

**CARIBBEAN COMMUNITY ADMINISTRATIVE TRIBUNAL
REVIEW COMMITTEE**



On Appeal from the Caribbean Community Administrative Tribunal

CCAT/Application for Review 1 of 2024

Between

Gerald Crick

Applicant

And

CARICOM Secretariat

Respondent

Before: **Judge A Burgess (Presiding)**
 Judge P Jamadar
 Judge C Ononaiwu

Date of Decision **11 April 2025**

Appearances:

Mr George Kirnon for the Applicant

Ms Radha Permanand and Mr O’Neil Francis for the Respondent

International Administrative Law – Caribbean Community Administrative Tribunal – Review Committee – Conditions to be satisfied for Review Committee to grant leave to appeal decision of the Tribunal – Whether the Tribunal erred in proceeding to hear and determine a preliminary objection despite the President’s non-recusal – Whether the Tribunal erred in determining it had no jurisdiction to hear the Applicant’s complaint because it was time-barred – Whether the case was exceptional in the interest of justice – CCAT Statute – CCAT Rules of Procedure 2020.

SUMMARY

This matter concerns an application by Gerald Crick to the Review Committee of the Caribbean Community Administrative Tribunal (‘CCAT’ or ‘the Tribunal’) for leave to

appeal the decision on preliminary objection of the Tribunal. The Tribunal had ruled that the complaint of Mr Crick against the Respondent, the Caribbean Community Secretariat ('CARICOM Secretariat'), was time-barred and inadmissible.

At the hearing of the preliminary objection, the Tribunal had raised that the General Counsel of the Respondent had been an original member of the Tribunal and had a previous professional connection with the Judges on the Panel. The Panel had indicated that it was capable of dealing with the matter impartially and independently and the parties agreed to the Panel proceeding to hear and determine the preliminary objection.

The Tribunal held that the complaint was not filed within 90 days from 31 August 2023, the date on which the Applicant received notice that the relief asked for would not be granted, in keeping with Article III2(1)(c)(i) of the CCAT Statute and Article V2(c)(i) of the CCAT Rules of Procedure. The Tribunal found that the parties' negotiation of a settlement could not extend the time limit for filing a complaint. The Tribunal also found that it could not consider whether there were 'exceptional circumstances' for an extension of time for filing the complaint, pursuant to Article III2(2) of the CCAT Statute and Article V(3) of the CCAT Rules of Procedure 2020, because those provisions stipulate that any such extension shall not exceed a further 60 days and more than 60 days beyond the 90-day time limit had passed.

The Applicant sought leave to appeal the Tribunal's decision on grounds concerning the non-recusal of the President of the Tribunal despite a professional connection with the General Counsel of the Respondent and the continuation of the proceedings before the Tribunal as then constituted. Leave to appeal was also sought on grounds relating to the Tribunal's determination that it had no jurisdiction to hear the complaint because it was time-barred.

The Review Committee held that two conditions must be satisfied under Article XIX of the CCAT Rules of Procedure for the grant of leave to appeal a decision of the Tribunal. First, the Applicant must make an arguable case that the Tribunal exceeded or failed to exercise its jurisdiction or erred on a question of fact or law, or both. Second, the case must be

exceptional in the interest of justice or the interest of the international functioning of the eligible CARICOM institutions.

The Review Committee found that the Applicant had made an arguable case that the Tribunal erred by (i) proceeding to hear and determine the preliminary objection in the face of Article IV of the CCAT Rules of Procedure which expressly mandates recusal of a Member of the Tribunal in cases involving persons with whom the Member has a professional connection, (ii) holding that it had no jurisdiction to entertain an application for an extension of time in which to submit the complaint, and (iii) not inviting the Applicant to make submissions in relation to the existence of exceptional circumstances under Article III2(2) of the CCAT Statute and Article V(3) of the CCAT Rules of Procedure and good and substantial reasons under Article XXV(6) of the CCAT Rules of Procedure, for the extension of time for filing the complaint. The Committee also considered this to be an exceptional case where granting leave to appeal would be in the interest of justice, not only as it relates to the Applicant but also because the clarification of the legal issues raised could enhance the administration of justice by the CCAT for the benefit of staff members of all eligible CARICOM institutions.

Accordingly, the Review Committee granted leave to the Applicant to appeal the decision of the Tribunal on the three identified grounds, with costs reserved for a later stage of the proceedings.

REASONS FOR DECISION

Reasons: [1 - 43]

Decision [44]

Introduction

[1] This is an application by Gerald Crick ('the Applicant') for leave to appeal the Decision on Preliminary Objection of the Caribbean Community Administrative

Tribunal ('the Tribunal'), issued on 30 August 2024, which declared that the complaint of the Applicant against the Caribbean Community Secretariat ('the CARICOM Secretariat', 'the Secretariat' or 'the Respondent') was time-barred and inadmissible.

- [2] This is the first application to the Review Committee for leave to appeal a decision of the Tribunal pursuant to Article XIX of the Rules of Procedure of the Caribbean Community Administrative Tribunal, 2020 ('CCAT Rules of Procedure').

Factual Background

- [3] The Applicant was employed with the Respondent from 7 December 2007 until his retirement on 20 January 2024. At the time of his retirement, he was the Deputy Programme Manager and Officer in Charge of the Human Resources Management Unit ('HRMU').
- [4] Another staff member employed by the Respondent made a complaint to the Secretary-General of the Respondent that the HRMU committed acts of 'gross misconduct' in improperly handling her medical information and that her privacy and dignity had been violated. The employee demanded a written apology from the Applicant.
- [5] The Secretary-General referred the complaint to the Joint Disciplinary and Complaints Committee ('JDCC'), which issued a report on 3 July 2023 recommending that the Applicant and the HRMU provide written acknowledgements and apologies. On 27 July 2023, the Secretary-General instructed the Applicant and HRMU to 'provide written acknowledgements and apologies as recommended'.
- [6] By letter dated 7 August 2023 to the Secretary-General, the Applicant contended that the procedures adopted by the JDCC did not adhere to the Staff Rules or the

principles of natural justice and therefore requested the Respondent to reconsider its position. The Respondent, in a letter dated 31 August 2023, indicated that it stood by the report of the JDCC and the Secretary-General's instructions as to the steps to be taken as a result of the report.

- [7] In a letter dated 7 September 2023, titled Pre-Action Protocol, the Applicant through Counsel requested that the instructions from the Secretary-General be withdrawn. The Respondent, by letter dated 13 September 2023, indicated that the Applicant had not exhausted all internal remedies and signalled its preparedness to meet with the Applicant to reach an amicable resolution.
- [8] By letter dated 15 September 2023, the Applicant maintained that he had exhausted all internal remedies and that his letter dated 7 September 2023 constituted an appeal. He accepted the Secretariat's invitation to meet to reach an amicable resolution of the matter.
- [9] After meeting with the Applicant on 27 September 2023, the Respondent, by letter dated 10 October 2023, offered to settle on the basis that no record of the matter would be placed on the Applicant's file, there would be no performance consequences or any reflection on any evaluation made in respect of the Applicant and the Applicant would not be required to make an apology. The Respondent indicated that both sides should bear their own costs since a full settlement was being offered.
- [10] By letter dated 11 October 2023, the Applicant rejected the offer of settlement. The Respondent, in a letter dated 12 October 2023 repeated its offer of settlement and, in a response of the same date, the Applicant rejected the settlement in its entirety because the Respondent would not pay costs.
- [11] The Applicant and Respondent maintained their respective positions regarding settlement of the matter in further exchanges of correspondence on 17 and 27

October 2023 and 6, 7, 8 and 11 December 2023. In an email dated 12 December 2023, the Applicant indicated a preparedness to reduce his proposal for costs. By email dated 19 December 2023, the Respondent restated its proposed settlement terms, holding its position that both parties should bear their own costs.

- [12] The Applicant filed his complaint with the Tribunal on 6 March 2024. The complaint challenged the decision of the Secretary-General of the CARICOM Secretariat mandating that the Applicant should apologise to another staff member for the ‘improper handling’ of that staff member’s medical information. He sought declarations that the Staff Rules of the CARICOM Secretariat do not confer a power on the Secretary-General to mandate a ‘forced apology’ in the circumstances of this matter or at all, and her decision was therefore *ultra vires* the Staff Rules and void for want of jurisdiction and that the procedure followed by the JDCC and the Secretary-General in the investigation of the complaint is an abuse of process. He also sought orders that the decision of the Secretary-General be rescinded, that the Respondent pay to him an amount the equivalent of three and one half months’ salary for loss of the opportunity to receive payment for his accumulated leave, an order for damages and moral damages for loss, injury and damage in the equivalent of nine (9) months’ salary, for aggravated damages in such amount as the Tribunal saw fit and for costs of less than USD5,000.

Procedural Background

- [13] On 21 March 2024, the Respondent filed a preliminary objection to the jurisdiction of the Tribunal and to the admissibility of the Applicant’s complaint. The Respondent contended that all matters relating to the Applicant’s terms of employment or terms of appointment or provisions of the Staff Rules and Regulations, which are the matters on which jurisdiction would need to be based pursuant to Article III1(1) of the Statute of the Caribbean Community Administrative Tribunal (‘CCAT Statute’), were completely addressed in full satisfaction of the Applicant’s requests. The Respondent submitted that the only live

matter was that of costs, which it did not consider to be within the Tribunal's jurisdiction. The Respondent also contended that the Applicant's complaint was inadmissible under Article V2(c)(i) and (ii) of the CCAT Rules of Procedure because at no time did the Respondent give notice that it was not providing the relief sought by the Applicant. The Respondent maintained that its offer of settlement made on 10 October 2023 was in complete satisfaction of the relief sought by the Applicant.

- [14] At the hearing of the Preliminary Objection on 19 June 2024, the Tribunal raised with the parties that the General Counsel of the Respondent was an original member of the Tribunal until her resignation to assume the position of General Counsel. The Judges on the Panel also raised that they had a previous professional connection with the General Counsel of the Respondent. The Panel indicated that it was capable of dealing with the matter before it impartially and independently. The President of the Tribunal pointed out that there were only three members of the Tribunal at that time and if either party objected to the Panel proceeding, the matter could not be determined until there was a new appointment to the Tribunal. Both parties agreed to the Panel proceeding to hear and determine the preliminary objection. It was also agreed that the Deputy General Counsel would lead and argue the preliminary objection for the Respondent.
- [15] In response to the Respondent's preliminary objection to the admissibility of the claim, the Applicant contended that the entire package of relief sought included costs and therefore the relief he had asked for had not been granted by the Respondent.
- [16] At the hearing, the Tribunal, *suo motu* - on its own motion, invited the parties to address the issue of whether the complaint had been filed within 90 days of receipt of notice that the relief asked for would not be granted, in keeping with Article V2(c)(i) of the CCAT Statute. In oral submissions and supplemental submissions filed on 29 June 2024, the Applicant maintained that the Respondent could not have given such notice until the date when the negotiation finally failed. The Applicant

contended that 19 December 2024 was that date and therefore the claim had been filed within the prescribed 90-day period.

- [17] In its Decision on Preliminary Objection, the Tribunal disagreed with the Applicant, holding that 31 August 2023 was the date on which the Applicant received notice that the relief asked for would not be granted. As 31 August 2023 was the *dies a quo* from which the time began to run for the purposes of jurisdiction of the Tribunal, the 90-day period for filing a complaint before the Tribunal was 29 November 2023. The Tribunal found that the Applicant could not use the correspondence between the parties negotiating a settlement to reset the time limits or extend the time limits for filing a complaint. The Tribunal noted that it may extend the time for filing a complaint ‘in exceptional circumstances where the interests of justice so require’ under Article III2(2) of the CCAT Statute and Article V(3) of the CCAT Rules of Procedure¹. However, it found that even if it were willing to consider an extension, the complaint would still be out of time because the aforementioned provisions of the Statute and Rules stipulate that the period for filing could not exceed 60 days from the deadline. For those reasons, the Tribunal rejected the complaint as time-barred.

The Present Application

- [18] By an amended Notice of Application filed on 19 December 2024, the Applicant sought leave to appeal the decision of the Tribunal on seven grounds, namely:

- 1) The President of the Tribunal failed to disclose the full extent of his relationship with Ms Lisa Shoman, the General Counsel of the Respondent, for the benefit of Counsel, which provided Counsel with a valid ground of objection and deprived the Tribunal of its legitimacy to hear and determine the application;
- 2) The Tribunal erred when it failed to recognise that given the relationship between the President and Ms Shoman, the President was required to recuse himself from the hearing of the application pursuant to Article IV of the CCAT Rules of Procedure, and the

¹ The Tribunal refers to Article V2(2) of the CCAT Rules of Procedure in paras 61 and 63 of its decision.

Tribunal therefore lacked jurisdiction to proceed to hear the matter as then constituted;

- 3) The President's invitation to Ms Shoman, during the period when the decision in the matter was still pending, to assist with the arrangements for a CCAT Workshop involving a discussion of substantively similar issues to those raised in the matter before the Tribunal without also inviting Counsel for the Applicant, is a manifestation of bias which threatens to bring the legal profession as well as the Tribunal into disrepute and must necessarily result in the setting aside of the Tribunal's decision in the interest of transparency;
- 4) The Tribunal committed a grave error of procedure when having earlier decided to determine the matter, it improperly placed itself in the shoes of the Respondent and purported to argue a ground which the Respondent earlier abandoned as having no obvious merit, and failed to provide Counsel with the opportunity to address the Tribunal on the scope of the Tribunal's jurisdiction to hear the matter;
- 5) The Tribunal misdirected itself in holding that 12 August 2023 was the date on which the Respondent gave notice to the Complainant pursuant to Article III2(1)(c)(i) of the CCAT Statute that the remedy sought would not be granted;
- 6) The Tribunal erred in law in finding that there were no exceptional circumstances or good and sufficient reasons for the purposes of Article III2(2) of the CCAT Statute and Article XXV(6) of the CCAT Rules, without inviting the Applicant to make submissions in relation to the existence of such reasons;
- 7) The Tribunal erred and misdirected itself in holding that the Tribunal had no jurisdiction to entertain an application for an extension of time in which to submit the complaint.

[19] We have grouped these grounds of appeal into two categories. Grounds (1) to (3) concern the failure of the President of the Tribunal to recuse himself and the continuation of the proceedings before the Tribunal as then constituted. The other grounds, (4) to (7), relate to the Tribunal's determination that it had no jurisdiction to hear the complaint because it was time-barred.

[20] The Applicant has requested that the decision of the Tribunal be set aside and the matter be referred to a properly constituted Tribunal for a determination of the substantive complaint on its merits. Alternatively, the Applicant has sought leave to

apply to a properly constituted Tribunal for the grant of a further period of one week in which to file the complaint.

Analysis

- [21] At the outset, we examine the conditions which must be satisfied under Article XIX of the CCAT Rules of Procedure for the grant of leave to appeal a decision of the Tribunal. These conditions are set out in paras 1 and 3 of Article XIX, which provide as follows:

ARTICLE XIX APPLICATION FOR LEAVE TO REVIEW

1. A party to a case in which judgment has been delivered may with the leave of the Review Committee appeal to the Review Committee on the ground that the Tribunal has exceeded or failed to exercise its jurisdiction, or has erred on a question of fact or law or both.
...

3. The Review Committee shall grant leave to appeal only in exceptional cases in the interest of justice or the international functioning of the eligible CARICOM Institutions.

- [22] Article XIX prescribes two separate conditions which an applicant must satisfy for the Review Committee to grant leave to appeal. First, the ground(s) of the proposed appeal must be that the Tribunal exceeded or failed to exercise its jurisdiction or erred on a question of fact or law or both. Second, the case must be ‘exceptional’ in the interest of justice or in the interest of the international functioning of the eligible CARICOM Institutions.

- [23] We now assess whether the Applicant has satisfied each of these conditions.

Grounds of the Proposed Appeal

- [24] A preliminary issue is the standard of proof which an applicant must meet in relation to the grounds of the proposed appeal at this stage of the proceedings. The Review Committee considers that it is sufficient at the stage of seeking leave to appeal to

make out an arguable case that the Tribunal exceeded or failed to exercise its jurisdiction or erred on a question of fact or law or both. It is appropriate to require the applicant to meet the standard of proof of 'arguable case' since the applicant will have to demonstrate at the substantive stage of the proceedings that the Tribunal has committed an error.

- [25] In oral submissions, Counsel for the Applicant characterised the seven grounds of its proposed appeal as errors of law by the Tribunal. We now assess whether the Applicant has advanced an arguable case that the Tribunal made errors of law.

Non-recusal of the President of the Tribunal

- [26] With respect to grounds (1) to (3) concerning the President's failure to recuse himself and the continuation of the proceedings before the Tribunal as then constituted, the Applicant has alleged the violation of the substantive and procedural requirements of Article IV of the CCAT Rules of Procedure. Article IV provides as follows:

**ARTICLE IV
RECUSAL**

1. A Member of the Tribunal shall recuse himself or herself:
 - a. in cases involving persons with whom the Member has a personal, familial or professional connection;
 - b. in cases concerning which he/she has previously been called upon in another capacity, including as advisor, representative, expert or witness; or
 - c. if there exist other circumstances such as to make the Member's participation inappropriate.
2. Any Member who recuses himself or herself shall immediately inform the President of the Tribunal in writing.
3. Any party to a case may request the recusal of a Member of the Tribunal in writing for any of the causes stated above. The Application for recusal shall be filed as soon as the party concerned becomes aware of the existence of the cause.

4. The Tribunal shall examine the submissions in camera and make a final decision as to the recusal of the Member involved. The Member involved shall not participate in these deliberations.

[27] The Applicant asserts that the Tribunal committed several errors in relation to the matter of recusal. First, the Applicant contends that it was an error of law for the President of the Tribunal not to disclose fully to Counsel the extent of his professional connection to Ms Shoman so that Counsel could have a full appreciation of the matter. The Applicant maintains that the President failed to disclose that he and Ms Shoman shared more than the basic professional relationship of previously serving on the Tribunal (with which no issue was taken), but are ‘in fact friends, partners and team members in matters of litigation in defence of LGBTQ rights in Belize’, who both ‘resided in Belize and shared a strong social interaction and mutually supportive relationship’. Second, the Applicant contends that it was an error of law for the Tribunal to proceed to hear and determine the preliminary objection in circumstances where the President of the Tribunal was expressly mandated by Article IV of the CCAT Rules of Procedure to recuse himself from the hearing on the ground that he enjoyed a professional relationship with the member of the senior management of the Respondent having charge and legal conduct of the matter on behalf of the Respondent. The Applicant submits that it was an error for the President to simply disclose the professional connection with a person involved in the case and provide an assurance that he could nonetheless act impartially. Third, the Applicant alleges that the President’s invitation to Ms Shoman, while the decision in the matter was still pending, to assist with the arrangements for a CCAT workshop was a manifestation of bias and indicative of the partiality of the Tribunal where the matter was concerned.

[28] The Respondent contends that the President of the Tribunal did disclose at the hearing of the preliminary objection the information about his professional connection with Ms Shoman which Counsel for the Applicant claims was not disclosed. Further, the General Counsel of the Respondent was not a person involved

in the case, not being a party, counsel or a witness in the matter. While the General Counsel would have had care and conduct of the communications in the matter, she would not have been a decision-maker and would have been acting on instructions.

[29] The Respondent further submits that the fully informed agreement of the parties or the operation of necessity may exceptionally oust the need for a Member of a Tribunal to recuse himself or herself. If Article IV were applied so strictly to the point where it was administratively unworkable, it would not serve the purpose for which it was intended. The Respondent maintains that once presented with all the facts (including that there were only three Judges for the Tribunal and the matter could not proceed if one were to recuse himself), Counsel for the Applicant gave his unconditional acceptance to the Tribunal proceeding as it was constituted. The Respondent rejected the allegation that the President's invitation to the General Counsel to participate in the CCAT workshop was a manifestation of bias, noting that representatives of all eligible CARICOM institutions were present at the workshop, by virtue of their status as representatives of their institutions on committees of the CCAT.

[30] Taking into account the parties' submissions and without making any conclusive determination as to their merits, the Review Committee finds that the Applicant has advanced an arguable case that it was an error of law for the Tribunal to proceed to hear and determine the preliminary objection in the face of Article IV of the CCAT Rules of Procedure which expressly mandates recusal of a Member of the Tribunal in cases involving persons with whom the Member has a professional connection.

Tribunal's Jurisdiction to Hear the Claim

[31] Grounds (4) to (7) of the proposed appeal allege errors of law with respect to the Tribunal's determination that it had no jurisdiction to hear the Applicant's complaint because it was time-barred. First, the Applicant contends that the Tribunal erred in purporting to argue a ground which the Respondent had earlier abandoned and failed to provide Counsel with an opportunity to address the Tribunal on the scope of the

Tribunal's jurisdiction to hear the matter. We find that the Applicant has not made an arguable case that the Tribunal committed such an error. The Respondent's preliminary objection that the complaint was inadmissible was not based on a contention that the complaint was filed more than 90 days after receipt of notice that the relief sought would not be granted, contrary to Article V(2)(c)(i) of the CCAT Rules of Procedure. Rather, it was argued that the complaint was inadmissible because the Respondent had not provided notice to the Applicant that the relief sought would not be granted. Accordingly, the Respondent had not 'abandoned' the issue of the complaint being time-barred. In any event, the Tribunal was correct to determine whether it had jurisdiction in the matter and whether the complaint was admissible irrespective of whether the parties agreed on jurisdiction. Further, at the hearing of the preliminary objection, the Tribunal did afford Counsel the opportunity to address the question of whether the complaint had been filed outside the 90-day limit after receipt of notice. Counsel for the Applicant addressed the matter in oral submissions as well as in Supplemental Submissions filed after the hearing.

[32] Second, the Applicant alleges that the Tribunal erred with respect to its finding of the date on which the Respondent gave notice that it would not grant the relief sought, pursuant to Article III2(1)(c)(i) of the CCAT Statute. The Applicant contends that the Tribunal erred in finding that 12 August 2023 was the *dies a quo*, since such date cannot be supported by the facts underlying the complaint and no Tribunal apprised of the facts and the law could reasonably have concluded that 12 August 2023 was the date on which the Respondent gave notice that the remedy sought would not be granted. We do not find that the Applicant has made an arguable case that the Tribunal erred in holding that 31 August 2023 (not 12 August 2023 as the Applicant asserts) was the effective date for calculating whether the claim was filed properly.

[33] Having reviewed the relevant correspondence, the Tribunal held that the Respondent's response of 31 August 2023 to the Applicant's Counsel conveyed a clear and definitive administrative decision that the Secretary-General of

CARICOM mandated that the Applicant should apologise to another staff member for the ‘improper handling’ of that staff member’s medical information. The Tribunal found that, through this response, the Respondent not only maintained its earlier decision, taken by the JDCC in July 2023, but it also denied him the appeal he requested. The Tribunal rejected the Applicant’s contention that the *dies a quo* should be the date when the negotiation finally failed, that is, 19 December 2023 when the Respondent’s letter of that date to the Applicant effectively ended the discussions to settle the matter. While encouraging negotiations between parties in an effort to settle a possible claim, the Tribunal emphasised that negotiation of a settlement does not change the date upon which the dispute crystallises for the purpose of the time within which to file a claim before the Tribunal. We agree.

- [34] Third, the Applicant alleges that the Tribunal erred in finding, without inviting the Applicant to make submissions on the matter, that there were no exceptional circumstances, in accordance with Article III2(2) of the CCAT Statute, or good and sufficient reasons, in accordance with Article XXV(6) of the CCAT Rules of Procedure, for extending the time limit for filing the complaint. The Applicant therefore contends that the Tribunal erred in holding that it did not have jurisdiction to entertain an application for an extension of time in which to submit the complaint.
- [35] The Tribunal noted that it has the discretion under Article III2(2) of the CCAT Statute and Article V(3) of the CCAT Rules of Procedure to extend the time for the filing of a complaint ‘in exceptional circumstances where the interests of justice so require’. Both provisions stipulate that any such extension of time shall not exceed a further 60 days. The Tribunal acknowledged that the burden of proof will be on a Complainant to show that exceptional circumstances exist which justify an extension of the time limit. The Applicant had not requested an extension of time for filing the complaint and the Tribunal did not invite the Applicant’s submissions as to the existence of exceptional circumstances. As the Tribunal considered that it could not extend the time for filing the complaint beyond 60 days and more than 60 days

beyond the 90-day time limit for filing the complaint had passed, the Tribunal made no determination as to the existence of exceptional circumstances in the case.

[36] There is no mention in the Tribunal's decision of Article XXV(6) of the CCAT Rules of Procedure, which provides that '[a]ny time limit prescribed under these Rule[s] may be extended for good and substantial reasons'. It is not clear that the Tribunal considered whether it had the discretion under Article XXV(6) of the CCAT Rules to extend the time limit for the filing of a complaint beyond 60 days for good and substantial reasons.

[37] We therefore find that the Applicant has made an arguable case that the Tribunal erred in holding that it had no jurisdiction to entertain an application for an extension of time in which to submit the complaint. We also consider that the Applicant has made an arguable case that the Tribunal erred in not inviting the Applicant to make submissions in relation to the existence of exceptional circumstances for the purposes of Article III2(2) of the CCAT Statute and Article V(3) of the CCAT Rules of Procedure and good and substantial reasons for the purposes of Article XXV(6) of the CCAT Rules.

Exceptional Case in the Interest of Justice or the International Functioning of Eligible CARICOM Institutions

[38] The second condition which the Applicant must satisfy for the grant of leave to appeal is that the case is 'exceptional' in the interest of justice or in the interest of the international functioning of the eligible CARICOM Institutions. The Review Committee will examine this issue on a case-by-case basis, taking into account all relevant considerations.

[39] The Applicant argues that the 'interest of justice' is not confined to justice for the litigants themselves but also pertains to the justice to be made available to staff members of eligible institutions through the functioning of the CCAT in its application of international administrative law. The Applicant cited the third recital of the preamble of the CCAT Statute which affirms that the Tribunal shall be

‘impartial and independent and bound by international principles of due process of law’ and that ‘its decisions shall be consistent with the principles of fundamental human rights and taken in accordance with international administrative law’. The Applicant submits that wherever the principles of independence, due process, and principles of international human rights law could potentially be affected, any corrective action would be in the interest of justice, not only with respect to the litigants before the Tribunal, but also the administration of justice within the legal framework of the CCAT. The Applicant contends that this case is exceptional because it makes allegations not only in relation to the inherent nature of the Tribunal’s role in administering justice in light of the principles of international administrative law enshrined in its preamble but because of the implications for the legitimacy of the Tribunal with respect to the administration of justice for staff of the eligible CARICOM institutions.

[40] The Applicant further submits that, assuming that the relationship between the President of the Tribunal and the General Counsel is as alleged, the grant of leave to appeal would be in the interest of all eligible CARICOM institutions, including the Respondent. In this regard, the Applicant asserts that the Respondent was instrumental in assisting with the selection of the first set of judges of the CCAT, including the General Counsel who was the President of the Tribunal at the time of her recruitment as General Counsel, that the General Counsel of the Respondent would be in charge of the legal management of each matter that could potentially reach the CCAT, and that other CARICOM Institutions seek the guidance of the General Counsel in contentious matters.

[41] Citing jurisprudence from the Caribbean Court of Justice and the Judicial Committee of the Privy Council concerning the existence of ‘exceptional circumstances’ justifying an apex court’s interference with concurrent findings of fact of the lower courts, the Respondent argues that ‘exceptional circumstances’ for the grant of leave to appeal is a high bar. The Respondent submits that the Applicant has not made out that the case is exceptional in the interest of justice. The Respondent maintains

that the Tribunal's decision was properly made, there was no miscarriage of justice, there could be no allegation that a proper judicial process did not occur and fully informed Counsel gave consent to the Tribunal proceeding to hear and determine the matter.

[42] The Respondent further submits that it was intended that the eligible CARICOM Institutions would seek leave to appeal on the basis that a case was exceptional in the interest of the international functioning of the eligible CARICOM Institutions. The Respondent contends that it would be unusual and awkward for the employee or former employee to argue, on a review, that the Tribunal's decision has affected the international functioning of his or her employer/former employer since the proof of that can only come from the eligible institution itself. The Respondent maintains that there is no evidence before the Review Committee that the decision of the Tribunal on the preliminary objection or the unconditional agreement of the parties to proceed with the panel as constituted has affected the international functioning of the CARICOM Secretariat. Further, the Respondent rejects the Applicant's assertion that the Secretariat was instrumental in the selection of judges of the CCAT, noting that the Regional Judicial and Legal Services Commission, an independent body, selected judges. Further, the Respondent maintains that the Office of the General Counsel does not provide legal advice to other CARICOM Institutions on matters relating to contracts of employment, terms of appointment or Staff Rules and Regulations.

[43] We consider this to be an exceptional case where granting leave to appeal would be in the interest of justice. This case raises important legal questions about the interpretation and application of Article IV of the CCAT Rules of Procedure governing recusal of a Member of the Tribunal, including with respect to procedural fairness requirements. We note that during the discussion, at the start of the hearing of the preliminary objection, of the professional connection between the Tribunal and the General Counsel of the Respondent, there was no mention of Article IV of the CCAT Rules of Procedure, including the right of a party to the case under

paragraph 3 of that Article to request recusal of a Member of the Tribunal. Additionally, the case raises important questions about the relevance of Article XXV(6) of the CCAT Rules of Procedure to the exercise of the discretion of the Tribunal to extend the time for the filing of a complaint. The grant of leave to appeal would be in the interest of justice, not only as it relates to the Applicant in this matter, but also because the clarification of the legal issues raised by this case could enhance the administration of justice by the CCAT for the benefit of staff members of all eligible CARICOM institutions.

Decision

[44] For the reasons stated above, the Review Committee grants leave to the Applicant to appeal the decision of the Tribunal on Grounds 2, 6 and 7 of the draft Notice of Appeal in the amended Notice of Application filed on 19 December 2024. The issue of costs is reserved for a later stage of the proceedings.

/s/ A Burgess

Judge Burgess (Presiding)

/s/ P Jamadar

Judge Jamadar

/s/ C Ononaiwu

Judge Ononaiwu