

IN THE GRAND COURT OF THE CAYMAN ISLANDS

✓ CAUSE NO: ²⁰⁸ OF 2005

BETWEEN:

LORNA HAMPSON

PLAINTIFF

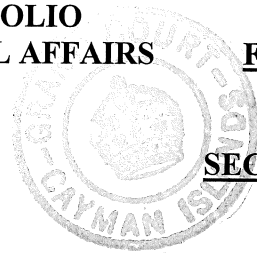
AND:

CHIEF SECRETARY, PORTFOLIO
OF INTERNAL & EXTERNAL AFFAIRS

FIRST DEFENDANT

ATTORNEY GENERAL
OF THE CAYMAN ISLANDS

SECOND 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.	(1) LORNA HAMPSON PO Box 907 GT Grand Cayman Cayman Islands The relevant decision (as set out below) is a decision to terminate the Plaintiff's employment as Senior Crown Counsel (Civil) with the Cayman Islands Government.
Judgment, order, decision or other proceeding in respect of which relief is sought	Decision of the Chief Secretary to terminate the Plaintiff's employment as Senior Crown Counsel (Civil) as referred to in his letter to the Plaintiff dated 17 th February 2005 ("the Decision")

Relief Sought

1. An order of certiorari to quash the Decision;
2. A Declaration that the Decision was *ultra vires*;
3. An Order of Prohibition and/or an injunction to prevent the Defendants from enforcing the Decision;
4. Interim relief in the form of a stay restraining the Defendants from enforcing the Decision pending the outcome of both the application for leave to apply for judicial review and any subsequent application for judicial review in the event that leave is granted;
5. Costs;
6. Damages for wrongful termination of employment, stress, inconvenience to be assessed; and
7. Any other orders or relief that the Court deems appropriate.

The Plaintiff requests an urgent oral application for leave in view of the interim relief sought and the fact that the Plaintiff is required to comply with the Decision before Tuesday 10th May 2005.

Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant

Campbells Attorneys-at-Law
PO Box 884 GT
Grand Cayman

TEL: 9492648
FAX: 9498613

Signed 

Dated 2nd May 2005

GROUND S ON WHICH RELIEF IS SOUGHT

SUMMARY

1. This is a challenge by way of judicial review to a decision of the First Defendant, made on 17th February 2005, purported to be made under the authority of General Orders, to retire the Plaintiff as Senior Crown Counsel (Civil) on the sole ground of “*improvement in the organisation*”.

2. Leave to apply for judicial review should be granted as the First Defendant’s Decision and/or action is unlawful for any or all of the following reasons;
 - i. **No authority or jurisdiction to make the Decision** – The First Defendant does not have the authority or jurisdiction to retire or dismiss the Plaintiff on the ground of “improvement of organisation” pursuant to General Orders, since it is stated at Chapter 1, clause 5 that, “*General Orders shall be deemed comprehensive. They state what is permitted and where there is no provision there is no authority....*”

 - ii. **Procedural impropriety** – The First Defendant failed to follow all or any legitimate procedure established under law in the consideration of the request by the Second Defendant to terminate the Plaintiff’s contract of employment.

 - iii. **Frustrating the legislative purpose** – The First and Second Defendant’s exercised their powers in a manner such as to frustrate the legislative purpose of the Crown, *via* directions by the Secretary of State contained in General Orders and ancillary legislation, in that they failed to provide the Plaintiff with sufficient detail as to what specific authority the First and Second Defendant were purportedly relying on to in seeking the Plaintiff’s purported retirement on the sole ground of “*improvement of the organisation*”.

- iv. **Substantial Unfairness** - The lack of candour and detail of the grounds relied on by the First and Second Defendant did not allow the Plaintiff to make sufficient representations regarding the review of her continued employment as Senior Crown Counsel (Civil) or indeed allow the Plaintiff to appeal the final decision to terminate her contract of employment which is contrary to the rules of natural justice. Further or alternatively, there was a failure to disclose documents, a failure to disclose the Second Defendants representations to the First Defendant and there was a lack of any formal adjudication procedure and/or appeal process.
 - v. **Irrationality** – It was wholly irrational of the First and Second Defendants to terminate the Plaintiffs employment on the ground of “*improvement of organisation*”.
3. The Second Defendant is joined as a party in order to comply with s.11 (2) of the Crown Proceedings Law (1997 Revision).

SUMMARY OF THE FACTS

4. The Plaintiff is Senior Crown Counsel (Civil), a position within the Legal Department headed by the Attorney General of the Cayman Islands.
5. The Plaintiff who was born on 13th September 1956 has Crohns Disease and had been suffering from this condition prior to her appointment as Crown Counsel in 1983.
6. At all times the Crown and the Attorney General’s office was aware of the Plaintiff’s condition of health prior to and after the Plaintiff’s appointment.
7. During the period of the years 2001 to 2003 the Plaintiff endured a particularly difficult episode of sickness attributable to Crohns Disease.

8. As a result of the Plaintiff's sick leave during the years 2001 to 2003, the Plaintiff was referred to the Chief Medical Officer to advise on whether the Plaintiff was permanently disabled, and in which case should she be made to retire on such ground.
9. The Chief Medical Officer convened a Medical Board to review the Plaintiff's condition on 23rd May 2003. Upon review of the Plaintiff's case the Medical Board adjourned its review for a period of 3 months to so as to give the said Board an opportunity to determine if a new drug being taken by the Plaintiff was effective at significantly reducing the debilitating symptoms of Crohns disease.
10. On the 26th September 2003 the Medical Board met to further review the Plaintiff's health in the light of the new treatment regime. The Board were satisfied that the Plaintiff's Crohns Disease was manageable under the new treatment regime. This Board determined that the Plaintiff was capable to perform all her duties as Senior Crown Counsel (Civil) and declined to recommend her retirement on medical grounds.
11. A letter dated 17th February 2005 was received by the Plaintiff from the First Defendant on or about the 28th February 2005. It gave the Plaintiff notice that she was to be removed from office as Senior Crown Counsel (Civil) for the purpose of facilitating "*improvement in the organisation*", upon advice received from the Second Defendant. The Plaintiff was given notice in the letter from the First Defendant that her last date of service would be 10th May 2005.
12. At no time did the First or Second Defendant advise the Plaintiff on what authority the decision has been made despite a formal request by the Plaintiff's attorneys at law in a letter to the First Defendant dated 21st March 2005. The First Defendant replied by letter dated 29th March 2005.

13. A letter before action was sent on 29th April 2005 to the First Defendant inviting the First Defendant to reconsider the termination of the Plaintiff's employment and to provide reason(s) for the decision of the First Defendant in light of the lack of information forthcoming from the First Defendant in his reply letter dated 29th March 2005.
14. To date there has been no response from the First or Second Defendant to the letter before action dated 29th April 2005 giving the Plaintiff no alternative but to seek judicial review as a remedy to challenge the First Defendant's Decision.

THE LEGISLATIVE FRAMEWORK

15. The statutory provisions that have and continue to govern the Cayman Islands Civil Service originate from the Crown. The power to amend, repeal, interpret or waive any instruction is vested in the Crown, exercisable through the Governor, pursuant to section 54 of the Constitutional Order 1972 and in conjunction with the Colonial Regulations.
16. The instructions of the Crown, via the Secretary of State for Foreign and Commonwealth Affairs and the Governor, are contained in a book of the Crown's instructions, to be cited as "General Orders" pursuant to Chapter 1, clause 1 of the same.
17. General Orders are deemed comprehensive. They state what is permitted and where there is no provision there is no authority, Chap. 1, clause 5 General Orders.
18. Colonial Regulations are issued by the Crown through the Secretary of State, and in so far as provisions contained therein are not made in General Orders, they will apply in the Cayman Islands pursuant to Chapter 1, clause 16.

19. In the event of conflict between General Orders and departmental instructions then General Orders prevail, pursuant to Chapter 1, clause 17(a) General Orders.
20. In the event of conflict between General Orders and any law or regulation made then the law or regulation shall prevail, pursuant to Chapter 1, clause 17(b).
21. In the event of conflict between General Orders and any written contract of employment then the contract shall prevail, pursuant to Chapter 1 clause 17(c).
22. Where General Orders refer to the Public Service Commission Law, 1975 (“PSC”) this is deemed to be a part of the Crown instructions pursuant to the preamble of the same.
23. Regulation 26(3) read in conjunction with the Third Schedule of the PSC makes mandatory provision that any office subordinate to the Attorney General, for which a legal qualification is required, cannot be considered by the Public Service Commission.

Possible Grounds for Dismissal

24. Pursuant to General Orders and the PSC there are no grounds and therefore no authority for the First Defendant to retire or dismiss the Plaintiff on the grounds of “*improvement to organisation*”

THE GROUNDS FOR REVIEW

Lack of candour and transparency

25. Lack of candour and unnecessary secrecy are themselves capable of being reason for granting judicial review (*see, Salih [2003] EWHC 2273 (Admin); Nadarajah [2003] EWCA 1768*). Thus far there has been a complete lack of transparency and openness about the First Defendant's reasons and/ or authority for making the decision.

Lack of a fair hearing

26. The Plaintiff's ability to challenge the Second Defendant's advice to the First Defendant was unreasonably hindered by the unreasonable obstruction of access to Civil Service Personnel Records upon which the Second Defendant had based his recommendation to the First Defendant and for which the First Defendant made the Decision to retire the Plaintiff from office.
27. Through a denial of full and unfettered access by the Plaintiff and her attorneys at law to her Civil Service Personnel Records, the Plaintiff was denied an opportunity to respond to the opinion proffered by the Second Defendant to the First Defendant in contravention of the rules of natural justice.
28. At no time did the First Defendant (or the Second Defendant as Head of Department) advise the Plaintiff on what authority has been relied on in making the Decision to retire the Plaintiff from office, despite a request from the Plaintiff's attorneys at law to so advise. This denied the Plaintiff a fair opportunity to challenge the basis of the Decision contrary to the rules of natural justice.

Lack of authority to make the decision

29. The First Defendant does not have the authority to retire or dismiss the Plaintiff on the grounds of “improvement of organisation” pursuant to General Orders, where it is stated at Chapter 1, clause 5 that, “*General Orders shall be deemed comprehensive. They state what is permitted and where there is no provision there is no authority....*”.

Procedural impropriety

30. The First Defendant failed to follow all or any legitimate procedure established under law in the consideration of the request by the Second Defendant to terminate the Plaintiff’s contract of employment.

Frustrating the legislative purpose

31. The First and Second Defendant exercised their powers in a manner to frustrate the legislative purpose of the Crown, *via* directions by the Secretary of State contained in General Orders and ancillary legislation, by not informing the Plaintiff with sufficient detail as to what specific authority the First and Second Defendant were relying on to seek the Plaintiff’s retirement on the sole ground of “*improvement of the organisation*” so as to enable a fair review of the circumstances surrounding the Decision to retire the Plaintiff.

Substantial Unfairness

32. The lack of candour and detail of the grounds relied on by the First and Second Defendant did not allow the Plaintiff to make sufficient representations regarding the review of her continued employment as Senior Crown Counsel (Civil) or indeed allow the Plaintiff to appeal the final decision to terminate her contract of employment which is contrary to the rules of natural justice.

Irrationality

33. It was wholly irrational of the First and Second Defendants to terminate the Plaintiffs employment on the ground of "*improvement of organisation*"

REQUEST FOR INTERIM RELIEF

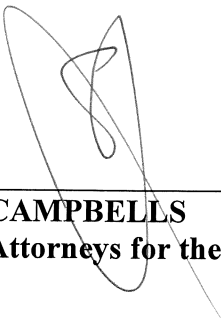
34. The Plaintiff requests interim relief in the nature of an injunction restraining the Defendant from exercising his powers to enforce the Decision pending the outcome of both the application for leave to apply for judicial review and any subsequent application for judicial review in the event that leave is granted.
35. It is respectfully submitted that the balance of convenience lies in favour of the Plaintiff as there is likely to be irreparable harm suffered by the Plaintiff if the injunction is not granted.

CONCLUSION

35. Leave should be granted as the action challenged is unlawful for one or more of the above reasons.
36. The Plaintiff also humbly requests that the Grand Court expedite this application for leave for judicial review and interim relief, on the basis that irreparable damage will occur to the Plaintiff in the near future if the Decision is acted upon on the 10th May 2005.

RELIEF AND REMEDIES SOUGHT

37. An order of certiorari to quash the Decision;
38. A Declaration that the Decision was ultra vires;
39. An Order of Prohibition and/or an injunction to prevent the Defendants from enforcing the said Decision;
40. Interim relief in the form of a stay restraining the Defendants from enforcing the Decision pending the outcome of both the application for leave to apply for Judicial Review and any subsequent application for Judicial Review in the event that leave is granted;
41. Costs;
42. Damages for wrongful termination of employment, stress, inconvenience to be assessed; and
43. Any other orders or relief that the Court deems appropriate.



CAMPBELLS
Attorneys for the Plaintiff