

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2011/0847

BETWEEN:

LEANDRA GABRIELLE VERNEUIL

Claimant

and

THE REGISTRAR OF THE HIGH COURT OF JUSTICE

Respondent

Appearances:

**Horace Fraser for the Claimant
Deale Lee for the Respondent**

**2011: November 3
2013: April 29**

JUDGMENT

- [1] **BELLE J:** The Claimant Leandra Verneuil is a practising attorney-at-law whose name is on the roll of legal practitioners. Mrs Verneuil had applied for and obtained a practising certificate for the years 2005 to 2010 and applied again in December of 2010 to the Registrar of the High Court for her practising certificate. On this occasion the Registrar refused to issue a practising certificate to the Claimant.
- [2] Mrs Verneuil claimed that her cheque for \$300.00 which accompanied her application for the practising certificate was returned to her. According to Mrs Verneuil at that time no reason was given to her for refusing to issue the practising certificate.
- [3] On making enquiries about the certificate a member of the registry staff told Mrs Verneuil that there were outstanding Judgments against her. Mrs Verneuil was subsequently refused audience in the High Court because she did not possess a practicing certificate.

[4] It is at this point in August of 2011 that the Claimant applied for leave to file a Claim for Judicial Review. After being granted leave the Claimant prayed for the following orders:

(1).....

(2).....

(3) A declaration that the Registrar has unlawfully interfered with the Claimant's common law right to work and practice her profession.

(4) A declaration that the decision of the Registrar has unlawfully interfered with the Claimant's contractual rights and obligations to her clients and generally to conduct her business for profit.

(5) An order certiorari to quash the decision of the Registrar.

(6) General Damages for inconvenience and distress.

(7) General Damages for unlawful interference with contractual relations.

(8) Aggravated Damages

(9) Costs

(10) Interest

[5] Based on these facts and the legal issues raised by counsel the Following issues are to be decided:

a. Whether on a proper construction of Sections 23 and 24 of the Legal Profession Act (LPA) the Claimant is entitled to be issued a practising certificate as of right.

b. Whether the Claimant has a legitimate expectation of being issued with a practising certificate notwithstanding her failure to satisfy section 23 of the Legal Profession Act.

- c. Whether the Claimant has a common law right to work and whether this has been infringed.

[6] **Agreed Alternative Means of Redress**

Before going into the issues as described above, it is evident that the parties agreed that pursuant to Section 24 of the LPA the Claimant had a right to apply to the court for the issue of a practising certificate to her in spite of section 24 of the LPA.

- [7] Indeed at the hearing of the Application for leave in this matter the applicant's application for leave in so far as it asked for an interim order that she be allowed to practice law was treated as an application pursuant to section 24 of the LPA and as a result the Registrar of the High Court was ordered to issue a practising certificate to the Claimant for the year 2012.
- [8] The question of the right to apply for the High Court's determination has therefore already been determined. What is left to be determined is whether the Claimant is entitled to a practising certificate without such a determination by the court as of right.
- [9] The LPA may be analysed from three perspectives. Firstly we may approach it from the perspective of the literal meaning and other rules of construction of the relevant sections of the LPA. Secondly we are guided by the case law on similar statutes or statutes which grant similar rights and thirdly we can apply a contextual approach in construing the objective of the law i.e. to regulate the conduct of attorneys-at-law.
- [10] The relevant part of section 24 of the LPA states:

"In the cases described in subsection (2), an attorney-at-law applying for a practising certificate shall, unless the High Court otherwise orders, give to the Registrar at least 4 weeks before the application is made, notice of his or her intention to make the application and the High Court may in its discretion order the Registrar to issue or refuse the application or to issue a practising certificate to the applicant subject to such terms and conditions as it may think fit.

Subsection (1) applies to any case where an attorney-at-law makes an application for a practising certificate-

(i) After having had given against him or her any judgment which involves the payment of moneys other than costs and is not a judgment as to the whole effect of which upon him or her, he or she is entitled to indemnity or relief from any other person, and without having produced evidence of the satisfaction of such judgment."

Section 24 of the LPA is preceded by Section 23 of the Act which provides inter alia that:

- (1) An attorney-at-law who desires to practise law shall apply to the Registrar for a certificate to be called a practising certificate;
- (2) On being satisfied that the attorney-at-law is not disqualified from obtaining a practising certificate, the Registrar shall issue to the attorney-at-law a practising certificate.

[11] It is clear that the intention of these subsections is to facilitate the issue of a practising certificate to an applying attorney-at-law and that such a certificate shall be issued by the Registrar where the applicant is not disqualified.

[12] It is common ground that the Registrar does not have a choice in the matter and must issue the certificate where the applicant is not disqualified. Where the applicant is disqualified or where pursuant to the subsection (2) the Registrar is not satisfied that the attorney-at-law is not disqualified she should not issue the certificate.

[13] **Legitimate Expectation**

Guided by the approach outlined above I now deal with the issue whether the Claimant had a legitimate expectation of being issued a practising certificate.

[14] Counsel for the Claimant argues that Claimant had a legitimate expectation to be granted a practising certificate. I do not agree with this submission for the reasons stated by the Defendant. A legitimate expectation would have arisen if in full

knowledge of the requirements laid down in the statute and of the applicants' circumstances the Registrar had issued the practising certificate prior to 2012.

- [15] The Registrar could not create a legitimate expectation which is contrary to the provisions in Sections 23 and 24 of the LPA. In addition to this the Defendant gives evidence that the Registrar wrote to attorneys informing them that the relevant sections would be applied to upcoming applications with some time given for the transition. This has not been refuted.
- [16] In **Samuel Fletcher v The Attorney General of Saint Lucia** HCVAP2009/12 a case about the alleged legitimate expectation of Special Constables to be appointed Constables in the Royal Saint Lucia Police Force, Baptiste JA (Ag) as he then was, referred to the case of **Regina (Bibi) v Newham London Borough Council** in which Lord Justice Schiemann stated at paragraph 19:

"In all legitimate expectation cases, whether substantive or procedural, three practical questions arise. The first question is to what has the public authority whether by practice or by promise, committed itself, the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the court should do."

- [17] Then Lord Justice Schiemann opined at paragraph 20 that the answer to the first question posed no jurisprudential problems; it is a question of analysing the evidence and then stated at paragraph 21:

"Sometimes, the answer to the first question is dispositive of the case. If the public body has done nothing which can legitimately have generated the expectation that is advanced to the court, the case ends here. It seems likely that a representation made without lawful power will be in this class."

- [18] Based on these authorities and the evidence in this case I conclude that the Claimant enjoyed no legitimate expectation to be granted a practising certificate.
- [19] **Expectation to be treated fairly**

In my view the language "on being satisfied" requires that the Registrar affords the applicant a hearing to satisfy herself if necessary that there is no disqualification.

That hearing is a prerequisite of fairness in the process or natural justice. In this case there is no evidence from the Registrar that she afforded the applicant a hearing in the matter. She should have.

- [20] Several cases were cited by counsel on both sides which support this view , see **Rv Licensing Authority ex Parte Panton** (1970) 15 WIR 380; **Fisher v Minister of Public Safety** (No.2) [2000] AC 434; and **CCSU v Minister for Civil Service** [1985] AC 374, where examples of this principle are clearly stated.

In **Fisher** Lord Lloyd of Berwick stated at page 447:

"But legitimate expectations do not create binding rules of law. As Mason C.J. made clear, at page 291 a decision maker can act inconsistently with a legitimate expectation which he has created, provided he has given adequate notice of his intention to do so, and provided he gives those who are affected an opportunity to state their case. Procedural fairness requires of him to do no more than that. Even if therefore the appellant had a legitimate expectation that he would not be executed while his petition was pending his expectation could not survive the government's letter of 2nd and 30th January 1998 in which it informed the appellant's solicitors in unequivocal terms that it would wait no longer than 15th February 1998."

- [21] In the premises apart from the right to a hearing before the Registrar I have held as stated before, that pursuant to the scheme of the LPA the Claimant had the right to apply to the High Court for a determination of the matter of her qualification to be issued a practising certificate.
- [22] I now elaborate on the nature of such a hearing. In the High Court there should be a hearing with evidence presented by interested parties where necessary and with facility for witness statements or affidavits to be filed and cross examination of witnesses.
- [23] I am persuaded that there should be a hearing on the matter since paragraph (i) which pertains to the alleged disqualification in this case is very detailed and provides that the applicant would be disqualified if the judgement against the applicant..."is not a judgment as to the whole effect of which upon him or her, he

or she is entitled to indemnity or relief from any other person and without having produced evidence of the satisfaction of such judgment."

- [24] Based on the language of the section it would be patently unjust to determine that the Claimant is disqualified without considering whether any other person could be called upon to indemnify her or there is someone from whom she can obtain relief.

- [25] It should be noted that the disqualification would also be lifted if the debt is paid.

When compared to the other disqualifications in section 24 we see that there are a number of categories of disqualification. Firstly there are the disqualifications in section 24 (2) (a) and (d) based on failure to obtain a certificate or not having held a practising certificate for 12 months. Then there are the disqualifications which flow from the suspension from practise or being struck off the Roll and the period of his or her suspension has expired or his or her name has been restored to the roll as in subparagraph (c). Then there are the disqualifications which flow from the determination of a court or Disciplinary Committee. These are found in subparagraph (e) having been declared a person of unsound mind by a registered medical practitioner; failure to pay compensation or costs ordered by the Committee or failure to comply with any order of the Committee.

- [26] Finally we have the circumstance where the applicant is subject of a writ of attachment, (g), (b) being an undischarged bankrupt or there being against her a receiving order in bankruptcy or finally (h) having been declared bankrupt, having obtained a discharge after entering into a composition with her creditors or a deed of arrangement for the benefit of creditors and finally (i) being the subject of a judgment etc.

- [27] These circumstances all describe different kinds of conditions which could cause disqualification or which should be considered in a hearing before a determination of disqualification is made. It is obvious that these conditions are of such a nature that the applicant would be aware of them and should be able to lead evidence as to the various stages where the matters have reached and the mitigating factors

involved in all of the matters related to financial issues, court orders or orders of the Committee. The nature of these conditions provides a further basis of the desirability of a fact finding hearing and the hearing of arguments related to the legal consequences of the facts which are proven.

[28] Just as in criminal matters there may be matters which are seen as mitigating circumstances, in civil matters there may be mitigating circumstances which require consequentially varied degrees of responses from the administration of justice. Preventing the applicant from practicing law is the highest penalty in relation to a money debt pursuant to section 24 (2) (i) in this regard under the LPA.

[29] Section 24 (2) provides the circumstances in which an applicant may be disqualified for a short period of time, a long period of time or indefinitely. There are circumstances in which the Registrar may be able to make a decision without any further enquiry. However in the case of section 24 (2) (i) (disqualification for money debt) if the applicant is required to prove his or her eligibility to practise she should be given the opportunity to do so before a decision is made either by the Registrar or the High Court.

[30] **Appeal**

If the Registrar makes a decision and the applicant is aggrieved the applicant may apply for relief by way of appeal or by way of the application referred to in Section 24 of the Act.

[31] Section 60 of the Supreme Court Act provides for a person aggrieved by a decision of the Registrar which deprives them of any right, title or priority to appeal to a Judge of the High Court, in Chambers.

[32] It is therefore evident that there was an alternative means of redress available to the Applicant. In the circumstances the court will not entertain an application for judicial review. See **Regina v Chief Constable of Merseyside Police, Ex parte Calveley and others** [1986] QB 424.

[33] **Right to Work**

In my view the decision of the Registrar not to issue a practising certificate to the Claimant did not give rise to any action in tort unless it could be shown that she was acting deliberately and outside of the scope of her duties to deprive the Claimant of work or to make it impossible for the Claimant to perform contracts which she had entered into.

- [34] In **OBG Ltd v Allan** [2008] AC 1 it was held that inducing a breach of contract was a necessary and sufficient requirement for liability; that in order to be liable a person had to know that he was inducing a breach of contract and to intend to do so with knowledge of the consequences.

At paragraph 62 Lord Hoffman states;

"Likewise, one may intend to cause loss without intending to procure a breach of contract. But the concept of breach of contract is in both cases the same. In both cases it is necessary to distinguish between ends, means and consequences. One intends to cause loss even though it is the means by which one achieved the end of enriching oneself. On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions."

- [35] In relation to the issue of depriving the Claimant of work by unlawful means in **OBG LTD**, Lord Hoffman stated at paragraph 51;

"Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the Claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant."

- [36] Consequently I must hold that there can be no action for damages against the Registrar for breach of a common law right to work or inducing a breach of contract where there was no evidence of an intention to breach any contract or to cause loss or damage.

[37] I have already held that on any construction of the legislation there were remedies available to the Claimant which she could pursue prior to filing a claim for judicial review, the first being an application for the court to order the issue of a practising certificate pursuant to section 24 of the LPA and alternatively as an appeal against the registrar's decision to refuse to issue the practising certificate pursuant to section 60 of the Supreme Court Act. Consequently the action for judicial review must fail and the related action in tort cannot proceed independently of that action.

Part 56.8 of the CPR 2000 states:

"The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that-

- (a) arises out of ; or
- (b) is related or connected to;

The subject matter of an application for an administrative order

- (2) In particular the court may, on a claim for judicial review or for relief under the Constitution award-
 - (a) Damages;
 - (b) Restitution; or
 - (c) An order for return of property to the claimant if the –
 - (i) Claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates, or
 - (ii) Facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
 - (iii) Court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.

- [38] Paragraph (3) of the rule also provides for the court to order that the claim be dealt with separately from the claim for an administrative order or that the whole application be dealt with as a claim or in either case makes an order as to costs because of the unreasonable use of the procedure under this part.
- [39] It appears then that the only possible option available to the court if the court is to consider dealing with the matter in an alternative fashion would be to order that the other relief be dealt with separately from the claim for an administrative order. However in the circumstances I see no factual basis for making such an order since there is no evidence that the Registrar acted other than pursuant to her understanding of section 24 of the Act.
- [40] There is no evidence that the Registrar acted maliciously, fraudulently, or capriciously. She did not act outside of the authority provided by the LPA in making a decision to refuse to issue the practising certificate pursuant to section 23 or 24 of the LPA. The court has not questioned her right to make such a decision but merely the procedure by which she arrived at the said decision.
- [41] Counsel for the Claimant cited **Roncarelli v Duplessis** in support of his argument that the Crown should pay damages for the loss suffered to the Claimant by being deprived of work by the Registrar's decision. In my view **Roncarelli v Duplessis** 16 D.L.R 689 is not helpful to the Claimant since in that case the Defendant authority, the attorney general had no power to cancel a liquor licence but purported to instruct that the licence be cancelled. The relevant Commission had abdicated its authority in relation to liquor licences and the decision to cancel the applicant's liquor licence was therefore declared unlawful.
- [42] There is no evidence of an actionable unlawful act committed by the Registrar. The only case available to the Claimant is a public law action for relief pursuant to the legislative framework which is provided.

- [43] I agree with Counsel for the Defendant that no common law right to work has been infringed. Indeed it would amount to saying nothing more than that a contract of service has been interfered with. Counsel has not produced any authority to the effect that there is a common law right to work in a chosen profession. But the law may determine how the right to practise the profession may be regulated as it does in the LPA.
- [44] However the Claimant has not claimed any constitutional breach and has not grounded her common law claim in any authority which deals with such a claim. The other cases referred to by the Claimant's counsel namely **Angela Innis v The Attorney General Privy Council Appeal** No.29 of 2007 and **Horace Fraser v The Judicial and Legal Services Commission**, Privy Council Appeal No 116 of 2006 which were cited by counsel for the Claimant were not claims pursuant to the common law but were claims of failure to follow statutory procedures which resulted in breaches of the Claimants' contracts of employment. The Claimant has not claimed any breach of contract of employment but breaches of contract for services which have not been described with any particularity.
- [45] In the circumstances it is my view that the Defendant could not be successfully sued for interference with the Claimant's right to work at the time of filing the claim for judicial review. In **Bourgoin S.A. v. Ministry of Agriculture** the English Court of Appeal held that a breach of article 30 of the European Economic Community treaty could afford in English Law a right to judicial review, a declaration as to invalidity of the measure constituting the breach and possibly an order of mandamus but would not give rise to a claim for damages since it was to be regarded as of the nature of making of an invalid order or one in excess of power.

Indeed in **Bourgoin S.A.** Nourse L.J held at page 790A:

"In this country the law has never allowed that a private individual should recover damages against the Crown for an injury caused to him by ultra vires order made in good faith. Nowadays this rule is grounded not in procedural theory but on sound acknowledgement that a minister of the Crown should be able to discharge duties of his office expeditiously and fearlessly, a state of affairs which could

hardly be achieved if acts done in good faith, but beyond his powers, were to be actionable in damages."

[46] There can therefore be no basis for claiming damages nor aggravated damages from the Defendants.

[47] I therefore conclude that the Claimant is not automatically entitled to a practising certificate but should not be deemed disqualified until she is given an opportunity to ventilate her circumstances with regard to the provisions of Section 24 (2) (i) of the LPA.

[48] I therefore make the following Order:

The Claimant has not suffered a breach of a common law right to work as a result of the decision of the Registrar.

[49] The Registrar's decision has not unlawfully interfered with the Claimant's contractual rights and obligations to her clients and generally to conduct her business for profit.

[50] The Claimant had a legitimate expectation to be treated fairly.

[51] The Claimant's claim for an order of certiorari is dismissed since the Claimant failed to avail herself of an alternative form of redress.

[52] The Claim for damages is dismissed

[53] The Claim for aggravated damages is dismissed.

[54] The court makes no order as to costs because of the novel nature of the issues which have been discussed in relation to the Legal profession Act.



Francis H V Belle
High Court Judge

