In The Supreme Court of Bermuda

CIVIL JURISDICTION
2022: No. 77

BETWEEN:

ELDON ROBINSON

Applicant

- and -

PUBLIC SERVICE VEHICLES LICENSING BOARD

Respondent

JUDGMENT

Application for judicial review of the decisions of the Public Service Vehicles Licensing Board refusing to: (i) reinstate the Applicant's public service vehicle (taxi) driver's licence in August 2019; and (ii) to remit the Applicant's grievance to a Court of Summary Jurisdiction; Delay in applying for judicial review; Whether an issue was now academic obviating judicial review; Whether the decisions and deferral of decision were ultra vires and therefore illegal

Date of Hearing: **13, 14, 27 March 2024**
Date of Judgment: **6 December 2024**

Appearances: **Cameron Hill, Spencer West Bermuda, for the Applicant**

Eugene Johnston, Attorney General's Chambers, for the Respondent

JUDGMENT of Mussenden CJ

Introduction

1. In these proceedings dated 22 March 2022 Mr. Robinson seeks judicial review of two decisions (the "**Decisions**" or "**Public Law Claims**"):
    a. By the Minister of Transport (the "**Minister**") in a letter dated 17 October 2019 wherein the Public Service Licensing Board (the "**Board**") refused to reinstate Mr. Robinson's taxi driving licence (the "**Licence**"), a public service vehicle license ("**PSVL**"), in August 2019 (the "**Renewal Decision**"); and
    b. By the Transport Control Department ("**TCD**") which, having received a letter from law firm DV Bermuda, Barristers & Attorney ("**DVB**") dated 26 October 2019 seeking to remit the matter to a summary court, on an unknown date thereafter, refused to remit Mr. Robinson's grievance (the "**Grievance**") to a Court of Summary Jurisdiction ("**Summary Court**") (the "**Remittal Decision**").

2. On 5 May 2022 the then Chief Justice Mr. Hargun granted leave for Mr. Robinson to issue an originating Notice of Motion seeking judicial review.

3. I agreed with the parties at the start of the hearing that a proper approach to this matter was to deal with the Public Law Claims first and to issue a judgment on the same, and then if necessary, hold a subsequent hearing to deal with the issue of damages.

The Parties

4. Mr. Robinson is a taxi driver and he has been driving a taxi since May 2016 when he was first issued his Licence pursuant to section 82 of the Motor Car Act 1951 (the "**MCA**").

5. Mr. Terry Spencer, Director of TCD, filed an affidavit sworn 13 March 2024 ("**Spencer 1**") in support of his application pursuant to the Crown Proceedings Act 1966, to substitute the

various names of the Respondent used in the proceedings for the name of the Board. The affidavit also exhibited a number of documents, including Board meeting minutes, which I will address later. Mr. Spencer stated that although Mr. Robinson had referred to the Respondent as TCD in the Hearing Bundle and as the Queen in his skeleton argument, the body that made the Decisions is the Board. He explained that TCD is sometimes asked to give the Board assistance, pursuant to section 30 of the MCA, but licensing functions belong to the Board. He exhibited documents relevant to this matter.

6. Section 28 of the MCA establishes the Board for the purposes of licensing the use of public service vehicles and it holds powers and discharges the duties conferred or imposed upon it by various section of the MCA and any other legislation.

7. Section 14(2) of the Crown Proceedings Act 1966 provides for the Court to grant an application by or on behalf of the Attorney-General for a minister or a government board to be substituted as the defendant to the proceedings if the Court thinks fit on such terms as the Court may determine.

8. Both Mr. Hill and Mr. Johnston agreed that the proper respondent is the Board. On that basis and on the circumstances of this matter, I was satisfied that I should exercise my discretion to substitute the Bord as the Respondent in these proceedings and I granted such application.

<u>The Judicial Review Application and the Relief Sought</u>

9. As a result of the Decisions, Mr. Robinson seeks judicial review of the Decisions which he submits were wrong in law.

10. The original relief sought by Mr. Robinson was as follows:
    a. An order of certiorari quashing the Decisions, declaring that the Decisions were wrong in law.
    b. Damages for the several debts and losses he incurred over the period 27 August 2019 to 1 August 2020 as a result of his License not being renewed, including:

i. Total lost earnings of $83,788.30;
ii. Total Expectation Loss of $27,214.77; and
iii. Debts incurred on loans from: (i) Ms. Mekisha Simmons in the amount of $1,795; and (ii) Mr. Paul Wilson in the amount of $100.

for a total claim in damages of $112,898.07.

11. Mr. Hill submitted by way of his reply submissions and at the hearing on 27 March 2024 for the relief sought to be amended such that the application for *certiorari* in relation to the Decisions be replaced by a claim for a declaration of illegality and that the Decisions taken were *ultra vires* the MCA and, therefore, wrongful. The damages claim would remain. The amended relief sought was as follows:
    a. The Applicant, Mr. Robinson seeks a declaration that the decision taken on 20 August 2019, and renewed thereafter from time to time, to defer and/or not renew his application for the issuance of a PSVL was *ultra virus* the MCA on the grounds that the Board took into account matters it ought not to have taken into account and/or failed to take account of matters that it ought properly to have taken into account and/or failed to provide reasons for the decision taken and/or failed to follow the rules of natural justice and was therefore illegal.
    b. The Applicant, Mr. Robinson seeks a declaration that the decision not to remit his application to a Summary Court following indication of a wish to so do within 10 days of notification of the decision to refuse to grant the issuance of his Licence, dated 17 October 2019, was *ultra virus* the MCA, notwithstanding that no notification has been received of such refusal to date, nor the reason for the failure complained of and is therefore illegal.

12. Mr. Johnston objected to the amendments stating that the Court should proceed on the basis of the application for *certiorari*. However, I ruled that I would allow the amendment on the basis that I was cautious to proceed to grant a relief that Mr. Robinson no longer sought.

13. Mr. Hill also sought leave to amend the Form 86A to include an express request for leave to extend time in which to seek judicial review. I deal with the application to extend time and

delay later in this Judgment where I have found that I will exercise my discretion to extend the time for bringing judicial review proceedings on the basis of there being a good reason to do so.

Statement of Grounds on which Relief is Sought

14. The Applicant's grounds are as set out below. The grounds were not amended in any way after the relief sought was amended.

15. Mr. Robinson sought to renew his Licence in August 2019 with the Board, which refused the application, without providing reasons.

16. Mr. Robinson filed the Grievance with TCD pursuant to sections 82 and 116 of the MCA. TCD was supposed to remit the Grievance to a Summary Court but failed to do so.

17. Mr. Robinson complains that he was never told why his application to renew his Licence was denied /deferred and why his request for his Grievance to be remitted to a Summary Court was not so remitted. However, Mr. Robinson states that he received unofficial oral communications that his application was deferred until the outcome of a pending criminal matter that had commenced against him. He complains that the unofficial oral communications were made to him despite the fact that he had instructed counsel on the matter who in turn had made many requests for the reasons for the Decisions.

18. Thus, the grounds upon which Mr. Robinson sought relief were as follows:
    a. Ground 1 – The Board failed to provide reasons for deciding to deny/defer the Applicant's application.
    b. Ground 2 – The Board failed to allow the Applicant to be heard, in relation to those reasons (if indeed any were rendered).
    c. Ground 3 – TCD failed to remit the matter to a Summary Court, after the Applicant followed the proper appeals procedure in relation to his Grievance.
    d. Ground 4 – The Applicant was never told why his Grievance was not remitted to a Summary Court, despite following the grievance procedure.

e. Ground 5 – The Board deliberately waited for the conclusion of the criminal matter in which the outcome would not have had – or ought not to have had – any bearing on its decision in any event, as the type of offence, for which the Applicant was tried and acquitted, was not something which could have – or ought to have – been properly or fairly considered by the Board.

19. Thus, the Applicant averred that these were satisfactory and adequate grounds upon which TCD and the Board can be declared to have acted contrary to the law, and ordered to compensate him for damages suffered, that he now seeks, which flow directly from his inability to renew his License, despite his various efforts before and after the Board's denial/deferment.

The Evidence of the Applicant

Robinson 1

20. Mr. Robinson filed an affidavit sworn 1 March 2022 ("**Robinson 1**"). He stated that he had been driving a taxi since May 2016. He had had some medical issues which on medical advice did not allow him to perform manual labour, so driving a taxi was a recommended occupation in order for him to earn a living.

21. Mr. Robinson referred to correspondence that flowed from TCD and then between his then counsel and officials of TCD in October 2019. I will turn to that correspondence in detail later but two letters of significance flowed between the parties as follows (I have emphasized some words by underlining them):

    a. A letter dated 17 October 2019 from Mrs. Jasmin Smith, Director of TCD to Mr. Robinson (the "**Director Smith's Letter**") which Mr. Robinson states that he received on 24 October 20219. The letter set out that Mrs. Smith was writing on behalf of the Board thanking him for attending the Board's meeting of 20 August 2019 (the "**August 2019 Meeting**"). She informed him that at the same meeting, in accordance with section 82 of the MCA the Board considered his request to renew his Licence, deferred his request and informed him that he did not have permission

to drive public service vehicles, adding that for the avoidance of doubt his current Licence for a public service vehicle remains expired. Mrs. Smith informed him that under section 108 of the MCA, if he was aggrieved by the Board's decision, he had the right to remit the matter to a Summary Court, any application to do so to be in writing, along with a $100 deposit within ten days of the date of the letter, to the Board setting out the grounds on which he was aggrieved. He was directed to contact the Senior Traffic Officer Ms. Matias if he had any questions. I should add here that Mr. Johnston submitted early in argument that section 82(2) states that "*where a person is aggrieved by a decision of the Board to issue him a driver's licence … he may have that matter remitted to a court of summary jurisdiction.*" He noted that "to issue" is different from "to renew" as used by Director Smith in her letter. He submitted that Director Smith was wrong to use the words "to renew" although I pointed out that there was no affidavit evidence that stated or admitted that she was wrong to use those words.

b. A letter dated 26 October 2019 from DVB, on behalf of Mr. Robinson to Ms. Matias (the "**DVB October Letter**"). It referred to the August 2019 Meeting and to Director Smith's Letter noting that it did not set out any reasons for refusing Mr. Robinson's application. Interestingly, the DVB October Letter intimated that the reason for the Board's refusal was due to an impending Magistrates' Court matter in which Mr. Robinson was a party, but which had not yet been resolved. The letter went on to refer to Mr. Robinson's medical condition and that the Renewal Decision disabled his ability to derive income. The letter requested the matter be remitted to a Summary Court and set out the grounds as follows: (i) the Renewal Decision was erroneous in law; (ii) Mr. Robinson was not afforded an opportunity properly to arm himself as the Board did not properly or at all disclose the case against him; and (iii) The Board disregarded the *audi alteram partem* right of Mr. Robinson.

22. Mr. Robinson referred to further correspondence that flowed between the parties including a letter from DVB dated 14 December 2019 to Magistrates' Court, copied to Mr. Terry Spencer, Acting Director of TCD (the "**DVB December Letter**") which complained that

Mr. Robinson had not been heard yet, remained unemployed and that the Board were indifferent but Mr. Robinson hoped that the letter would spur the Board into action.

23. Mr. Robinson stated that he was provided with oral unofficial reasons for the Renewal Decision which was due to his pending criminal case in the Magistrates' Court where he was one of three defendants. He stated that by the time of these proceedings, he was acquitted of the charges as he had no case to answer.

24. Mr. Robinson set out the context of the criminal matter. In summary, whilst driving his taxi with passengers, it was stopped by the Bermuda Police when he and the passengers were arrested. On 6 March 2019 he was charged with a single count of conspiring to remove criminal property, namely stolen money, from Bermuda, contrary to section 230 of the Criminal Code Act 1907 to which he pleaded not guilty. Two passengers were eventually charged and pleaded guilty to a range of offences. Mr. Robinson's trial was scheduled for 9 December 2019 but was adjourned. It started on 12 March 2020 and was adjourned to 28 April 2020 and continued on 30 June 2020. After the close of the Crown's case, he was acquitted on a no case to answer application. Following his acquittal, he was still not allowed to drive until the Board renewed his Licence on 21 August 2020, after he had contacted the Royal Gazette which wrote an article on 12 August 2020 about his circumstances. Thus, he was unable to drive a taxi for one year.

25. Mr. Robinson set out his efforts to obtain a Legal Aid Certificate for this matter which was eventually granted in January 2021 and assigned to in-house counsel. Mr. Robinson then applied to have the Legal Aid Certificate transferred to Mr. Wilson of DVB which was done on 11 February 2021. DVB sent a letter before action dated 22 April 2021 to TCD. Thereafter correspondence flowed between the Attorney General's Chambers and DVB.

26. Mr. Robinson set out his evidence for the assessment of damages.

<u>Robinson 2</u>

27. Mr. Robinson filed a Second Affidavit sworn 15 March 2024 ("**Robinson 2**"), after the hearing had commenced. Mr. Johnston had no objections to Robinson 2 except paragraph 5 which was withdrawn by Mr. Hill. In Robinson 2, he sought to correct a misleading statement about a conviction of supplying marijuana as follows:

    a. March 2016 - he was charged with the offence of supplying marijuana, some months before the grant of his first Licence; and

    b. April 2018 - he was convicted, on a plea of guilty, of the supply of marijuana, during the currency of his first Licence. He served 7 months of a sentence of 12 months, being released early for good behavior.

28. Mr. Robinson addressed the proceedings in a meeting held 20 August 2019 with the Board as well as the Minutes of that meeting (the "**Minutes**").

29. Mr. Robinson also addressed an issue of delay in correspondence as a result of the Covid-19 Pandemic and the resulting Government orders for members of the public to remain at home.

30. Mr. Robinson stated that his Licence had been restored to him and there was little sense in remitting the matter to a Summary Court.

31. Mr. Robinson stated that he was advised that his claims to damages falls under the heads of malfeasance in a public office, or alternatively, common law breach of a statutory duty and/or negligence. As these matters were to be adjourned until the Court issued its judgment on the Decisions, Mr. Robinson sought an extension of time in which to bring his public law applications, noting that the Crown had not contested his application for an extension.

The Evidence of the Respondent

32. Two orders dated 2 June 2022 and 10 August 2023 granted leave to the Respondent to file evidence. As stated above, Spencer 1 sworn 13 March 2024 was presented at the hearing (unsworn) on 13 March 2024 and spoke to the appropriate Respondent. It also referred to a number of exhibited documents that were before the Board in 2019 when Mr. Robinson applied to the Board to renew his License as well as his own letter dated 13 August 2020 to

Mr. Robinson informing him that the Board had approved his application for a PSVL ("**Director Spencer's Letter**"). Spencer 1 did not provide any explanation or commentary in respect of the bundle of documents. I set out the relevant documents in the next section and I indicate in parathesis "Spencer 1" where that document was an exhibit of that Spencer 1 affidavit.

33. One of the exhibited documents were the Minutes of the meeting on 20 August 2019. Mr. Hill objected to the admission of the Minutes noting that the Board had ample time to file evidence. After some discussion, I allowed the evidence of Mr. Spencer and the Minutes to be admitted as I found them to be relevant to the issues in the matter. Mr. Hill indicated that he may need to file further evidence to clarify some points raised in Spencer 1.

The Chronology and Relevant Documents

34. The chronology and relevant documents are as follows:
    a. Mr. Robinson was first issued his Licence on 17 June 2016 and it expired on 27 August 2019.
    b. **"Application"** - Application by Mr. Robinson for a renewal of his Licence dated 22 May 2019; (Spencer 1)
    c. Five (5) character reference letters for Mr. Robinson; (Spencer 1)
    d. "**August 2019 Convictions Email**" - Email dated 20 August 2019 from BPS Officer of the Criminal Records Office to Ms. Matias informing of 6 convictions and sentences of Mr. Robinson dated 19 April 2018. This email was in reply to an email the previous day from Ms. Matias to the BPS seeking a vetting review for Mr. Robinson. (Spencer 1)
    e. "**20 August 2019 Agenda**" – The Agenda for the Board's meeting held on 20 August 2019. The handwritten notes in relation to Mr. Robinson state *"Deferred' until next meeting in September 19.*" (Spencer 1)
    f. The Minutes – Minutes of the Board's August 2019 Meeting dated 20 August 2019. Paragraph 9 dealt with Mr. Robinson's Application. The Minutes reflect that Mr. Robinson attended the meeting and spoke to his previous convictions and the fact that he was released after 7 months of a 12 month sentence for good behaviour. He

provided characters references and indicated that he did not have a report from a parole officer as he had successfully completed parole and his parole officer advised him that he would not need a report. The Minutes also reflect that when asked if there were any pending court matters, Mr. Robinson stated that there was an issue but no conviction, his lawyer had advised him that as long as there was no conviction, appearing before the Board was not going to be a problem, that he would be cleared of the charges – hopefully soon, and he was trying to lead a clean life, noting that driving taxi was his livelihood. The Minutes then reflect that: (i) he would be informed of the Board's Decision in writing from TCD within 2 weeks; and (ii) the Board's Decision was that Mr. Robinson was attending Court on 27 August 2019 and that the Board unanimously agreed that their decision would be deferred until after the case against Mr. Robinson concluded.

g. Director Smith's Letter dated 17 October 2019 sent to Mr. Robinson.

h. DVB October Letter dated 26 October 2019 sent to Ms. Matias of TCD.

i. "**19 November 2019 Agenda**" – The Agenda for the Board's meeting held on 19 November 2019. The handwritten notes of the Board's decision states "*Renewal of PSV licence – Appeal*". (Spencer 1)

j. "**3 December 2019 Agenda**" – The Agenda for the Board's meeting held on 3 December 2019 had an agenda item "*Discussion of Appeals of ... and Mr. Robinson*". The typed note says "*Review Letters of Appeal from both applicants*", pertaining to Mr. Robinson and another un-related applicant. The handwritten notes of the Board's decision states "*Deferred*". (Spencer 1)

k. "**10 December 2019 Agenda**" – The Agenda for the Board's special meeting held on 10 December 2019 had an agenda item "*Discussion of Appeals from Mr. Robinson*". The handwritten notes of the Board's decision, appears to pertain to Mr. Robinson and to another un-related applicant, say that the chair of the Board would write a letter stating that '*the initial decision stands*'. (Spencer 1)

l. DVB December Letter dated 14 December 2019 sent to Magistrates' Court, copied to Mr. Terry Spencer, Acting Director of TCD.

m. "**July 2020 Agenda**" – The Agenda for the Board's meeting held 21 July 2020. The typed notes for the Board state "*20 August 2019 the Boards' decision Deferred,*

Appeal was made to the Board on 29 Nov 2019, Discussion under AOB was held on 3 Dec 2019, and 15 July 2020 an update from Magistrates Court was received." The handwritten note of the Board's decision says that the matter was deferred to the next meeting as the Board was awaiting some communication from Mr. Spencer. (Spencer 1)

n. "**RG Article 1**" – on 12 August 2020, the Royal Gazette published an article entitled "Falsely accused taxi driver desperate to get life back" in which Mr. Robinson spoke of the circumstances of the matter and that a Magistrate had acquitted him after finding that he had no case to answer.
o. Director Spencer's Letter – dated 13 August 2020 – from Mr. Spencer to Mr. Robinson informing him that the Board had approved his application for a PSVL.
p. The renewal application marked in handwriting "approved" dated 13 August 2020;
q. **RG Article 2**" – on 24 August 2020, the Royal Gazette published an article entitled "Reprieved taxi driver finally gets back licence" in which Mr. Robinson explained that TCD called him on 13 August 2024 to tell him that his licence had been renewed.

<u>Rules of the Supreme Court Order 53 – Judicial Review</u>

35. Order 53 rule 1(2) of the Rules of the Supreme Court 1985 ("**RSC**") provide as follows:

> ***Cases appropriate for application for judicial review***
> *(1) ...*
> *(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—*
> > *(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,*
> > *(b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and*
> > *(c) all the circumstances of the case,*
>
> *it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.*

36. Order 57 rule 7 of the RSC provide as follows:

> ***Claim for damages***

(1) On an application for judicial review the Court may, subject to paragraph (2) award damages to the applicant if—

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and

(b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

The Legal Framework of the Board

37. As stated above, section 28 of the MCA establishes the Board for the purpose of licensing the use of public service vehicles which has the powers to discharge the various duties conferred or imposed on it.

38. Section 82 of the MCA states as follows:

Discretionary powers of Board concerning issue of drivers' licences to drive public service vehicles

82 (1) Where a person applies for the issue or renewal of a driver's licence to drive a public service vehicle or a community service vehicle, the Board shall make due enquiry with regard to his character and to his record as a driver; and where it appears to the Board—

(a) that the applicant is not of good character; or

(b) that the applicant—

(i) has been convicted at any time of manslaughter, where the offence occurred by reason of the driving by him of any vehicle; or

(ii) has been convicted of any offence involving obligatory disqualification under the Traffic Offences (Penalties) Act 1976 [title 21 item 13],

then the Board, if they consider that it is desirable in the interest of persons carried in public service vehicles or a community service vehicles that he should not drive or be in charge thereof, may refuse to issue to him a driver's licence or, as the case may be, to renew a driver's licence, valid for the driving of a public service vehicle or a community service vehicle; and in any such case shall by notice cause him to be informed of their decision:

Provided that nothing in paragraph (a) shall have effect in relation to the issue of a driver's licence valid for the driving of an omnibus to a person employed by the Government as an omnibus driver.

(2) Where a person is aggrieved by a decision of the Board to refuse to issue him with a driver's licence valid for the driving of a public service vehicle or a community service vehicle he may have the matter remitted to a court of summary jurisdiction in the manner provided, and subject to the conditions set out in, section 116.

39. Section 86(1)(d) of the MCA provides that a PSVL is valid for a period of three years:

Duration and renewal of drivers' licences

86 (1) Subject to the subsections (1A) to (5) and the provisions of this Part, unless suspended or cancelled under any Act—

> *…*
>
> *(d) a driver's licence valid for the driving of a funeral home limousine, public service vehicle, heavy truck, tractor trailer, tank wagon, community service vehicle or a self-propelled constructional machine shall remain in force for a period of three years next succeeding the date of the issue of the licence; and*

40. Section 90 of the MCA governs the cancellation of PSVLs and provides as follows:

Cancellation of licence to drive public service vehicle

90 (1) Where it is made to appear to the Board that a person holding a driver's licence valid for the driving of a public service vehicle, but not being a person employed by the Government as an omnibus driver—

> *(a) has been convicted of any offence involving dishonesty; or*
>
> *(b) having been convicted of any offence involving an element of assault, has been sentenced to a term of imprisonment …; or*
>
> *(c) …*
>
> *(d) in the case of a taxi driver, has persistently disregarded the provisions of regulations concerning his conduct and obligations as a carrier; or*
>
> *(e) has otherwise behaved in such a manner that it is desirable that his licence to drive a public service vehicle be cancelled.*

the Board may, if they consider that in the public interest he should not be allowed to drive a public service vehicle, by order cancel his licence in so far as it authorizes him to drive a public service vehicle, and may order that he be disqualified for driving a public service vehicle; and shall by notice inform him accordingly.

2A Before making an order under subsection (1) cancelling a driver's licence valid for the driving of a public service vehicle, the Board shall afford the holder of the licence an opportunity to be heard and make representations with respect thereto, and the Board shall cause a proper record of the proceedings had before it to be kept in writing in such form as the Minister may direct."

5. A person whose driver's licence has been invalidated by an order as aforesaid—

> *(a) in a case such as referred to in subsection (1)(a) or (b), at any time after the expiration of 12 months from the date on which invalidation had effect;*

(b) in a case such as referred to in subsection (1)(c), (d) or (e), at any time after the expiration of one month from the date on which the invalidation had effect,

may apply to the Board for the revocation of the order; and on any such application the Board, after taking into consideration the conduct of the applicant subsequent to the making of the order and the other circumstances connected with the case, may, if they think fit, revoke the order; and on such a revocation the Board shall cause the revocation to be noted on the licence.

7. Any person who is aggrieved by a decision of the Board to refuse to revoke an order under subsection (5) may, in the manner provided by and subject to section 116, apply to have the matter remitted to a court of summary jurisdiction.

41. Section 108 of the Act provides for the notification of right to have matters remitted to a court of summary jurisdiction and provides as follows:

Notification of right to have certain matters remitted to a court
Where in respect of an order or other decision of the Minister or the Board the matter may be remitted to a court of summary jurisdiction, the document notifying the person concerned of the decision of the Minister or the Board in the matter shall also notify the person that he has the right to have the matter remitted to a court and shall also notify the time within which he must lodge an application to have the matter so remitted as provided in section 116.

42. Section 116 of the Act provides for the remission of matters to a court of summary jurisdiction and provides as follows:

Remission of matter to court and appeals arising therefrom
116 (1) Where any person who is entitled, under this Act, to have remitted to a court of summary jurisdiction any matter involving a decision or order of the Minister or the Board by which he is aggrieved desires so to remit the matter—

*(a) the person desiring so to remit the matter, (hereinafter in this section referred to as "the applicant") must, within ten days after he has been notified of the decision or order, lodge an application in writing with the Minister or the Board setting out the grounds on which he is aggrieved; and when the applicant lodges the application with the Minister or the Board he shall deposit with the Minister or the Board the sum of $100; *

(b) the Minister or the Board, on receiving an application as aforesaid shall forthwith transmit the application together with the record of the proceedings, if any, before the Board kept under section 90(2A) to the Senior Magistrate, who shall make the necessary arrangements for the matter to be heard by a court of summary jurisdiction and shall cause the applicant and the Minister or the Board to be notified of the day on which the court will hear the matter;

(c) the court, after taking into account the record of the proceedings, if any, kept under section 90(2A) and after hearing such additional evidence as with the leave of the court the Minister or the Board, as the case may be, may call in support of, or the

applicant may call against, the decision or order, either confirm or reverse the decision or order of the Minister or the Board, and shall inform the applicant and the Minister or the Board accordingly;
(d) if the court confirms the decision or order of the Minister or the Board the sum of $100 deposited by the applicant shall be forfeited to Her Majesty and shall be paid into the Consolidated Fund, but if the court reverses the decision or order of the Minister or the Board such sum shall be repaid to the applicant.

(2) Where any person applies to have a matter remitted to a court as aforesaid, then the decision or order of the Minister or the Board in respect of which the application was made shall, except as otherwise expressly provided, remain in full force and effect pending the determination of the matter by the court; and any contravention thereof or failure to comply therewith shall be punishable, and shall give rise to the same liability, as if no application had been made for the matter to be remitted to a court.

The Issue of the Administration of Justice

Applicant's submission on delay

43. Mr. Hill submitted that Mr. Robinson has not breached the six-month time limit because the wrongful act, to refuse or to remit, is ongoing and continues to the date of the hearing. Further, that Mr. Robinson has received no notification of the Decisions. Mr. Hill referred to Order 53 Rule 4 which sets the time limit of six months for bringing judicial review proceedings. He argued that the Remittal Decision by the Board was ongoing and Mr. Robinson has not received any notification of it. Thus, as that failure to remit the matter is ongoing, then there has been no delay in bringing the application for Judicial Review. Mr. Hill argued that as it was a breach of a statutory duty, it gave rise to loss and damages which persisted to date.

44. Mr. Hill also submitted that the Covid 19 Pandemic and the disruption to Court services adequately explained the delay in bringing the application before the Court within six months of the Renewal Decision. He stated that the Courts were closed most of the time and not receiving documents or processing claims already lodged. Thus, any delay could be explained by the belief that that matter had been remitted and Mr. Robinson was simply awaiting a Notice of Hearing at which time direction would have been given. He referred to

two Practice Directions[1], noting that lawyers were uncertain about the Court's opening hours and when matters could be brought before the Court.

Respondent's submission on the administration of justice

45. Mr. Johnston submitted that Mr. Robinson should be denied any public law relief on the basis of delay and that the public law claims are now academic (the "**Administration of Justice Argument**").

46. In respect of delay, Mr. Johnston submitted that Mr. Robinson was guilty of undue delay in bringing his judicial review application. He argued that Mr. Robinson should have asked for leave to apply for judicial review sometime in 2019, but instead, he waited nearly two years after the Board renewed his taxi licence, there being no justification for such a delay.

Analysis on delay

47. In my view, I accept that there was some delay but I am of the view that there is good reason for extending the period. First, Director Smith's Letter is dated 17 October 2019. The DVB October Letter in reply, dated 26 October 2019, requested the matter be remitted to a Summary Court. The DVB December Letter dated 14 December 2019, to the Magistrates Court, copied to the Acting Director TCD, complained that Mr. Robinson had not been heard yet, the purpose being to spur the Board into action. To these letters, Mr. Robinson and DVB did not receive a reply. In my view, it is clear that the Renewal Decision was communicated on 17 October 2019 which means that the six-month time limit to bring judicial review of that decision was 17 April 2020.

48. Second, the position is not so clear in respect of the Remittal Decision as no response was ever provided to Mr. Robinson despite the DVB December Letter. It seems that Mr. Johnston

[1] The Practice Direction dated 20 April 2021 noted that due to the Covid-19 pandemic, there would be reduced services although the Supreme Court and the Magistrates Court were in operation, but with reduced services and limited access. The Practice Direction set out in detail the effect of the reduced services of the Courts in force until 30 April 2021. It provided email addresses for urgent matters.

expected Mr. Robinson to select some date after the DVB December Letter and then file the judicial review proceedings within six months of that date. However, in my view, the time limit should not have run from the DVB December Letter as there was never any reply to that letter indicating the position of the Board in respect of the request to refer the matter to a Summary Court. To my mind, Director Spencer's Letter dated 13 August 2020 which informed Mr. Robinson that the Board had approved his application for a PSVL was a better indicator that the matter had not been submitted for referral. Therefore, on that basis, I am not satisfied to accept that since the Board never conveyed a decision to Mr. Robinson, that the time-limit has remained open-ended. In my view, this means that the six-month time limit to bring judicial review of the Referral Refusal Decision was from the date of Director Spencer's Letter dated 13 August 2020 and then expired on 13 February 2021.

49. Third, in light of the two dates I have set out above for the Decisions, the application for Judicial Review dated 22 March 2022 was well beyond 17 April 2020 and 13 February 2021. At this stage, I am prepared to accept that the Court's reduced hours and services as a result of the Covid-19 Pandemic contributed to some delay in 2021 but, anecdotally, by the end of 2021 a level of normal service had returned to the filing of matters and the hearing of cases. I note that Mr. Robinson states that he first applied for legal aid in December 2019 and thereafter, both he and DVB followed up over a period of time with the Legal Aid Committee for a decision on the application. Part of the process involved providing an opinion on the merits in the period September to December 2020 with legal aid finally being approved in January 2021 although DVB was approved as counsel on 11 February 2021. Thereafter during the period April 2021 to May 2021 Mr. Wilson conducted a round of correspondence with Government officials to try to resolve the matter. During the period 31 May 2021 to 19 December 2021 Mr. Wilson conducted a round of correspondence with the Attorney General's Chambers to address the matter. In my view, Mr. Robinson took reasonable steps to have the matter resolved, even engaging counsel at an earlier stage to assist him and eventually seeking legal aid to secure legal representation. Therefore, I am satisfied to exercise my discretion pursuant to Order 53 Rule 4 that there is good reason to extend the period within the judicial review application should be file. On that basis, I dismiss the

Board's position that the matter should not proceed because of delay in bringing the proceedings.

Respondent's submissions on whether the public law claims are now academic:

50. Mr. Johnston submitted that the Decisions (Public Law Claims) are now academic because after the Board renewed his Licence, Mr. Robinson could derive no real benefit from bringing judicial review proceedings. He argued that the Court does not adjudicate matters without a practical purpose. He relied on *Corporation of Hamilton v Minister of Home Affairs* [2014] Bda LR 39 where Kawaley CJ [para 28] dismissed the Corporation's judicial review application for a number of reason including that it would be an improper exercise of the Court's discretionary case management to compel the Minister to defend the validity of a decision he had already revoked. In that case, Kawaley CJ referred to several authorities as set out below.

> *"8. Counsel [Mr. Dunch] firstly referred the Court to extracts from the leading practitioner's text, Michael Fordham QC, 'Judicial Review Handbook', Sixth Edition. Paragraph 4.6 reads as follows:*
>
> > *"Courts do not like holding moots. One of the great values of public law is in clarifying and guiding, prospectively. But even that function is recognised as a function which arises out of deciding a specific dispute requiring resolution. In general judges need persuading that it is right to entertain a judicial review challenge where the issues are, or have become, academic or hypothetical. Sometimes, it will be in the public interest to grasp the nettle, rather than leave the uncertainties for yet further litigation in the future."*
>
> *9. Fordham then goes on to give examples of when the underlying merits may be irrelevant to the need for the Court to determine an issue or issues:*
>
> > *(a) test cases, where the decision-maker would benefit from guidance for the future and the application before the court would be an appropriate vehicle for such guidance (paragraph 4.63);*
> > *(b) cases where the court's views on the merits should be expressed in the public interest (paragraph 4.6.4);*
> > *(c) matters which, although they are "academic", require determination because they deal with points of "general importance": Deuss-v Attorney General for Bermuda [2009] UKPC 38, [2010] 1 ALL ER 1059, at [11] (paragraph 4.6.5).*

10. Mr. Dunch relied upon the following dictum of Lord Slynn in R-v-Secretary of State for the Home Department, ex parte Salem, [1999] 2 All ER 42 at 47 to demonstrate why the Corporation was no longer entitled to pursue the present proceedings:

> *"The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."*

14. Counsel then pointed out that this statement of general principle had been expressly approved by Scott Baker LJ in Fletcher-v- NHS Pensions Agency [2006] EWCA Civ 516 at [19]. The general policy presumption against considering academic points has also been reaffirmed by Scott Baker JA on behalf of the Court of Appeal for Bermuda in Director of Land Valuation-v-Banks [2013] Bda LR 47, a case to which I referred in the course of argument. The conclusions reached by the Court of Appeal, on an issue which was not strictly before them, implicitly disapprove of the more generous approach I took at first instance1 to furnishing an 'advisory' opinion:

> *"9. The law is set out in the speech of Lord Slynn of Hadley with which the other members of the House agreed in R v Secretary of State for the Home Department ex-parte Salem [1999] 1 AC 450 at 456G…*
>
> *10. Lord Pannick QC on behalf of Mr Banks submits that is not one of those rare cases in which the Court should embark on considering an issue that is academic between the parties. Judgments are most helpful if they determine live issues. The meaning of section 5 of the Land Valuation Act should not be determined in a factual vacuum; particular facts in a particular case are required. There is no evidence to suggest that many other cases are pending or anticipated, either on the same facts or otherwise.*
>
> *11. The Chief Justice concluded that section 5(1) of the Act does not apply to high-end residential properties such as that owned by Mr Banks but only to units supporting a main dwelling house used for some business or commercial purpose and that is the matter Mr Small submits should be reconsidered by this Court. However, Lord Pannick points out, that if the Court does decide to hear the appeal that is moot it should look at the meaning of the whole of section 5 including section 5(2) and not just section 20 5(1).*
>
> *12. Mr Small's argument is that this is a very important point; 758 other properties could be affected. The Chief Justice's decision is of high persuasive authority and, he submits, if it is wrong, as he contends it is, it should not be allowed to stand. A new five year list will begin on 1 January 2014 and a lot of tax turns on the result. That is why the Chief Justice allowed the point to be argued as a matter of public interest and this Court should do likewise.*
>
> *13. In my judgment the facts are likely to differ from case to case and I am not persuaded that there are other identical cases or similar cases in the pipeline or that there is any other pressing reason why this court should consider and rule on the point.""*

51. Mr. Johnston also relied on the case of *Robinson v BCAA* [2023] SC (Bda) 73 Civ (6 October 2023) where Hargun CJ denied leave to bring judicial review proceedings where what was offered to the applicant by the respondent was the most that could be obtained at the end of a judicial review. Mr. Johnston argued that in the present case, if the Court granted the original relief to quash the Decisions, it would mean that Mr. Robinson would have no Licence, that request being a nonsensical. In *Robinson* Hargun CJ stated as follows:

> *"42. Mr Caines, for Mr Robinson, urges the Court that if the Court considers that the judicial review proceedings was the appropriate route to challenge the decision, then the Court should give Mr Robinson leave to issue judicial review proceedings out of time. The Court declines to do so for two reasons. As made clear by Hellman J in Darrell and Lord Woolf MR in Clark v University of Lincolnshire any application for leave to issue judicial review proceedings must be made promptly and in any event within 3 months of when the grounds arose. Secondly, it appears to the Court that the BCAA is prepared to consider an application 22 for approval, under Article 134, from an appropriate entity and is prepared to designate a person other than Mr Lynch-Wade to make the determination.*
> *…*
> *45. It seems to the Court that the proposals which the BCAA has put forward to Mr Robinson in relation to the de novo consideration of any application he may wish to make on behalf of any corporate entity for approval under Article 134, is all he can realistically hope to achieve 23 in any successful application for judicial review. In the circumstances, the court declines to give leave, out of time, to Mr Robinson to issue judicial review proceedings."*

Applicant's submissions on whether the public law claims are now academic:

52. In essence Mr. Hill submitted that the case was not academic as he sought the relief of a declaration that the Decisions were ultra vires and therefore illegal, as a basis for Mr. Robinson's claim in damages.

Analysis on whether the Public Law Claims are now academic:

53. In my view, the Public Law Claims are not now academic for several reasons. First, this case involves an exercise of a discretion by the Board to deny an application or defer a decision in respect of the livelihood of a person because there were criminal charges pending against him. It is without dispute that pursuant to the Constitution, a person in Bermuda is entitled

to fundamental rights and freedoms, in particular Article 6(2)(a) which provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty. In my view, resolving this issue is not an acidic pursuit but should be determined.

54. Second, whilst there is no evidence that similar circumstances exist where there may be many other cases pending or anticipated in respect of the renewal of taxi licenses, in my view there may be a broad range of applications to Government departments wherein character may be required to be taken into account. On that basis, to my mind, applying the principles set out in *Corporation of Hamilton* and the *Judicial Review Handbook*, this case is one where the court's views on the merits should be expressed in the public interest.

55. Third, Mr. Robinson was denied his livelihood and thus seeks damages. That point in itself means that the Public Law Claims are not now academic. In my view, they issues need to be resolved in order to determine if the matter will proceed to a phase for determining whether damages are appropriate in all the circumstances.

56. In light of these reasons, I dismiss Mr. Johnston's position that the matter is no academic.

Ground 1 - The Respondent failed to provide reasons for deciding to deny/defer the Applicant's application

Ground 2 - The Board failed to allow the Applicant to be heard, in relation to those reasons (if indeed they were rendered).

Ground 5 – The Board deliberately waited for the conclusion of the criminal matter in which the outcome would not have had – or ought not to have had – any bearing on its decision in any event, as the type of offence, for which the Applicant was tried and acquitted, was not something which could have – or ought to have – been properly or fairly considered by the Board.

Case Law on Statutory Interpretation

57. In respect of statutory interpretation, in *Minister of the Environment v Rodrigues Trucking and Excavating* [2004] BDA LR 39 Kawaley J stated at pages 2, 3 and 4:

> *"However, if regard was to be had to the canons of construction, Mr. Froomkin relied on three interpretive principles. Firstly, the presumption that Parliament does not intend unworkable or impracticable, inconvenient, anomalous or illogical, futile or artificial results, or a disproportionate counter-mischief: Bennion, page 751 et seq. Secondly, he submitted, that the "starting point in statutory interpretation is to consider the ordinary meaning of the word or phrase in question, that is its proper and most known signification. If there is more than one ordinary meaning, the most common and well-established is preferred (other things being equal": Bennion, page 917. However, the context may drive the interpreter to one of the others. This may be a quire different meaning, or a subdivision of the common meaning": ibid, page 920."*
>
> *"the applicability of the presumption against absurdity or inconvenience in Bermuda law was supported by reference to Hope Bowker real Estate v Roderick DeCouto [1986] BDA LR 19, where the Court of Appeal for Bermuda (at page 4-5 of the Court's judgment) gave a statutory provision a restricted meaning to avoid "an untoward result which does nothing towards achieving the object of the legislation."*
>
> *"For the principle that the main purpose of the statutory interpretation is to ascertain the meaning of the words used, The Plaintiff's Counsel cited Sir James Astwood JC at pages 2-3 of his judgment in Ministry of Finance v Hawkes [1991] Bda LR 57…. It was submitted that the Chief Justice's articulation of the canons of interpretation remain good law."*
>
> *"In essence, there is a presumption that Parliament does not intend to confer more powers than is strictly necessary. This principle is essentially the same as the principle against penalization under a doubtful law, save that the latter principle looks at the impact of the statute on the citizen from the citizen's perspective.*
>
> *The Defendant's counsel relied on the following passages from Bennion, 2nd edition (sections 271,278):*
>
> > *"The court … should strive to avoid adopting a construction which penalizes a person where the legislator's intention to do so is doubtful, or penalises him in a way which was not made clear … One aspect of the principle against doubtful penalisation is that by the exercise of state power the property or other economic interests of a person should not be taken away, impaired or endangered, except under clear authority of law.""*

Case law on the principle of fairness

58. The Courts also recognized the principle of fairness in the decision-making process as in the case of *Council of AME Churches and Tweed v The Minister of Home Affairs* [2017] Bda LR 66, Kawaley J stated:

"6. The second umbrella principle upon which the merits of the application turn are best reflected in a judicial statement upon which Mrs Sadler-Best for the Minister relied. Lord Bridge famously observed in Lloyd-v-McMahon [1987] UKHL 5 (at page 10); [1987] AC 625: "My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on anybody the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

Case Law on Failure to Provide Reasons

59. In respect of the adequacy of reasons test, in *South Bucks District Council and Another v Porter (No. 2)* [2004] UKHL 33 at 36 Lord Brown of Eaton-under-Heywood stated:

"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

Case law on renewal of licences

60. In *R (on the application of Bean Leisure Trading A Limited) v Leeds City Council* [2014] WL 1097122 Stuart-Smith J, in setting out the applicable legal principles, stated as follows:

> *"The provision for annual renewal of licenses means that the council is entitled to "have a fresh look" at the matter. If there has been no change in circumstances since an earlier decision and the council wishes to depart from an earlier decision, it must give its reasons for so doing. Clear from the judgment of O'Connor LJ in R v Birmingham City Council ex parte Sheptonhurst Ltd [1990] 1 All ER 1026, where he said:*
>
> > *"… [W]here Parliament, having expressly limited the grounds on which the licence may be refused, has drawn no distinction between grant and renewal of the licence and provided that a licence shall not last for more than a year, then it seems to me that to exceed to Mr. Tabachnik's submission [that Parliaments cannot have intended that the vagaries of local opinion should be determinative of an existing trader's rights to continue to trade] would be to introduce a fetter on the discretion of the Local Authority in cases of renewal which Parliament has not done. However, although the discretion is unfettered there is a difference between an application for grant and an application for renewal and that distinction, as the cases have pointed out, is that when considering an application for renewal the Local Authority has to give due weight to the fact that the licence was granted in the previous year and indeed for however many years before that. It is of particular importance that the licensing authority should give due weight to this fact in this field, for I do not doubt that there is an opposition to sex shops on grounds outside the limits imposed by paragraph 12 of the Schedule. I have come to the conclusion that the licensing authority were entitled to have a fresh look at the matter… In a case where there has been no change of circumstances, if the licensing authority refuses to renew on the ground that it would be inappropriate having regard to the character of the relevant locality, it must give its reasons for refusal: see paragraph 10(20) of the Schedule. If the reasons given are rational, that is to say properly relevant to the ground for refusal, then the court cannot interfere. I believe is to be the true protection for a licence holder applying for renewal against a wayward and irrational exercise of discretion. The fact that in previous years the licensing authority did not choose to invoke those reasons for refusing to grant or renew the license does not make the reasons irrational."*

The Applicants' Case

61. Mr. Hill submitted that Director Smith's Letter stated that the application was 'deferred' and it also referred to section 108 which sets out that an order or other decision of the Minister or the Board may be remitted to a Summary Court. He noted that the letter did not say to what event or date it was deferred or why it was deferred. He argued that it followed that the "deferral' was a 'refusal' which accorded with the language in section 82(2) namely "to refuse to issue" a PSVL. Also, he stated that Director Smith informed that if he was aggrieved by the Board's "decision", then he had the right to remit the matter to a Summary

Court. He argued, thus, it was clear that the Board, by deferring the application, had made a decision to refuse to grant the Licence.

62. Mr. Hill submitted that the Board failed to provide any justification for the refusal to renew Mr. Robinson's License which deprived him of important procedural protections guaranteed by both the Human Rights Act, by the incorporation of the European declaration of Human Rights and Fundamental Freedoms as well as the Constitution. He also submitted that if the Board had remitted the matter to a Summary Court, then it would have had to set out the proceedings before the Board refusing to renew the Licence, which would have given Mr. Robinson notice of the grounds for the refusal to renew his Licence. Further, Mr. Robinson was denied an appeal to the Supreme Court depending on the decision of a Summary Court.

63. Mr. Hill submitted that Director Smith's Letter informed Mr. Robinson that the Board had decided not to renew his Licence but it failed to provide any reasons for doing so. Further correspondence from DVB also failed to elicit any reasons to Mr. Robinson. He referred to an 'unofficial' explanation being communicated orally to Mr. Robinson that it was due to his then impending Magistrates' Court trial, in which he was one of three defendants, for which he was subsequently acquitted. Mr. Hill argues that such an informal oral explanation is no explanation at all. Thus, Mr. Hill submitted that the Board undertook no evaluative process or due enquiry at all. The refusal to renew Mr. Robinson's Licence was based on the pending Magistrates' Court matter which was an irrelevant consideration in relation to the evaluation of an applicant whether for issue or renewal, as shown by the Minutes of the various meetings. Mr. Hill argued that in the circumstances, the Licence should have been renewed and if Mr. Robinson was later convicted, then pursuant to section 90, the Board could have considered whether to cancel his Licence, noting that it was unlawful for the Board to deny the renewal of the Licence.

64. Mr Hill relied on the House of Lords case of *Padfield v Ministry of Agriculture, Fisheries and Food* [1968] AC 997 [page 998] where an order was made directing the Minister to consider a complaint noting that where Parliament conferred a discretion to promote the policy and objects of the Act, which were determined by the construction of the Act, the

discretion was not unlimited, and if it appeared that the effect of the refusal to appoint a committee of investigation was to frustrate the policy of the Act, then the Court was entitled to interfere. Also, [page 1030] the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the Courts.

65. Mr. Hill relied on the case of *R v Secretary of State for the Home Department, Ex Parte Simms and Another* [2000] 2 A.C. 115 which involved two prisoners convicted of murder who had maintained their innocence and wanted access to journalists to assist them but the Minister had imposed an indiscriminate ban on all interviews by journalists with prisoners. The Court found that there was a presumption that the statute had been enacted subject to the fundamental civil liberties, such that the indiscriminate ban was unlawful as it sought to threaten a prisoner's ability to gain access to justice and amounted to an unjustifiable curtailment of his right to freedom of expression.

66. Mr. Hill relied on *Maronie-Durham v Bermuda Bar Council* [2021] Sc (Bda) 49 App (30 June 2021) which involved an appeal from a decision by the Bar Council to refuse to issue a practicing certificate to the appellant on the grounds that she did not satisfy the requirement for certification as a fit and proper person under the relevant statute. Subair Williams J held that professional conduct complaints against the appellant should be determined by a properly constituted independent and impartial tribunal at the criminal standard of proof, but until that time, it ought not to be presumed or surmised that the appellant was responsible for the misconduct alleged.

67. Mr. Hill relied on the case of *Pearce v Parole Board* [2023] AC 807 which addressed the power of a parole board to consider allegations made against a prisoner in consideration of assessing risks associated with an application for parole. The Court found that it was lawful for the parole board to investigate the allegations and make findings of fact, but if it could not do so, then it would be unfair to expect the prisoner to give answers if he was facing criminal or prison proceedings, then the parole board could give such weight as it thought fit to the allegations in all the circumstances noting that the parole board could also disregard the allegations if there was a lack of information.

Character of Mr. Robinson

68. Mr. Hill submitted that section 82 of the MCA requires the Board to make due enquiry of the character of Mr. Robinson. He stated that it was unclear what steps the Board had taken to make due enquiry as no evidence had been produced to the Court before the hearing date. The Spencer 1 exhibit shows that the August 2019 Convictions Email was in response to a request for vetting from TCD.

69. Mr. Hill submitted that it was for Board to show that they had construed the MCA in order to give effect to its objects and purposes, as intended by Parliament, as objectively determined. Thus, the construer would need to answer the question what facts would give rise to an issue with the character of Mr. Robinson. Thereafter, the Board would have to make a determination as to whether his character precluded the renewal of his Licence. Mr. Hill noted that the Board had not given Mr. Robinson an opportunity to answer any queries that they had.

70. Mr. Hill submitted that the MCA was clear that the types of behaviour targeted involved acts associated with driving. Where an offence of dishonesty is mentioned, it specifically requires a conviction, a mere allegation being insufficient. Mr. Hill argued that in respect of the offences with which Mr. Robinson was charged, they had nothing to do with his ability to drive his taxi safely and properly for passengers. He argued that a Summary Court and this Court would have been confronted with incontrovertible facts; including that the criminal case against Mr. Robinson was weak for which he was acquitted on the basis that there was no case to answer. Mr. Hill referred to section 90(a) of the MCA and submitted that it provided the safeguard against convicted larcenists operating a taxi by providing for the withdrawal of a license when the holder is convicted of an offence of dishonesty.

71. Mr. Hill submitted that the MCA was clearly drafted for the protection of road users and more particularly for the users of taxi cabs. He argued that it was difficult to see how a mere allegation of involvement in a bank fraud could have any effect on the protection of road users and the users of taxi cabs in Bermuda. Mr. Hill submitted that a failure to make due enquiries or to have made undue enquiries would render the Renewal Decision unlawful. It would also fall foul of the doctrine of legality by which statutes are construed to give effect

to the objective intention of Parliament, which was the protection of users of taxis in Bermuda. Thus, Mr. Hill argued that the Board should have considered all the circumstances of the case but that to have considered only the existence of pending criminal proceedings was irrational, particularly where section 90(1) sets out that for a conviction of an offence of dishonesty, the board can cancel a PSVL. Mr. Hill argued that it was unclear how the Board thought it was exercising its powers to have made due enquiry into the character of the Mr. Robinson.

Failure to provide reasons

72. Mr Hill submitted that a failure to provide reasons for the Renewal Decision would make it *ultra vires* as the law imposes an obligation upon a decision maker to provide cogent and understandable reasons for the making of any particular decision or the exercise of any discretion. He relied on the case of *R (on the application of Bean Leisure Trading A Limited) v Leeds City Council* [2014] WL 1097122 which involved the exercise of a council's discretion to limit the number of lap dancing clubs in the Leeds city centre. It was expressly recognized that the council retained a large discretion in the exercise of its discretion to limit such clubs both numerically and geographically.

73. Thus, Mr. Hill conceded that the Board retained a wide discretion in the exercise of their function when renewing licenses. However he stressed that: (i) they must comply with the general principles applicable to the exercise of that discretion; (ii) it is not unfettered; (iii) it is necessary to protect Mr. Robinson's fundamental rights; (iv) that reasons must be given, particularly when failing to renew an existing license; and (v) that there must be procedural fairness.

74. Mr. Hill submitted that Director Smith's Letter should have contained reasons for the decision not to renew the Licence as it would have given him an indication of the basis for the Renewal Decision and protected his procedural right to have knowledge of the accusations made against him. Such failure to provide reasons made the Renewal Decision *ultra vires*.

Failure to provide a proper hearing of the Allegation

75. Mr. Hill submitted that Mr. Robinson was denied the opportunity to have the case against him put to him and to answer that case. He argued that Mr. Robinson would have been able to raise the issue of "Innocence until Proven Guilty" and he would have been able to point out to the decision maker and/or a Summary court, the absence of any evidence of the proceeding leading up to the decision to withhold the Licence, the procedural issues and the steps taken to make enquiries as to Mr. Robison's character.

Failure to protect fundamental human rights

76. Mr. Hill submitted that it was a canon of construction of statutes and the exercise of discretionary powers that those powers are to be exercised in order to give effect of fundamental human rights, in the present case, the right to the presumption of innocence when charged with a criminal offence as enshrined in the Bermuda Constitution. Mr. Hill argued that that presumption extends to the right of Mr. Robinson on application to have his Licence renewed and especially where the MCA contains an express provision, section 90, permitting the withdrawal of an issued licence on conviction for an offence of dishonesty.

77. Mr. Hill relied on the House of Lords case of *R v Secretary of State for the Home Department Ex Parte Simms* [2000] 2AC 115 where Lord Hoffman stated [page 131] that: (i) "*fundamental rights cannot be overridden by general or ambiguous words"*; and that (ii) "*In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual."* Mr. Hill submitted that the most basic interview would have revealed a lack of involvement of Mr. Robinson in the alleged offence and thus the allegation was insufficient to permit the refusal of the renewal of the Licence that he had held since 2016. Mr. Hill relied on the House of Lords case of *R v Tower Hamlets LBC Ex Parte Chetnik Developments Ltd* [1988] AC 858 where Lord Bridge referred to the work of Professor Sir William Wade QC in *Administrative Law, 5th Ed.* (1982) at pages 355-356 in the chapter

entitled "*Abuse of Discretion*", that "*The common theme of all the passages quoted is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended.*" Mr. Hill argued that Mr. Robinson was deprived of the presumption of innocence, which was later vindicated in spectacular fashion.

Failure to comply with the provisions of the MCA and procedural fairness

78. Mr. Hill submitted that Section 90(2A) of the MCA provides a holder of a licence an opportunity to be heard and make representations if there is a question that that a licence may be cancelled pursuant to section (90)(1). However, he argues that Mr. Robinson was never given the opportunity to be heard or to make representations in defence of his character. Further, Mr. Hill argued that the offence with which he was charged in the Magistrates' Court had nothing to do with driving a taxi whilst section 82 of the MCA involved questions of character and fault while operating a public service vehicle.

79. Mr. Hill submitted in his skeleton argument, prepared before the filing of Spencer 1, that the Board had filed no affidavit evidence as to Mr. Robinsons fitness to drive a taxi on Bermuda's roads, as there was no such evidence, noting that on the contrary, his Licence had been restored. Mr. Hill submitted that had evidence been filed to demonstrate the grounds upon which the Licence was withheld then Mr. Robinson could have had the opportunity to be heard with a record taken of such proceedings. Mr. Hill argued that the Court could draw adverse inferences from the failure to file affidavit evidence as it demonstrated that no proceedings under section 90(2A) took place. Thus, the failure to provide the hearing under section 90(2A) for cancellation of the Licence made the decision *ultra vires*.

The Respondent's Case

80. Mr. Johnston submitted that there were four important principles to note about the legislation:

a. Section 82 is an administrative function and section 90 is a judicial function. The test for when a function is administrative and when it is judicial is set out in *Darrell v Board of Inquiry* [2013] Bda LR 75 at paras 40 and 41. He submitted that when the Board is exercising powers in section 82, it is making a broad evaluative judgment; but when the Board is engaged in activities pursuant to section 90, it is making specific determinations. When a decision maker is performing judicial functions, they are immune from private law claims. He cited *Sirros v Moore* [1975] QB 118and *Durity v Attorney General* [2009] 4 LRC 376 and stated that this mirrors the position found in section 12(5) of the Crown Proceedings Act 1966.
b. The Legislature clearly intended to group issuance and renewal of PSVLs together, and hold both separate from the powers to cancel or suspend a PSVL. He argued that this must mean that the Legislature intended the Board to approach issuance and renewal of a PSVL in a similar way, meaning that the MCA does not demand that the Board treat an application to renew in the same way it would when contemplating cancelling one. Further, the MCA does not require the Board to hold a hearing before making a decision pursuant to section 82(1).
c. Section 82(2) only affords an appeal to a Summary Court if the Board decides not to issue a PSVL. Thus, the Board's decision to refuse to renew a PSVL is not subject to the appeal procedure in section 116. The appropriate way to challenge a failure to renew a PSVL is judicial review proceedings.
d. Section 82(1) obliges the Board to enquire into both the character of an applicant and also whether the applicant has certain types of convictions, which are distinct considerations. The need to enquire into the Applicant's character makes it obvious that while such enquiry is taking place, it cannot properly be said that the Board deferred its decision (or adjourned its hearing). He argued that in those circumstances, the Board is in the process of deciding; and it could only be judicially reviewed if there is some failure to act.

<u>The Character Argument</u>

81. Mr. Johnston submitted that the Board was right to assess the character issues before it, and it was appropriate to enquire further into the criminal allegations (the "**Character Argument**").

82. Mr. Johnston submitted that the Board was entitled to: (i) wait until the conclusion of Mr. Robinson's criminal trial before deciding to renew his Licence or not – such a decision assisting Mr. Robinson rather than harming him; and (ii) decide not to renew on the information available to it. Mr. Johnston submitted that when a decision maker is given a statutory power to assess a person's character, that means reviewing: (i) the overall character of the person; and (ii) the impact admitting a person into a certain profession, or occupation, would have on the profession itself or the occupation. He relied on *Layne v Attorney General of Grenada* [2019] UKPC 11 which cited *Bolton v Law Society* [1994] 1 WLR 512 which was cited in the Bermuda case *Maronie-Durham v Bermuda Bar Council* [2021] SC (Bda) 49 App (30 June 2021). He argued that any criminal offence is *prima facie* indicative of bad character and that so long as the character issue in question is relevant to the profession the decision maker is guarding, the decision maker is given wide latitude by the Courts.

83. In *Layne*, Lord Sumption stated at paragraph 57 as follows:

> *"57 In England, the practice of imposing a condition of "good character" on aspirants to certain occupations appears to begin in the 1830s, with statutes introducing such a condition for constables, holders of licensed premises and <u>licensed cab-drivers</u>. Today, there is a very large number of statutes imposing a condition of good character on eligibility for a wide variety of public appointments and regulated occupations. These include not only ministers of justice (judges, solicitors and barristers), but medical practitioners, opticians, dentists, chiropractors, social workers, foster parents, childminders and others. There is very little authority on the use of the concept of good character in cases like these. But I agree with the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512, 518 that the fundamental purpose of excluding those with criminal convictions from the solicitors' roll is to*
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> > *"maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."*
>
> *It can normally be presumed that the same purpose underlies the exclusion of those with criminal convictions from other occupations in which there is a public interest in maintaining confidence in the integrity of its practitioners. It can certainly be*

presumed in the case of aspiring barristers. The exclusion is not punitive. Nor is it designed to simply prevent the admission of persons with a propensity to offend again or who for some other reason are likely to act in a manner inconsistent with the standards of their chosen profession. It is directed to the maintenance of the collective public reputation of practitioners in the relevant field. Prima facie, conviction of a criminal offence is not consistent with good character. It is a finding that a person has fallen below the standards of integrity which society requires of its members, and is therefore unlikely to be consistent with an occupation calling for a special degree of integrity. ..."

58. I say that a criminal conviction is "prima facie" inconsistent with good character, because there are two potential limitations on that principle. One is that the question posed by section 17(1)(a) of the Grenada Legal Profession Act 2011 is whether the applicant is of good character at the time when the decision is made whether or not to admit him. This will usually be true of conditions of eligibility for public appointments or professional occupations. The other is that the conviction must be for an offence which is relevant to the occupation in question, in this case practice at the bar. In the context of the admissibility of evidence of past convictions, it has been held in England that such convictions may be consistent with present good character if they are "old, minor and have no relevance to the charge": R v Hunter (Nigel) [2015] 1 WLR 5367, para 79. ...

84. In *Layne*, Lady Black stated at paragraph 62 as follows:

"61. In my view, there is no element of discretion involved in the Supreme Court's consideration of an application under section 17(1) of the 2011 Act by a person who seeks admission to practise as an attorney-at-law. To my mind, taken in context, the reference in the section to someone being "eligible" to be admitted, if they satisfy the court as required, is not sufficient to import such a significant discretion. When considering whether the person has satisfied it that he is of good character, the court is therefore engaged in a process of evaluation. Its task is to ascertain the relevant facts and to decide whether, in the light of them, it is satisfied that, at the time when it determines the application, the person is of good character.

62. Each case must, in my view, be evaluated on its own individual facts. It will be relevant to consider not only evidence as to any criminal convictions that the applicant may have, but also evidence as to his other conduct up to the time at which the court's determination is made. The court is not looking for good character in the abstract, but for good character for the purposes of admission to practise as an attorney. This sort of good character is coloured by the need to "maintain the reputation of the solicitors' profession" and to "sustain public confidence in the integrity of the profession", see Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512, 518. It is the judge's assessment of whether or not the applicant's character would undermine these objectives that is material to the determination of whether the applicant is of good character, not the actual opinion of members of the public about him."

85. Mr. Johnston submitted that when making these types of evaluative judgments and risk assessments, decision makers can rely on unproven allegations. He relied on *Pearce*, a parole board case, as commented on above, which he argued also decided that a procedure may be fair even if allegations formed the backdrop of a decision and where giving an applicant the opportunity to comment on the allegations may be enough. He noted that the Court in that case referred to the case of *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 which was about a risk assessment and the statutory power to deport a person in the interest of national security. stated as follows:

> *"42. Lord Hoffmann, in arriving at the same conclusion, said this (para 56):*
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> > *"In any case, I agree with the Court of Appeal that the whole concept of a standard of proof is not particularly helpful in a case such as the present. In a criminal or civil trial in which the issue is whether a given event happened, it is sensible to say that one is sure that it did, or that one thinks it is more likely than not that it did. But the question in the present case is not whether a given event happened but the extent of future risk. This depends upon an evaluation of the evidence of the appellant's conduct against a broad range of facts with which they may interact. <u>The question of whether the risk to national security is sufficient to justify the appellant's deportation cannot be answered by taking each allegation seriatim and deciding whether it has been established to some standard of proof. It is a question of evaluation and judgment,</u> in which it is necessary to take into account not only the degree of probability of prejudice to national security but also the importance of the security interest at stake and the serious consequences of deportation for the deportee." (Emphasis added in Pearce.)*
>
> *66. In the conduct of its proceedings the Board must comply with the requirements of procedural fairness, which is the modern term for the rules of natural justice. Those requirements are, as Singh LJ explained in R (Talpada) v Secretary of State for the Home Department [2018] EWCA Civ 841 ("Talpada") para 57, first that the decisionmaking body is impartial, and must not be, or appear to be, biased, and, secondly, that the decision-making body is under a duty to hear the other side: ie that the person whose legally protected interests may be affected by its decision must be given the opportunity to make representations to the decision-maker before the decision is taken. The duty of procedural fairness is a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case. In Kioa v West (1985) 60 ALJR 113,127 Mason J stated:*
>
> > *"In this respect the expression 'procedural fairness' more aptly conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case. The statutory power must be exercised fairly, that is, in accordance with procedures that are fair to the individual concerned in the light of the statutory requirements, the interests of the individual and the interests and purposes, whether public or private, which the statute seeks*

to advance or protect or permits to be taken into account as legitimate considerations ...”

86. Mr. Johnston referred to *Durham* which, in relation to assessing character, he took to state that Bar Council would be usurping the Supreme Court. However, he submitted that having considered Pearce, Durham may have been wrongly decided. Thus, he argued that the Board would not have been acting unlawfully by enquiring into allegations they were made aware of, stressing that it would be their duty to so enquire.

87. Mr. Johnston submitted that the MCA granted powers in certain ways. In respect of section 82 to issue or renew PSVLs there were broad inquisitorial powers with due enquiry of an applicant’s character and his record as a driver. However, section 82(2) provided only for a refusal to issue a PSVL to be referred to a Summary Court – but not a refusal to renew a PSVL, which should be challenged by way of judicial review. Mr. Johnston sought to explain this anomaly in that for a first time issue, it was proper for character to be considered and thus an appeal to a Summary Court was rational but as a failure to renew is more drastic , then challenge by judicial review to the higher court was necessary. In respect of section 90 to cancel PCVLs there were broad adversarial proceedings with a right to be heard and to make representations.

88. Mr. Johnston submitted that an evaluative exercise had to take place in respect of risk.

89. Mr. Johnston submitted that the Board was aware of two relevant character issues: (i) Mr. Robinson’s incarceration for drug offences and a ‘proceeds of crime offence’; and (ii) an upcoming criminal trial for dishonesty offences where the charges were brought in March 2019, a few months before the renewal Application. Mr. Johnston argued that either one of those issues went to Robinson’s character and could have justified non-renewal of the Licence, but in circumstances where the Board had limited powers to delve into the allegations that formed the basis of the criminal charge, it decided to wait and see what happened, when the conclusion would provide a more fulsome picture of the issue of character. Mr. Johnston submitted that the use of the word “defer” was a distraction, but by the Board waiting, it could more properly enquire into Robinson’s character. He maintained

that Mr. Robinson had an opportunity to speak to both character issues noting that Mr. Robinson stated that the first character issue could be explained away and the second was a non-issue. Thus, the Board was fair.

Whether to give reasons

90. Mr. Johnston relied on the *South Bucks District Council* which was about a local authority and an application for planning permission. He submitted that pursuant to section 82, the Board was not required to hold a hearing but the Minutes show that the Board asked him about any relevant matters and he answered. The Minutes showed [at para 9.8.1] that the Board deferred the Application to after Mr. Robinson's Court appearance on 27 August 2019 after which they would conduct a proper evaluation, thus it was a continuing process. Mr. Johnston argued that no decision was made to refuse the Application, only that the Application was deferred until the Approval was granted in August 2020.

91. Mr. Johnston relied on *R (Bean Leisure Trading A Limited)* where it was decided that a licensing authority was only required to give reasons for its decisions to refuse renewal of a license when there was no change of circumstances between licensing periods and the licensing authority decides to change its previous position. However, he argued that in the present case, the two character issues represented a material change to what was before the Board in 2016, when they first issued Mr. Robinson a License, meaning that the Board was entitled to look at the matter afresh, without the constraint of what had happened before.

Analysis

92. In my view, the application for judicial review of the Renewal Decision should be granted for several reasons.

93. First, the Minutes [at para 9.8] show that at the Board meeting on 20 August 2019, the Board decided that the decision on the Application would be deferred until after the criminal proceedings had concluded. The evidence shows that the Board deferred its decision at subsequent Board meetings on 3 December 2019, 10 December 2019 and 21 July 2020. There is no evidence of the minutes of the Board meetings between January and June 2020

or if Board meetings took place during those months. In my view, the position taken by the Board to defer a decision was precisely that, a decision to defer the determination of the Application. It was not a decision on the substantive Application itself. To my mind the decision on the Application, which was to approve it, was made on 13 August 2020 as evidenced by Director Spencer's Letter. I find support in this position because if the Board had made a decision on the Application at the meeting of 20 August 2019, there would be no need to defer the Application thereafter and likewise there would be no need to make a decision on the 13 August 2020. To round off that point, if there was a decision on the Application on 20 August 2019, there was not a further application by Mr. Robinson after that date that fell to be decided on 13 August 2020.

94. Second, in my view, I agree with Mr. Johnston that Director Smith's Letter was inaccurate and wrong in that it informed Mr. Robinson about his right to have the Grievance remitted to a Summary Court. In dissecting the letter, Director Smith was correct to state that the Board had deferred the Application because the Board had in fact deferred it. However, Director Smith understood that to mean that it was a decision that could be remitted to a Summary Court. Although there was no affidavit evidence by the Respondent to state that that understanding was wrong, in my view I find that based on the Minutes it was indeed a wrong conclusion for Director Smith to reach. In light of my finding, the section 82(2) provision for a person aggrieved by a decision of the Board to refuse to issue a PSVL to be remitted to a Summary Court was not available to Mr. Robinson. I turn to the point about whether the section provides for a failure to renew a PSVL to be remitted to a Summary Court later.

95. Third, I am obliged to turn to the decision of the Board to defer the Application, on several occasions, for the reason and time that it did. In my view, relying on *Council of AME Churches and Tweed,* it was unfair and therefore *ultra vires* for the Board to defer the Application for the reason stated in the 20 August 2019 Minutes, that the decision would be deferred until the after the case against Mr. Robinson concluded. If the Board had proceeded on the basis of fairness, then it would have taken into account the reality that by deferring the Application it was (i) denying Mr. Robinson a decision on the Application and consequently his right to earn a living and (ii) his right to remit the Grievance to a Summary

Court. To my mind, the Board could have waited a reasonable time for the determination of the criminal proceedings, but once it was known that the criminal proceedings were not going to be resolved in a timely manner, for example, after the first criminal court date of 27 August 2019, then it was open to the Board to make a decision on the Application.

96. Fourth, following on from the previous point, the legislative framework provided a mechanism in section 90 for the Board to cancel a PSVL. Thus, if the Board desired to await the outcome of the criminal matter in order to make an evaluative assessment, then it would have been entirely proper to grant the Application and then if Mr. Robinson was convicted then the Board could have invoked the process pursuant to section 90 to cancel the Licence.

97. Fifth, I have considered the arguments of counsel in respect of whether the Board had undertaken an evaluative assessment of Mr. Robinson's character as part of the process for the Application. In my view, the evaluative assessment addressed or attempted to address two matters – the previous convictions and then the pending criminal matter. In respect of the previous convictions, the Minutes show that the Board had an exchange with Mr. Robinson about his previous convictions and the Board had sight of the contents of the August 2019 Convictions Email. In my view, the Board was entitled to do that as part of the evaluative assessment of Mr. Robinson's character. However, although Mr. Johnston submitted that the previous convictions could have justified non-renewal, it is clear to me that the previous convictions were not the reason for the deferral.

98. Sixth, to my mind it is clear that the Board was focused on the outcome of the pending criminal proceedings as part of the evaluative assessment. In applying the principles in *Layne*, the Board was entitled to take into account a conviction, which as the case states would be *prima facie* inconsistent with good character. However, in the present case, the pending criminal proceedings had not yet started so there was no conviction to rely on to assess character.

99. I disagree with Mr. Hill that the Board ought not to have considered the offence as it was of a kind which could not properly have been considered by the Board. In my view, on Mr. Robinson's own evidence, the offence was conspiring to remove criminal property, namely

stolen money from Bermuda, having being arrested with two passengers in his taxi. On that factual matrix, the Board in assessing his character, would be entitled to consider a conviction of the offence charged where he was using his taxi and position as a taxi driver in the commission of the offence.

100. Thus, I agree with Mr. Johnston that the Board were entitled to wait for the outcome of the criminal proceedings, but only subject to my findings above of the unfair number of deferrals. In considering the case of *Pearce*, the Board could have investigated the allegations but they would have had to give utmost due regard to the fundamental rights of Mr. Robinson that he was presumed to be innocent until he was proved or had pleaded guilty. Further, he enjoyed a right to silence in the criminal proceedings and as stated in *Pearce*, it would be unfair to expect Mr. Robinson to give answers if he was facing criminal proceedings. To those points, in following *Simms*, the Board would not have been able to draw any adverse inferences against Mr. Robinson if he had relied on his fundamental rights to not assist with the evaluative assessment with criminal proceedings pending. In any event, the Board chose not to investigate the allegations, preferring to defer the decision until the outcome of the criminal proceedings. I am bound to add here, that I disagree with Mr. Hill's contention that Mr. Robinson was derived of the presumption of innocence as I see no evidence that the Board proceeded on the basis that Mr. Robinson was guilty of the pending proceedings.

101. Seventh, I disagree with Mr. Johnston that the Board could defer the Application in the way that it did, that is with the suspension of Mr. Robinson's Licence. The Act contemplates a process in respect of PSVLs on the following basis: (i) an application to issue a PSVL; (ii) an application to renew a PSVL; (iii) a power to cancel a PSVL; and (iv) a remittal process to a Summary Court for review. In my judgment, a proper construction would be that for a person holding a taxi licence, that at the end of three years as set out in section 86(1)(d), when it expires or is about to expire, and they are desirous to renew it, an application can be made to renew it. I rely on *Rodrigues Trucking and Excavating* for the presumption that Parliament does not intend an unworkable or impracticable or inconvenient system. It seems reasonable to conclude that Parliament recognized that a holder of PSVL intends to use it to offer a service for remuneration. Thus, a holder of a

PSVL should be able to apply for renewal in order to continue operating for remuneration. In my view, deferring the determination of the Application, while a driver remains suspended from operating a taxi until after the case concluded 13 months later defeats the intention of Parliament. In my view, the Board failed to take these matters into account when continuing to defer the Application as it did beyond a reasonable date.

102. Eighth, in respect of Ground 5, in light of the above reasons, I am satisfied that I should grant the amended relief sought, as amended by me to reflect my findings, namely a declaration that the decision taken on 20 August 2019, and renewed thereafter from time to time, to defer and/or not renew his application for the issuance of a PSVL, until it did so, was *ultra virus* the MCA on the grounds that the Board took into account matters it ought not to have taken into account and/or failed to take account of matters that it ought properly to have taken into account and/or failed to follow the rules of natural justice and was therefore illegal.

103. Ninth, in respect of Ground 1, in my view, the Board was not required to provide reasons for a refusal because, as set out above, the Board did not determine the Application until 13 August 2020 when they granted approval. Thus, as they did not refuse the Application there was no need to furnish reasons for such refusal. Had the Board refused the application, then applying the principles set out in the case of *R (Bean Leisure Trading A Limited)* and *South Bucks District Council* there would have been an obligation on the Board to provide the reasons for refusing to renew the Application. However, in my view, the Board failed to provide reasons for the continuous deferral. To that point, I do not consider that the unofficial reasons given orally to Mr. Robinson counts as properly giving reasons to Mr. Robinson. Therefore, I am satisfied that I should grant the relief sought that the failure to provide reasons for the deferral was therefore illegal.

104. Tenth, in respect of Ground 2, that ground was conditional on whether reasons were rendered in Ground 1. Having found that: (i) no reasons were required for the refusal because there was no refusal; and (ii) no reasons were given for the deferral in respect of Ground 1, there is no need for me to resolve Ground 2.

<u>Ground 3 – TCD Failed to remit the matter to a Summary Court, after the Applicant followed the proper appeals procedure in relation to his Grievance</u>
<u>Ground 4 – The Applicant was never told why his Grievance was not remitted to a Summary Court, despite following the grievance procedure</u>

<u>The Applicant's Case</u>

105. Mr. Hill submitted that the Remittal Decision was taken in a breach of statutory duty as the only individual who could remit the matter to a Summary Court would be the Director, the Minister or the Board. He argued that the failure to remit deprived Mr. Robinson of a fair trial as guaranteed by Article 6 of the Bermuda Constitution which mirrored the provisions of Article 6 of the European Declaration of Human Rights and fundamental Freedoms.

106. Mr. Hill submitted that DVB had responded to Director Smith's Letter requesting the matter be remitted to a Summary Court. However, the Board's refusal to remit the matter, as required mandatorily under the MCA, had the effect of inhibiting Mr. Robinson's ability to derive income. He noted that DVB never received a reply to the request to remit. Thus, he claims for damages as a result of various breaches of duty as a result of such negligence.

107. Mr. Hill submitted that the Court should order the matter to be remitted to a Summary Court so that it could say whether or not the Licence should have been renewed. I should point here that Robinson 2, filed after Mr. Hill's oral submissions, states that there was little sense in remitting he matter now that his Licence had been issued.

<u>The Respondent's case</u>

108. In essence, Mr. Johnston submitted that the Board did not make a decision and therefore, there was no requirement to remit the matter to a Summary Court.

Analysis

109. I have already set out that as a substantive decision was not made by the Board, the remittal process was not open to Mr. Robinson. In light of those findings, I am not satisfied to grant the relief sought for Ground 3.

110. However, in respect of Ground 4, in my view, it is clear that no reasons were provided to Mr. Robinson for the refusal to remit the Grievance to a Summary Court or at all. To that point, in my judgment, on the basis of Director's Smith Letter to Mr. Robinson, despite it containing an incorrect directive, the Board had an obligation to provide reasons to Mr. Robinson for failing to remit the Grievance to a Summary Court. Therefore, I am satisfied that I should grant the relief sought that the failure to provide reasons for not remitting the Grievance was therefore illegal.

111. I should add here that I disagree with Mr. Johnston that a refusal to renew a PSVL is not referrable to a Summary Court pursuant to section 82(2) but any remedies for such a refusal to renew should be by way of judicial review. The MCA allows for refusal to issue and cancellation to be referred to a Summary Court. In my view the intention of Parliament must have been for persons aggrieved by a decision of the Board in respect of PSVLs, namely the issue, renewal and cancellation of PSVLs, to have the matter referred to a Summary Court. I rely on *Rodrigues Trucking and Excavating* to find that to exclude refusals to renew would be an absurdity and inconvenience in the scheme of the MCA. In my view, the omission may have been a drafting error, but the MCA section 82(2) should be read as to include a refusal to renew a PSVL as being referrable to a Summary Court for review.

Conclusion

112. In light of the above reasons, the application by Mr. Robinson for the relief sought in the form of declarations is as follows:

a. Ground 1 – I grant the declaration that there was a failure to provide reasons for the deferral of the Application.
b. Ground 2 - There is no need for me to resolve Ground 2.
c. Ground 3 - I decline to grant the declaration sought in relation to Ground 3.
d. Ground 4 – I grant the declaration that there was a failure to provide reasons for the failure to remit the Grievance to a Summary Court.
e. Ground 5 - I am satisfied that I should grant, in part, the amended relief sought, as to reflect my findings, namely a declaration that the decision taken on 20 August 2019, and renewed thereafter from time to time, to defer his application for the issuance of a PSVL, until it approved it, was *ultra virus* the MCA on the grounds that the Board took into account matters it ought not to have taken into account and/or failed to take account of matters that it ought properly to have taken into account and/or failed to follow the rules of natural justice and was therefore illegal.

113. Unless either party files a Form 31TC within 7 days of the date of this Ruling to be heard on the subject of costs and/or damages, I direct that costs shall follow the event in favour of the Mr. Robinson on a standard basis, to be taxed by the Registrar if not agreed.

114. I will hear the parties on directions to address the issue of damages.

Postscript

115. This Judgment is being delivered well beyond the normal timeframe expected for the issuance of judgments and rulings and my own personal timeframe for doing so. I extend my apologies to the parties and counsel and thank them for their patience. The reason for the delay is that I have had to turn my attention to a range of other judicial administration duties including recruitment and appointment of other judicial officers, other personnel issues, the Probate Division, the Judicial Complaints Protocol, procurement of an electronic case management system, dealing with the loss of Court 1 in Sessions House and therefore relocating the Supreme Court and Court of Appeal into new premises in Dame Lois Browne Evans Building, meeting with court users groups and

planning for and participation in the 8th Biennial Conference of the Caribbean Association of Judicial officers which Bermuda hosted in November 2024.

Dated 6 December 2024

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HON. MR. LARRY MUSSENDEN
CHIEF JUSTICE