

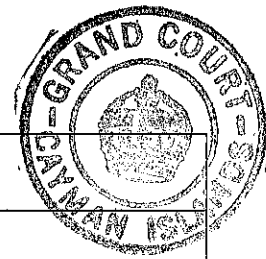
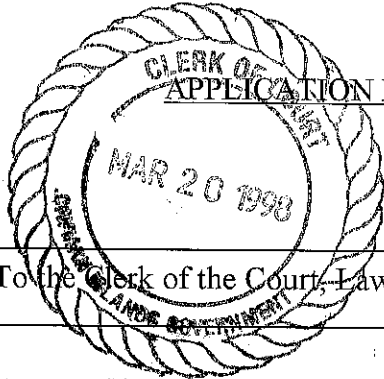
Application for Leave to Apply for Judicial Review (O.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 702 OF 1998

BETWEEN: Ms. KAREN NIXON PLAINTIFF

AND: PUBLIC SERVICE COMMISSION DEFENDANT



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.	Karen Nixon of P.O. Box 47GT, Grand Cayman, Cayman Islands, BWI.
Judgment, order, decision or other proceeding in respect of which relief is sought	Decision of the Public Service Commission on 2. 1. 1998 to dismiss the applicant from her employment.
<p align="center">Relief Sought</p> <p>Leave to apply to the Grand Court for the issue of an order of certiorari against the Public Service Commission to quash its decision to dismiss the applicant from her employment</p>	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Clyde Allen Brooks & Brooks Barristers & Attorneys-At-Law PO Box 1355, Grand Cayman, British West Indies
Signed <i>Brooks & Brooks</i>	Dated <i>20.3.98.</i>

GROUND ON WHICH RELIEF IS SOUGHT

- a. That the Public Service Commission Regulations 1985 reg. 37 states, inter alia, a public officer in respect of whom a disciplinary inquiry is to be held shall be entitled to

- receive a free copy of any documentary evidence relied on for the purpose of the inquiry.
- b. That the above regulation provides for mandatory disclosure of documentary evidence by its use of the word "...shall..".
 - c. That the applicant was not allowed a copy of a written complaint in order to provide a full and comprehensive reply to it. That a number of oral and written request were made to the Head of Department, Mr. Connolly, and to a Mrs. Gomez to provide with a copy of the complaint. Mr. Connolly initially indicated that he would provide a copy of the complaint but later refused to provide one.
 - d. That instead of providing the applicant with a copy of the complaint Mrs. Gomez set out in a memorandum dated 8 September 1997 an abbreviated version of the written complaint and gave that to the applicant but refused to provide the applicant with the substantive complaint.
 - e. That the written complaint formed the basis of charges levelled against the applicant in a letter dated 28 October 1997 from the Chief Secretary, Mr. James Ryan, received by the applicant on 3 November 1997.
 - f. That some if not all of the alleged charges are not sufficiently particularised to enable the applicant to properly reply to them. The applicant is not provided with the name(s) of any of the complainants, the date(s), or the nature of the alleged complaint.
 - g. That by refusing to provide the applicant with the necessary documentary evidence the applicant was prevented from having a full opportunity to answer the alleged complaint and charge.
 - h. That in a letter dated 6 November 1997 the applicant's legal representative wrote to the Head of the applicant's Department, Mr. Connolly, and requested a copy of the alleged complaint.
 - i. That Mr. Connolly neither provided a copy of the complaint nor any explanation for his refusal to provide a copy of it.
 - j. That by refusing to provide the applicant or her legal representative with a copy of the written complaint prevented the applicant from having a fair and unbiased hearing.
 - k. That the complaint concerning the conduct of the applicant was made by the Head of Department and that in refusing to allow her sight of the evidence against her was to improperly interfere with the course of justice.
 - l. That the letter of the legal representative referred to at h. above stated: "Without wishing to pre-judge matters, based on our clients account of the events, we do not think that it can be said that she should be dismissed for her actions."
 - m. That it was clear in the circumstances that the applicant intended to provide a substantive reply to the allegations being levelled at her.
 - n. That although the contents of the letter from the legal representative is not a full and comprehensive reply, it is a reply based on the limited information and the alleged charges so far before the applicant.
 - o. That reg.47(1)(a) does not specify the nature and extent of the reply other than it must be sufficient to exculpate the applicant.
 - p. That reg.47(2) provides that if it a reply is not adequate, the Chief Secretary "...shall refer..." the case to the Commission who "...shall advise..." the Governor on the appointment of a tribunal.

- q. That the applicant should not have been dismissed under reg. 47(9) without the opportunity of a hearing.
- r. That if reg. 47(9) is applicable, it states, inter alia, that "...the Commission shall forward to the Governor a report on the misconduct charged, which shall include details of all relevant evidence of the misconduct, together with its advice.". The applicant was not provided with a copy of the relevant evidence and her legal representative did not have an opportunity to contradict or correct it. The applicant was therefore prevented from obtaining legal representation on the evidence that grounded the exercise of the Governor's powers under the above regulation.
- s. That regulation 47(9) states, inter alia, that "The Commission may advise such of the punishments specified in regulations 45 as it may deem appropriate in the circumstances." The above provision is clearly discretionary. It is implicit that when exercising such discretionary power there is a duty to act judicially. By that it is meant that the Governor could only properly act if in doing so he observes the rules of natural justice and in particular the *audi alteram partem* rule. Hence, the applicant should be provided with charges that are properly framed and if requested the evidence, if any, upon which the charges are based to enable the applicant or his legal representative a full opportunity to provide a reply.
- t. That the above regulation envisages that in order for the Commission to advise on the appropriate punishment it must take into consideration such factors as the seriousness of the allegations, any mitigating factors, if any, and the applicants previous conduct and character. The applicant was not allowed to appear and make any representation before the tribunal. The applicant was not allowed a full and fair hearing.
- u. That the decision to dismiss was contrary to natural justice.