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Civil

IN THE GRAND COURT OF THE CAYMAN ISLAND

CAUSE NO: 130 of 2006

BETWEEN MICHAEL **FORD**

APPELLANT

A N D IMMIGRATION APPEALS TRIBUNAL
(the Tribunal)

RESPONDENT

HEARD: November 28 2006

Appearances: Mr. Ramon Alberga QC instructed by Mrs. Sherri Bodden-Cowan
for the appellant

Miss Vicki Ellis, Asst. Solicitor General and Mr. Wayde
Bardswell, Crown Counsel for the Tribunal.

RULING

1. The resolution of immigration matters appears typically to follow a tortuous course. This one is no exception. It is the appellant's second appeal to this Court against decisions of the Tribunal. These decisions were given on an appeal to the Tribunal against the refusal by the Immigration Board (as that body was then called – "the Board"), of the appellant's application for the grant of Caymanian status.
2. His first appeal to this Court was successful. It was resolved by an order of 23 November 2005 made with the consent of the Tribunal, on the basis that the Tribunal (as then constituted) had acted in breach of the principles of natural justice upon refusing his appeal against the decision of the Board.

3. That breach involved the Board's – and then the Tribunal's – unenquiring acceptance of an anonymous complaint against the appellant that he was not a person of good character, had been guilty of sharp business practices detrimental to the interests of Caymanians and had held a Caymanian company up to ransom during negotiations which led to the settlement of a dispute with that company.
4. This result was reached without either the Board or the Tribunal having properly investigated the allegations upon which the complaint had been made or without having afforded the appellant an opportunity to refute the allegations.
5. The matter was therefore referred back to the Tribunal by this Court for its proper consideration in observance of the rules of natural justice.
6. The Order of 23 November 2005 provided, with the consent of the parties, in this respect as follows:

“The Immigration Appeals Tribunal ((‘the Tribunal’) is directed to act in accordance with the following directions:

- (i) The Tribunal shall consider the matter by way of rehearing which means the Tribunal shall confine its proceedings including any enquiry, only to the matters which are on the record in relation to the matter existing within the records of the Tribunal; or any changes in the Law since this matter was last before the Tribunal.*
- (ii) Before making its decision the Tribunal is to inform the Applicant of the nature of the matters weighing against the*

grant of the application and afford the Applicant an opportunity to address it in regard to any such concerns.

(iii) Such information in relation to the matters referred to at (ii) above shall be the subject of a written communication to the Applicant at least 21 days prior to the date fixed for the hearing of the matter”.

7. It followed that the appellant, by agreeing to the terms of that order, was anticipating having to meet the same allegations, but, on the rehearing; being given a full and fair opportunity to be heard before any unfavourable decision might be taken.
8. However, by a letter from its Chairman to his attorney Ms. Bodden, dated 2nd March 2006; the Tribunal informed the appellant that it did not intend to rely upon the concerns which had been previously relied upon by the Board (or by the previously constituted tribunal) in their respective refusal of his application and appeal.
9. Other matters of concern to the Tribunal were said to have arisen. These were set out in the form of interrogatories which had been earlier addressed in writing to the appellant and as reaffirmed in the same letter from the Chairman.
10. The Interrogatories requiring the appellant's response in writing, identified three broad heads of concern:
 - (i) the appellant's "multiple identities and overall credibility"; that is: as to whether the appellant held multiple nationalities and passports and as to his use of multiple names or identities;

(ii) whether the appellant is legally and ordinarily resident in the Cayman Islands; and

(iii) whether the residence of the appellant and his family will contribute to the well-being of the Islands.

11. The Chairman's letter concluded with the warning, that unless and until the Interrogatories are answered, the appellant's appeal would not be heard.

12. In a letter dated 17th January 2006 from Ms. Bodden to Miss Ellis (the latter as advisor to the Tribunal), it is stated that the appellant had been advised by his attorneys that, as a matter of principle, he should not respond to the Interrogatories. Further, that the Interrogatories raise matters which were not canvassed at the hearing of the application by the Board or given as their reasons for refusal and that it is neither right nor fair for the Tribunal at this stage, to raise personal concerns which concerns were not raised by the body from whom they are considering the Appeal against the refusal of the applicant's application for Caymanian status.

13. The letter of 17th January 2006 also required of the Tribunal, an explanation whether it sought to rely upon the reasons earlier given by the Board for its decision which had become the subject of the order of the Court of 23 November 2005. This was required in the context, as asserted by the letter; that "the reference back to the Tribunal by the Court to which [we] consented [(as set out above from the Order of 23 November 2005)] is to enable it to give the appellant the opportunity to meet these allegations". On this issue the letter concluded by a warning that "in the event the Tribunal insists on a response to these outrageous and irrelevant questions, we will immediately file an application before His

Lordship the Chief Justice, seeking directions as to whether or not the Appellant is required to answer such Interrogatories”. Hence this Appeal.

THE BASIS OF THE APPEAL

14. The strident note upon which that letter concluded has carried through into the grounds of appeal in the appellant’s Originating Motion. These are as follows:

- “1. That the Respondent Tribunal does not have the power and/or jurisdiction to administer interrogatories to the Appellant and the decision that the said Interrogatories must be answered is ultra vires;
2. That the Respondent does not have the power to refuse to hear the Appellant’s appeal until the Interrogatories are answered and the decision to that effect is contrary to Law, unreasonable and ultra vires the powers of the Respondent;
3. Even if, which is denied, the Respondent has the power to ask questions of the Appellant, the questions must be reasonable questions and the questions contained in the Interrogatories are not reasonable questions in the circumstances of the Appeal;
4. In any event the Interrogatories do not arise out of the reason given by the Board for its decision which reason is no longer being relied on and furthermore are also beyond the scope of the Order of the Court of 23 November 2005;
5. That once the reasons given by the Board for refusing the application of the Appellant for status which was made under the provisions of Section 17(4) of the Immigration Law (2001 Revision) [(the then applicable Law)] has been recognised by the Respondent as being inappropriate and without

any basis or foundation, the Interrogatories sought to be administered are irrelevant in any consideration of the Appeal by the Respondent.”

15. The relief sought on this appeal to the Court includes orders that the decision to issue the Interrogatories be set aside for being unlawful and unreasonable, and that the Tribunal be directed to hear the appeal according to Law within a reasonable time.
16. Given the nature and extent of the grounds of appeal, I thought it necessary to clarify the basis upon which this appeal could properly be taken at this stage and so convened a preliminary hearing, before the commencement of the arguments. This resulted in directions that grounds 3 and 5 could not properly be heard as grounds of appeal at this stage. These are grounds complaining about the lack of reasonableness or relevance of the Interrogatories; issues which do not arise for consideration in the context of an appeal on a point of law alone. That latter is the limited extent of the statutory right of appeal given by section 17(2) of the Immigration Law 2003(Law 34 of 2003) (“The Law”).
17. An assessment of the reasonableness or relevance of the Interrogatories could be taken in the wider context of judicial review and after the reliance placed upon them by the Tribunal can be considered. That is a separate form of relief from that afforded by Section 17(2) of the Law. The point of law must therefore more narrowly be identified as being only whether or not the Tribunal has the power to issue the Interrogatories at all and, in that sense, whether the Interrogatories are lawful or not.

THE POINT OF LAW:
JURISDICTION TO ISSUE THE INTERROGATORIES

18. The basis of the appellant's argument in this regard is as described in Ms. Bodden's letter of 17 January 2006 and as developed by Mr. Alberga in the arguments: It is that the Interrogatories are impermissible because they raise matters which were not canvassed at the hearing of the application by the Board. As such they do not form a part of the record for the rehearing before the Tribunal as contemplated by the Order of the 23 December 2005 referring the matter back for its consideration, by way of rehearing on the existing record. Further, that it was not right or fair for the Tribunal at this stage to raise personal concerns not raised by the Board from which they are considering an appeal and not relied upon in the reasons given by the Board for their refusal of the Appellant's application.
19. The real gravamen of the Appellant's concerns, it must be said, is that as someone who for many years has enjoyed the rights appurtenant to the grant of permanent residence under the Immigration Laws of the Cayman Islands and who has separately and more recently been considered suitable for the grant of British Overseas Territory Citizenship; any concerns raised now by the Tribunal going to such matters as character, identity and general suitability for a grant of Caymanian status; must have already been considered and addressed during the process of his applications for the earlier grants. If this is so, it would seem that the Tribunal can have no bona fide reason now for relying upon such concerns as a basis for refusing the application for Caymanian status.
20. The Tribunal has not been oblivious to these concerns of the Appellant. The Chairman's letter of the 2nd March 2006 asserts the position that it remains the Tribunal's duty nonetheless to be itself satisfied, as the body responsible for the

grant of Caymanian status, about these matters; in particular, those questions addressed to such matters as the Appellant's domicile of choice; actual residence in the Islands and commitment to the welfare of the Islands.

21. It is asserted by the Chairman, that the grant of Caymanian status – which carries with it entirely different and wider rights and expectations than any other grant, including as to the unfettered conduct of business within the Islands – points to the nature of the independent and different duty of the Tribunal.
22. This duty forms the basis for the examination of the question to be answered now – whether or not the Tribunal has the jurisdiction or power to issue the Interrogatories.
23. The starting point has to be the relevant statutory provisions.

“BY WAY OF REHEARING”

24. Section 15(1) and (2) of the Law in relevant part provides:

(1) “Any person aggrieved by or dissatisfied with, any decision of a Board...may, (a) within twenty-eight days of the communication of the decision to him, or (b) such longer period as the chairman of the Immigration Appeals Tribunal may, for good reason shown, allow, appeal therefrom by way of rehearing to the Immigrations Appeals Tribunal and the matters referred to the Tribunal may not be remitted to the Board.” (Emphasis supplied)

(2) An appeal under subsection (1) may be lodged on the ground that -

(a) it is erroneous in law;

(b) it is unreasonable;

(c) it is contrary to the principles of natural justice;

(d) it is at variance with the Regulations.”

25. Section 22(13) also specifically provides - it seems for good measure in light of Section 15(1) – that any applicant who is aggrieved by a refusal of the Board to grant him Caymanian status may, subject to Section 15, appeal to the Tribunal against such refusal.
26. Section 17(1), which must be read with Section 15(1); provides –
- “On an appeal, the Immigration Appeals Tribunal may make such order (including any order for costs) as it thinks just.”*
27. Thus, section 17(1) connotes a wide jurisdiction; one which, on the face of it, is clearly not confined only to either upholding or overturning a decision of the Board. The Tribunal can make any order it thinks just, subject, as Section 15(1) also provides; to not being able to remit the matter to the Board. It follows that the Tribunal’s decision is intended by the Law to be final and dispositive and, it would also appear; untrammelled by whatever approach or view the Board may have taken of the matter.
28. Such a conclusion would be contrary to another main submission of Mr. Alberga which, I nonetheless acknowledge, thoroughly and helpfully framed the issues in the following terms:

“I respectfully submit that the reference back to the Immigration Appeals Tribunal [(by this Court)] did not envisage a situation where the (Tribunal) was to exercise an original jurisdiction and could approach the matter by abandoning the reasons given by the Immigration Board for the decision appealed from and relied upon by the Tribunal in affirming the decision and considering for the

first time new evidence and new issues never at any time considered or advanced by the Immigration Board in arriving at this decision and dealing with the appeal on the basis of the new evidence elicited on its own motion and then advance entirely new and different reasons for affirming the decision of the Immigration Board and dismissing the appeal.

A Court of Appeal or Appellate Tribunal must not attempt of its own volition to elicit new evidence from questions asked of the Appellant and which evidence was not before the Tribunal in the first instance, then use that new evidence for the purpose of affirming the decision of the first instance Tribunal.... To proceed in this way is a novel and unheard of procedure and the Respondent (who is an Appellate Tribunal) should not be allowed to proceed in this way. This was not the purpose or intent of the Order of 23rd November 2005.

Once the reason given by the Immigration Board and the Immigration Appeals Tribunal were jettisoned and impliedly, if not expressly recognised to be spurious and unsupportable, the Immigration Appeals Tribunal are then left with no alternative but to allow the appeal and to grant status to the Appellant.

To proceed in any other way would be against the spirit and intent of the Order of 23rd November 2005."

29. For the Tribunal, Miss Ellis argued that there is a very real distinction between an "appeal by way of rehearing" and what is sometimes otherwise referred to as a

“statutory appellate review”. Further, that the Law provides for what is a rehearing in the fullest sense and which does not confine the Tribunal to a consideration only of whether or not to uphold the particular decisions at which the Board had arrived. It also allows the Tribunal to consider any change of event, circumstance or law and, if necessary; to receive fresh evidence and make such further or other order as the case may require according to the state of things at the time of the rehearing before it.

ANALYSIS

30. The expression “appeal by way of rehearing” can bear different meanings according to the context in which it is used. In the present context it describes the process by which appeals are taken before a statutory appellate body whose decisions are, by Section 18(1) of the Law, deemed to be “administrative and not judicial” and which, like the Board from which the appeal comes, must itself exercise its functions in keeping with its statutory remit.
31. The matters which must specifically be considered by the Board in deciding whether or not to grant Caymanian status are set out at Section 23 of the Law. They include (and at the time included) the very matters cited by the chairman of the Tribunal as being of concern also to the Tribunal in his letter of 2 March 2006:
 - (a) the economic situation of the Islands and the due protection of persons engaged or likely to be engaged in gainful occupation;
 - (b) the health, character and the previous conduct of the applicant and, where applicable, of any member of his family;

- (c) any advantage which the continued residence of the applicant or his family may afford to the Islands;
- (d) that the applicant is or would upon the grant to him of Caymanian status become domiciled in the Islands;
- (e) the hardship that may be caused to a spouse and his dependants; and
- (f) that the grant is not contrary and is conducive to the public interest....”

The Law provides that the Board (and by extension and necessary implication the Tribunal) may, if satisfied with respect to the foregoing considerations, make a grant of Caymanian status in the favour of the applicant.

- 32. Regard must also be paid to Part III of the Immigration Directions (2001 Revision, or its replacement) which sets out the Cabinet’s policy guidelines to be followed when the grant of Caymanian status is being considered. The factors in paragraph 31 above are, among others, reiterated and affirmed in those guidelines.
- 33. Section 22(10) of the Law itself goes on to provide that the Board may require or allow an applicant to attend before it or any committee of the Board in support of the application, but subject as aforesaid, no applicant should be entitled to appear before the Board.
- 34. The question then becomes: are the same considerations set out by the Law and policy guidelines as required to be taken by the Board and the procedure for determining them, entirely at large when an appeal comes before the Tribunal “by way of rehearing”? Or is the Tribunal confined in its consideration only to the particular ground(s) upon which the Board considered and refused the application?

35. In my view the former construction is the accurate expression of the Law. When taken with the prohibition against remitting matters to the Board, the latter construction would create an unnatural and undue fetter upon the clear terms of Section 17(1) that the Tribunal on hearing an appeal “may make such order...as it thinks just”. Viewed in that context, the latter, narrower construction would mean that the Tribunal could decide only to allow or not allow an appeal, confined only to the very ground upon which the appellant sees fit to bring his appeal.
36. In preferring the wider construction of the expression “by way of rehearing”, I am fortified, I believe, by pronouncements of high judicial authority.
37. Of the several cases cited, that most helpful to the present analysis is Lloyd v McMahon [1987] 1 A.C. 625.
38. That case dealt with the question, among other things – what were the powers of the Divisional Court in hearing an appeal from a decision of a district auditor imposing surcharges upon members of the Liverpool City Council for failing to carry out their functions under the Local Government Finance Act 1982.
39. Section 20(3) of the Act of 1982 provided that the Divisional Court had wide powers to confirm, vary or quash the decision of the district auditor and to give any certificate which he could have given.
40. Lord Justice Lawton framed the issue in this way:

“...the starting point in any inquiry of this kind is to construe the statutory provisions which confer the originating and appellate jurisdictions with the object of finding out whether Parliament intended to provide a legal framework in which aggrieved persons could be assured of justice. As I have come to a firm

conclusion about the effect of the statutory framework in this case, there would be no point in my examining the statutory or contractual frameworks which have been considered in other cases.An appeal is available to any person "who is aggrieved" by a decision of an auditor and on the hearing of the appeal "the court may confirm, vary or quash the decision and give any certificate which the auditor could have given". This must mean that the court rehears the case. There are no limitations on what the aggrieved person can complain about..."

41. And, per Dillon LJ at page 653-654:

"The appeal is provided for by statute in Section 20(3) of the Act of 1982, and the Divisional Court is given very wide power to confirm, vary or quash the decisions of the district auditor and to give any decision which he could have given. I agree entirely with the Divisional Court that the appeal hearing before the Divisional Court required an examination de novo of the questions which the district auditor had to consider and the appeal fell to be decided on the evidence and arguments placed before the Divisional Court, whether or not they had been placed before the district auditor. In that sense the Divisional Court was exercising an original as well as an appellate jurisdiction."

42. And finally, per Woolf LJ at p664:

“The power of appeal which is given by Section 20 to the court is a wide one. It is accepted that the court grants a hearing de novo – a full rehearing, and subsection (3) provides [(here repeating the provisions which in effect provide that the Court may confirm vary or quash the decision and give any certificate which the district auditor could have given)].

43. And Lawton LJ, reflecting upon the further question whether a flaw in the original proceedings can be set right by the full and proper procedure being adopted upon the rehearing *de novo* by way of appeal said (at p 669):

“In my view in cases such as this the question the Court should ask is whether, taking into account the complainant’s rights of appeal, and if those rights have been exercised what happened on the appeal, the complainant, viewing the combined proceedings as a whole, has had a fair hearing? I regard this approach as appropriate because if Parliament makes provision for an initial hearing followed by appeal then what Parliament should be presumed to intend is that the persons affected by those proceedings should be treated fairly in the proceedings as a whole. Where there are shortcomings in the initial proceedings but the appellant has in fact been dealt with fairly when the proceedings as a whole are considered, to regard the proceedings as invalid would be to condemn something as being unfair because of a flaw in a part when if the whole was considered the flaw would be sufficiently insignificant to enable the whole

procedure to be regarded as unblemished. Expressing the matter slightly differently, if the whole procedure is properly regarded as being fair, then to strike that procedure down because of a flaw in part will be to apply an unduly technical approach.”

44. From the foregoing dicta, it appears the conclusion that the appeal involved a rehearing de novo, in the exercise of original jurisdiction; was arrived at by process of deduction from the enabling words of Section 20(3); “confirm, vary or quash the decision and give any certificate which the auditor could have given”.
45. Here, the position is a fortiori: not only are the enabling words “make such order as it thinks just” even more categorical, the Law expressly provides for appeal “by way of rehearing”. It would follow, to my mind, that the jurisdiction to be construed can be no less compendious than that construed in Lloyd v McMahon.
46. Though a decision only at first instance, R v Immigration Appeal Tribunal Ex. Parte Hubbard [1985] Imm. AR 110 is of persuasive value here also, because of the comparable though not identical statutory context with which it dealt. It was held that the appellate authorities were not confined in hearing appeals from decisions of the Secretary of State on immigration matters, to considering only issues on which the Secretary based his decision.
47. Instead, they were allowed to consider the appeal generally, having regard to whether or not the decision was in accordance with the Law or any Immigration Rules applicable to the case.
48. The jurisdiction vested by statute in the appellate authorities, while distinctly narrower than that given the Tribunal here; nonetheless included the power to

“review any determination of a question of fact” on which the Secretary’s decision was based.

49. On the strength of these authorities, it seems to me that the appeal to the Tribunal, viewed as a rehearing *de novo* in the exercise of an original jurisdiction, would admit of a procedure by which the earlier bad decision of the Board might be excised and jettisoned, while preserving other matters of concern for the consideration of the Tribunal in the exercise of its original jurisdiction. That, in effect, is what the Chairman’s letter has sought to explain as the approach being taken by the Tribunal.

50. The case report of *Ex Parte Hubbard* (above) was first brought to my attention by Miss Ellis after the close of arguments and so without Mr. Alberga having had an opportunity to make submissions about it. A draft of this ruling was subsequently therefore released to allow for full written submissions about that case.

51. Mr. Alberga in his written submissions argued that *Ex Parte Hubbard* was decided on the basis of a concession by Counsel who appeared, to the effect that “an Appellate Authority should not seek to go behind a finding of fact of the body making the decision which was favourable to the Appellant.”

52. I remain of the view that the real value of the case is as described above. Indeed, at page 8 of his judgment in the case Justice Woolf (as he then was) stated as follows in relation to the concession of Counsel:

“The second proviso is one which Mr. Collins made as a concession at the close of the argument before me, namely, that the adjudicator should not seek to go behind a finding of fact of the Secretary of State which is favourable to the appellant. Mr.

Collins made this concession having regard to his interpretation of the provision and I express no personal view as to whether he was obliged to make that concession or not. I am content to deal with it in the way in which he dealt with it, namely, as a concession.”

52. Now, even if that concession and Mr. Alberga’s reliance on it is right as a matter of general principle, its application in the circumstances of this case would be moot, at best. This is because it would be premature and improper now to embark upon an analysis of the Interrogatories by way of comparison with the findings of the Board – such as they were when the matter was before the Board – for the purpose of deciding whether or not the Interrogatories would involve the Tribunal necessarily “seeking to go behind a finding of fact of (the Board) which was already decided in favour of (the Appellant).”
53. Yet this is precisely what Mr. Alberga invites me to do in his further written submissions. He seeks to persuade me that the only proper decision open to the Tribunal and I should so declare; is that the Appellant must be granted Caymanian Status, the Board having implicitly decided that all else was in order with his application besides the misconceived concerns which have been successfully impugned before the Court and jettisoned by the Chairman in his letter of 2nd March 2006.
54. I have already sought to explain why, in the context of this appeal which is on a point of law, it would be wrong to seek to delve into such factual issues. These last set of arguments only serve to reinforce that position. The approach I am invited to take would involve anticipating the proceedings of the Tribunal, in a

manner which would preclude the very enquiry by way of rehearing which I conclude it is authorised to conduct.

55. Nothing from *Ex Parte Hubbard* or any of the cases cited, can be relied upon for such a proposition.
53. While I must admit to some reluctance in accepting that the Tribunal, as an appellate body, might, of its own motion; abandon the only expressed reason for the decision relied upon by the Board from which the appeal is brought and seek to promote other issues of apparently legitimate concern potentially detrimental to the appellant's case; I can, in principle, see no basis upon which to refute that it should have the power to do so. This is given, as I have found, that the Tribunal is to be regarded as exercising not only an appellate review, but an original jurisdiction as well. Given also, that it is obliged to be cognisant of and to consider all the issues raised by the Law and policy. These may include – on the present state of the case law decided under comparable statutory regimes – matters of fact which were in existence at the date of the decision under appeal, even if those facts were not known to the Board at that time. See for instance: *R v Immigration Appeal Tribunal ex parte Abed El Naby MoHamed El Nashouky El Hassanin [1985] Imm A.R. 502.*
54. Charged with the duty of rehearing the Appellant's case – not just the particular ground of his grievance – and without the power to remit the case to the Board for its reconsideration, it seems to me plain enough that the Law intends that the Tribunal should be able to give the case its fullest re-consideration. It must then be obliged to take account of the matters stipulated in the Law (and as reiterated

by the Immigration Directions) and considered by it to be relevant to the proper disposal of the case.

55. To the extent that the Interrogatories are, on the face of them, addressed to those concerns, they may therefore not be deemed to be ultra vires the powers of the Tribunal. Nor may they be deemed to be unreasonable or irrational, in the entirely anticipatory manner proposed here on behalf of the Appellant.

56. Furthermore, in necessarily having the same powers as the Board to summon before it an appellant for enquires to be taken, the Tribunal must also have the authority to require answers to questions in writing. Indeed, as was also said in Lloyd v McMahon (Per Dillon LJ at p649), while a tribunal must act fairly by observing the requirements of natural justice, “...it is equally well established;...that a person who has to decide a question in a quasi-judicial capacity can, in general, lay down his own procedure. Whether or not, therefore, the district auditor ought ultimately to have offered the appellants an oral hearing on any ground, I can see no objection whatsoever to the course he adopted in the first place of inviting written representations from the appellants.”

57. It is said on behalf of the Tribunal that, for instance, the application form submitted by the appellant for the grant of Caymanian status and dated 23 April 2002, was incomplete in that, among other things, he failed to indicate whether he intended to acquire domicile in the Cayman Islands.

58. These are matters falling within the statutory criteria for the consideration of the Board – and now the Tribunal – in deciding upon an application. It must be acknowledged that in so approaching these matters, the Tribunal is entitled to be itself satisfied about them notwithstanding that similar, if not the same

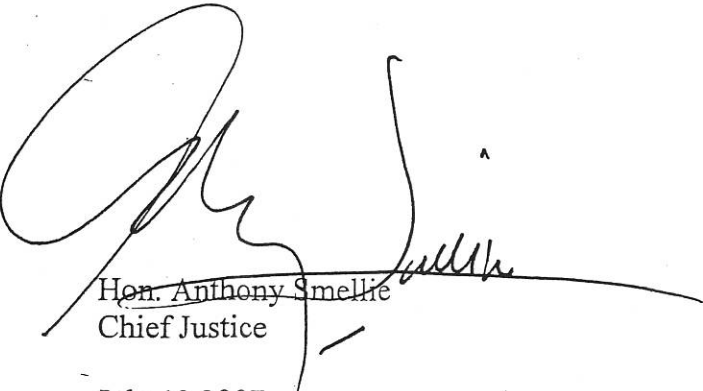
considerations, should or would have exercised the minds of those who were responsible for the earlier grants of residency and British Overseas Territories Citizenship to the applicant.

59. It would follow that the Tribunal is authorised to enquire into these matters although the basis, or pre-qualification, of the appellant's application for the grant of Caymanian status is, under Section 22(3) of the Law, that earlier grant of Citizenship to him.
60. Nor do I consider that there is anything to the contrary in the Order of the 23 November 2005 by which this Court directed, in allowing the appeal against the Tribunal's earlier decision upholding the Board's decision, that the Tribunal shall "*...confine its proceedings including any enquiry, only to matters which are on record in relation to the matter existing within the records of the Tribunal; or any changes in the Law since this matter was last before the Tribunal*". Enquiries going to matters contemplated by the statutory criteria must implicitly be regarded as matters before the Tribunal.
61. In conclusion, I would add only that whatever the underlying concern of the Interrogatories may be, the Tribunal will be sure to allow the appellant the fullest opportunity to address them. This will involve notifying, in the clearest terms, the real nature of the remaining concerns, if that be the case after the Interrogatories are answered, and allowing him to respond to the concerns.
62. Only then could it be said that "the appellant has in fact been dealt with fairly when the proceeding as a whole are considered"; to adopt the further views expressed in *Lloyd v McMahon* above.
63. With that caution given, I conclude that the Interrogatories are not unlawful.

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OUTSTANDING APPEAL

64. Another application for the grant of Caymanian status by the appellant based on the ground of naturalization and filed pursuant to Section 22(4) of the Immigration Law (2003 Revision); had also been refused by the Board. This refusal, which was, in a decision of 6 May 2004 given on the ground that to grant it would be contrary to the public interest, is also the subject of an appeal (“the second appeal”) to the Tribunal.
65. The second appeal came up for hearing on 14 September 2005 at a time when the previous appeal was not yet disposed of by the order of 23 November 2005, and was *sub judice* the Grand Court.
66. The Tribunal has recently directed that the second appeal be heard consecutively to the appeal before it and which is now the subject of the Interrogatories.
67. I can see no reason, consistent with the Tribunal being able to determine its own procedure and in the absence of any potential prejudice to the appellant, why this should not be allowed.



Hon. Anthony Smellie
Chief Justice

July 19 2007