COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **No. 00015**

Public Law Side

IN THE MATTER of an application

by Yuri Starostenko for leave to Apply for Judicial Review

AND IN THE MATTER of the Application for Leave to apply for an Order of Mandamus

AND IN THE MATTER of the Securities Industry Act, 2011, as Amended

BETWEEN:

YURI STAROSTENKO

AND

IRINA TSAREVA-STAROSTENKO

Applicants

AND

THE SECURITIES COMMISSION OF THE BAHAMAS

Respondent

BEFORE: The Honorable Madam Justice Carla D. Card-Stubbs

APPEARANCES: Irina Tsareva Starostenko and Yuri Starostenko, Claimants, pro se

Gladstone Brown and Krishna Higgins for the Defendant

HEARING DATE: October 30, 2025

Application to reconsider court's decision refusing leave to apply for judicial review – Part 42 Supreme Court Civil Procedure Rules 2022, as amended (CPR)- Re Barrell Jurisdiction
Application for leave to appeal court's decision refusing leave to apply for judicial review – Whether applicants have some reasonable prospect of succeeding on the appeal

RULING

Card-Stubbs J:

INTRODUCTION

[1.] There are two applications filed by the Applicants: the application of the Applicants/Intended Appellants for the reconsideration of the decision to refuse leave for judicial review and, in the alternative, for leave to appeal that decision.

[2.] For the reasons set out below, the application for reconsideration of the decision is refused.

[3.] For the reasons set out below, the application for leave to appeal the decision is refused.

BACKGROUND

[4.] By written ruling dated April 7, 2025, this Court refused the application for judicial review filed by the Applicants/Intended Appellants, herein referred to as the Starostenkos.

[5.] On May 20, 2025 the Starostenkos filed a Notice of Motion for leave to appeal and on June 10, 2025 filed a Notice of Application for reconsideration. The applications were heard together. The Starostenkos represented that the relief sought was a reconsideration of the decision, and, failing that, leave to appeal the decision.

[6.] The Respondent, the Securities Commission of The Bahamas ('SCB') opposed both applications.

[7.] Both parties submitted initial and supplemental skeleton arguments. Both parties made oral submissions.

[8.] The hearing of both applications was first listed for hearing on July 16, 2025. On that occasion, on the application of the Starostenkos, the matter was adjourned to allow the Starostenkos to lodge supplemental submissions in response to submissions of the SCB which had only been served on the Starostenkos on the day before the hearing.

[9.] On the morning of the adjourned hearing, the Starostenkos filed, and sought to rely on, an affidavit in the proceedings. There was no proof of service on the SCB. The SCB

represented that they had not seen the affidavit. The filed affidavit sought to introduce evidence of recent matters and not of matters that were directly referred to in the filed applications. This Court refused the Starostenkos' application for a further adjournment and disallowed the use of the affidavit in the current hearing.

APPLICATION FOR RECONSIDERATION

[10.] The Notice of Application for Reconsideration recites that a reconsideration is warranted because of (1) the Starostenkos' pro se status and technical difficulties and (2) an incomplete court file due to the "ongoing renovation of the Court's building" leading to the omission of a consideration of amended legislation, namely the 2024 Securities Industry Act (SIA2024).

[11.] The grounds for reconsideration are set out as:

1. Exceptional Circumstances: The Impugned Decision was premised on the legal framework prior to the enactment of the Securities Industry Act, 2024, which took effect on 29 July 2024. Section 187(1) of the Act materially alters the standard of judicial review applicable to decisions of the Securities Commission, rendering the Ruling obsolete and erroneous in law.
2. Inherent Jurisdiction: This Honourable Court retains jurisdiction to revisit its final orders under its inherent powers and to correct errors arising from changes in the law.
3. Supplemental Jurisdiction: This Honourable Court has the supplemental jurisdiction to hear and determine an application for reconsideration of its previous decision under the
    a. *Re Barrell*. The Application for Reconsideration is proper, pursuant to the guidance in
    b. Notes to Part 42.10 of the Civil Procedure Rules of the Supreme Court ('CPR').
4. Public Interest: The reconsideration is necessary to ensure alignment with the legislative intent of the Act and to maintain public confidence in the administration of justice.

[12.] The Starostenkos rely, *inter alia*, on the case of **Belgravia International Bank & Trust Company Limited Bretton Woods Corporation v Sigma Management Bahamas Ltd. And Frank R. Forbes** and the notes in the CPR Practice Guide at Part 42.10.

[13.] Part 42 of the Supreme Court Civil Procedure Rules 2022, as amended (CPR) deals with Judgments and Orders. Rule 42.10 provides:

42.10 Correction of error in judgment or order.

(1) The Court may at any time, without an appeal, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.

(2) A party applying for a correction must give notice to all other parties.

[14.] Rule 42.10 CPR contemplates the correction of an error or mistake in limited circumstances. It is not a substitute for an appeal. The notes in the Practice Guide provide references to cases in which that jurisdiction is exercised. Some cases also, usefully, note the limits to that jurisdiction. The notes read:

> *The slip rule*
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> The slip rule only applies to a clerical error or an accidental slip or omission in a judgment or order in order to do no more than correct typographical errors. The rule is limited to genuine slips and cannot be used to enable the Court to have second thoughts or add to its original order. A judge does have the power to recall their order before it is issued but not afterward; (see *Saint Christopher Club Ltd* v *Saint Christopher Club Condominiums* (St. Kitts and Nevis) [2008] ECSC J0115-2).
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> However, the Court has an inherent jurisdiction to vary its own orders to make the meaning and intention of the Court clear and can use the slip rule to amend an order to give effect to the intention of the Court (see *Bristol – Myers Squibb* v *Baker Norton Pharmaceuticals Inc.* [2001 EWCA] Civ 414).
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> If the errors complained of are substantive it would be more appropriate to challenge the order by way of an appeal rather than on an application to vary or amend the order under the slip rule (see *Travia Douglas* v *Shivoughn Warde et al*, considering the *Bristol-Myers* case; see also *The Trustee in the Bankruptcy of the Estate of Richard Paul Joseph Pelletier* v *Olga Pelletier et al* (St.Kitts and Nevis) KN 2021 HC 2). See *Scotiabank (Bahamas) Limited* v *Ricardo N. Gibson and Another* [2018] 2 BHS J. No.18 for considerations of the Court in deciding whether to exercise its discretion.
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> The Court also has the jurisdiction to hear and determine an application for reconsideration of its previous decision under the Re Barrell jurisdiction where there are strong reasons for doing so see *In Re Barrell Enterprises* [1973] 1 WLR 19 and the case of *Belgravia International Bank & Trust Company Limited Bretton Woods Corporation v Sigma Management Bahamas Ltd. And Frank R. Forbes* SCCiv App. No. 75 of 2021.

[15.] The Starostenkos further cite the following cases as the authorities for the court's jurisdiction to "reconsider" or "reopen" a matter notwithstanding the pronouncement of the court's order: **Richard Anthony Hayward and another v Striker Trustees Limited and another [**2019] 1 BHS J**, In the matter of L and B (Children)** [2013] UKSC 8 , **Alexandra Henderson vs. Yamaha Motor et al** SCCivApp No. 153 of 2021**, Belgravia International Bank & Trust Company Limited Bretton Woods Corporation v Sigma Management Bahamas Ltd And Frank R. Forbes** SCCiv App. No. 75 of 2021**, Renee**

and Edcil Ferguson v Bank of The Bahamas Limited 2021/CLE/gen/00353 and **Buckeye Bahamas Hub Limited vs Pedro Knowles et al** SCCivApp No. 110 of 2022**.**

[16.] The Starostenkos submit that (1) the court's ruling was based on misrepresentations that misled the Court and "the original decision *may* have been tainted by material misrepresentations". They also argue that (2) exceptional circumstances exist namely the *Securities Industry Act 2024*, which has "materially altered the foundation of the Ruling ….and altered the legal landscape, rendering the Ruling's foundation obsolete."

[17.] The SCB relies on the cases of ***Belgravia International Bank & Trust Company Limited et al v Sigma Management Bahamas*** SCCivApp. No. 75 of 2021***and*** **Junkanoo Estates, and Others v UBS (Bahamas) Ltd. (in Voluntary Liquidation)**, Claim No. 2014/CLE/gen/No.01620 & 2015/CLE/gen/No.01451

[18.] The parties appear *ad idem* on the applicable principles for the exercise of the so-called *Re Barrell* jurisdiction. It is not necessary to reproduce at length the principles here save to record the summary of Justice of Appeal Indra Charles in the local appellate decision of **Buckeye Bahamas Hub Limited vs Pedro Knowles et al**. In dismissing an application for reconsideration where the order of the Court of Appeal had been perfected, Charles JA noted at paragraphs 10 to 11:

> Re Barrell Jurisdiction
>
> 1. With respect to the **Re Barrell** jurisdiction, a Court is seized with jurisdiction to reverse/reconsider its decision at any time before the order is drawn up and perfected but not afterwards. As a matter of principle, a Court retains control of a case to the extent of being able to reconsider the matter of its own motion or to hear further argument on a point which has been decided even after judgment had been handed down (but before the order has been perfected).
> 2. However, once the court has made and perfected the order, only in exceptional circumstances should a court be invited to reverse a reasoned decision since an appeal, where it exists, is the more appropriate course in such a situation: **Compagnie Noga D'Importation et D'exportation SA v Abacha (No. 2)** [2001] 3 All ER 513, following the approach adopted in **Re Barrell.** ….

[19.] The Starostenkos also rely on the principles set out in **Taylor v Lawrence** [2002] EWCA Civ 90, [2003] QB 528 and considered by the Court of Appeal in **Buckeye Bahamas Hub Limited vs Pedro Knowles et al.** From paragraphs 23 to 32, Justice of Appeal Charles examined that jurisdiction as a residual jurisdiction of the Court of Appeal. At paragraph 30, Justice of Appeal Charles continued:

> 30. In order to invoke the **Taylor v Lawrence** jurisdiction, Buckeye has to satisfy us that the present application meets the following criteria which are cumulative:
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> (a) It is necessary to do so in order to avoid real injustice;

(b) The circumstances are exceptional and make it appropriate to re-open the appeal and;
(c) There is **no alternative effective remedy**. [Emphasis added]

[20.] In this case, the Starostenkos contend that the ruling was based on misrepresentations that misled the Court. They sought to argue anew why the SCB ought to provide the information sought by their application for leave to pursue judicial review, why the information sought is not confidential and why it is in the public interest that the SCB releases the type of information sought. The Applicants also argue that "exceptional circumstances" exist, including subsequent legislative developments that have materially altered the foundation of the ruling.

[21.] The Starostenkos, by this application, seeks to rely on their interpretation of the "subsequent legislative development", namely the 2024 Act. They submit that the 2024 Act gives them a clear path to judicial review in this matter. For its part, the SCB disagrees with the Starostenkos' interpretation of the 2024 provisions.

[22.] For the record, I note that there is no evidence that the court file was "incomplete" or that "ongoing renovation of the Court's building" lead to an incomplete court file or that such a state of affairs caused the court to err in not considering the 2024 Act.

[23.] The Starostenkos filed an application for leave for judicial review on August 23, 2022. An amended notice was filed on February 17, 2023. That application alleged breach of certain sections of the ***2011*** Act. The 2024 Act was not in force. There is no allegation of a breach of the 2024 Act. The 2024 legislation was not argued before this court. It seems to me that this Court would fall into grave error to consider, and rule upon, amended legislation that was not the subject of an application or of an amended application.

[24.] I note that there was no attempt on the part of the Starostenkos, prior to the court's issued ruling, to have the court accept new evidence or submission in order to address the point. Notably, there is no submission that the SCB would have been in breach of the 2024 Act. The reliance on the 2024 Act is said to be for the benefit of the Applicants. In other language, based on their interpretation of the provisions of the 2024 legislation, the Starostenkos would impose the burden of the 2011 legislation on the SCB and claim the benefit of the 2024 legislation.

[25.] There is no basis for a reconsideration of this court's decision. The SCB submits that this court is *functus officio*. I agree. The matter was heard and determined. A written ruling was issued and the order was perfected. This court is *functus officio*.

[26.] The Starostenkos submit that this court can exercise its inherent jurisdiction to set aside judgments tainted by material misrepresentation and in exceptional circumstances. Even if this court could exercise such an inherent jurisdiction, there is before me no evidence of "material misrepresentation" or "exceptional circumstances" that would cause this court to reopen the hearing and reconsider the decision. The Starostenkos raise "fraud" in their submissions but there are no allegations or proof of fraud in this case.

[27.] The remedy of the Starostenkos lie in an appeal. What the Applicants seek is a reversal of this court's decision and a rehearing of the application on its merits. Their remedy in such an instance must come by virtue of an order from an appellate court.

[28.] In the circumstances, the application for reconsideration is refused.

APPLICATION FOR LEAVE TO APPEAL

[29.] The Notice of Application for leave to appeal cites two grounds in its Schedule B: (1) Material misapprehension of Facts and (2) Error of Law in Statutory Interpretation. The grounds are set out in the notice. There is no draft notice of appeal exhibited.

[30.] Both parties relied on the case of **Junkanoo Estates Ltd. & Anor. v UBS (Bahamas) Ltd. (In Voluntary Liquidation) SCCivApp. No. 0049 of 2024**. The Applicants also relied on **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another** [2022] 2 BHS J No. 160.

[31.] **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another [**2022] 2 BHS J. No. 160, sets out the relevant test for a leave application in this jurisdiction. In dismissing an application for leave to appeal, the Honourable Mr. Justice Isaacs, JA, cited with approval the case of *Keod Smith v Coalition to Protect Clifton Bay* SCCivApp. No. 20 of 2017, which adopted guidance from *Smith v Cosworth Casting Processes Limited* (1997) 4 All ER 840. At paragraph 55, Isaacs, JA noted:

> "55. In **Keod Smith v Coalition to Protect Clifton Bay** SCCivApp. No. 20 of 2017, Isaacs, JA, adopting the guidance from Lord Wolff in the case of **Smith v Cosworth Casting Processes Limited** (1997) 4 All ER 840, noted at paragraphs 23 through 27 of his judgment:
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> > "23. The test on a leave application is whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying: per Lord Woolf in Smith v Cosworth Casting

Process Ltd [1997] 4 All ER 840.

24. In a Practice Direction issued by the Court of Appeal in the United Kingdom in 1999 Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) 1999 WLR 2, the following appears:

> 'The general test for leave
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> 10. There is no limit on the number of appeals the Court of appeal is prepared to hear. It is therefore not relevant to consider whether the Court of Appeal might prefer to select for itself which appeals it would like to hear. The general rule applied by Court of Appeal, and this is the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples are where a case raises questions of great public interest or questions of general policy, or where authority binding on the Court of Appeal may call for consideration.
> 11. The approach will differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal, as will be indicated below. However, if the issue to be raised on the appeal is of general importance that will be a factor in favour of granting leave. On the other hand, if the issues are not generally important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of leave. (Emphasis added)

25 Also in those Practice Directions, the Court of Appeal dealt specifically with appeals from interlocutory orders:

> 'Appeals from interlocutory orders
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> 17. An interlocutory order is an order which does not entirely determine the proceedings: see R.S.C., Ord. 59, r. 1A. Where the application is for leave to appeal from an interlocutory order, additional considerations arise: (a) the point may not be of sufficient significance to justify the cost of an appeal; (b) the procedural consequences of an appeal (e.g. loss of the trial date) may outweigh

> the significance of the interlocutory issue; (c) it may be more convenient to determine the point at or after trial. In all such cases leave to appeal should be refused.'
>
> 26 The Notes to Order 59/14/7 of the White Book 1997 which provides guidance on civil procedure in England, outlines the test for the grant of leave to appeal to the Court of Appeal there -
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> > 'The Court of Appeal will grant leave if they see a prima facie case that an error has been made (see (1907) 123 L.T.J. 202) or if the question is one of general principle, decided for the first time (Ex p Gilchrist Re Armstrong(1886)17QBD 521 per Lord Esher MR at 528) or a question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage (see per Bankes LJ in Buckle v Holmes[1926] 2 KB 125 at p. 127). Generally, the test which the Court applies is whether the proposed appeal has a reasonable prospect of success.'
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> 27 The approach of the English courts has generally been followed by the courts of The Bahamas when considering applications for leave to appeal and for leave to appeal out of time. I have been unable to find a local authority generally discussing the issue of leave to appeal to this Court but I am confident that the factors which call for consideration are much the same as those considered in leave to appeal out of time applications, of which there are many determined by the Court. …

[32.] This court will consider each ground of appeal in light of the relevant test for a leave application in this jurisdiction.

Ground 1: Material Misapprehension of Fact

[33.] The ground is that the court operated under a "misapprehension as to material facts" by failing to consider the different categories of registrants under the Act viz, current registrants and former registrants.

[34.] By the Application for judicial review, the Starostenkos alleged a breach of statutory duty on the part of the SCB in failing to provide certain information. That Application sought "to impugn the conduct of the Securities Commission in respect of the

making available documents or information required to be filed with the Commission available for public inspection under subsection 158(2)(a) of the Securities Industry Act, 201[sic]". The evidence by affidavit was that the Applicants sought certain information in relation to named persons. The Applicants had sent a letter by email on 21 March 2022 to the Securities Commission of The Bahamas, requesting "the register, containing the prescribed information required to be filed with, delivered to or provided to the Commission by or on behalf of" persons named in the letter and described as "regulated persons". The last paragraph of the letter read,

> "The reason for this request is that the required information is not posted to the Internet website of the Commission, which does not contain the dates of registration and information about further regulated persons".

[35.] The application for judicial review was based on the SCB's failure to provide information in answer to a letter written in general terms. That letter was part of a chain of request where the Applicants had been informed that public information was available on the website. This court's finding, having reviewed the affidavits in the matter was that the Applicants did not show, in their application for leave, what information they said that they were entitled to (and which did not appear on the website) such that it amounted to a breach of the Respondent's statutory obligation. This court's ruling considered whether, in relation to the information sought, the Applicants had shown that the information sought and required to be made public had not been made available to them i.e. via the website.

[36.] The reasoning of this court is found, in part, in the following paragraphs:

> [69.] I have had regard to the content of the affidavits of the Applicants and the nature of the current application.
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> [70.] The Applicants did not allege that the failure of the Defendant is a decision not to supply them with the information and that such decision is illegal, irrational or procedurally unfair. There is no such, or similar, ground set out in the grounds for relief.
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> [71.] One may surmise, and one ought generally not to surmise, that the case of these pro se litigants is that the determination not to supply them with the information required to be kept under sections 158 and 166 of the Securities Industry Act is illegal. However, the established case at its highest, does not demonstrate that what is sought is in fact public information per the statute AND that such information has not been made available online. The Applicants have not shown, by virtue of their application, what information they deem missing in relation to the information required to be kept by the Commission. The mere failure of the Defendant to respond to a letter of request, one of several such exchanges, cannot be treated as equivalent to a dereliction of duty under section 158.
>
> [72.] It may be said that there is a minimum compliance expected by the Defendant which is to make available to the public "all documents or information required to be filed with it" per

section 158 2(a). However, that very section, viz section 158 (20(b), permits the Commission to make those documents and information available by its website. The Defendant's case is that it has done so. The Applicants have not demonstrated that such information is not available by the website. Despite the allegation in their letter of request, no such ground is set out in their Application for leave to pursue judicial review. In oral submission, the Applicants indicated that they had had difficulties accessing the website. Even if that were so, it seems to me that that condition may be peculiar to the Applicants and cannot amount to a breach of duty by the Defendant.

[73.] *In this application, the Applicants have not identified the information as concerned each named person which is (1) required to be supplied under sections 158 and 166Act and (2) which did not appear on the Defendant's website.*

[74.] The Defendant submits that this is a fishing expedition, and I am inclined to agree. I have regard to the tenor of the email communication, the subject matter and the contents of same. The request for information appears broad-reaching and it seems to me that the pursuit of judicial review is being launched as a collateral means of obtaining information not merely on registered persons in general but in relation to specific persons for litigation and related-purposes. However, I note and caution that unless the Commission is acting under a statutory duty or statutory discretion to withhold the information to be supplied under section 158 then that information ought to be made available to the public.

[75.] The Applicants, by way of their second affidavit, provided information on some of the named persons. The Applicants do not indicate, in the affidavit, why it was necessary to reproduce the information. However, it does beg the question as to the nature of the information being sought by the Applicants.

[76.] The Defendant has categorized some of the information appearing in the second affidavit of the Applicants as non-public information and has sought to make it clear that such non-public information did not emanate from them.

[77.] While it is unclear what the non-public information is, I remind myself that this is the Applicants' case and theirs is the burden of proving that the information sought by their letter of request is (1) within the category of all documents or information required to be filed with the Defendant and (2) that category has not been made available on the Defendant's website for public inspection. That is the starting point. If an Applicant were to discharge that burden, then it would become the Defendant's

evidential burden to prove that disclosure is exempted under s. 158(3).

[78.] The Applicants seem to have proceeded on the basis of the lack of a response to their letter. I am satisfied that the email thread as provided by the Defendant, demonstrates that, as a result of the parties' previous dealings, the Applicants were well aware as to where to find the information that is made available to the public.

[79.] The failure of the Defendant to respond in writing to the June 22 letter of request, does not, in my view, amount to a failure to make the information available. Otherwise, every failure to answer an email in matters of this sort would amount to a statutory breach. Such a result would retard the operations of the statutory body and would prove unworkable. I think that this is a result that the statute sought to preempt by having the information made available on a website that members of the public could access quickly and without recourse to the staff of the Commission.

[80.] It is my determination that in this matter the Applicants will be unable to demonstrate that the conduct that they seek to impugn is illegal, or Wednesbury unreasonable or irrational or procedurally improper.

[EMPHASIS SUPPLIED]

[37.] The Starostenkos, in their current application for leave to appeal, argue that the court ought to have considered different categories of registrants under the Act viz, current registrants and former registrants. It seems to me that it was for the Applicants, in their application, to condescend to the details of the information sought in relation to named persons. It was for the Applicants to show the SCB's statutory duty to provide the type of information sought in the manner sought by the Applicants. It was for the Applicants to allege that they were entitled to the information sought *in relation to named persons* and that such information, *whether the named person was a current or former registrant*, had not been made available to them or was not provided to them. This would have been the basis of the invocation of the court's supervisory jurisdiction. The Applicants failed to meet the threshold of an application for judicial review in these circumstances.

[38.] This first ground bears no reasonable prospect of success.

Ground 2: Error of Law in Statutory Interpretation

[39.] The second ground of the application for leave to appeal is that the Learned Judge exercised the discretion under a mistake of law:

> The Learned Judge erred in law by exercising the discretion under a mistaken interpretation of Section 187(1) of the Securities Industry Act, 2024 (the 'Act'),

enacted on 29 July 2024, which governs judicial review of decisions of the Commission.

[40.] The Starostenkos' contention is that the new Section 187(1) of the Act 2024 granted the Applicants "a statutory right to challenge a non-appealable decision of the Commission under Section 187(1)."

[41.] In this case, I find it unnecessary to determine whether the interpretation of the section 187 of the 2024 Act is correct. The subject matter was brought under the 2011 Act. The nature of judicial review actions is to challenge the decision-making process of the decision-maker, which, in this case, is the SCB. The 2011 Act was applicable at the time that the challenged decision was taken. If there is to be a determination as to the decision-making process, the decision-making process would have to be considered in light of the obligations as imposed on the SCB at the time it acted in relation to the request of the Starostenkos. If the Starostenkos were dissatisfied, the applicable legislation at the time was the 2011 Act. Their recourse under that Act is to be considered. Their filings and submissions were in relation to the 2011 Act. The 2024 Act was not before the court for consideration nor is it retroactively applicable to a decision taken in March 2022.

[42.] This second ground bears no reasonable prospect of success.

CONCLUSION

[43.] Having examined the proposed grounds of appeal, I find that there is no arguable basis for an appeal. I find that there is no ground of appeal raised which has a reasonable prospect of success.

COSTS

[44.] The Starostenkos have been unsuccessful in both applications. The SCB has successfully resisted the applications. Taking into account the provisions of Part 71, CPR and in particular the provisions of Part 71, Rule 71.6, I find no reason to depart from the general rule that the unsuccessful party should pay the costs of the successful party. Therefore in this matter, the Starostenkos shall pay the SCB's costs, to be assessed and fixed by this Court if not agreed.

[45.] I direct the parties to lodge with the court written submissions on costs, if the parties are unable to agree. The written submissions should not exceed 2 pages and should be lodged with the court on or before December 12, 2025.

ORDER

[46.] For the foregoing reasons, the order and directions of this Court are as follows.

IT IS HEREBY ORDERED THAT:

1. The Applicants' application for reconsideration is refused.
2. The Applicants' application for leave to appeal is refused.
3. The Respondent's costs of both applications are to be paid by the Applicants, to be assessed and fixed by this Court, if not agreed.

Dated this 20th day of November 2025

Carla D. Card-Stubbs, J