

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ²²⁴ of 2012

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO ORDER
GCR ORDER 53

AND IN THE MATTER OF THE POLICE LAW (2006 REVISION)

BETWEEN:

ERIK MARLON BODDEN

Applicant

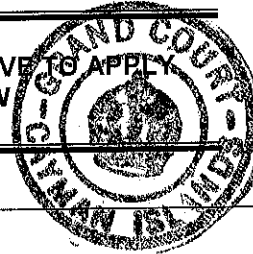
v

HIS EXCELLENCY THE GOVERNOR OF THE CAYMAN ISLANDS

Respondent



EX PARTE APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW



To the Clerk of the Court, Law Courts, George Town, Grand Cayman

Name, address and description of Applicant	Erik Marlon Bodden, former Police Constable c/o Stuarts Walker Hersant 4 th Floor, Cayman Financial Centre 36A Dr Roy's Drive George Town, Grand Cayman
Judgment, order, decision or other proceeding in respect of which relief is sought	<p>(1) The Decision of the Respondent dated 1 February 2012 that the Applicant failed to lodge his notice of appeal in time (the "Limitation Decision"); and</p> <p>(2) The Decision of the Respondent dated 1 February 2012 that the Respondent had no jurisdiction to properly consider the Applicant's appeal (the "Jurisdiction Decision")</p>

Relief Sought

The Applicant seeks leave of the Court to permit the Judicial Review of the Limitation Decision and the Jurisdiction Decision of the Respondent complained of and seeks the following relief:-

- (1) An Order of *Certiorari* to quash the Limitation Decision of the Respondent;
- (2) An Order of *Certiorari* to quash the Jurisdiction Decision of the Respondent;
- (3) A Declaration that the Applicant properly complied Section 56(1) of the Police Law (2006 Revision);
- (4) An Order of *Mandamus* requiring the Respondent to consider the appeal lodged by the Applicant pursuant to Section 56(1) of the Police Law (2006 Revision);
- (5) A Declaration that the Limitation Decision and the Jurisdiction Decision were and are erroneous in law, unreasonable and contrary to the principles of natural justice;
- (6) Such further and/or other relief as this Honourable Court thinks just; and
- (7) Costs

GROUND UPON WHICH RELIEF IS SOUGHT

Introduction

1. The Applicant is a citizen of the Cayman Islands. He was employed as a Police Constable of the Royal Cayman Islands Police Service (the "RCIPS").
2. On 17 January 2009, as the result of a minor collision, the Applicant was arrested and charged with careless driving and driving while intoxicated. The matter was referred to the Legal Department for a decision whether to pursue the complaints against the Applicant in respect of the the 17 January 2009 accident.

3. On 26 May 2009, by way of memorandum, the Solicitor General advised the Commissioner of Police (the "**Commissioner**") that no further action ought to be taken in respect of the allegations¹. In so advising, the Solicitor General made specific reference to the inherent inconsistencies and unsatisfactory nature of the evidence. At page 3 of the Memorandum, the Solicitor General stated:-

"In all the circumstances, we are of the view that the entirety of the evidence at this stage is conflicting and that it would be difficult to establish a case against the Accused to the requisite standard of beyond a reasonable doubt. Consequently we do not recommend criminal charges in this matter".²

4. Consequent upon the Solicitor General's advice, the charges against the Applicant were withdrawn and he continued to perform his police duties without incident.
5. Notwithstanding the noted evidential difficulties identified by the Solicitor General, and curiously some 9 months subsequent to the accident, the Applicant was made the subject of disciplinary proceedings issued by the Police Standards Unit of the RCIPS on 30 September 2009 (the "**Disciplinary Proceedings**").
6. The six complaints which formed the basis of the Disciplinary Proceedings alleged various breaches of either the Royal Cayman Islands Police Service Take-Home Vehicle Police and Procedures or the Police Regulations (1996 Revision). Importantly, the matters relied upon by the Police Standards Unit all arose out of the 17 January 2009 incident; an incident in respect of which the Commissioner had been advised that there were insurmountable evidential difficulties.
7. There was a hearing of the Disciplinary Proceedings on 23 October 2009 and although the Applicant was acquitted on a number of the complaints, the Commissioner used his statutory power to dismiss the Applicant. The Applicant was accordingly discharged from the RCIPS in or around late October 2009.
8. The Applicant was notified of the decision of the Commissioner in writing on 28 October 2009. Pursuant to Section 56 of the Police Law (2006 Revision), the Applicant had a right of appeal against the Commissioner's decision. In order to exercise this statutory right,

¹ It should be noted that this view accords with that of the supervising police officer assigned to this matter (see page 2 of the memorandum dated 26 May 2009).

² See Exhibit EMB-1, page 1

the Applicant was required to make said appeal by lodging with the Chief Secretary, within 7 days after notification of his discharge, a written statement of intention to appeal and of the grounds thereof.

9. The Applicant instructed Stuarts Walker Hersant ("**Stuarts**") to conduct the appeal on his behalf. Accordingly, on 4 November 2009, Stuarts lodged the required written statement of intention to appeal with the Governor's Office by way of letter³ (the "**4 November Letter**").
10. This written statement unequivocally stated that the 4 November Letter should be treated as the Applicant's written statement of intention to appeal required by Section 56(1) of the Police Law. Further, the 4 November 2009 letter set out a number of grounds upon which the Applicant relied. These were, *inter alia*, as follows:-
 - (i) that the Commissioner erred in fact in that he wrongly made certain findings which were entirely inconsistent with the evidence adduced at the hearing;
 - (ii) that the Commissioner erred in fact in that he wrongly made certain findings concerning allegations of which there was no supportive evidence, sufficient or at all;
 - (iii) that the Commissioner erred in law in that the decision to discharge was, in the premises, disproportionate and unreasonable; and
 - (iv) that the Commissioner acted in a procedurally improper manner and/or in breach of the principles of natural justice which materially undermined the fairness of the disciplinary proceedings.
11. In addition, the Applicant's right to provide the Respondent with perfected Grounds of Appeal were expressly reserved. The basis for this reservation is that the Applicant had not been provided with the necessary documentation from the RCIPS, including the transcript of the proceedings and other supporting evidence.

³ Exhibit EMB-1, page 4

12. The 4 November Letter was received by the Governor's Office on even date.⁴ Accordingly, the Applicant's written statement of intention to appeal and the grounds relied upon, were lodged within the limitation period of 7 days prescribed by statute.
13. Due to an error in calculation, Stuarts were under the misapprehension that the said limitation period had expired. Accordingly, the 4 November Letter also unnecessarily requested an extension of time within which to appeal.
14. By way of response, the Respondent's office wrote to Stuarts on 12 November 2009 requesting that his predecessor be provided with legal submissions concerning the evidential, legal and jurisdictional bases for the requested extension. It would seem as if the Respondent had equally laboured under the flawed calculation in respect of the limitation period.
15. Notwithstanding the fact that the Applicant made a request to the RCIPS for the transcript of the disciplinary proceedings and other evidence relied upon shortly after notification of the Commissioner's decision, this disclosure was belatedly provided to the Applicant on 13 September 2011, some 23 months after the hearing.
16. Upon receipt and review of the same, Stuarts wrote to the Respondent on 1 relaying that it had, without justification, only recently received the requested disclosure in September 2011⁵. As a result, the Applicant was now in a position to pursue his statutory right of appeal against the Commissioner's unlawful decision.
17. On 1 February 2012 the Respondent wrote to Stuarts informing it that, as a result of the Applicant's failure to justify the need for an extension⁶:-

"no legal basis upon which the Governor can properly consider an appeal. The Governor's ability to hear and adjudicate upon appeal is governed by the Police Law and he is satisfied having reviewed its provisions that the time for appealing has expired".

18. The Respondent's decision that (i) he did not possess the jurisdiction to properly consider and appeal and (ii) that the time for appeal has expired are those which the Applicant now seeks to Judicially Review.

⁴ Stamped copy letter at page 7 of Exhibit EMB-1

⁵ Exhibit EMB-1 at page 8

⁶ Exhibit EMB-1 at page 9

Grounds Upon Which The Relief Is Sought

19. The Respondent was not lawfully entitled to reach the said Decisions and, in so doing, erred in law and in fact, acted unfairly and procedurally improperly. Further, the said Decisions were unreasonable in all the circumstances.

Errors of Fact

20. The Respondent wrongly found that:-
- 20.1 the Applicant failed to lodge his written notice of appeal within 7 days of receiving notification of the Commissioner's decision;
 - 20.2 the Applicant had therefore failed to comply with the limitation period prescribed by Section 56(2) of the Police Law (2006 Revision); and
 - 20.3 there was no extant appeal pending before him.

Errors of Law and Illegality

21. In making the Decisions, the Respondent:-
- 20.1 failed in his duty to independently assess whether the Applicant had fulfilled the statutory requirements delineated within Section 56(1) of the Police Law (2006 Revision);
 - 20.2 wrongly found that the grounds of appeal set out within the 4 November Letter, which stood as the Applicant's written statement of intention to appeal, were legally insufficient and did not comply with Section 56(2) of the Police Law (2006 Revision);
 - 20.3 failed, properly or at all, to give effect to its statutory obligation pursuant to Section 56(1) of the Police Law (2006 Revision) to consider the appeal lodged by the Applicant; and
 - 20.4 acted in denial of the Applicant's statutory right of appeal enshrined in Section 56(1) of the Police Law.

22. Without prejudice to the above, if the Applicant's written statement of intention to appeal was out of time and/or the grounds of appeal set out therein were insufficient, the decision of the Respondent to not provide the Applicant with an extension of time was unlawful as the Respondent:-

22.1 failed to take into account, properly or at all, the dilatory conduct of the RCIPS in failing to provide the Applicant with the requested disclosure in a timely fashion;

22.2 failed to take into account, properly or at all, the inability of the Applicant to formulate and perfect the said grounds of appeal consequent upon the unjustifiable and unexplained late provision of the requested disclosure;

22.3 failed to take into account, properly or at all, the public interest in ensuring that the proper administration and conduct of the RCIPS and its officers;

22.4 failed to take into account, properly or at all, the public interest in ensuring that the procedures set out in the Police Law (2006 Revision) for the institution and conduct of disciplinary proceedings were adhered to; and

22.5 failed to take into account, properly or at all, the irreparable harm that would be suffered by the Applicant; and

Procedural Impropriety

23. Further, or in the alternative, the Respondent acted in a procedurally improper manner and/or in breach of the principles of Natural Justice in that, notwithstanding the Applicant's compliance with the statutorily prescribed limitation period, the Respondent failed and/or refused to allow the Applicant an opportunity, adequate or at all, to pursue his appeal.


Unreasonableness

24. Further, or in the alternative, the said Decisions of the Respondent were unreasonable in the premises.

Conclusion

25. This application is made at the earliest opportunity and within the time limited imposed by Order 53, rule 4(1) of the Grand Court Rules.
26. The Applicant will rely upon the Affidavit of Erik Marlon Bodden sworn on [insert date] to which the documents referred to herein are exhibited.
27. Further, the Applicant reserves his right to amend and/or supplement these Grounds in due course as permitted by Order 53, rule 6(2) of the Grand Court Rules, if required or if so ordered by this Honourable Court.

Dated this 2nd day of May 2012



STUARTS WALKER HERSANT
Attorneys-At-Law for the Applicant