

JUDICIAL REVIEW ACT

CHAPTER 7:08

Act
60 of 2000

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

CHAPTER 7:08

JUDICIAL REVIEW ACT

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CHAPTER 7:08

JUDICIAL REVIEW ACT

An Act to provide for an application to the High Court of the Supreme Court of Judicature for relief by way of judicial review and for related matters. 60 of 2000.

[*ASSENTED TO 13TH OCTOBER 2000]

PART 1

PRELIMINARY

1. This Act may be cited as the Judicial Review Act. Short title.
2. This Act came into operation on 6th November 2000. Commencement.
[270/2000].
3. This Act binds the State. Act binds the
State.
4. In this Act— Interpretation.

“Court” means the High Court of the Supreme Court of Judicature;

“action” includes inaction.

PART 2

JUDICIAL REVIEW PROCEDURE

5. (1) An application for judicial review of a decision of an inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall be made to the Court in accordance with this Act and in such manner as may be prescribed by Rules of Court. Application for
judicial review.

(2) The Court may, on an application for judicial review, grant relief in accordance with this Act—

- (a) to a person whose interests are adversely affected by a decision; or

*See section 2 for date of commencement of this Act.

(b) to a person or a group of persons if the Court is satisfied that the application is justifiable in the public interest in the circumstances of the case.

(3) The grounds upon which the Court may grant relief to a person who filed an application for judicial review includes the following:

- (a) that the decision was in any way unauthorised or contrary to law;
- (b) excess of jurisdiction;
- (c) failure to satisfy or observe conditions or procedures required by law;
- (d) breach of the principles of natural justice;
- (e) unreasonable, irregular or improper exercise of discretion;
- (f) abuse of power;
- (g) fraud, bad faith, improper purpose or irrelevant consideration;
- (h) acting on instructions from an unauthorised person;
- (i) conflict with the policy of an Act;
- (j) error of law, whether or not apparent on the face of the record;
- (k) absence of evidence on which a finding or assumption of fact could reasonably be based;
- (l) breach of or omission to perform a duty;
- (m) deprivation of a legitimate expectation;
- (n) a defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice; or
- (o) an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power.

(4) An applicant is not limited to the grounds set out in the application for judicial review but if the applicant wishes to rely on any other ground not so set out, the Court may, on such terms as it thinks fit, direct that the application be amended to specify such other ground.

(5) Subject to subsection (1), sections 6(1) and 11, a person is entitled, when making an application for judicial review under subsection (2)(b) or (6), to make the application in any written or recorded form or manner and by any means.

(6) Where a person or group of persons aggrieved or injured by reason of any ground referred to in paragraphs (a) to (o) of subsection (3), is unable to file an application for judicial review under this Act on account of poverty, disability, or socially or economically disadvantaged position, any other person or group of persons acting *bona fide* can move the Court under this section for relief under this Act.

5A. (1) Where an application is filed under section 5(2)(b) or (6), the Court may suspend the hearing of the matter for such time as it considers just, and appoint a person or such number of persons possessing such training or qualifications as the Court considers just and as the circumstances warrant, to investigate the facts of the complaint or matter and to submit a report on its finding to the Court within such time as is specified by the Court.

Appointment of persons to investigate.

(2) Such report shall be made available to the parties to the action who shall be entitled to be heard in respect of the report and make whatever application to the Court in respect of the report that they consider just.

6. (1) No application for judicial review shall be made unless leave of the Court has been obtained in accordance with Rules of Court.

Leave of Court.

(2) The Court shall not grant such leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

7. (1) Notwithstanding section 6, where the Court is satisfied that an application for judicial review is justifiable in the public interest, it may, in accordance with this section, grant leave to apply for judicial review of a decision to an applicant whether or not he has a sufficient interest in the matter to which the decision relates.

Leave of Court in public interest.

(2) Upon the filing of an application for leave under subsection (1), the Registrar shall immediately cause notice of the application to be published on two days in each of two daily newspapers circulating in Trinidad and Tobago.

(3) A notice under subsection (2) shall name the applicant, state the decision which is the subject matter of the application, describe the nature of the relief being sought, and any other relevant matter, and invite any person with a more direct interest in the matter to file a similar application, or to apply to be joined as a party to the proceedings, within fourteen days of the last publication of the notice.

(4) Where no one files a similar application or applies to be joined as a party within the time specified in subsection (3), the Court may grant leave to the applicant.

(5) Where an application is filed within the time specified in subsection (3) and the Court is satisfied that—

- (a) the person applying (“the second applicant”) has a more direct interest in the matter than the first applicant; and
- (b) the first applicant does not possess any special expertise or ability that will materially enhance the presentation of the case,

the Court may refuse to grant leave to the first applicant and grant leave instead to the second applicant, but in that event the second applicant shall not be liable to pay the costs of the first applicant.

(6) Where an application to be joined as a party is made by more than one person within the time specified in subsection (3), the Court may grant leave to such applicant or applicants as it thinks fit.

(7) In determining whether an application is justifiable in the public interest the Court may take into account any relevant factor, including—

- (a) the need to exclude the mere busybody;
- (b) the importance of vindicating the rule of law;

- (c) the importance of the issue raised;
- (d) the genuine interest of the applicant in the matter;
- (e) the expertise of the applicant and the applicant's ability to adequately present the case; and
- (f) the nature of the decision against which relief is sought.

(8) Where an application is filed under section 5(6), the Court may not make an award of costs against an unsuccessful applicant, except where the application is held to be frivolous or vexatious.

8. (1) On an application for judicial review, the Court may grant the following forms of relief: Remedies.

- (a) an order of *mandamus*, prohibition or *certiorari*;
- (b) a declaration or injunction;
- (c) an injunction under section 19; or
- (d) such other orders, directions or writs as it considers just and as the circumstances warrant.

(2) A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review seeking such relief has been made, and the Court considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by orders of *mandamus*, prohibition or *certiorari*;
- (b) the nature of the persons and bodies against whom relief may be granted by such order; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration to be made or injunction to be granted, as the case may be.

(3) In any law—

- (a) reference to a writ of *mandamus*, prohibition or *certiorari* shall be read as reference to the corresponding order; and

(b) reference to the issue or award of any such writ shall be read as reference to the making of the corresponding order.

(4) On an application for judicial review, the Court may award damages to the applicant if—

(a) the applicant has included in the application a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that, if the claim has been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages.

(5) The Court, having regard to all the circumstances, may grant in addition or alternatively an order for restitution or for the return of property, real or personal.

Alternative remedies.

9. The Court shall not grant leave to an applicant for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision, save in exceptional circumstances.

Interlocutory applications.

10. (1) An interlocutory application may be made in an application for judicial review and the Court may make any interlocutory order, including an order for discovery of documents, interrogatories or cross-examination, and may grant any interim relief as it thinks fit.

(2) The Court may, at any stage of the application for judicial review, direct that the proceedings to which such application relates shall be stayed until further notice.

Delay in applying for relief.

11. (1) An application for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) The Court may refuse to grant leave to apply for judicial review if it considers that there has been undue delay in making the application, and that the grant of any relief would cause substantial hardship to, or substantially prejudice the rights of any person, or would be detrimental to good administration.

(3) In forming an opinion for the purpose of this section, the Court shall have regard to the time when the applicant became aware of the making of the decision, and may have regard to such other matters as it considers relevant.

(4) Where the relief sought is an order of *certiorari* in respect of a judgment, order, conviction or other decision, the date when the ground for the application first arose shall be taken to be the date of that judgment, order, conviction or decision.

12. Where the Court is of the opinion that an inferior Court, tribunal, public body or public authority against which or a person against whom an application for judicial review is made is not subject to judicial review, the Court may allow the proceedings to continue, with any necessary amendments, as proceedings not governed by this Act and not seeking any remedy by way of orders of *mandamus*, prohibition or *certiorari*, and subject to such terms and conditions as the Court thinks fit.

Private law action.

13. Where the Court is of the opinion that a decision of an inferior Court, tribunal, public body or public authority against which or a person against whom a writ of summons has been filed should be subject to judicial review, the Court may give such directions and make such orders as it considers just to allow the proceedings to continue as proceedings governed by this Act.

Power of Court to convert private law action into public law action.

14. (1) Any person who has an interest in a decision which is the subject of an application for judicial review may apply to the Court to be made a party to the proceedings.

Application to be made a party to proceedings.

(2) The Court may—

(a) grant the application either unconditionally or subject to such terms and conditions as it thinks just;

- (b) refuse the application; or
- (c) refuse the application but allow the person to make written or oral submissions at the hearing.

Application in respect of failure to make a decision.

15. (1) Where—

- (a) a person has a duty to make a decision to which this Act applies;
- (b) there is no law that prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision,

a person who is adversely affected by such failure may file an application for judicial review in respect of that failure on the ground that there has been unreasonable delay in making that decision.

(2) Where—

- (a) a person has a duty to make a decision to which this Act applies;
- (b) a law prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision before the expiration of that period,

a person who is adversely affected by such failure may file an application for judicial review in respect of that failure on the ground that the decision-maker has a duty to make that decision, notwithstanding the expiration of that period.

(3) Without prejudice to section 8, on an application for judicial review under this section, the Court may make all or any of the following orders:

- (a) an order directing the making of the decision;
- (b) an order declaring the rights of the parties in relation to the making of the decision;
- (c) an order directing any of the parties to do, or to refrain from doing, any act or thing, the doing, or the refraining from the doing, of which the Court considers necessary to do justice between the parties.

16. (1) Where a person is adversely affected by a decision to which this Act applies, he may request from the decision-maker a statement of the reasons for the decision. Application for reasons for decision.

(2) Where a person makes a request under subsection (1), he shall make the request—

- (a) on the date of the giving of the decision or of the notification to him thereof; or
- (b) within twenty-eight clear days after that date,

whichever is later, and in writing.

(3) Where the decision-maker fails to comply with a request under subsection (1), the Court may, upon granting leave under section 5 or 6, make an order to compel such compliance upon such terms and conditions as it thinks just.

PART 3

MISCELLANEOUS

17. The Court may at any stage direct that proceedings to which an application for judicial review relates shall be stayed until further order on such terms and conditions as the Court may direct. Stay of proceedings.

18. (1) Where a person brings proceedings alleging that another person is not entitled to act in an office to which this section applies, the Court may— Injunction to restrain person from acting in office.

- (a) grant an injunction restraining that other person from so acting; and
- (b) if the case so warrants, declare the office to be vacant.

(2) This section applies to—

- (a) a public office;
- (b) an office created by any written law;
- (c) an office in which the public has an interest; and
- (d) any other office as the Court considers it is in the public interest to grant relief.

Power of Court to modify or enforce order.

19. (1) The Court may, at any time before the proceedings are concluded, of its own motion or on the application of any party, revoke, vary or suspend the operation of any Order made by it under this Act.

(2) Without prejudice to any other law, the Court shall have such incidental or ancillary powers to enforce any Order or judgment it makes under this Act.

Natural justice.

20. An inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner.

Remit to tribunal, etc.

21. If, on an application for judicial review seeking an order of *certiorari*, the Court quashes the decision to which the application relates, the Court may remit the matter to the Court, tribunal, public body, public authority or person concerned, with a directive to reconsider it and reach a decision in accordance with the findings of the Court.

Enforcement of judgment.

22. (1) Subject to subsection (2), where an order has been made or a judgment given in favour of a person who brought an application under section 5(2)(b) or (6) and who, for any reason, is unable to enforce the order or judgment, any other person is entitled to enforce that order or judgment on behalf of that person.

(2) Where a person seeks to enforce a judgment or order under subsection (1) on behalf of a successful applicant, he shall first obtain leave of the Court.

Appeals.

23. (1) A person aggrieved by a decision of the Court, including an interlocutory order, under this Act is entitled to appeal that decision as of right to the Court of Appeal.

(2) An appeal shall lie from a decision of the Court of Appeal referred to in subsection (1), as of right to the Judicial Committee of the Privy Council.

24. The Rules Committee, established under section 77 of the Supreme Court of Judicature Act, may make Rules to give effect to this Act. Rules.
Ch. 4:01.

25. Nothing in this Act shall apply to proceedings which began before the commencement of this Act. Transitional
provision.
