IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 60362 OF 2013

IN THE MATTER OF THE POLICE LAW (2010 REVISION)

AND IN THE MATTER OF AN APPEAL against the decision of the Commissioner of Police to discharge Constable John James Morrison because, in the Commissioner's opinion, the retention of his services would be contrary to the public interest

AND IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW pursuant to Order 53 of the Grand Court Rules 1995

BETWEEN:	**JOHN JAMES MORRISON**	**- APPLICANT**
AND:	**COMMISSIONER OF POLICE**	**- 1st DEFENDANT**
	DEPUTY GOVERNOR OF THE CAYMAN ISLANDS	**- 2nd DEFENDANT**

NOTICE OF EX PARTE APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
Section 16(2)(b) of the Police Law 2010

TO : **The Clerk of the Court**
Law Courts Building
George Town
Grand Cayman

CLERK OF COURT
OCT 23 2013
CAYMAN ISLANDS GOVERNMENT

Name, address and description of Applicant :

Mr. John James Morrison
485 Marina Drive, Prospect
George Town
Grand Cayman
Cayman Islands

Decision in respect of which relief is sought :

The 1st Defendant's decision which was communicated to the Applicant on the 20th December 2011 which stated that :

"This is to inform you that your contract which expired 2 October 2011 will not be renewed. I have made the decision to discharge you from the RCIPS as per Section 16(2)(b) of the Police Law, 2010."

Section 16(2) of the Police Law 2010 states that *"A police officer may at any time during the currency of his term of engagement – (b) be discharged if, in the opinion of the Commissioner, the retention of his service would be contrary to the public interest."*

Relief sought :

(1) An order of certiorari to quash the 1st Defendant's decision on the grounds that it was procedurally unfair, unreasonable, oppressive and therefore unlawful;

(2) A declaration that the 1st Defendant's decision to discharge the Applicant under Section 16(2)(b) of the Police Law 2010 without giving reasons was unlawful and therefore a nullity and of no effect;

(3) An order that the Defendants arrange for the immediate payment to the Applicant of his accrued back pay, pension entitlements and all other pecuniary entitlements that are due to him from 20th December 2011 until the current date;

(4) A declaration that the Applicant is entitled to be paid his salary, pension and all other pecuniary entitlements up to and including 2nd October 2014;

(5) General and Special Damages in respect of the Applicant's unlawful discharge from the RCIPS by the 1st Defendant and the consequential reputational damage, financial loss, hardship and emotional distress to the Applicant;

(6) An order for costs; and

(7) Such further, consequential, or other relief as this Honourable Court deems just.

Name and address of Applicant's attorneys :

CLIFFORD LAW ASSOCIATES
Attorneys-At-Law
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5th Floor, Genesis Building
George Town

Clifford Law Associates

CLIFFORD LAW ASSOCIATES
Attorneys at Law for the Applicant

Dated : 22ND Oct 2013

Grounds on which relief is sought :

1. **Errors in law :** The 1st Defendant erred in law in applying Section 16(2)(b) of the Police Law 2010 :–

(a) when he notified the Applicant on 20th December 2011, without giving the Applicant the opportunity to comment or without giving reasons for his decision, that he had made the decision to discharge him from the Royal Cayman Islands Police Service pursuant to section 16(2)(b) of the Police Law 2010 which states that *"A police officer may at any time during the currency of his term of engagement – be discharged if, in the opinion of the Commissioner, the retention of his service would be contrary to the public interest."*;

(b) when he made this decision he was in breach of the rules of natural justice and procedural fairness and therefore his decision is a nullity and of no effect. As Lord Bridge stated in the House of Lords decision in *Lloyd v McMahon* [1987] A.C. 625,*"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.";* and

(c) when he made this decision to take such action without providing any reason whatsoever as to why he felt it was appropriate to discharge the Applicant pursuant to Section 16(2)(b) of the Police Law 2010 and without rationalizing why these provisions were applicable to the Applicant's employment with the Royal Cayman Islands Police Service. This was clearly not only a breach of the well-established rules of natural justice but indeed, in the absence of reasons, was *Wednesbury* unreasonable in accordance with settled authorities.

2. At common law, *"there is a presumption that procedural fairness is required whenever the exercise of a power adversely affects an individual's rights protected by common law or created by statute. These include rights in property, personal liberty, status and immunity from penalties or other fiscal impositions. The duty to afford procedural fairness is not, however, limited to the protection of legal rights in the strict sense: it also applies to more general interests, of which the interest in pursuing a livelihood and in personal reputation have received particular recognition: Ridge v. Baldwin [1964] A.C. 40; McInnes v. Onslow-Fane [1978] 1 W.L.R. 1520 at 1527-1528; Rees v. Crane [1994] 2 A.C. 17."*

3. Applying the above principle to the circumstances at hand, it is submitted that the 1st Defendant was subject to a duty to ensure that procedural fairness was maintained in reaching a decision of whether or not to discharge the Applicant pursuant to Section 16(2)(b) of The Police Law 2010. This is so because a decision to discharge the Applicant would clearly affect the Applicant's vested financial interests in receiving a salary, health insurance coverage and pension contributions; his interest in pursuing a livelihood; and, in maintaining his, up until that point, unblemished personal and professional reputation.

4. If the preceding submission is accepted, what must necessarily follow is a consideration of what particular procedures the 1st Defendant was required to abide by in order to ensure procedural fairness was maintained considering all of the relevant circumstances surrounding the decision of whether or not to discharge the Applicant. Some decisions require full adjudicative type hearings in order to ensure procedural fairness has been maintained, whereas others only narrowly permit the mere right of notice of the decision under consideration.

5. At common law, there are no rigid rules governing what type of procedures a decision-maker will have to follow in order to ensure procedural fairness has been maintained. In *Russell v. Duke of Norfolk* [1949] 1 All E.R. 109 at 1188, Tucker L.J. noted-

   "There are in my view no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter under consideration and so on."

6. Given the flexible nature of this principle, at times it has been difficult to ascertain what procedures would be considered necessary to follow in order to ensure the requirement of procedural fairness has been met by a decision-maker regarding a particular decision. Fortunately, there is a large amount of reported cases concerning the 'dismissal' of office holders which provide considerable assistance in determining what procedures are sufficient or, as the case may be, insufficient to meet the standard of procedural fairness required in the making of such decisions.

7. In the House of Lords decision in *Ridge v. Baldwin* [1964] A.C. 40, one of the leading cases on the boundaries of procedural fairness, it was held that the decision of a Watch Committee to dismiss a Chief Constable could not be lawfully exercised *"until the Watch Committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence."* This was held despite the absence of any such express statutory provisions to this effect. The Watch Committee were acting pursuant to s. 191 (4) of the Municipal Corporations Act, 1882 which provided that-

   "The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same."

8. Arguably, the wording of section 191 bestowed even wider discretion upon the Watch Committee than Section 16(2)(b) of The Police Law 2010 bestows upon the 1st Defendant yet even in the former case it was held that such power was not absolute and essentially could not be lawfully executed prior to providing the Chief Constable with the reasons for their proposed course of action and giving him a chance to make representations on his behalf.

9. In *R v. Smith* (1844) 5 Q.B. 614 it was held that even personal knowledge of the offence was no substitute for hearing the officer: his explanation might disprove criminal motive or intent and bring forward other facts in mitigation, and in any event delaying to hear him could heighten the risk of yielding too hastily to first impressions.

10. The principle enunciated in *Ridge v Baldwin* was applied by the House of Lords in *R v Chief Constable of North Wales, ex p. Evans* [1982] 1 WLR 1155 where it was held that the decision by a Chief Constable to give an Officer the choice to either resign or be dismissed was made contrary to the rules of natural justice due to the failure of the Chief Constable to give the officer an opportunity to be heard in relation to allegations made against him, some of which were later proved to be factually inaccurate. As Lord Hailsham opined at p. 1157-

    "The Chief Constable should have directed his mind to the criteria laid down in the Regulation in accordance with the appropriate principles of natural justice. He did not do so, and I think it only too likely that it was precisely this belief that his discretion was absolute which lead to the cavalier treatment to which, in the event, the respondent was subjected."

11. It has been noted that *"in our system of law surprise is regarded as the enemy of justice."* Per Lord Steyn in *R. (on the application of Anufrijeva) v Secretary of State for the Home Department* [2004] 1 A.C. 604 at para. 30. The draconian manner in which the 1st Defendant chose to reach his decision to discharge the Applicant and the consequential damage both financially and to the Applicant's professional and personal reputation is a regrettable example of this observation.

12. The cited authorities clearly require that, despite the absence of express statutory provisions to this effect, the rules of natural justice required the 1st Defendant to:

    a) give the Applicant notice of the fact that he was considering discharging him because, in his opinion, retaining his services would be contrary to the public interest;
    b) give the Applicant the reasons why he felt that retaining his services would be contrary to the public interest;
    c) give the Applicant a proper opportunity to respond to these reasons; and
    d) consider the Applicant's response in a fair and unbiased manner in order to determine what effect, if any, the Applicant's response had on his proposal to discharge him from the RCIPS.

13. It is a settled principle at common law that a failure by a decision-maker to ensure that procedural fairness has been maintained will result in the decision being considered unlawful, furthermore, it is also a settled principle that where a decision was made unlawfully, it is to be considered a nullity and of no effect. Applied to the matter at hand, if the decision to discharge the Applicant is indeed deemed to have been made unlawfully, as we say it was, and thus was not an effective discharge of the Applicant, it necessarily follows that he was never in fact discharged by the 1st Defendant. As a consequence, we say that the Applicant is thus entitled to his accrued salary, pension and all other benefits he would have enjoyed, but for his unlawful discharge by the 1st Defendant, up until at least his mandatory retirement date on the 29th May 2013 because the Applicant obtained the Right to be Caymanian (Caymanian Status) on the 23rd June 2011. From that date the Applicant's fixed term contract of employment should have been converted to an open ended contract in accordance with the Public Service Management Law.

Furthermore, on the 13th April 2011 the Applicant formally applied for a renewal of his contract of employment, which would have expired on 2nd October 2011, for a further three (3) years. By way of correspondence from the Commissioner's office on the 17th October 2011, the Applicant was informed that the renewal of his contract of employment had been approved for a further three (3) years which would have, but for the 1st Defendant's unlawful decision to discharge the Applicant, continued his employment up to and including 2nd October 2014. Because it is a common practice for police officers who are willing to continue serving past their mandatory retirement date to be allowed to do so, we say that the Applicant is entitled to be paid his salary, pension and other benefits up to and including 2nd October 2014.

14. With respect to the 1st Defendant's failure to provide reasons why he felt that retaining the Applicant's services would be contrary to the public interest, as stated at par. 7-114 of *De Smith's Judicial Review, Sixth Edition-*

    "Usually, the remedy given in a case of breach of duty to give reasons or adequate reasons is an order quashing the unreasoned decision, rather than an order to require provision of the reasons. The former remedy is usually deemed preferable as it reflects the purpose of reasons to encourage focused decision-making and avoids the risk of reconstruction of reasons after the decision."

15. In *R. (on the application of D) v Secretary of State for the Home Department* 1 F.L.R. at [18], Maurice Kay J noted the danger of remedying a failure to give reasons :

    "It is well-established that the court should exercise caution before accepting reasons for a decision which were not articulated at the time of the decision but were only expressed later, in particular after the commencement of proceedings."

16. For the foregoing reasons it is therefore submitted that, in accordance with the authorities on the point, if the court accepts that the 1st Defendant failed to provide reasons why he felt that retaining the Applicant's services would be contrary to the public interest, the correct course of action is to quash the decision.

17. Unfortunately and as mentioned earlier, the 1st Defendant's decision to discharge the Applicant from the RCIPS seems to have fallen below the standard by which the lawfulness of the decisions of public authorities is adjudged in another respect.

18. It has long been a settled principle at common law that decisions which are *"so unreasonable that no reasonable authority could ever come to it"* - *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 K.B. 223 *per Lord Greene M.R.* are unlawful. In the *Wednesbury* case, Lord Greene M.R. provided a non-exhaustive list of administrative shortcomings which would be covered by this notion of unreasonableness. These included: bad faith, dishonesty, attention given to extraneous circumstances, disregard of public policy, wrong attention given to irrelevant considerations and failure to take into account matters which are bound to be considered.

19. It has been noted that the threshold of unreasonableness or irrationality (as it has at times been referred to) in this sense is *"notoriously high"* and any claimant making a challenge under this principle has *"a mountain to climb"*. Recently, it has been held by the English Court of Appeal that decisions will not be held to be unreasonable in the *Wednesbury* sense provided the decision was *"within the range of reasonable responses"*.

20. Applying this test to the 1st Defendant's decision to discharge the Applicant from the RCIPS, it is submitted that the 1st Defendant's decision in this regard without providing reasons as to why he felt that retaining the Applicant's services would be contrary to the public interest was a decision that no reasonable authority could ever have come to.

21. Accordingly, it is respectfully submitted that the decision must be considered *Wednesbury* unreasonable and the decision should consequently be quashed.

22. **The Legitimate Expectation Argument**: At common law, an individuals' legitimate expectation of the provision of a benefit or advantage to be conferred by a public authority is protected under certain circumstances: *Council of Civil Service Unions v Minister for the Civil Service [1965] A.C. 374*.

23. In *Council of Civil Service Unions v Minister for the Civil Service* (supra) at pg. 408-409 Lord Diplock stated that, for a legitimate expectation to arise, the decision:

    "must affect [the] other person... by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that the benefit or advantage will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."

24. It is submitted that on this basis the Applicant indeed had a legitimate expectation that his contract would be renewed in October 2011, as it had been on previous occasions, and in fact as previously indicated the RCIPS had advised him in writing on the 17th October 2011 that the renewal of his contract for a further 3 years had been approved. On the 4th November 2011 the Applicant officially informed the RCIPS that he had been granted the Right to be Caymanian, a fact that the Applicant assumed the RCIPS was already aware of.

25. **Damages –** It is submitted that in appropriate cases and where the circumstances require it, that damages should be awarded on a successful Judicial Review application. Sometimes the circumstances are such, as they were in *McLaughlin v His Excellency the Governor of the Cayman Islands* [2007] UKPC 50, that reinstatement without more is not enough to ensure that justice is done. It is our submission, given the circumstances, that for a number of reasons reinstatement is not a viable option in this case. We accordingly submit that given the unlawful decision of the 1st Defendant and the consequences to the Applicant that this is a case which justifies the award of damages.

26. **The Issue of Delay** – We submit that the merits of this case are unequivocal and therefore the only potential issue that may be advanced by the Defendants in an attempt to defeat this application is the issue of delay in filing the application.

27. In that regard, the Applicant will point to the fact that he took the following primary actions in an attempt to overturn this unlawful decision by the 1st Defendant and obviate the need to file this Application for Judicial Review :

    (i) On 2nd February 2012 he appealed the 1st Defendant's unlawful decision to the 2nd Defendant;

    (ii) On 1st May 2012 he wrote by email to the Deputy Chief Officer of the Portfolio of Internal & External Affairs requesting an update on his appeal;

    (iii) On 28th September 2012 he wrote again to the Deputy Chief Officer of the Portfolio of Internal & External Affairs, following his meeting with Crown Counsel from the Attorney General's Chambers, and advised that he was willing to accept any one of the options that was previously proposed by Crown Counsel to settle the matter;

    (iv) On 22nd January 2013 he wrote, following a request dated 15th January 2013 from the Chief Officer of the Portfolio of Internal & External Affairs, detailing grounds of appeal to the 2nd Defendant and the Appeal Advisory Panel; and

    (v) On the 7th May 2013 he attended the Appeal hearing and provided his evidence to the Appeal Advisory Panel.

28. Despite two letters from the Applicant's attorneys, dated 2nd July and 6th August 2013, to the 2nd Defendant enquiring about the status of the appeal, apart from an initial holding response dated 10th July 2013 from the 2nd Defendant, the Applicant's appeal is still pending and there is no indication that a decision has been made.

29. Twenty two (22) months have now passed since the Applicant was unlawfully discharged by the 1st Defendant; Twenty (20) months have now passed since the Applicant appealed his unlawful discharge from the RCIPS by the 1st Defendant to the 2nd Defendant; Five (5) months have now passed since the Appeal was heard by the Appeal Advisory Panel; and yet there is still no decision on the Applicant's appeal notwithstanding the fact that the Attorney General's Chambers had previously advised the Portfolio of Internal & External Affairs that the 1st Defendant's decision to discharge the Applicant from the RCIPS is indefensible.

30. These facts lead to the irresistible conclusion that the 2nd Defendant has either refused to make a decision that seems inevitable or that the 2nd Defendant is incapable of discharging his responsibilities under the law in this regard.

31. The 2nd Defendant's unreasonable delay in resolving this matter is in itself a ground for this Application for Judicial Review in the same way that the unreasonable delay by a domestic tribunal in resolving a dispute was held to be a ground for an Application for Judicial Review in the case of **R v Chief Constable of the Merseyside Police, Ex parte Calveley [1986] 2 W.L.R 144 CA**. It is our submission that the 2nd Defendant's unreasonable delay in adjudicating on this appeal against the decision of the 1st Defendant requires the Court to step in to ensure that justice is done.

32. In Judicial Review Applications, Sub-rule 4(1) of the Grand Court Rules 1995 provides that -

"An application for leave to apply for judicial review shall be made promptly and in any event within 3 months from the date when grounds for the application first arose unless the Court considers there is good reason for extending the period within which the application shall be made."

33. The words *"good reason"* are not defined but it is clear from the decision in **Grey v Pearson [1857] H.L.9 Cas.61 (**which was cited in **Attorney General v Donalds and Gooden [1997] CILR 495)** that those words should be given their ordinary meaning unless by so doing that interpretation would create some absurdity. In that case **Lord Wensleydale** stated that *"In construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the document, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther."*

34. It is equally clear that the words *"good reason"* in sub-rule 4(1) of the Grand Court Rules 1995 were intended to refer to *"good reason"* for extending the time limit and granting leave to apply as opposed to *"good reason"* for the delay in bringing the application. In **The Law Society Gazette** an article entitled **"Judicial Review: Time is of the essence"** was published on the 24th September 1986. In that article the case of **R v Stratford-on-Avon DC, ex p Jackson [1985] 1 WLR 1319** (where leave was granted after a delay of 9 months) was discussed. At the bottom of page 2 of the article it states *"The phrase 'undue delay' is similar to the notion of want of promptness in Order 53 r4 and was so considered by the Court of Appeal in ex p Jackson. They concluded that whenever there is a failure to act promptly or within three months there was 'undue delay'. They further concluded that even though there may be "good reason" for the failure to act promptly the court still retains a discretion to refuse to grant leave if the granting of the relief sought would be likely to cause substantial hardship etc. That conclusion is no doubt sound, but is it suggested that it misses the point of Order 53 r4 which requires "good reason" for granting the extension of time to be shown rather than a "good reason" for the failure to act promptly."*

35. We submit that the above commentary in The Law Society Gazette is correct, however, a judge is clearly entitled to consider and ought to consider if there is *"good reason"* for the delay although the focus of the judge must be on whether there is *"good reason"* to grant leave to apply for Judicial Review even if the application is out of time. It is settled law that the decision on whether or not to grant leave to apply for Judicial Review, whether the application is out of time or not, is always left to the judge's discretion.

    It is further accepted that even where leave is granted to apply for Judicial Review where the application is out of time, that leave does not prohibit the Respondent(s) from arguing at the substantive application stage that the application was not made promptly. I respectfully submit that the case of **R v Stratford-on-Avon DC, ex p Jackson [1985] 1 WLR 1319 and [1995] 3 All ER** is good law for granting leave out of time. In ex p Jackson although the application for leave to apply for Judicial Review of a planning decision was made 9 months after the decision of a Planning Authority, leave was granted. **Ackner LJ** in granting leave stated at page 1325 *"We have considered with care a number of submissions made to us on behalf of the respective respondents to the effect that substantial hardship etc would be suffered if the leave sought or substantive relief were to be granted. However, as the wording of s 31 (6) itself shows, the court, in considering whether or not to exercise the discretion conferred on it by the subsection, may have to consider the interests of sections of the public wider than the immediate parties to the relevant dispute. We think that on the facts of the present case such consideration may well necessitate, inter alia, some assessment of the substantial merits or otherwise of the applicant's complaints and that this assessment can be made far more appropriately and satisfactorily on the hearing of the substantive application. In the meantime it is accepted that the applicant has an arguable case and indeed this was so decided by Glidewell J. In all circumstances we do not feel that leave to make the application for judicial review should be refused. We propose to grant leave and will hear submissions whether or not our order should incorporate any express provision for the extension of time. However, applying the objective test which we have indicated as being the correct one, we accept there has been "undue delay" in the present case within the meaning of s 31 (6) and so hold. We therefore emphasise that on the hearing of the substantive application the respondents will have liberty to argue that, even though we have found that there was good reason for the failure to act promptly, the court could still refuse to grant the relief sought on the hearing, on the grounds referred to in s 31(6); the discretion to refuse relief conferred on the judge by that subsection will not be fettered in any way by our decision."*

36. See further support for these positions in **The Law Society Gazette** in an article entitled **"Practice: delay in Judicial Review – R v Diary Produce Quota Tribunal for England and Wales ex p Caswell and another"** which was published on the 4th July 1990. The ex p Caswell case involved a delay in bringing the application for Judicial Review as well. In that case Lord Goff of Chieveley in granting leave stated at page 8 *"I imagine that, on an ex parte application for leave to apply before a single judge, the question most likely to be considered by him, if there has been such delay, is whether there is good reason for extending the period under rule 4(1). Questions of hardship or prejudice, or detriment, under section 31(6) are, I imagine, unlikely to arise on an*

ex parte application, when the necessary material would in all probability not be available to the judge. Such questions could arise on a contested application for leave to apply, as indeed they did in ***Reg v Stratford-on-Avon District Council, Ex parte Jackson****; but even then, as in that case, it may be thought better to grant leave where there is considered to be good reason to extend the period under rule 4(1), leaving questions under section 31(6) to be explored in depth on the hearing of the substantive application."*

37. One of the most recent cases in the Cayman Islands on the issue of delay in Judicial Review applications is **Rupert Ackermon v Government of the Cayman Islands and the National Roads Authority [2013] unrep.** This is the case involving the challenge to the Government's decision to close a portion of the West Bay Road to facilitate the For Cayman Investment Alliance agreement. **Quin J** refused leave on the basis of undue delay but particularly because of the substantial prejudice that the delay would have caused to third parties had leave been granted.

38. On page 6 at line 22 of his judgment **Quin J** pointed out that section 31(6) of the Senior Courts Act 1981 of England (which we referenced in previous cases above) applies in the Cayman Islands by virtue of section 11 of the Grand Court Law (2008 Revision). **Quin J** rehearsed Section 31(6) at line 25 thus -

"Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant – (a) leave for the making of the application ; or (b) any relief sought on the application, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person, or would be detrimental to good administration."

39. We submit that on the facts of this case, especially given the delay by the 2nd Defendant in resolving this matter, the interest of justice requires that leave be granted. We further submit that there is no reasonable prospect of the Defendants succeeding on the argument that if the relief sought is granted, it would create substantial hardship to them; or that it would substantially prejudice their rights or the rights of any other third parties because there are no third parties involved; or that it would be detrimental to good administration. We further submit that it would be to the benefit of good administration for leave to be granted because it would allow for the prospect of a decision that would prevent this type of grave injustice from occurring in the future.

40. On page 19 at line 7 of the judgment of **Quin J** an important and relevant case is cited. In that case the applicant was relying upon **R v Borough of Milton Keynes ex p Macklen 30th April (unrep.)** where **Mr. Justice Brooke** observed, in considering a pre-claim letter : *"If adopting such a course turns out to be unsuccessful then there would surely be little danger of the application for judicial review being turned down on the grounds of delay because the [Applicant] had followed the very desirable procedure of seeking to have the dispute resolved by other means."*

41. We have established on the facts of this case that the Applicant tried to resolve this matter, via his appeal to the 2nd Defendant, before filing this Application for Judicial Review. We therefore submit that in this case, the court should follow the **ex p Macklen** case and not penalize the Applicant for trying very hard to resolve this matter through the domestic appeal process and without the need for litigation.

42. Returning now to the judgment of **Quin J** in the **Ackermon** case, it is noted on page 26 at line 11 of the judgment that in deciding whether there is "good reason" to allow an extension of time *"Crown Counsel submits that the Court must examine:*

    (i.) Whether the applicant has a reasonable objective excuse for his delay;

    (ii.) What, if any, is the danger in terms of hardship or prejudice to third party rights and detrimental to good administration, which would be occasioned if leave were granted;

    (iii.) Even if there is substantial damage within any of these categories, does the public interest require that the Court grants leave;

    (iv.) *The strength of the Applicant's claim."*

    We agree with Crown Counsel in that case and simply underscore our view and argument that the Court's primary concern must be whether or not there is "good reason" to allow the application for leave.

    We further submit that on the facts of this case and sworn affidavit of the Applicant, it cannot be successfully argued by the Defendants that the Applicant's case has no merit and no prospect of success. It is clear that the Applicant's case has merit and it is equally clear that the 1st Defendant erred in law in deciding to discharge the Applicant from the RCIPS when he did. It is our submission, therefore, that it is in the public interest to correct this unlawful decision and prevent it from occurring in the future and that this is *"good reason"* for granting leave to apply.

43. The Applicant's case can clearly be distinguished on the facts from the **Ackermon** case. There would have undoubtedly been substantial prejudice to third parties in the **Ackerman** case had leave been granted. That is clearly not the case here.

44. **Quin J** in his judgment on page 40 at line 12 referred to the case of **O'reilly v Mackman [1983] 2 A.C**. He quoted **Lord Diplock** at paragraph H on page 280 *"The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer than is absolutely necessary in fairness to the person affected by the decision."*

On this point we respectfully submit that the authority in this case has not been kept in suspense because it is well aware that the Applicant has been trying to address this wrong for some substantial time now without the need for litigation and one would expect that the authority, in this case the 1st Defendant, would act with caution in dealing with similar situations pending a decision in this case.

45. **Quin J** goes on page 43 at line 10 *"It is clear from the case law that the obligation to act promptly and in any event, within three months, is even more important when third parties are involved."* It is equally clear from the judgment that in reaching his decision to refuse leave in the **Ackermon** case, **Quin J** was focused on the substantial prejudice that would have been occasioned on third parties had leave been granted.

46. On a plain reading of Order 53 r4(1), we submit that there is no sustainable argument why correcting this wrong decision made by the 1st Defendant which caused so much financial hardship, embarrassment and reputational damage to the Applicant would not be in the interests of justice and therefore a *"good reason"* to allow the Judicial Review application to proceed. The fact is, the reasons behind time limit clauses such as sub-rule 4(1), is to ensure finality and certainty in administrative decisions, and not to provide a means by which public authorities can avoid paying damages to persons unfairly affected by their decisions.

47. We submit that the Applicant has exhausted all remedies available to him, save and except bringing this Application for Judicial Review. The Applicant has appealed the 1st Defendant's unlawful decision to the 2nd Defendant and as a result of various correspondence received and an Appeal hearing being held, the Applicant has maintained hope that the issue would be resolved without having to resort to litigation. We further submit that this fact is also a *"good reason"* for the Court to allow this application for Judicial Review despite it being brought beyond the three month period.

48. For all of these reasons, we submit that the Defendants have no prospect of success if they attempt to defeat this application on the ground of undue delay and as we said at paragraph 27 above, the merits of the Applicant's case are unequivocal.

49. Accordingly and for all of the foregoing reasons, we reiterate that the decision taken by the 1st Defendant to discharge the Applicant is, in our submission, unlawful and leave should be given to apply for Judicial Review to quash this unlawful decision in the interest of justice and given the delay by the 2nd Defendant in resolving this matter. No hardship or prejudice will be caused to anyone by so doing and it would certainly not be to the detriment of good administration to do so. It is our submission that on the facts of this case, everything points in the direction of granting leave and that the interest of justice requires that leave be granted.