allegations which were made against her.
GROUND 3 - The Judge failed to be transparent in respect of the allegations made.*

9. The skeleton argument submitted in support of the appeal made clear that the allegation was that the Applicant was a family friend of the father and previously intervened in the criminal justice system in order to get him released from jail.
10. While the appeal was pending, Conyers, who were the attorneys representing the mother, wrote to the Supreme Court registry on 12 January 2023 asking:

While it may be said that the learned Judge touched on the allegation in paragraph 44 of her Ruling, we write to inquire whether the learned Judge wished to respond to the allegation in respect of the intervention to help the Respondent.

The Applicant states that she did not receive that letter. That statement has not been challenged.

11. On 9 March 2023 a hearing took place before the Court of Appeal. It does not appear that the mother's attorney alleged any improper link between the Applicant and the DPP during the course of that hearing.
12. At the hearing of the appeal, it appears that the President of the Court of Appeal asked whether there are any statutory provisions that allow a Puisne Judge to sit as a magistrate. That was significant because it appears that a magistrate could have sought the release of someone in custody for an alleged breach of a DVPO. The attorney representing the mother wrote to the Court of Appeal registry on 10 March 2023 stating that:

We have been unable to identify any specific provision of law which expressly or even impliedly prohibits, or allows, a Puisne Judge to assume the role and/or powers of the statutory position of a Magistrate.

It appears that the Applicant was not asked about this.

13. Subsequently, the Court of Appeal contacted the Bermuda Police Service ('BPS'). That e-mail raised for the first time the role of the DPP. BPS responded while the appeal was still pending stating that:
 - a. The father had been arrested at 7.08pm on 23 December 2018 for breach of a DVPO.
 - b. The custody record indicated that the Applicant had ordered the father's release at 10.31pm on 23 December 2018.
 - c. A report had been submitted to the DPP for charge approval.
14. Custody records obtained from BPS stated, among other matters, that:

Email response received from Senior Crown Counsel Nicole Smith stating at 07:11 hrs on Monday 24. December 2018 stating that the DPP's office is not proceeding with this matter due to insufficient evidence to conclude that [the father] breached any specific term of the consent order. Email thread from Ms. Smith attached to the incident.

15. Neither the DPP nor the Applicant were contacted about the information obtained from BPS. However, on 20 March 2023 the parties were e-mailed by the Registrar of the Bermuda Courts indicating that the Court of Appeal was likely to reference the information obtained from BPS.
16. On 15 May 2023 the Court of Appeal allowed the appeal. The judgment concluded that there was an appearance of bias so that the judge should have recused herself. Relevant factors included:
 - a. The failure of the Applicant to address the issue of her relationship with the father and to respond to the letter of 12 January 2023 (see above) [25]. This was said to be ‘wholly unsatisfactory’.
 - b. A Puisne Judge’s intervention to secure the release of a person arrested for a breach of a DVPO would appear irregular at best and unlawful at worst [27].
 - c. There were also criticisms of the role played by the DPP in the release of the father [29]. In this context, it was stated that there were questions about:

... (i) why the DPP had so speedily decided not to proceed with the alleged breach against the father nor to require him to attend court; and (ii) whether Stoneham J herself had expressed any views to the relevant authorities as to the strength or weakness of the evidence allegedly supporting the mother's complaint.

[29]
17. The 1st and 2nd Respondents argue that it is important to note that the Court of Appeal was careful to avoid expressing its remarks regarding the Applicant as findings of fact. They argue that there was no need for findings as the Court was simply addressing arguments regarding apparent bias. So for example, in relation to the DPP it was expressly said that the Court was not ‘deciding the matter, since we have not received submissions in relation thereto’ [29]. The 1st and 2nd Respondents argue that means that the Court of Appeal was not determining any rights. This is a matter that I will return to. I merely note at this stage the significance of the remarks of the Court of Appeal must be considered in light of what follows.
18. The Court of Appeal did not suggest any action should be taken against the Applicant.
19. The Applicant states that:

The first I learned anything about the appeal, or indeed the contents of the Court of Appeal’s judgment, was some time shortly

after the judgment was publicly handed down on 15 May 2023, when reading press reports about the Court's judgment. ... Following the judgment's release and the publicity surrounding it, I became the subject of constant gossip. I noticed whispers behind my back and snideness from counsel. Former friends, prominent lawyers, began to disassociate themselves from me - one even making it clear to me by directly telling me upon a happenstance encounter on the street that she had now decided to do so, to avoid any tarnish or stain spreading to her. Bermuda is small.

This evidence is supported by a newspaper report of the Court of Appeal's judgment.

20. On 20 March 2023 the Chief Justice wrote about a possible complaint about delay in producing a judgment. That was followed by a complaint to the Judicial and Legal Services Committee ('the Committee'). The role of the Committee in considering complaints about judicial misconduct is considered at paragraph 42 onwards. On 6 June 2023 the Applicant's attorneys wrote arguing that the role of the Committee was unconstitutional. That complaint is not directly related to these proceedings and appears to have not been proceeded with further. However, it is said to be an example of the Chief Justice alerting the Applicant before making a complaint.
21. On 11 August 2023 the Chief Justice wrote the Governor. The letter stated that the judgment of the Court of Appeal suggested that judicial misconduct may have occurred. The letter concluded:

In light of the above concerns expressed in the Judgment and having regard to sections 8-16, 72 and 74 of Guidelines of Judicial Conduct, the Committee is respectfully requested to consider whether the conduct of Justice Stoneham complained of amounts to judicial misconduct.

Paragraphs 8-16, 72 and 74 of the Guidelines for Judicial Conduct for the Judges of the Supreme Court of Bermuda and the Magistracy are concerned with impartiality and conflicts of interest.

22. It appears to me that in this letter the Chief Justice essentially identified a matter that required investigation and requested the Governor to take action to investigate the matter. It also appears to me that this letter is part of the material that needs to be considered when assessing the significance of the judgment of the Court of Appeal. It is clear that the Chief Justice regarded the remarks of the Court of Appeal as going beyond the sorts of criticisms of first instance judges that are common and that first instance judges have to accept.

Those sorts of remarks do not prompt formal investigations. This is a matter that I will consider further below.

23. The Applicant argued that there was an inconsistency between the arguments of the 1st and 2nd Respondents and the arguments of the 3rd Respondent. That is because the 1st and 2nd Respondents argued that no findings had been made. However, the 3rd Respondent felt obliged to act. It appears to me that there is no inconsistency. It appears to me that the Chief Justice merely concluded that the judgment of the Court of Appeal demonstrated a need for an investigation. He expressly stated that ‘concerns [had been] expressed’. He did not state that findings had been made. He then sought to refer the matter to the Governor for investigation. That is not surprising. In a small jurisdiction like Bermuda, there might well be legitimate concerns if the Chief Justice were to investigate a fellow judge rather than refer an issue to the Governor for consideration as to whether it should be investigated in accordance with the Constitution.
24. On 15 September 2023 the Complaints (Filtering) Sub-committee of the Committee concluded that there was a case of judicial misconduct that raised ‘a case to answer’. The decision stated that:

[11] The Filtering Sub-Committee underlines that our role in this preliminary assessment is not to make a finding of judicial misconduct but only to decide and make a recommendation about whether or not the complaint should be screened out and summarily dismissed.

[12] The Complaint therefore passes our preliminary assessment of the merits and appears to raise a case to answer of judicial misconduct. [Emphasis added]

The language of ‘appears’ reflects the Judicial Complaints Protocol for Bermuda (‘the Protocol’) (see paragraph 45 below).

25. On 16 November 2023 the Secretary to the Committee wrote to the Applicant notifying her that there had been a further complaint by the Chief Justice. The letter supplied a copy of the complaint as well as the decision of the Complaints (Filtering) Sub-committee of the Committee. The Secretary asked for a response to the complaint. There is a dispute about the meaning of the letter. In particular, there is a dispute about whether the letter merely sought an indication as to whether the complaint was disputed or whether it sought representations about the conduct generally. It appears to me that the letter did seek representations about conduct:

- a. Firstly, the letter stated that:

I am sending this to you to give you the opportunity to respond to the complaint. ...

... the Committee would wish to know whether you intend to respond to the complaint and, if so, how long you would wish to have to do so. The Committee asks this question because, if the position is that you do not intend to avail yourself of the opportunity to respond to the complaint, the Committee and the Governor will need to decide how, and by what route, to proceed and there will be no point in delaying a decision on that question in order to await a response that will never come.

It appears to me that this language is seeking representations generally. It was asking for a response to the complaint. It was not merely asking if the complaint was denied. That interpretation is consistent with the fact that it was being said that representations were being asked for in order to decide how to proceed.

- b. The letter should be read with the Protocol. I consider the Protocol later. However, I note at this stage that I have concluded that the Protocol does provide for representations to be made to the Committee (see paragraph 45 below).

- 26. On 9 January 2024 the Applicant's attorneys wrote that any attempt to discipline her other than by way of section 74(4) of the Constitution would be unconstitutional. This may have caused the Committee to take no further role in the case.
- 27. On 24 January 2024 the Court of Appeal delivered its judgment in *Junos v Governor of Bermuda* [2024] CA (Bda) 4 Civ. I will consider that judgment in detail at paragraph 46 below. It is sufficient to note that the Court of Appeal essentially concluded that an aspect of the role played by the Committee was unconstitutional. As a consequence, this may also have caused the Committee to take no further role in the case. In any event the Committee played no further role in the Applicant's case.
- 28. On 11 March 2024 the Governor wrote to the Applicant's attorneys giving them an opportunity to respond to the complaint. The Applicant's 2nd affidavit states in relation to this letter:

Given all that had happened, it was obviously highly unlikely that matters would then just stop.

The Applicant argues that this evidence was not challenged and so should be accepted. That appears to me to be wrong as a matter of principle. The evidence is that the Governor wrote inviting representations. There is no

challenge to the Governor's consideration of those representations. Had there been a basis for believing that the Governor adopted a closed mind to the representations, one might have expected a challenge. In those circumstances, it appears to me that there is no basis for concluding that the Governor did not consider the representations with a sufficiently open mind to mean that her consideration of the representations was unlawful.

29. On 21 April 2024 the Applicant's attorneys responded to the Governor's invitation for representations stating, among other matters, that:
- a. It was not wrong for the Applicant to respond to the letter sent by Conyers during the Court of Appeal proceedings.
 - b. It was accepted that the Applicant had wrongly intervened to secure the release of the father. Having previously been a magistrate, she wrongly believed that she had the power to order the father's release.
 - c. There was no evidence that the judge had any role in the decision-making of the DPP.

The letter contained no information about the relationship between the Applicant and the father's family.

30. On 11 July 2024 the Governor wrote to the Applicant's attorneys. The letter stated that a tribunal would be established pursuant to section 74(4) of the Constitution ('the Tribunal') to consider dismissal for 'inability or misbehaviour'. The letter also stated that the Applicant would be suspended but that representations seeking to set aside the suspension would be considered.
31. The Tribunal was chaired by Lord Burnet. Its other members were Dame Janice Pereira and Dame Linda Dobbs. As part of its evidence gathering, it held a hearing in Bermuda. It ordered that the hearing would be held in private. That was in part in light of the matters set out in the following passage of its decision:

The concern of Counsel, which we shared, was that if our hearing in Bermuda were held in public it would cause irremediable harm to the judge whatever the outcome of our deliberations because of inevitable adverse publicity. That harm would be most damaging were we to conclude that the matter should not result in a referral to the Privy Council. [8]

32. The Tribunal stated in a decision dated 15 April 2024 (which in fact must be an error and the date must be 2025) that 3 'deeper concerns' had been identified by the Court of Appeal. These were:

- a. *The reality of the alleged relationship between the judge and the father's family;*
- b. *The propriety of the judge's involvement in releasing the father from custody on 23 December 2018; and*
- c. *The circumstances of the decision of the DPP not to proceed against the father for alleged breach of the DVPO. [36]*

In relation to these concerns, the Tribunal held that:

... we have concluded that the judge was not guilty of any misconduct arising from the matters under complaint. Rather, as she accepts, she made errors of law and judgement which in our view did not amount to misconduct. The threshold for removal is "misbehaviour" which requires serious misconduct sufficient to destroy confidence in a judge's ability properly to perform the judicial function. [2]

33. In reaching the conclusion cited in the paragraph above, the decision of the Tribunal included the following findings, among others:

- a. In relation to the failure of the Applicant to respond to the letter from the mother's attorney dated 12 January 2023, the Tribunal stated that:

... even if she had received this letter. she would have been right not to respond. Judges do not expand upon their reasons set out in a judgment in correspondence with one of the parties to the proceedings. [22]

The Tribunal noted that:

There are other mechanisms which enable a judge to furnish an appellate court with information relevant to a suggestion of apparent bias. [22]

- b. Judicial guidelines do not expressly deal with the possibility that a judge might privately interfere with the independent prosecutorial function of the DPP in respect of a person whom the judge is connected with. However, if that were to happen, it would clearly be a serious matter of misconduct [41]. In fact, the DPP had informed the Tribunal that the Applicant had 'no involvement whatsoever' in its decision [50]. In light of this the Tribunal stated that:

we were satisfied ... that there was no substance in the suggestion of misconduct or impropriety on the judge's part in connection with the decision not to proceed against the father ... [54]

- c. The Applicant's family had never accepted that it was related to the person who was alleged to have been the Applicant's brother and was also alleged to have been related to the father in the family proceedings [63]. Had the true position been known, the Applicant

would not have needed to recuse herself in the family proceedings [67].

- d. The Applicant made a legal error in exercising a jurisdiction in relation to an alleged breach of a DVPO that she did not have. However, that was not a reason for her to recuse herself [107].

34. The Tribunal concluded by noting that:

It is regrettable that the judge did not volunteer, nor did the Court of Appeal seek, an explanation which would have clarified the position and dispelled the suspicions spoken of in the Court of Appeal judgment. The issue raised by that court of its own motion, namely that the judge may have played a part in the decision of the DPP not to prosecute the father for alleged breach of the DVPO, had not been advanced by the mother and on examination has no substance. [Emphasis added]

35. On 21 April 2025, the suspension of the Applicant was lifted.

Submissions of the parties

36. I have considered the very helpful written and oral submissions with care. I address some of the submissions that I regard as being particularly significant in the course of my reasoning in this judgment. However, any failure to expressly mention a submission does not mean that it was not considered.
37. The Applicant argues that the actions of the Court of Appeal, the Chief Justice and the Committee constitute unfair determinations of the Applicant's right to a good reputation and/or her suspension. She relies on both section 1(a) and 6(8) of the Constitution. That means that she essentially argues there was a breach of her fair trial rights and/or also a denial of 'protection of the law' by reason of a failure to act fairly.
38. The First and Second Respondents argue, among other matters, that:
 - a. The Applicant has had adequate redress so that the proviso in section 15(2) of the Constitution applies.
 - b. There was no breach of section 6(8) of the Constitution ('section 6(8)') as neither the Court of Appeal nor the Committee determined the Applicant's civil rights.
 - c. Section 1(a) of the Constitution ('section 1(a)') confers no additional rights. In any event, there was no breach of section 1(a).
 - d. The Tribunal ensured fairness.

39. The Third Respondent argues that there was no duty to seek representations before referring a complaint to the Committee. In any event, the Governor sought representations. Further, there is no recoverable loss attributable to the Third Respondent as any harm was caused by the expression of concerns by the Court of Appeal. Finally, it is said that the Third Respondent is immune from suit.
40. Further details of the arguments of the parties are set out below when those arguments are considered.

Legal framework

Legal framework for handling judicial complaints

41. Section 74(3) of the Constitution ('section 74(3)') provides that:

A judge of the Supreme Court shall be removed from office by the Governor by instrument under the Public Seal if the question of the removal of that judge from office has, at the request of the Governor, made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

42. The Judicial Complaints Protocol for Bermuda states that:

On 1 November 2013, the Governor H.E. Mr. George Fergusson announced the formation of a standing Judicial and Legal Services Committee to advise him on, inter alia, judicial complaints. The present Protocol has been voluntarily adopted by the Judiciary of Bermuda with the concurrence of the Judicial and Legal Services Committee. [6] ...

This background to the operation of the Committee is expanded upon in footnote 1 to *Junos v The Governor of Bermuda* [2024] CA (Bda) 4 Civ which states:

First convened by Governor George Ferguson in November 2013 as a standing committee to advise the Governors of Bermuda on their constitutional responsibilities in relation to the judiciary, including the power to appoint judges and magistrates and to make decisions concerning complaints about judicial conduct (other than issues relating to judgments which should or could be considered further in the courts). The [Committee] comprises 8 persons including the President of the Court of Appeal as

chairperson, the Chief Justice, two overseas judges, the President of the Bermuda Bar Association and three prominent lay members from the Bermuda community.

43. The Protocol makes provision for the Chief Justice to complain to the Committee. Paragraph 10 states that:

Where the President of the Court of Appeal, the Chief Justice or Senior Magistrate consider ... that judicial misconduct may have occurred, they may refer that matter to the Committee to be dealt with as a complaint. [Emphasis added]

It appears to me that paragraph 10 makes clear that the role of the Chief Justice is not to determine whether there has in fact been misconduct. The threshold for a complaint is that there may have been misconduct. That appears to me to be unsurprising in light of the role that the Privy Council ultimately plays in determining whether there has been misconduct. Having identified a possibility of misconduct, paragraph 10 enables the Chief Justice to ensure that there is an independent investigation.

44. Where a complaint has been submitted by the Committee, the Protocol provides that ‘a preliminary assessment of the merits of complaints will be carried out by a Complaints (filtering) Sub-committee’ [11]. It provides that complaints may be dismissed where ‘they are unmeritorious on their face’ [12]. It also provides a list of circumstances where a complaint will be dismissed. These include where ‘it is untrue, mistaken or misconceived’ [12(f)]. The Protocol does not appear to provide for a judge to make representations at this stage. Consistent with this, the Complaints (Filtering) Sub-committee of the Committee appears to have concluded in its decision dated 15 September 2023 that there was a case to answer without seeking a response from the Applicant. It appears to me that this all demonstrates that, at the material time, the role of the Complaints (Filtering) Sub-committee of the Committee was simply to filter obviously hopeless complaints. It was intended to ensure that judges were not bothered by hopeless cases.

45. Paragraph 15 of the Protocol states that:

The Committee will consider all complaints which have been filed in time and which appear to raise a case to answer of judicial misconduct. Receipt of the complaint will be acknowledged and the judge complained of will be given a reasonable time to respond to the complaint and given an opportunity to be heard. [Emphasis added]

It appears to me that this makes clear that representations will be invited after the Complaints (Filtering) Sub-committee of the Committee decides that there is a case to answer. The Applicant disputes this reading of the Protocol. However, it appears to me consistent with the letter dated 16 November 2023 seeking representations. It also appears to me to be pointless for paragraph 15 to give the judge an opportunity to respond if that response is not considered.

46. As noted above, the operation of the Protocol was considered recently by the Court of Appeal in *Junos v The Governor of Bermuda* [2024] CA (Bda) 4 Civ. The Court of Appeal held that the Protocol was objectionable because it provides for the Committee to summarily dismiss complaints and to deal with complaints that could not lead to removal from office ([14] and [43]). However, the Court of Appeal also held:

... we do not find that the [Committee] itself or the Protocol which is intended to inform the conduct of its affairs, are without effective value. Far from it. In the continuing absence of a statutory scheme for dealing with all kinds of judicial complaints, as a standing body of suitably qualified persons to advise the Governor on complaints which could require his intervention under section 74 of the Constitution for removal of a judge or for differentiating between such complaints and those less serious but which might require other forms of intervention, the Governor is perfectly entitled to rely upon the JLSC. Indeed, when presented with complaints, the Governor is entitled to seek the advice of any suitably qualified person or persons he wishes. [46]

What matters in this context, is that the [Committee] is a suitably qualified body of persons capable of giving sound advice to the Governor for dealing with such complaints as may involve the removal of a judge from office, including where appropriate, as to whether the complaint crosses the threshold of seriousness and requires the convening of the Tribunal contemplated by section 74 of the Constitution. [48]

47. The Applicant argues that in light of *Junos* it was unlawful for the 3rd Respondent to refer the complaint directly to the Committee ‘and to ask the committee not merely for advice but to determine it’ (Applicant’s skeleton at [72]). However, it appears to me that the Applicant mischaracterises what happened. What happened was that the Committee decided on 15 September 2023 that the Chief Justice’s complaint ‘appears to raise a case to answer’. Had the complaint been dismissed at that stage, that would have been contrary to the principles identified in *Junos* as it would have been the determination of a complaint. However, there was no determination of the complaint. Representations were then sought but they were never determined as the matter was then passed to the Governor. Separately, the Governor invited

representations on 11 March 2024 implying that she had not adopted a closed mind to the handling of the complaint (see paragraph 28 above).

Interpretation of the Constitution

48. In *Minister of Home Affairs v Fisher* [1980] AC 319 it was held that constitutions such as the Constitution:

... call for a generous interpretation avoiding what has been called "the austerity of tabulated legalism," suitable to give to individuals the full measure of the fundamental rights and freedoms referred to. (p328H)

Section 1(a) of the Constitution

49. Section 1(a) provides, among other matters, that:

Whereas every person in Bermuda is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely...
(a) ... the protection of the law ...

50. Section 1(a) was recently considered by the Privy Council in *Corporation of Hamilton v Attorney General of Bermuda* [2025] 1 WLR 5218. It noted that:

Having regard to the summary of the established jurisprudence of the Board, the Board in this appeal entertains no doubt that section 1 of the Constitution of Bermuda is a Preamble and is therefore not separately or independently enforceable. [89]

51. That finding in the paragraph above did not, however, prevent the Privy Council in *Hamilton* from giving separate consideration to whether ‘section 1(a) of the Constitution confer[s] an independently enforceable right to the protection of the law’ ([97] onwards). In that context the Privy Council cited authority including *Lewis v Attorney General of Jamaica* [2001] 2 AC 50 and *Attorney General of Barbados v Joseph and Boyce* (2006) 69 WIR 104 (an appeal before the Caribbean Court of Justice from Barbados).

52. In *Lewis* it was held by Lord Slynn that:

... the protection of the law’ covers the same ground as an entitlement to ‘due process’. Such protection is recognised in

Jamaica by section 13 of the Constitution and is to be found in the common law (Hamilton at [103]).

Section 13 of the Constitution of Jamaica was in similar terms to section 1 of Bermuda.

53. In *Joseph* section 11 of the Barbados Constitution was in similar terms to section 1 of the Constitution. More specific protection for fair trial was provided for in section 18 of the Barbados Constitution. The Caribbean Court noted that:

... the right to the protection of the law is so broad and pervasive that it would be well nigh impossible to encapsulate in a section of a constitution all the ways in which it may be invoked or can be infringed. Section 18 deals only with the impact of the right on legal proceedings ... But the right to the protection of the law is, as we shall seek to demonstrate, much wider in the scope of its application. The protection which this right was afforded by the Barbados Constitution would be a very poor thing indeed if it were limited to cases in which there had been a contravention of the provisions of section 18 (Hamilton at [106]).

54. In *Hamilton* the Privy Council considered an argument that the judgment of the Privy Council in *Newbold v Commissioner of Police* (2014) 84 WIR 8 demonstrated that the approach in *Lewis* and *Joseph* should not be applied. In *Hamilton* the Privy Council held that:

On the question of whether section 1(a) confers a separate and independently enforceable right to the protection of the law, the Board notes the earlier case law of the Board which strongly suggests that such a provision can have independent effect even where the opening section of the relevant constitution does not in general confer separate and independently enforceable rights [226a]

It, however, held that the determination of any issues regarding section 1(a) were premature. As a consequence, the findings regarding section 1(a) appear to be obiter.

55. The 1st and 2nd Respondents argue that the Privy Council proceeded on a flawed basis because it had failed to correctly summarise section 6(8) of the Constitution (see [97(d)] of *Hamilton*). The 1st and 2nd Respondents also argue that if section 1(a) gives rise to an ‘enforceable right to the protection of the law’, that would undermine section 6(8). It appears to me that these arguments lack merit because:

- a. The Privy Council has given a very clear indication that section 1(a) gives rise to an ‘enforceable right to the protection of the law’. Although that indication might be obiter, it appears to me that any Supreme Court Justice should be very reluctant to reject that indication. Very powerful arguments would be required. The arguments of the 1st and 2nd Respondents are not sufficiently powerful. It is highly unlikely that the Privy Council misunderstood section 6(8).
 - b. In any event the judgments in *Lewis* and *Joseph* provide strong support for the approach of the Privy Council. It appears to me that those judgements essentially demonstrate that the importance of due process rights mean that provisions such as section 1(a) give rise to a right to protection of the law.
 - c. I will consider the effect of both sections 1(a) and section 6(8) below. However, it appears to me that the provisions are concerned with different matters. Section 6(8) is concerned with fair trial rights such as the right to an independent judiciary. Section 1(a) is concerned with wider due process rights and so is not restricted to applying to a ‘court or other adjudicating authority’. However, section 1(a) does necessarily impose the same standards. For example, it does not require all decisions to be taken by persons who are sufficiently independent to be judges. This analysis is consistent with the judgment in *Joseph*.
56. In light of the matters above, it appears to me that section 1(a) gives rise to an ‘enforceable right to the protection of the law’. That finding means that I need to consider the content of that right.
57. In *Maya Leaders Alliance v Attorney General of Belize* [2015] CCJ 15 (AJ) the Caribbean Court of Justice considered section 3(a) of the Belize constitution (which is very similar in terms to section 1(a)). It held that:

We wish to be clearly understood as affirming that the right to protection of the law does encompass access to and the enjoyment of the fundamental rules of natural justice. [42] ...

The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. ... It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, “adequate safeguards against irrationality,

unreasonableness, fundamental unfairness or arbitrary exercise of power. ... Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy. [47] [Emphasis added]

58. In *Maharaj v Prime Minister (Trinidad and Tobago)* [2016] UKPC 37 the Privy Council held that:

*While, therefore, *Rees v Crane* and *Durity v Attorney General* should not be interpreted as laying down an inflexible rule that every instance of failure to observe the rules of natural justice will give rise to a constitutional claim, in general, where a prompt and effective legal remedy cannot be or is not provided, such a claim will arise. [40] ...*

The availability of judicial review is a factor to be considered in deciding whether a constitutional claim that an individual has been denied the protection of the law should be entertained. It is not determinative of that issue. In the present case, it was open to the appellant to challenge the decision not to reappoint him by way of judicial review but ... this was not an effective or timeous remedy. [43]

59. The Applicant argues that *Maharaj* demonstrates that I need to consider whether there has been a breach of natural justice and a failure to provide 'prompt and effective legal remedy'. The Third Respondent argues that not every breach of natural justice is sufficient to establish a breach of the Constitution. He argues that if every breach of natural justice were a breach of the Constitution it would result in surprising consequences such as a potential right to claim damages for any breach of natural justice.
60. I am not sure that there is as much difference between the arguments of the Applicant and the Third Respondent as their submissions appeared to suggest. The Applicant's submission that there was a need to consider whether there was a failure to provide 'prompt and effective legal remedy' implicitly accepted that not every breach of natural justice is a breach of the Constitution. That implicit concession appears to me to be correct and identifies the test that I need to apply. It appears to me that:
- a. *Maya Leaders Alliance* references the right to 'fundamental rules of natural justice' [42]. It appears to me that the use of the word 'fundamental' reflects the fact that constitutions are essentially concerned with legal principles that are given particular weight.

Constitutions are essentially intended to protect fundamental rights. Public law fairness is a wider common law principle.

- b. It is true, as the Applicant argues, that the court in *Maya Leaders Alliance* references ‘procedural fairness demanded by natural justice’ [47]. However, that reference is in the context of a sentence that says there ‘may be’ a claim for damages. In other words, the court in *Maya Leaders Alliance* was not saying that all breaches of natural justice are unconstitutional. In *Maharaj* the Privy Council appeared to reject ‘an inflexible rule that every instance of failure to observe the rules of natural justice will give rise to a constitutional claim’ [40].
- c. Breaches of natural justice are likely to occur regularly. The best public servants may well reach flawed conclusions about the obligations imposed by natural justice in light of the fact sensitive and uncertain nature of those obligations. The key thing is whether there are effective systems to correct errors. It appears to me that the importance of effective systems is what *Maya Leaders* emphasises.
- d. As a consequence, I accept the submissions of the Applicant that a Constitutional breach occurs when there is a breach of natural justice without a ‘prompt and effective legal remedy’. In this context, it appears to me there is an expectation that mechanisms such as judicial review will normally be able to effectively correct breaches of natural justice. That is not to suggest that judicial review is always sufficient to ensure that there is no breach of the Constitution. *Maharaj* makes that clear. The key issue is whether judicial review (or any other remedy) is ‘prompt and effective’ on the facts.
- e. I should add that it appears to me that my conclusion about the test to be applied means that I reject the submission of the Applicant that giving significance to the word ‘fundamental’ in the judgment in *Maya Leaders* risks unhelpful uncertainty. It appears to me that the word ‘fundamental’ is consistent with the test that I have concluded that I should apply. The word ‘fundamental’ can be used because the effective remedies that a state can be expected to provide have failed.
- f. I have considered the argument of the Respondents that holding that any breach of natural justice is a constitutional breach undermines the leave stage of judicial review by allowing claims based on natural justice to be brought as constitutional claims. This is not a matter that appears to me to carry significant weight given the guidance of higher courts in *Maya Leaders* and *Maharaj*. However, the conclusion I have reached encourages resort to judicial review. That is because it may be necessary to apply for judicial review in order to demonstrate that it is ineffective.
- g. It also appears to me that the test I will apply means that section 6(8) is not made meaningless. Section 6(8) is concerned with fair trial

rights. A breach of section 6(8) does not depend upon there being an ineffective remedy.

61. In light of the matters above, it appears to me that in order to determine whether there has been a breach of section 1(a), I need to consider whether there has been a breach of natural justice without ‘prompt and effective legal remedy’. That means that I need to consider the requirements of natural justice.

Natural justice

62. In *R (Osborn) v Parole Board* [2014] AC 1115 the UK Supreme Court held that a ‘court must determine for itself whether a fair procedure was followed’ [65]. In other words the issue is not whether a decision maker adopted a reasonable procedure.
63. In determining what fairness requires, there is a need to consider all of the circumstances of the case (*Rees v Crane* [1994] 2 AC 173 at 192C).
64. In *R (Osborn) v Parole Board* [2014] AC 1115 the UK Supreme Court then considered the purposes of procedural fairness. These were said to include:

... justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions taken in the exercise of administrative or judicial functions. Respect entails that such persons ought to be able to participate in the procedure by which the decision is made, provided they have something to say which is relevant to the decision to be taken. [68]

The Court then cited with approval "How Law Protects Dignity", Jeremy Waldron [2012] CLJ 200. This article stated that:

Applying a norm to a human individual is not like deciding what to do about a rabid animal or a dilapidated house. It involves paying attention to a point of view and respecting the personality of the entity one is dealing with. As such it embodies a crucial dignitarian idea—respecting the dignity of those to whom the norms are applied as beings capable of explaining themselves. [68]

65. In *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 Lord Neuberger held that:

... where the executive intends to exercise a statutory power to a person's substantial detriment, it is well established that, in the absence of special facts, the common law imposes a duty on the

executive to give notice to that person of its intention, and to give that person an opportunity to be heard before the power is so exercised [178] [Emphasis added]

Lord Neuberger recognised that there was an exception to this rule where:

... the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity. ... any argument advanced in support of impossibility, impracticality or pointlessness should be very closely examined, as a court will be slow to hold that there is no obligation to give the opportunity, when such an obligation is not dispensed with in the relevant statute. [179] [Emphasis added]

The Applicant argues that this demonstrates that there is a high threshold that must be crossed before it is concluded that it would be pointless to provide an opportunity to be heard. One reason why such an approach may be required is that:

A right to be consulted before a power is exercised is very different in its nature and in its potential effect from a right to challenge it after it has been exercised. [188]

66. I do not accept that the pointless test identified by Lord Neuberger in *Bank Mellat* is always applicable. For example, there may be cases where a later fair decision-making process means that there is no need for fairness at an early stage. However, I accept that in general it will be very difficult to justify denying a person an opportunity to make representations at some stage before a decision that causes ‘substantial detriment’.
67. The 1st and 2nd Respondents rely on *Fay and Payne v The Governor and the Bermuda Dental Board* [2006] Bda LR 65 to argue that an unfair procedure can be cured by a subsequent fair procedure. In that judgment Kawaley J concluded that proceedings ‘as a whole’ must be considered when deciding whether there had been a fair trial [35]. However, he did not suggest that the opportunity to make representations after a decision remedies a failure to permit representations before decisions. Such a conclusion would be inconsistent with the statements in *Bank Mellat* and *R (SP) v Secretary of State for the Home Department* [2004] EWCA Civ 1750 (see paragraph 111 below) about the difficulties in persuading a decision-maker to change their mind after a decision has been taken.
68. The 1st and 2nd Respondents rely on *Fay and Payne* because the Applicant has not challenged the Governor’s decision to refer the matter to the Tribunal or the decision of the Tribunal. The 1st and 2nd Respondents argue that this demonstrates that it is accepted that the decisions of the Governor and the Tribunal were fair and that that cures any unfairness. It appears to me that the

problem with this argument is that the judgment in *Bank Mellat* suggests that there is a need for an opportunity to make representations before ‘substantial detriment’. That suggests that later stages in a process are only likely to be effective if they are before any detriment (or possibly if that detriment can be cured). It appears to me that this analysis is consistent with the purposes of procedural fairness identified in *Osborn*. *Osborn* suggests that fairness is, among other matters, intended to ensure that individuals are shown respect by the adoption of a process that enables them to participate before harm is caused. This suggests that it is important to consider the effect of particular decisions when deciding what fairness requires.

69. In *In re W (Care Proceedings: Non Party Appeal)* [2017] 1 WLR 2415 the English Court of Appeal considered an appeal where a first instance judge had strongly criticised a range of professionals who come into contact with the children who had been the subject of the family proceedings in issue [3]. He also required the local authority employing one of the professionals to be notified of the findings as a matter of urgency [86]. The Court found that the procedure was unfair because:

... the case that the judge came to find proved against [the professionals] fell entirely outside the issues that were properly before the court in the proceedings and had been fairly litigated during the extensive hearing, the matters of potential adverse criticism had not been mentioned at all during the hearing by any party or by the judge, they had certainly never been “put” to [the professionals] and the judge did not raise them even after the evidence had closed and he was hearing submissions. [97E]

The Court went on to state:

This judgment should be seen by the profession and the family judiciary to be a particular, bespoke, response to a highly unusual combination of the following factors: (a) a judge considering himself or herself to be driven to make highly critical findings against professional witnesses, where (b) such findings have played no part in the case presented by any party during the proceedings, and where (c) the judge has chosen not to raise the matters of criticism him/herself at any stage prior to judgment. [98]

70. It appears to me that *Re W* demonstrates that, in principle, persons who are not a party to litigation can enjoy rights to fairness if those proceedings have sufficiently serious consequences for them (such as an impact on a person's reputation). That is not surprising. It appears to me that there could be obvious issues about the fairness of a court's procedure if it were to conclude in a

public judgment that a third party was guilty of serious criminal conduct without there being any opportunity to respond.

71. The 1st and 2nd Respondents rely on *Cheall v APEX* [1983] 2 AC 180 to argue that natural justice does not extend to 3rd parties. That was said to be relevant as the Applicant was not a party to proceedings in the Court of Appeal. The plaintiff in *Cheall* had sought to join a trade union. However, the union that he was already a member of objected and the consequential dispute between the unions was determined by the disputes committee of the Trades Union Congress. The plaintiff complained that he was unable to make representations to the committee. In that context, Lord Diplock held that:

Decisions that resolve disputes between the parties to them, whether by litigation or some other adversarial dispute-resolving process, often have consequences which affect persons who are not parties to the dispute; but the legal concept of natural justice has never been extended to give such persons as well as the parties themselves rights to be heard by the decision-making tribunal before the decision is reached. (p190B)

72. It appears to me that care must be taken applying *Cheall*. The dispute between the unions in *Cheall* was not being resolved by a court or a public decision maker. In addition, it is unclear whether the decision in question caused ‘substantial detriment’ to the plaintiff. For both reasons, it would appear that the public law principles identified in a long series of cases including *Bank Mellat* did not apply. For that reason, it appears to me that *Cheall* does not assist. If it were to be given the wide effect that the 1st and 2nd Respondents argue for, it appears to me that it would mean that *Re W* was wrongly decided. That was plainly a case where fairness rights were held to be enjoyed by professionals who were not parties to the underlying family law proceedings.
73. There have been a series of cases considering the approach to fairness where serious misconduct allegations are made against a judge.
74. In *Maharaj v Prime Minister (Trinidad and Tobago)* [2016] UKPC 37 the Privy Council held that:

Where a serving member of the judiciary is not afforded the chance to defend his reputation against such allegations, the integrity and independence of the judiciary are obviously implicated. [44]

It appears to me that this dicta is of little assistance. The issue in this case is not whether the Applicant is entitled to fairness at some stage. The disciplinary proceedings were determined by the Tribunal. There appears to

be no argument that the Tribunal's processes were anything other than fair. The issue in this case is whether fairness was required at an early stage. Assistance in relation to that issue is provided by 3 other judgments.

75. In *Rees v Crane* [1994] 2 AC 173 a challenge was brought to a decision of the Trinidad and Tobago's Judicial and Legal Services Commission to recommend to the President that the conduct of a High Court Judge should be investigated. It was argued in response to that challenge that the decision of the Commission was 2 stages away from removal and so issues of fairness did not arise. The Privy Council noted that:

It is clear from the English and Commonwealth decisions ... 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 the particular stage in question. ... (p191G)

However, despite this the Privy Council concluded the Commission should have given the judge an opportunity to make representations. Factors that were relevant to this conclusion included that:

... the commission is not intended simply to be a conduit pipe by which complaints are passed on by way of representation. ... (p193B)

The fact that a representation was made, a tribunal appointed and the respondent suspended ... were bound to raise suspicion or conviction that the commission and even the President were satisfied that the charges were made out, in a way which subsequent revocation of the suspension would not necessarily dissipate. If the respondent had had a chance to reply to such charges and had been given the opportunity to do so before the representation was made this suspicion and damage to his reputation might have been avoided. (p194C) ...

... a judge, though by no means uniquely, is in a particularly vulnerable position both for the present and for the future if suspicion of the kind referred to is raised without foundation. Fairness, if it can be achieved without interference with the due administration of the courts, requires that the person complained of should know at an early stage what is alleged so that, if he has an answer, he can give it. (p194F). [Emphasis added]

76. The 3rd Respondent argues that the facts of *Rees v Crane* are extreme and can be distinguished. It appears to me that the facts were extreme. However, that does not change the fact that the Privy Council's reasoning focused on the fact that the damage to reputation in issue where suspicion was raised about a judge was serious and potentially permanent. The significance of such harm

is obviously important when deciding what fairness requires applying the approach in *Osborn* and *Bank Mellat*.

77. In *Re Madam Justice Levers* [2010] UKPC 24 a tribunal such as that established in this case reported to the Privy Council. The judge subject to the disciplinary proceedings before the tribunal argued, among other things, that there had been a breach of natural justice before the case had been referred to the tribunal [4]. The Privy Council commented in this context that:

The Board considers that the Chief Justice was under a duty to act fairly in his official dealings with other members of his court. Had he referred his initial concerns to the Governor without raising them with Levers J or giving her a chance to deal with them, it could forcefully have been argued that he had acted unfairly. The Board does not consider, however, that if the Chief Justice had acted in this way that would have invalidated any subsequent consideration of the Governor of the matters placed before him. On the contrary, the Governor would have been under a duty to consider those matters. What was at stake was not only the position of Levers J, but the due administration of justice in the Cayman Islands. The Governor would have been in a position to put right any unfairness by giving Levers J the opportunity to deal with the matters raised by the Chief Justice before taking the decision, and it was a decision for him, whether or not to appoint a tribunal of investigation. ... [31] [Emphasis added]

The Privy Council found as a matter of fact that the Chief Justice had not acted unfairly. It appears to me that 2 matters caused it to reach these conclusions. Firstly, the judge's previous conduct suggested that she would not cooperate if the Chief Justice sought representations. Secondly, the Chief Justice was concerned about the impact of the judge's conduct on the administration of justice [32].

78. Both the Applicant and the Respondent seek to draw support for their arguments from *Re Madam Justice Levers*. That is not surprising as the facts are again distinguishable. The Applicant focuses on the fact that the Privy Council clearly found that fairness obligations could arise at an early stage. However, the Respondent argues that the Privy Council appeared to hold that the Governor could put right unfairness. It appears to me that *Re Madam Justice Levers* demonstrates that:

- a. Consistent with *Rees v Crane*, obligations of natural justice can arise at an early stage if a judge is on a track that might result in them being disciplined. In one sense it appears to go further as it suggests that fairness obligations can be imposed on a judicial decision maker (in that case the Chief Justice).

- b. However, any failure to act fairly does not necessarily invalidate subsequent consideration of the complaint in light of the importance for the administration of justice of the matters that might be raised by a judicial complaint. It is in that context that the remarks about the Governor putting right unfairness should be viewed. It appears to me that the Privy Council was pointing out that fairness could be achieved before the judge was disciplined. I do not read the Privy Council to be saying that the sort of harm to a judge's reputation that was considered in *Rees v Crane* could be undone by later fairness. It obviously cannot.
- c. The requirements of fairness do not necessarily apply if there is a sufficiently powerful reason. In that context, the due administration of justice can provide a justification for departing from the requirements of fairness.

79. In *Ayers-Caesar v Judicial and Legal Services Commission* [2025] UKPC 15 the issues before the Privy Council included whether a decision of the Judicial and Legal Services Commission (which was chaired by the Chief Justice) 'that the information before it triggered and met the threshold for disciplinary enquiry' was unlawful by reason of procedural unfairness? ([37] onwards). The Privy Council held that:

Acting fairly will normally require the Commission to give the judge notice of the allegations made against him or her, and an opportunity to answer them. [38]

The Privy Council then cited with approval dicta from *Rees v Crane* holding that:

Fairness, if it can be achieved without interference with the due administration of the courts, requires that the person complained of should know at an early stage what is alleged so that, if he has an answer, he can give it. (*Ayers-Caesar* at [38]).

The Privy Council rejected an argument that the judge could have made representations at a later stage holding that:

[The judge] would, in effect, be allowed to address the Commission only after it had already considered the matter and reached a decision which merely remained to be acted on. She would then have to attempt to persuade it to change its mind: something which is liable to be more difficult than persuading it before a decision has been made. [43]

80. It appears to me that *Ayers-Caesar* confirms that fairness can entitle a judge to an opportunity to make representations at an early stage in potential disciplinary proceedings.

81. The Applicant argues that fairness can entitle a person to notice of a decision even if they have no right to make representations. The Applicant argues that failing to give her notice of decisions was a failure to treat her with dignity. The Applicant relies on *Secretary of State for the Home Department v AF (No 3)* [2010] 2 AC 269. In *AF (No 3)* Lord Phillips considered whether article 6 of the European Convention on Human Rights ('article 6') always required a minimum level of disclosure. In that context he noted that:

Resentment will understandably be felt, not merely by the controlee but by his family and friends, if sanctions are imposed on him on grounds that lead to his being suspected of involvement in terrorism without any proper explanation of what those grounds are. Indeed, if the wider public are to have confidence in the justice system, they need to be able to see that justice is done rather than being asked to take it on trust. [63]

The Applicant also relies on the citation in *Osborn of How Law Protects Dignity* (see paragraph 64 above).

82. It appears to me that there is no basis for concluding fairness can require notice to be given in circumstances in which there is no right to be heard. Both *Osborn* and *AF (No 3)* were concerned with processes where a person had the right to be heard. In *Osborn* the focus was on the right to be heard if there is something relevant to be said as the reasoning of the Supreme Court cited above makes clear. In *AF (No 3)*, the remarks about resentment suggest that there may be good reason to provide reasons for a decision. However, those remarks were delivered where what was in issue was fairness during litigation. Holding that the remarks in *AF (No 3)* give rise to some general right to notice of a decision would undermine the principle that there is no universal right to reasons for a decision (*R (CPRE Kent) v Dover District Council* [2018] 1 WLR 108 at [51]). That is because it is difficult to see what value that there would be in notice of a decision if the decision was not explained.

Section 6(8) of the Constitution

83. Section 6(8) provides that:

Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

84. The language is similar to but not identical to article 6. For example, the phrase ‘adjudicating authority prescribed by law’ is not found in article 6. However, the similarities between article 6 and section 6(8) and the fact that article 6 applies in Bermuda means that article 6 is highly material when interpreting section 6(8) (*Day v Governor of the Cayman Islands* [2022] 3 LRC 557 at [34]). As a consequence, in my reasoning below I take account of judgments of the European Court of Human Rights (‘the ECtHR’). That is consistent with the approach of Martin J in *Lai v Bermuda Monetary Authority* [2025] SC (Bda) 49 civ.
85. In *Lai* Martin J held that section 6(8) was not engaged as the Bermuda Monetary Authority was not an ‘adjudicating authority’. That was because there was an appeal tribunal which determined ‘whether [a] civil penalty imposed by the BMA is valid and appropriate and based upon proper evidence’ [41]. In this context, it was noted by Martin J that:

... the criticisms that have been made by the BMA ... are not “findings of fact” against the individual directors in the legal sense because there has been no quasi-judicial enquiry by the BMA which has resulted in an evidential assessment ... [43]

Martin J also held that:

... the BMA’s object in conducting their investigation, issuing the Warning Notice and then issuing the Decision Notice was not to determine the former directors’ respective rights to a good reputation (or any other civil right) [46]

86. Applying the language of section 6(8) as well as *Lai* it appears to me that:
- a. For section 6(8) to be engaged, the decision maker must be a court or ‘adjudicating authority prescribed by law’. The Applicant accepts that not all public law decision makers are adjudicating authorities. The Applicant accepts that there must be a degree of formality. The judgment in *Lai* demonstrates that an adjudicating authority must be determining civil rights and obligations. Hence, it is not enough that it is expressing views about the conduct of an individual. That appears to me to be consistent with the language of section 6(8), which makes clear that there must be a determination of rights.
 - b. Civil rights must be in issue.
87. The Applicant argues that the civil right in issue in this case is the right to a good reputation.

88. Judgments of the ECtHR have suggested that article 8 of the European Convention on Human Rights ('the ECHR') may give rise to a right to a good reputation (e.g. *Hoiness v Norway* app 43624/14 at [63]). However, in *Attorney-General v Ferguson* [2022] UKPC 5 the majority of the Privy Council noted that:

... the Bermudian Constitution has no provision for the protection of private and family life, or for the protection of marriage, or which prohibits the discriminatory application of rights on the ground of a person's sexual orientation, such as are found in the Convention in articles 8, 12 and 14 and in some other national constitutions. [91]

That appears to me to be a clear finding that the Constitution does not incorporate article 8 of the ECHR into domestic law. In light of this, it appears to me that I need to focus on the extent to which domestic law gives rise to a right to a good reputation.

89. The Applicant argues that the fact that Bermudian law makes libel unlawful means that there is a domestic law right to a good reputation. However, it appears to me the existence of libel law does not assist the Applicant. There is no suggestion that any Respondent made statements that are or might be libelous. That is important because it appears to me that the Applicant must establish that there is a dispute about something recognised as a civil right as a matter of domestic law. Article 6 (and, by implication section 6(8)) do not extend the scope of domestic law (e.g. *Wilson v First County Trust Ltd* [2004] 1 AC 816 at [104]). However, reliance upon libel to establish that there was a civil right in issue in this case would essentially do this. It would be seeking to expand the civil right safeguarded by libel law. That is because, as far as I am aware, libel is the only provision of Bermudian law that safeguards a good reputation.
90. The Applicant relies on the judgment of the ECtHR in *Gerovska-Popchevska v North Macedonia* (no. 2) 30989/20. In that judgment the ECtHR held that:

The Court reiterates that the right to enjoy a good reputation is a "civil right" within the meaning of Article 6 § 1 ... [49]

However, these words were followed by the statement that:

This right is protected under domestic law ... [49]

The statement about domestic law reflects the fact that in North Macedonia there was apparently a constitutional right to a good reputation [26]. As a result, it appears to me that *Gerovska-Popchevska* determines that where there

is a domestic law claim for a good reputation, article 6 applies. However, it does not expand the scope of a domestic law claim or suggest that there is some wider right to a good character for the purposes of article 6. The Applicant argues that it is significant that the proceedings in *Gerovska-Popchevska* did not directly concern reputation. They were judicial misconduct proceedings. However, it appears to me that this does not undermine my conclusions. A constitutional right such as a right to a reputation would presumably apply to all forms of proceedings including judicial misconduct proceedings. However, as already noted, there is no relevant constitutional right to a good reputation in Bermuda. The right to a good reputation is narrower.

91. It is true that in *Fayed v UK* (1994) 18 EHRR 393 the ECtHR noted that:

... the respondent Government did not dispute the existence and "civil" character of the right under English law to a good reputation. [58]

It appears to me that this does not assist the Applicant. In fact all that happened was that the ECtHR accepted a concession while emphasising the need for there to be a right as a matter of English law. It should be noted that the concession was based on *Golder v UK* (1979) 1 EHRR 524. *Golder* was a case concerned with libel.

92. It is also true that in *In Re W* [2017] 1 WLR 2415 the English Court of Appeal appeared to hold that article 6 applied to critical findings reached at first instance regarding a local authority [103]. However, it appears to me that that carries limited weight. It appears to me that it is unclear the extent to which there was any argument about the engagement of article 6. There are obvious problems with the finding that article 6 was engaged in *In Re W*, not least because a local authority is a public authority and so lacks article 6 rights (e.g. *London Borough Council v LC* [2023] EWHC 2179 (Fam) at [45]). Further, if article 6 had applied, it would have been possible to rely on the Human Right Act 1998 to argue that article 8 gave rise to a right to a good reputation. As noted above, the Constitution does not permit reliance on article 8.
93. The Applicant also relies on the judgment of the ECtHR in *Paluda v Slovakia* 33392/12 to argue that section 6(8) applies. In *Paluda* the ECtHR accepted that article 6 applied to proceedings that sought to challenge a judicial suspension. However, it appears to me that it does not assist. If the Applicant had brought judicial review proceedings challenging her suspension, it may well have been that article 6 applied. A judicial review would have been concerned with rights as such as the right to work. However, that is far removed from the issues in this case. The suspension is not challenged.

94. In light of the matters above, it appears to me that in Bermuda there is no right to a good reputation that engages article 6/section 6(8) and that extends beyond libel. It is only where libel is in issue (as it is not in this case) that article 6/section 6(8) is engaged.
95. Another issue raised by the Respondents is whether, if contrary to my primary finding that there is no right to a good reputation, there was any determination of those rights. In particular, there is no dispute that the Applicant was suspended by the Governor. The 3rd Respondent accepts that suspension engages article 6/section 6(8) but argues that earlier stages in the process did not as they did not involve the determination of any rights.
96. One way in which the Applicant argues that article 6/section 6(8) is engaged by the decisions challenged is as a consequence of the impact of those decisions on the suspension decision. The Applicant argues that the test I should apply when determining this issue is that found in *R (G) v Governors of X School* [2012] 1 AC 167.
97. In *G* a teaching assistant had faced school disciplinary proceedings. Legislation had been enacted that resulted in findings made during school disciplinary proceedings being considered by the Independent Safeguarding Authority ('the ISA') when it decided whether to bar the teaching assistant from working with children. The issue was whether the relationship between the disciplinary proceedings and the proceedings considering barring meant that article 6 was engaged. In that context, Lord Dyson held that it was useful to consider whether the outcome of one set of proceedings was 'capable of playing a "major part in the civil right's determination"' in a second set of proceedings [69]. Lord Dyson later noted:

As a matter of substance, there is not much difference between (i) an outcome of proceedings A which has a major influence on the result in proceedings B and (ii) an outcome of proceedings A which is dispositive of the result in proceedings B. [69]

It appears to me that this suggests that a very strong link will be required between proceedings before there is a 'major influence'. That is because 'major influence' is said to be equivalent to 'dispositive'. Consistent with this, in *G* it was concluded by a majority that the disciplinary proceedings did not have a major influence on the ISA because:

... the ISA is required to make its own findings of fact and bring its own independent judgment to bear as to their seriousness and significance before deciding whether it is appropriate to place the person on the barred list. [79]

98. It appears to me that *G* demonstrates that a very close link is required between 2 sets of proceedings before the impact of one set of proceedings on a 2nd set of proceedings can be said to mean that the impact is enough to engage article 6 (and section 6(8)). For example, in *G* it was not enough that findings would be considered by the ISA because the ISA was required to make its own findings.
99. My conclusions regarding *G* find some support from the judgment of the ECtHR in *Volkov v Ukraine* (2013) 57 EHRR 1. In that case, the High Court of Justice ('the HCJ') was responsible for determining questions of fact and law. The findings of the HCJ were then considered by the Parliamentary Committee on the Judiciary and by a plenary meeting of Parliament. The combination of the HCJ, the Parliamentary Committee and the plenary meeting was held to be performing a judicial function [89]. What is material for these purposes is that the initial complaint that was made to the HCJ was by a number of its members after some enquiries had been conducted by them ([16] – [17]). There appears to have been no suggestion that those initial complaints or the process of investigation engaged article 6. That suggests that the link between the initial complaints and the subsequent determination of them was insufficient to engage article 6.
100. The Applicant also relies on the judgment of the Grand Chamber of the ECtHR in *Kakamoukas v Greece* 38311/02 as an example, of a case where the decision of a court regarding a third party was held to engage article 6. However, it appears to me that this adds little. Although the proceedings in issue were said to be a 'third-party appeal', they would have had the effect of setting aside a judgment involving the applicant [23]. So what was directly in issue was court proceedings that were intended to directly determine the rights of the applicant.
101. The reason why the approach in *G* may be important is that the judgment of the ECtHR in *Fayed v UK* (1994) 18 EHRR 393 essentially concludes that criticisms of a person by an official body are not the determination of any civil right to a good reputation. In *Fayed*, the ECtHR held that:

... the Court is satisfied that the functions performed by the Inspectors were, in practice as well as in theory, essentially investigative. The Inspectors did not adjudicate, either in form or in substance. They themselves said in their report that their findings would not be dispositive of anything. They did not make a legal determination as to criminal or civil liability concerning the Fayed brothers, and in particular concerning the latter's civil right to honour and reputation. ...

the object of the proceedings before the Inspectors was not to resolve any dispute (contestation) between Lonrho and the applicants. Those disputes, and in particular the applicants' libel claims that Lonrho through The Observer had wrongfully damaged their reputations, were being adjudicated by the ordinary courts. Likewise no dispute (contestation) between the Secretary of State or the Inspectors and the applicants as to the lawfulness of any alleged interference with the applicants' right to reputation arose merely because the applicants contested the grounds on which the Minister decided to appoint the Inspectors and on which the Inspectors conducted their lines of inquiry. [61]

It appears to me that these passages of the judgment of the ECtHR demonstrate article 6 is only engaged where there is a determination of a dispute between parties regarding a civil right such as character. So there is no doubt that libel proceedings would engage article 6 (and section 6(8)). However, negative comments made by a body in the course of carrying out functions other than the determination of a dispute regarding the right to good character do not engage article 6 because there is no determination of a dispute. So, for example, critical findings reached during an investigation do not engage article 6.

102. My conclusions regarding *Fayed* are supported by the judgment of Martin J in *Lai v Bermuda Monetary Authority* [2025] SC (Bda) 49 civ. Martin J noted that:

The Constitution does not confer an independent right to a fair hearing to anyone who might be "adversely affected" by the consequences of regulatory enforcement proceedings.[48]

This appears to me to be consistent with my judgment in *Fayed* as it suggests that criticisms alone are not enough.

103. In light of the matters above, it appears to me that even if there is a right to a good reputation, the mere fact that a body makes negative comments in the course of its functions does not engage article 6/section 6(8). For article 6/section 6(8) to be engaged, there needs to be a dispute about character that is resolved by an adjudicating body. I accept that the impact of one body's decision making on another body's decision making may engage article 6/section 6(8) but only if the impact is sufficiently significant that it can be said it has a 'major influence'.

Section 15 of the Constitution

104. Section 15(1) of the Constitution provides that:

If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress. [Emphasis added]

Section 15(2) provides that:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law. [Emphasis added]

105. The 1st and 2nd Respondents argue that there is an alternative remedy in relation to the Applicant's complaints about the judgment of the Court of Appeal. It is said that either:

- a. The Applicant could have applied to reopen the appeal. The Court of Appeal has an exceptional jurisdiction to reopen proceedings where that is necessary to avoid injustice (*Taylor v Lawrence* [2003] QB 528).
- b. The Applicant could have appealed to the Privy Council. I have some concerns whether a third party can appeal the terms of a judgment (Appeals Act 1911, section 2). However, I will not decide this issue on the basis that there was no appeal available. I heard no argument about this.

106. It appears to me that there are 3 problems with the alternative remedy arguments.

107. Firstly, applying to the Court of Appeal or appealing to the Privy Council would have required the Applicant to engage in proceedings in which she was initially the judge. The parties to those proceedings will then be involved in arguments about an appeal that they had believed was ended. They would potentially be put to expense. All of that is undesirable.

108. Secondly, the Applicant seeks damages. It is impossible to see how she can claim damages by participating in the original proceedings. The judgment of the ECtHR in *SW v United Kingdom* (2021) 73 EHRR 18 strongly suggests that the availability of damages may be necessary in a constitutional claim of this nature. *SW* was the judgment in proceedings before the ECtHR that followed the English proceedings that culminated in the judgment in *In Re W*

[2017] 1 WLR 2415. The Government argued that findings of the Court of Appeal were sufficient to mean no further redress was required. The ECtHR rejected that argument holding that:

... while the Court of Appeal judgment prevented the adverse findings from being widely disseminated, it did not address the gravamen of the applicant's complaint under art.8 of the Convention: namely, that upon the judge's direction his adverse findings were sent to the local authorities where the applicant had worked and to the relevant professional bodies without her having been given an opportunity to meet them in the course of the hearing. Consequently, it did not provide the applicant with redress for the loss or damage which she claims flowed from their disclosure to the local authorities and professional bodies. [54]

109. Although the issue in this case is an alleged breach of constitutional rights, it appears to me that it is unlikely that the constitution provides less of an effective remedy than the ECHR requires. Were a less effective remedy to be provided, that would potentially force Bermudians to apply to the ECtHR for redress for breaches of constitutional rights. It should be noted that article 15(1) of the Constitution expressly provides for proceedings to be available to seek 'redress' for a constitutional breach and that article 15(2) also references 'adequate means of redress'. That suggests that it is not enough that proceedings can be brought that will result in a finding that there was a breach of the Constitution.

110. I did consider the argument of the First Respondent that the Applicant is not entitled to damages. The problem with that is that it was agreed that the issue of damages would be adjourned. The Applicant clearly wants to claim damages and it appears to me that it would be wrong for me to reject the damages claim at this stage in light of the agreed adjournment.

111. Thirdly, seeking to persuade the Court of Appeal that its findings were flawed is inherently difficult. In *R (SP) v Secretary of State for the Home Department* [2004] EWCA Civ 1750 the English Court of Appeal commented that it is difficult to persuade a decision maker to change their mind because:

Inevitably the decision maker will be reluctant to conclude that his original decision was wrong. ... it is difficult to suppose that [a decision maker] can remain as open-minded as if no clear decision has been taken ... [58]

112. In light of the matters above, it appears to me that the potential for an application to the Court of Appeal or the Privy Council by the Applicant does

not provide an adequate alternative remedy so that section 15(2) of the Constitution is engaged.

Conclusions

113. I have no doubt that these proceedings are properly brought as there is no alternative procedure that affords adequate means of redress. My reasons for reaching that conclusion are set out at paragraph 104 above onwards. That means that I need to consider the actions of the Court of Appeal, the Chief Justice and the Committee to determine whether there was a breach of the Constitution.

The Court of Appeal

114. It appears to me that it is clear that the Applicant enjoyed no rights by reason of section 6(8)/article 6 in relation to the proceedings before the Court of Appeal that led to the findings that she challenges. I have reached that conclusion for the following reasons that reflect my reasoning set out at paragraph 88 onwards. In summary, it appears to me that the Court of Appeal was not determining the Applicant's civil rights:

- a. Firstly, there is no constitutional right to a good reputation. In Bermuda libel law does to some extent protect reputation. However, that was not in issue in this case. As a consequence, the Applicant's civil rights were not in issue.
- b. In any event, the expression of negative views by the Court of Appeal is not a determination of a dispute regarding rights. However, they were not expressed in the context of any dispute regarding the Applicant's reputation.
- c. I have considered with care the Applicant's arguments based on *G*. However, it appears to me that these arguments do not assist. In my opinion, the earliest matter that engaged section 6(8)/article 6 was the Applicant's suspension. However, the Constitution required the Governor to give her own consideration to whether suspension was justified. As explained in greater detail at paragraph 28 above, it appears to me that the Governor did give consideration to this issue including by seeking representations. There has been no challenge to the decision of the Governor arguing that she failed to give separate consideration to the issue of suspension.

115. It appears to me that the position regarding section 1(a) is less straightforward. Part of the reason why the issues raised by section 1(a) are less clear is that any advocate or judge who has been involved in litigation for a significant period will have experienced judicial criticism. The advocates

involved in this litigation are extremely experienced and recognised this fact as do I. Nobody would argue that fairness applies whenever a judge criticises advocates or judges in lower courts. However, it appears to me that *In Re W* strongly suggests that there can be circumstances where judicial criticism can be sufficiently serious and can have sufficient implications for a professional that the requirements of fairness apply. The professionals in *In Re W* were not judges. However, I can see no basis for distinguishing between judges and other professionals in light of the potential impact of criticisms. To use a hypothetical example far removed from the facts of this case, it appears to me that it would be inconceivable that an appellate court could make findings that a judge was corrupt without giving them an opportunity to address the court's concerns. The problem is determining when allegations are sufficiently serious to mean that fairness applies.

116. It appears to me that the starting point when considering whether fairness entitles a judge to an opportunity to respond to the criticisms is the statements of general principle found in *Osborn* and *Bank Mellat* (see paragraphs 64 and 65 above). These statements make it clear that the key issue is the impact of a decision (and, by implication, criticisms). It is a 'substantial detriment' that gives rise to rights of fairness. Normal criticisms of lawyers such as comments that a case could have been argued differently or that arguments are unmeritorious are unlikely to cause a substantial detriment. They are normal. Similarly, findings that judges acted unfairly or reached flawed conclusions are unlikely to cause a substantial detriment. All judges make mistakes. As a consequence, it appears to me that fairness can apply where criticisms are beyond common ones and cause a 'substantial detriment'.
117. It appears to me that any first instance judge should be very reluctant to find that appellate judges acted unfairly. The professional experience of appellate judges means that it is unlikely that they would fail to act unfairly. I have considered whether it is even appropriate for me to determine this issue. However, no party suggests it is not. That appears to me to be unsurprising in light of the clear right under section 15 to bring constitutional challenges. The Court of Appeal is no less liable to challenges under section 15 than other public officials.
118. As noted above, *Osborn* and *Bank Mellat* demonstrate how the requirements of fairness depend upon the impact of what is in issue for the person seeking to argue that they were treated unfairly. In this case that means I need to consider the impact of the remarks of the Court of Appeal. It appears to me that there are a number of matters that demonstrate the serious nature of the remarks of the Court of Appeal:

- a. The remarks of the Court of Appeal summarised in paragraph 16 suggest serious failings by the Applicant. They suggest conduct that went far beyond the sorts of unlawful rulings that any judge is likely to make from time to time. The suggestion that the Applicant might have intervened in a prosecution is particularly serious.
- b. The ruling of the Tribunal makes clear that it regarded the concerns expressed by the Court of Appeal as being particularly serious. For example, the Court of Appeal referred to the conduct in issue potentially being a 'serious matter of misconduct'.
- c. The Chief Justice regarded the findings of the Court of Appeal as sufficiently serious that they required an independent investigation. This is a matter that I consider later when I come to the actions of the Chief Justice.
- d. These matters need to be viewed in light of the fact that suspicion can be very harmful for a judge in light of their need to be seen as being of the highest moral character (*Rees v Crane*).
- e. The matters identified are particularly significant in the context of a small society like Bermuda. The reality is that criticisms such as those in issue are more likely to have an impact on a judge's standing because they are more likely to be noticed.
- f. The remarks of the Tribunal cited at paragraph 31 demonstrate that it is legitimate to be concerned about the impact of serious allegations on a judge such as the Applicant. The Tribunal clearly sought to avoid harm to the Applicant by ventilating criticisms of her conduct in public.
- g. One matter that I have not given weight to is the subjective views of the Applicant about what followed when the remarks of the Court of Appeal were made public. It appears to me that the issue for me must be whether objectively the remarks of the Court of Appeal were sufficiently serious to require the Applicant to be given an opportunity to give her account to the Court of Appeal. The Court of Appeal could not have known what would actually happen to the Applicant. However, it should be noted that the evidence of the Applicant is consistent with concerns about potential harm to reputation expressed in *Rees v Crane*.

119. In light of the matters in the paragraph above, it appears to me that the remarks of the Court of Appeal were sufficiently serious that they required the Court of Appeal to give the Applicant an opportunity to address its concerns before it delivered its judgment. However, there was no opportunity offered to the Applicant. As a consequence, the Court of Appeal acted unfairly. I have concluded that there was unfairness for the following reasons:

- a. The Court of Appeal expressed views that the Applicant had no opportunity to address. In particular, the concerns about contact between the DPP and the Applicant were not matters that had been raised at first instance. That meant that while the Applicant could and should have addressed some matters when responding to the recusal application, there were some matters that she could not. It is striking that the Tribunal expressly stated that it was ‘regrettable that ... Court of Appeal [did not] seek, an explanation (see paragraph 34 above). The Tribunal also noted that concerns about the DPP had not been raised earlier (see paragraph 34 above). It is also striking that the parties to the appeal were notified on 20 March 2023 about material obtained from BPS. However, the Applicant (and the DPP) were not given an opportunity to address this.
- b. There are mechanisms that could have been used to seek the views of the Applicant (see [22] of the Tribunal’s reasoning). Seeking of the views of the Applicant would have assisted with determining whether the Applicant should have recused herself. The DPP’s correspondence with the Tribunal demonstrates that it is likely that the Court of Appeal would have had its concerns answered had there been correspondence.
- c. It is the remarks of the Court of Appeal that caused harm. Once they had been made, there was no opportunity to respond.

120. As noted above at paragraph 61, unfairness is not necessarily a breach of section 1(a). The unfairness is only a breach of natural justice if there is no ‘prompt and effective legal remedy’. Judicial review can be but will not necessarily be a ‘prompt and effective legal remedy’ (*Maharaj*). Judicial review is obviously available in Bermuda. However, it appears to me that it is not an effective remedy in the circumstances of this case. *Rees v Crane* makes clear that the raising of concerns (even if unfounded) can have an impact on a judge. In this case it appears to me that once the Court of Appeal had delivered its judgment, any harm could not be undone.

121. In light of the matters above, it appears to me that the approach of the Court of Appeal breached section 1(a).

The Chief Justice

122. The position of the Chief Justice is much more straight-forward. He was essentially passing on the concerns raised by the Court of Appeal to a body charged with giving independent consideration to allegations of misconduct. He was essentially acting as a conduit pipe (to use the language used in *Rees v Crane*). He did not appear to have given any independent consideration to the complaints. That was not surprising. *Re Madam Justice Levers* recognises

that a chief justice must give substantial weight to the administration of justice. Here the administration of justice would potentially have been undermined had the concerns about misconduct been determined by the chief justice in light of the fact that he was a fellow member of the Supreme Court judiciary.

123. In light of the matters set out in paragraph 122, it appears to me that there is no doubt that section 6(8)/article 6 did not apply. Following the approach adopted in paragraph 114 in relation to the Court of Appeal, it appears to me that:
- a. Again the right to a good reputation was not in issue. One additional reason for reaching that conclusion is that the Chief Justice appears not to have reached his own findings regarding the Applicant's conduct. He was simply passing on concerns of the Court of Appeal.
 - b. Again there was no determination of a dispute regarding rights. In particular, it appears to me that the actions of the Chief Justice had no 'major influence' on what followed. The Governor was able to and did reach her own conclusions about suspension.
 - c. Further, the Chief Justice expressed no independent views about the conduct of the Applicant. So even if I am wrong to find that the Court of Appeal did not determine a dispute regarding rights, it is clear that the Chief Justice was not determining rights.
124. Further, it appears to me that section 1(a) is not engaged. As I have already made clear, it appears to me that it is clear that the right to make representations arises when a decision causes a 'substantial detriment'. It appears to me that it is difficult to see how the actions of the Chief Justice caused a 'substantial detriment'. He essentially made no findings and his decision was not made public. Any harm was caused by the judgment of the Court of Appeal. Once that unfairness had occurred, there was a need to investigate the concerns of the Court of Appeal (*Re Madam Justice Levers*).
125. In addition, it appears to me that this is a context where the opportunity to make representations would have been pointless. It appears to me that the Chief Justice made no findings about the criticisms of the Applicant. Instead, he decided that the correct procedure was for there to be an independent investigation. That appears to me to have been an approach open to the Chief Justice. It potentially assisted the Applicant by ensuring that any exoneration had credibility. The chief justice was entitled to assume that the Committee, the Governor and (should one be established) the Tribunal would act fairly.
126. The matters above mean that it is unnecessary for me to decide whether the Chief Justice was entitled to rely on judicial immunity. I suspect that he may

have been. However, I accept that the issue is far from straightforward and so have concluded it is better to leave the issue until it is material.

The Committee

127. I have already made clear at paragraph 47 above that it does not appear to me that the role of the Committee in this case was unconstitutional applying the judgment in *Junos*. The Committee did not reach any final conclusion regarding the complaint.
128. It appears to me that there is a need to consider what the Committee did in the Applicant's case when determining whether there was a breach of section 6(8)/article 6 and/or section 1(a). As I have made clear at paragraph 44, it appears to me that the first matter for the Committee to determine is whether a complaint is hopeless. On the facts of this case, it appears to me that is all that the Committee did in this case. The Committee decided whether the complaint was hopeless and then invited representations before passing the complaint to the Governor after objection was taken by the Applicant's attorneys to the Committee's role.
129. In light of the matters set out in paragraph 128, it appears to me that there is no doubt that section 6(8)/article 6 did not apply. Following the approach adopted in paragraph 114 in relation to the Court of Appeal, it appears to me that:
 - a. Again the right to a good reputation was not in issue. In this context it should be noted that the Committee made no positive findings regarding the complaint. It merely decided that the complaint was not hopeless.
 - b. It appears to me that the actions of the Committee had no 'major influence' on what followed. The Governor was able to and did reach her own conclusions about suspension.
 - c. The Committee also expressed no independent views about the conduct of the Applicant. It essentially merely concluded that a complaint about the concerns was not hopeless. So even if I am wrong to find that the Court of Appeal did not determine a dispute regarding rights, it is clear that the Committee was not determining rights.
130. Further, it appears to me that section 1(a) is not engaged for essentially the same reasons as I have concluded at paragraph 124 that it was not engaged in relation to the Chief Justice. Essentially there was no 'substantial detriment' as the Committee made no findings of substance and the decision was not made public.

Conclusion

131. In light of the matters above, I have dismissed this claim save that I have concluded that section 1(a) was breached by the Court of Appeal. Arrangements will now need to be made for a hearing to assess whether damages are payable for this constitutional breach and, if they are payable, what level of damages should be awarded.

Dated this **16th** day of **October 2026**



HUGH SOUTHEY KC
ASSISTANT JUSTICE