

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
IN THE COLONY OF MONTSERRAT
(Civil)

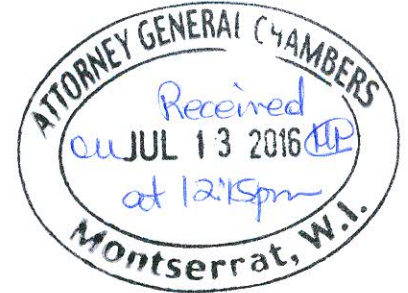
CASE NO: MINIHCV 2015/0035

BETWEEN:

KEN WEAKLEY

AND

THE COMPLAINTS COMMISSION
THE CHIEF MEDICAL OFFICER



Applicant

Respondents

Appearances:

- Mr. Jean Kelsick for the Applicant
- ✓ Mrs. Sheree Jemmotte-Rodney for the Respondents

2016 April 04
2016 July 12

Judgment

[1] **Redhead, J. (Ag):** The applicant, Ken Weakley applies to the Court for an order granting him leave to apply for judicial review of the Complaints Commission's decision dated 31st July 2015 in respect to a complaint made by the applicant on 3rd February 2015 with reference to the Chief Medical Officer's (CMO) treatment of the applicant between 27th December 2014 and 2nd January 2015. The said treatment being the subject/matter of the said complaint.

The grounds of the application are as follows:

[2] In breach of its duty the Complaint's Commission failed to give the said written complaint of the Applicant of maladministration on the CMO part and fair hearing. I must confess that I have great difficulty in understanding this ground

as articulated by Learned Counsel.

- [3] In consideration of the said complaint, the Complaints Commission failed to treat the applicant fairly when he appeared before it.
- [4] The Complaints Commission's written decision dated 31st July 2015 is unreasonable and/or irrational and/or unfair in that finding that the applicant was entitled to an apology, it failed to find that the 2nd respondent, the CMO was guilty of maladministration and to properly address and rule on the Applicant's several and specific complaints of misconduct and maladministration on the part of the 2nd respondent, The CMO.
- [5] The 2nd Respondent's failure to honour the undertaking given by her to the applicant on or about the 31st day (Sic) of 2014 to contact Nigel Harris, the manager of Fly Montserrat and approve the Applicant's medevac from Antigua to Montserrat was in breach of the Applicant's legitimate expectation that she would do so. As a consequence of the 2nd Respondent's said failure the applicant incurred avoidable and unnecessary medical and accommodation expenses of \$30,903.12.
- [6] The 2nd Respondent's treatment of the applicant was unreasonable and/or irrational and/or unfair and/or inconsistent and tantamount to an abuse of power and in breach of the 2nd Respondent's statutory and public duties to him and resulted in the Applicant incurring distress and discomfort and unnecessary expense of \$30,903.12.
- [7] The said written complaint lodged by the Applicant with the 1st Respondent (The Complaints Commission) exhausted, unsuccessfully, the only alternative form of redress available to the applicant against the 2nd Respondent. While the 1st Respondent considered the complaint for the reason that was aforesaid, its treatment of the complaint, and the decision thereon was unreasonable and/ or irrational and/or unfair.
- [8] The applicant is personally and directly affected by the first Respondent's said written decision and the 2nd Respondent's decision not to approve the medevac from Antigua.
- [9] I shall refuse the application for judicial review filed by the applicant for the under mentioned reasons.
- [10] The applicant on 27th December 2014 sustained a serious back injury and as a result he was taken to Glendon Hospital. The applicant was advised by Dr Gopal that he may have sustained a spinal fracture and a CAT scan was necessary in order for a proper diagnosis to be made. It was recommended that he should travel to Antigua so that the CAT scan can be done.

