

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

Claim No. BVIHCV 2016/0339

BETWEEN:

ROD SCATLIFFE

Claimant

-AND-

THE TAXI AND LIVERY COMMISSION

Defendant

Appearances: Ms. Karen Reid and Mr. David Abednego, Counsels for the Claimant
Mrs. Vareen Vanterpool-Nibbs Principal Crown Counsel for the Defendant

2018: June 28

JUDGMENT

[1] **Ellis J:** It is now an accepted principle of law that a public authority must act only on the basis of legal authority as to do otherwise would amount to an error of law or an illegality. Illegality as a ground for judicial review therefore means that a public authority must understand correctly the law that regulates its decision-making power and must give effect to it.

[2] Where an individual seeks to challenge a decision on the ground of illegality and alleges lack of jurisdiction or error of law, the onus is in the one who alleges to show that the decision maker did not correctly understand the law which regulated its power or did not give effect to the power. In the case at bar, the relevant scope and powers to be considered are embodied in the two operating Regulations, the **Road Traffic (Taxi-Cab) Regulations No. 28 of 1993** (“the 1993 Regulations”) and the **Road Traffic (Taxi-Cab Commission) Regulations No. 24 of 1997** as amended (“The Commission Regulations”) and center on the Commission’s power to convene and undertake an

administrative hearing into allegations of misconduct which are alleged to be in breach of regulation 29 of the 1993 Regulations.

[3] Counsel for the Defendant submitted that the 1993 Regulations, are aimed at laying down written rules, standards and procedures for:

- (a) obtaining taxi licences,
- (b) keeping and operating a taxi vehicles,
- (c) engagement with passengers, including instances where hire may be refused;,,
- (d) the standards of conduct for taxi drivers, and
- (e) consequences for breach of any provision of Regulations.

[4] The conduct expected of drivers in regulated under Regulation 29 which *inter alia* provides:

- (1) Every driver of a taxi-cab shall conduct himself in a proper, civil and decorous manner.
- (2) No driver or person in charge of a taxi-cab shall use any obscene, abusive or insulting language to any passenger or other person.
- (3) A taxi-cab driver shall-
 - (a) not smoke tobacco or drink alcohol while carrying passengers;
 - (b) give his name and identification number upon request to a passenger, police officer or authorized officer of the Ministry of Communications and Works;
 - (c) be in possession of an identification card, a taxi licence, and a Fare schedule;
 - (d) not allow anyone else to use the documents referred to in paragraph;
 - (e) not deface, change, or cancel any document referred to in paragraph (c)
- (4) No taxi driver operating at any Airport, Sea Port or Wharf in the Territory shall call out to or otherwise importune any person to travel in any vehicle.
- (5) No taxi-cab driver shall not induce or attempt to induce a person to hire his taxi by giving misleading information as to the time or place of arrival or departure of a carrier, or the location of any building or place, or as to its distance.
- (6) A taxi-cab driver shall report immediately to the police any attempt to use his taxi-cab to commit crime or escape from the scene of a crime.”

- [5] Regulation 30 of the 1993 Regulations provides that:
- “Any person who contravenes the provisions of these Regulations commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to a term of imprisonment not exceeding six months.”
- [6] The **Taxi and Livery Commission Regulations** were enacted later 1997, the purpose of which was to establish the Taxi and Livery Commission (the Defendant herein) which is empowered to monitor the conduct of taxi-cab operators to ensure that the provisions of the Taxi-Cab Regulations are complied with.
- [7] In 2009, the Virgin Islands Legislature enacted amendments to powers and functions of the Defendant in the **Road Traffic (Taxi-Cab Commission) (Amendment) Regulations No. 28 of 2009. Regulation 4A(1)(c) & (d)** gives the Defendant the power to issue tickets requiring the payment of penalties from taxi-operators, or dispatchers, upon monitoring all authorized Taxi Stands and Port to ensure compliance with the Taxi-Cab Regulations. **Regulation 4A(1)(e)** introduced the power to receive and investigate customer’s complaints with respect to the conduct of public transport operators, and to impose administrative fines and penalties provided by the law.
- [8] In 2017, further amendments to Defendant’s scope of authority were prescribed in **Road Traffic (Taxi and Livery Commission) (Amendment) Regulation No. 9 of 2017**. The objective of these amendments is to fully implement the taxi and livery ticket and administrative penalties structure for offences under the Regulations. Inspectors now have the power to issue tickets to taxi-operators and dispatcher for the commission of specified offences under these Regulations.¹

The Factual Background

- [9] The facts of this case are largely undisputed. The Claimant is a licensed taxi cab operator. On 13th December 2016, the Claimant received letters dated 4th and 5th December 2016, signed by the Director of the Taxi and Livery Commission ostensibly on behalf of the Commission. The 4th December letter advised the Claimant that a complaint had been made against him by Edrick Fahie, an Inspector employed by the Defendant alleging what is described as a verbal assault.

¹ The offences have all been categorized as offences under “*these Regulations*” and are prescribed within the attached Schedule 1. It is noteworthy that all of the offences first listed within Regulation 29 of the 1993 *Regulations* are included within Schedule 1 of the **Taxi and Livery Commission Regulations 2017**.

The letter also advised that an administrative hearing would be convened to inquire into alleged breaches of Regulations 29(1) and (2) and 4A (1) of the Road Traffic (Taxi-Cab) Regulations 1993. The letter further advised the Claimant that he was immediately suspended from operating his taxi pending the resolution of the complaint via the administrative hearing. The Claimant was given 7 working days to provide his response to the complaint however the particulars of the complaint were not provided.

- [10] By letter of 5th December, the Claimant was advised of the date and time of the administrative hearing.
- [11] By letter dated 14th December 2016, the Claimant's Attorney responded to the Commission indicating that the actions were unlawful and certain to deprive the Claimant of the ability to earn his living.
- [12] The administrative hearing was nevertheless convened on 15th December 2016. The Claimant attended with Counsel who advised the Commission of the illegality of the proceedings as well as the purported suspension. She also demanded copies of the complaint and all evidence relating to the complaint be disclosed to the Claimant.
- [13] The Commission indicated that it would take advice and revert by 19th December 2016. Having not received the promised response, the Claimant filed an application seeking leave to apply for judicial review. Leave was granted on 3rd March 2017 and the Claimant later filed the Fixed Date Claim Form herein on 17th March 2017 in which he seeks declaratory and certiorari relief in respect of the Commission's decision to conduct an administrative hearing into alleged breaches of sections 29(1) and (2) and 4A(1) of the Road Traffic (Taxi-Cab) Regulations 1993 and the Commission's decision to suspend the Claimant from operating his taxicab pending the resolution of the complaint.
- [14] By letter dated 10th January 2017, the Claimant received a letter from the Commission which purported to lift the suspension as of 10th January 2017. The letter was written by the Director of the Commission who indicated that he was directed to advise that the complaints against the Claimant would still stand and that a new date for the administrative hearing would be convened shortly.

[15] By way of consent order, the Commission conceded that the Claimant's suspension was illegal and that he was entitled to damages as a result. It follows that the outstanding issues for determination are as follows:

- (a) Whether the decision to conduct an administrative hearing into an alleged breach of Regulations 29(1) and (2) of the Road Traffic (Taxi-Cab) Regulations 1993 is ultra vires the Commission's statutory powers and illegal and/or in excess of its jurisdiction.
- (b) What is the appropriate amount of damages to be awarded in respect of the period of unlawful suspension?

The Defendant's Case

[16] Counsel for the Defendant submitted that is the clear spirit and intention of the Commission Regulations that the Defendant is to exercise all powers entrusted to it relative to the monitoring and enforcement of the 1993 Regulations including regulation 29. She argued that the legislative framework demonstrates a direct correlation and relationship which should exist and which was always intended to exist between the 1993 Regulations and the Commission Regulations. She argued that the Commission would have no purpose or usefulness apart from the 1993 Regulations, because the Commission was intended to serve (a) as the supervisory/regulatory body relative to operators within the taxi and livery industry, and (b) in a consultative role to the Minister on matters pertaining to the taxi services industry. As such she submitted that it is intended that the two Regulations would operate side by side.

[17] Counsel urged the Court to adopt a holistic review of the Commission Regulations which would make it clear that in accordance with Regulations 4A(1)(e), 6A(c) and 15A(1) the Director, (on behalf of the Defendant), is empowered to receive and investigate complaints of customers, members of the public or fellow taxi operator concerning a taxi operator. Counsel submitted that this necessarily includes the receipt and investigation of complaints relative to all aspects of the operations of a taxi-cab operator, including the conduct of drivers under Regulation 29 of the 1993 Regulations.

[18] The Defendant asserts that it has and continues to have the authority to conduct an administrative hearing relative to breaches of regulation 29 of the 1993 Regulations. Counsel submitted that under Regulations 6A and 15A of the Commission Regulations, an administrative hearing, is the

formal process to be utilized by the Director for the formal review and resolution of a complaint received concerning a taxi-operator. Counsel submitted that this is a quasi-judicial process, which should be conducted in an orderly and professional manner.

[19] Counsel argued that the Claimant's contention that the Defendant's decision to hold an administrative hearing is ultra vires is a consequence of an unduly narrow and restrictive interpretation of the legislation. The Defendant submitted that this restrictive interpretation is flawed and would necessarily go against the intention of the Legislature. The Defendant urged the Court to adopt a purposive interpretation of all the relevant provisions and to agree that the Defendant's action relative to an administrative hearing was not ultra vires and/or illegal. Counsel concluded that the Defendant was entitled to make a decision to pursue an administrative hearing against the Claimant, and up to the point that the administrative proceeding.

[20] The Defendant relied section 42(1) of the **Interpretation Act**² which expressly provides that:

“In the interpretation of a provision of an enactment, an interpretation that would promote the purpose or object underlying the enactment (whether that purpose or object is expressly stated in the enactment or not) shall be preferred to an interpretation that would not promote that purpose or object”.

[21] Applying section 42(1) to the facts herein, Counsel for the Defendant submitted that in giving effect to and promoting the purpose and objectives of the Regulations, the Court should rightly conclude that they empower the Defendant to deal with all complaints through an administrative hearing, notwithstanding that regulations 29 and 30 of the 1993 Regulations have not been expressly repealed. She argued that within the purpose and objectives of the Regulations, it is the nature of the complaint which gave rise to and necessarily engages the Defendant's jurisdiction to act. Counsel submitted that the nature of the complaint made to the Director, falls within the powers of the Defendant enabling it to summon the Claimant to an administrative hearing.

[22] The Defendant submitted that the Court ought not to limit the Defendant's power to receive, investigate, and resolve complaints which originate from “customers” only, notwithstanding the expressed language of regulations 4A(e) and 6A(c). Counsel invited the court to ignore the expressed reference to “customer's complaints” in these provisions. Instead, Counsel pointed to the fact that regulation 15A(1) of the *Commission Regulations*, expressly states that the Director

² Cap. 136 (as amended by the Interpretation (Amendment) Act, 2014)

may conduct an administrative hearing to resolve complaints filed by a member of the public against a public transport operator, or on one public transport operator against another. She submitted that regulation 15A (1) clearly widens the net of who can submit complaints to the Defendant and points to the intended scope and purpose of the Regulations, notwithstanding the specific language used in regulations 4A(e) and 6A(c).

[23] It was further argued that the legislative intent and purpose was to create a mechanism by which members of the public in the broadest sense could submit complaints, and have such complaints resolved in an administrative hearing. Counsel reiterated that this clear purpose ought not to be limited or stifled in this case as to do so would render an absurd effect of the law and point to a lacuna.

[24] The Defendant also relied on the maxim of statutory interpretation *ut res magis valeat quam pereat*. Counsel quoted the following excerpt of from the learned authors of Bennion on Statute Law:³

“It is a rule of law that the legislator intends the interpreter of an enactment to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). He must thus construe the enactment in such a way as to implement, rather than defeat, the legislative purpose. As Dr. Lushington put it in *The Beta* (1865) 3 Moo PCC NS 23, 25:...if very serious consequences to the beneficial and reasonable operation of the Act necessarily follow from one construction, I apprehend that, unless the words imperatively require it, it is the duty of the court to prefer such a construction that *res magis valeat quam pereat*. The rule requires inconsistencies within an Act to be reconciled. Blackstone said: “One part of the statute must be so construed by another, that the whole may, if possible, stand: *ut res magis valeat quam pereat*, (Blackstone 1765, i 64). It also means that, if the obvious intention of the enactment gives rise to difficulties in implementation, the court must do its best to find ways to resolving these. An important application of the rule is that an Act is taken to give the courts such jurisdiction and powers as are necessary for its implementation, even though not expressly conferred”⁴.

[25] Counsel argued that this principle can be applied to the present scenario, if the Court perceives that the actual words used in the Regulations are ambiguous or obscure.

³ Bennion, Francis: “Bennion on Statute Law”, 3rd Ed. Longman, 1990 (Part II Statutory Interpretation-Guides to Legislative Intention), Page 117

⁴This maxim was applied by Lord Diplock in (*Attorney-General of the Gambia v Momodou Jobe* [1984] AC 689, [1984] 3 WLR 174, p 702, followed in *de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing*⁴, that, “there is a canon of construction embodied in the Latin maxim *utresmagis est ut res valeat quam pereat* which is an aid to the resolution of any ambiguities or obscurities in the actual words used in any document that is manifestly intended by its makers to create legal rights or obligations”

[26] Counsel further submitted that another applicable rule of interpretation is that prescribed in section 19(3) of the Interpretation Act. It provides that:

“Where an enactment empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing or acts or things that are incidental to the doing thereof.”

[27] Counsel for the Defendant relied on the judgment of **R (Looe Fuels Ltd.) v Looe Harbour Commissioners**.⁵ In that case, the claimants sought judicial review of a decision of the defendant harbour masters themselves to install and sell from the harbour all fuel for use by boats using it, saying that they had no power to operate such an enterprise. Stanley Burnton J held that whilst the sale of fuel would assist the town, it was not part of the main business of the commissioners and was ultra vires.

[28] The Defendant relied on the following excerpt at paragraphs 19 – 22 of the judgment:

“I have been taken to a number of well-known authorities on the question of whether particular powers are incidental to or necessary for or consequential upon specific powers granted to a statutory body. Those authorities were helpfully summarised by Lord Templeman in Hazell v Hammersmith London Borough Council [1992] 2 AC 1 at page 29. He referred to the well-known authority of Attorney General v Great Eastern Railway Company [1885] 5 AC 473. Lord Blackburn in that case said at page 481:

“where there is an act of Parliament creating a corporation for a particular purpose, and giving it powers for that particular purpose, what it does not expressly or impliedly authorise is to be taken to be prohibited...”

Lord Selborne, the Lord Chancellor, said at page 478 that the doctrine of ultra vires:

“ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.”

Lord Blackburn said at page 418:

“those things which are incident to, and may reasonably and properly be done under the main purpose, though they may not be literally within it, would not be prohibited.”

It is with those principles in mind that I consider the question which arises in this case. In my judgment it would be wrong for the court to be unduly restrictive in determining what powers incidentals are to or necessary for a statutory body to carry out its functions. The statute and the activities of the statutory body must be

⁵ [2007] EWHC 1141

sensibly and practically considered; but one nonetheless must have regard to the statutory wording.”

[29] Summarizing the Defendant’s case, Counsel for the Defendant submitted as follows:

- a. That under the Commission Regulations as amended, the Defendant is empowered to have administrative hearings and give administrative penalties with respect to any matters and offences including the matters listed within regulation 29 of the 1993 Regulations.
- b. As no exceptions or limitations on the types of complaints which may be received and investigated (even on Administrative Hearings) are set out in the Regulations, there is no sustainable basis for insisting that Regulation 29 has been properly excluded from the Defendant’s remit under the Commission Regulations.
- c. In considering the entire legal framework (primary and secondary legislation) it has never been the intention of the legislators that breaches of offences under the Regulations would only be addressed by means of a summary criminal process.); and
- d. The Defendant’s actions of acting on a complaint received were within the intended scope of the Defendant’s powers under the Regulations: see **Charles v Judicial and Legal Service Commission & Anor [2002] UKPC 34**.

Court’s Analysis and Conclusion

[30] Pursuant to its supervisory jurisdiction, the Court is “*clothed with the authority to review public acts and to ensure that they are lawfully exercised in accordance with the power delegated to the specific functionary and thus in accordance with the legislation.*”⁶ The duty of the Court in exercising this jurisdiction has been succinctly summarized by the learned authors in **De Smith’s Judicial Review**⁷:

“The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision maker. The instrument will normally be a statute or delegated legislation, but it may also be an enunciated policy, and sometimes a prerogative or other common law power. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the “four corners” of their powers or duties. They are also acting as guardians of Parliament’s will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of parliament’s enactments.”

[31] The practical starting point of any discussion relative to the scope and powers of the Defendant is the governing legislation. This is consistent with Lord Diplock’s classic statement in the case of

⁶ Edmond Blaize et al v Architects Registration Board ANUHCv 2006/0256

⁷ Seventh Edition at paragraph 5 - 002

Council of Civil Service Unions v Minister for the Civil Service⁸ that ‘illegality’ is a failure by a public body to understand correctly the law that regulates its decision-making power or a failure to give effect to that law. In order to determine whether the public authority or decision maker has acted outside the scope of the powers granted to it under statute, a court must first determine the proper meaning attributable to the words used in the statute.

[32] The Court must therefore construe or interpret the particular legislative framework and in the case at bar this requires a review of the two operating Regulations, the 1993 Regulations and the Commission Regulations as amended. In construing this legislative framework, the Court has and regard to the most recent dictum delivered in the 2018 Eastern Caribbean Court of Appeal judgment of **Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited**.⁹ In that case, the Court of Appeal had to consider whether section 75(1)(a)(iii) of the Virgin Islands Telecommunications Act permitted the appellant to take enforcement action with respect to conduct that is past or only conduct that is present or future. Counsel for the appellant argued that the Telecommunications Act must be interpreted in a way which does not render it and its purpose futile or pointless. Counsel argued that notwithstanding that the section was written in the present and conditional tenses, the correct interpretation requires that the court read into the subparagraph the words “has carried on”. The Respondent on the other hand submitted that neither the grammatical meaning nor the context of the enactment supported the interpretation put forward by the appellant.

[33] At paragraphs 22 – 25 of the judgment, Carrington JA (Ag) considered the appropriate approach to be adopted by a court;

“In **R v Secretary of State for the Environment, Transportation and Regions ex parte Spath Holme** Lord Nicholls observed at page 396:

“Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful so long as it is remembered that the ‘intention of Parliament’ is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used.”

⁸ [1985] AC 374 (HL)

⁹ BVIHC VAP13 of 2016 British Virgin Islands

In **Douglas v The Police** our then Chief Justice, Sir Vincent Floissac stated:

“The function of the court in relation to a statute is to interpret the statute by ascertaining the legislative intention in regard thereto. That legislative intention is an inference drawn from the primary meanings of the words and phrases used in the statute with such modifications of those meanings as may be necessary to make them consistent with the statutory context.”

Parliament is expected to say what it means and mean what it says. The first recourse in determining the meaning of a statutory provision should be to the grammatical meaning of the words used and their context. If the grammatical meaning of the words used is clear and the context does not lead to the conclusion that the words used may have more than one meaning or a different meaning from the natural grammatical meaning, then effect should be given to the clear grammatical meaning as disclosing the intention of Parliament in using them.

When considering the context of words in an enactment, one has to consider the enactment as a whole, and not only the section in which the words under consideration appear, as well as all facts relevant to the subject matter of the Act that are before the court, including any commentary supplied by the drafters of the Act. The ultimate aim of the court is to arrive at what **Bennion on Statutory Interpretation** refers to as an informed interpretation of the legislation under consideration. **Bennion on Statutory Interpretation** suggests that this is arrived at in two stages:

“What may be called first stage of interpretation arises when the enactment is first looked at. Here a provisional view may be formed, perhaps that the meaning is clear. Or it may appear at the first stage that the enactment is grammatically ambiguous or vitiated by semantic obscurity. In all three cases it is necessary to go on and apply the informed interpretation rule. Thereafter, at second stage interpretation, a final view on legal meaning is formed.”

Bennion’s “informed interpretation rule” is that the court should infer that the legislator, when settling the wording of legislation intended it to be given a fully informed, rather than a purely literal interpretation (though the two usually produce the same result). I agree that this is the proper approach to be adopted by a court in interpreting statutory provisions.”

[34] This Court adopts this approach.

[35] In **Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited**, the Court of Appeal ultimately found that the words could be read in a way that makes grammatical sense and from which one could see a clear meaning. The Court of Appeal therefore found that the first stage of interpretation had been satisfied. The Court then went on to consider the second stage of interpretation suggested by **Bennion on Statutory Interpretation** in order to confirm whether the

literal meaning reflected the intention of Parliament. In doing so the Court considered that the particular context of the words under consideration is the enforcement action taken by the appellant against persons regulated by it. The Court considered the appellant's powers under Part XIII of the Telecommunications Act and concluded that while section 75 (1) (a) (iii) of the Act is only meant to cover current or future conduct, in determining whether conduct is current, the Appellant must have regard to what is current at the beginning rather than at the end of the enforcement process.

- [36] Turning to the case at bar, the context reveals that the 1993 Regulations were made pursuant to the Minister's powers under section 56 of the Road Traffic Act. These Regulations effectively regulated the licencing of taxi-cab operators and operational methods to be employed by such licensed operators. Regulation 29 established a code of conduct for taxi-cab drivers which essentially prescribes that they are to conduct themselves in a proper civil and decorous manner and to refrain from using obscene, abusive or insulting language to any passenger or other person.
- [37] Regulation 30 prescribes that any person who contravenes the provisions of the 1993 Regulations commits an offence and may be liable to criminal penalties on successful prosecution.
- [38] Surprisingly, notwithstanding their obvious regulatory nature, the Legislature did not appoint or establish a regulatory body under the 1993 Regulations, neither did it provide for regulatory personnel such as inspectors or wardens. Instead, the regulatory network was rolled out on a piecemeal basis. Four years after the enactment of the 1993 Regulations, the regulatory body, the Taxi and Livery Commission was established under the 1997 Commission Regulations tasked with the power to oversee the taxi industry and the operational aspects of the 1993 Regulations.
- [39] It was obviously intended that the Commission would regulate the taxi industry. Regulation 4 of the Commission Regulations sets out the general functions of the Commission which includes preparing and publishing of operating guidelines for taxi-cab operators. The Commission may also adopt measures to ensure compliance with those guidelines including issuing notices and making recommendations to the Minister for the suspension or cancellation of licences or taking other disciplinary action.

- [40] The Commission is also charged with conducting periodic safety inspections of vehicles and removing any vehicles found to be operating in an unsafe manner, monitoring authorized taxi stands and ports to ensure compliance with the 1993 Regulations and promoting mechanisms for the equitable and distribution of potential income.
- [41] Critically, the Commission also has an important advisory role. Regulation 4(1)(d) – (f) provides that the Commission is to advise the Minister on measures necessary for the proper regulation of the industry, on the exercise of his powers and duties as it relates to taxi-cab operators and the efficient management of the industry and on any matter relating to the industry which may be referred to it by the Minister.
- [42] In addition to its general and advisory functions, the Commission Regulations also vests the Commission with specific obligations. Under Regulation 8, the Commission shall prepare for the Ministers' approval, a demerit point system which is to provide for such disciplinary measures as the Commission considers necessary for the efficient and effective function of the industry. Once this demerit point system has been approved by the Minister, he may then authorize the Commission to enforce it in such manner as he may direct in writing.
- [43] Under Regulation 13 of the Commission Regulations, a further specific power conferred on the Commission to monitor the conduct of taxi-cab operators in order to ensure their compliance with the 1993 Regulations. These provisions are said to be without prejudice to the exercise of the powers of the members of the Commission as traffic wardens.¹⁰
- [44] The provisions of Regulation 13(2) are particularly relevant to the Claim herein and provide as follows:
- (1) The Commission shall monitor the conduct of taxi-cab operators to ensure that the provisions of the Road Traffic (Taxi-Cab) Regulations, 1993 are complied with.
 - (2) Where the Commission is of the opinion that a person has acted in contravention of the Regulations referred to in sub-regulation (1), it shall

¹⁰ Regulation 13 (3) of the 1997 Commission Regulations; Under Regulation 10, members of the Commission are designated as traffic wardens in accordance with section 61 of the Road Traffic Act and may exercise the powers conferred on such wardens under the Act or any Regulations made thereunder. These powers include the power to issue fixed penalty notices.

- (a) conduct an investigation to ascertain the nature and extent of the contravention; and
- (b) prepare and submit a report on the contravention to the Minister, Licensing officer or such other authority that has the enforcement power in relations to the contravention.

[45] It follows that as of 1997, the Commission's statutory role would be that which is clearly and unequivocally defined and prescribed in regulations 8 and 13 of the Commission Regulations.

[46] However, it is again surprising that as at this point in the legislative timeline; the Legislature had made no provision for the systemic operation and support of this regulatory body. Indeed, it is only in 2009 under the **Road Traffic (Taxi-Cab Commission) (Amendment) Regulations 2009** that the Legislature introduced a secretariat staffed with a director, an administrative officer and inspectors to handle complaints from the public and to conduct administrative hearings into the complaint. Regulation 4A of the 2009 Amendment (as amended by S.I. 2017/No. 9, "the 2017 Regulations") now supplements the Commission's powers, providing as follows:

- (1) For the performance of its functions, the Commission shall exercise the power to:
 - (a) randomly inspect any vehicle and the operator for the purpose of safety (including the proper use of seatbelts, horns, tires, light, signals, cellular phones and seating capacity), cleanliness (which includes appearance and attire of the operator and appearance of vehicle's interior or exterior and service to the traveling public;
 - (b) remove any vehicle found to be operating in an unsafe and dangerous manner from the street;
 - (c) monitor all authorized Taxi Stands and Ports to ensure compliance with the Taxi-Cab Regulations by issuing a ticket to:
 - (i) the taxi or livery operator, or
 - (ii) taxi or livery dispatcherto pay an administrative penalty or show cause within a period specified in the ticket, why the taxi operator or dispatcher should not be prosecuted for the offence committed;
 - (d) collect from a taxi or livery operator or taxi or livery dispatcher who breaches the Taxi-Cab Regulations or other Road Traffic legislation, administrative penalty paid within the time specified in a ticket issued to the taxi or livery operator or taxi of livery dispatcher;

- (e) **receive and investigate customers' complaints with respect to the conduct of public transport operators, and to impose administrative fines and penalties provided by the law;**
- (f) conduct background investigation at the request of the Chief Licensing Officer, on a person who has applied for a taxi permit to determine the validity of the application, the applicant's qualification, sound health and moral character, and submit a report on its findings with respect to the person, to the Chief Licensing Officer;
- (g) provide information and recommendations to the Chief Licensing Officer on the issuance or renewal of taxi permits;
- (h) review and propose rates, fares, tolls and zones, to the Minister;
- (i) employ or replace staff, as needed, to carry out the functions of the Commission;
- (j) conduct mandatory annual training in the areas of road safety and basic first aid for public transport operators, and impose penalties for failure to attend; and
- (k) conduct public relations meetings to promote the Virgin Islands tourism and the taxi and livery industry.

[47] It follows that as at 2009, the Commission had powers under regulation 8 and 13 of the Commission Regulations had been supplemented such that the Commission now has the power to *inter alia* receive and investigate complaints from customers with respect to the conduct of public transport operators and to impose administrative fines and penalties provided by law¹¹.

[48] The word "**customers**" is not defined in the principal Road Traffic Act or in the Regulations and so the Court must apply the ordinary and grammatical meaning of the word which in the **Oxford English Dictionary**¹² is defined as: "*a person who buys goods or a service*"

[49] Counsel for the Defendant has sought to persuade the Court that the word "customer" must not be construed broadly so that a customer may include any member of the public including presumably an inspector employed by the Commission to carry out tasks prescribed in Regulation 6C of the

¹¹Unfortunately, the piecemeal roll out of the regulatory regime is further revealed in the fact that no fines and penalties were prescribed until 2017, when the Road Traffic (Taxi and Livery Commission) (Amendment) Regulations 11 prescribed the issuance of taxi and livery tickets and administrative penalties for offences committed under the Regulations. The relevant penalties are identified at Schedule 1 and the form of ticket at Schedule 2.

¹²University Press Seventh Edition 2012

2009 Regulations. Counsel has submitted that to do otherwise would lead to an absurd and unworkable result where the Commission would be unable to discharge its intended regulatory functions and she has employed several interpretative maxims which she contends support this contention.

[50] Applying the approach to statutory interpretation utilized in **Douglas v The Police** and applied in **Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited**, the Court is satisfied that the BVI Legislature said exactly what it means and means exactly what it said in this legislation. The grammatical meaning of the words are clear and the particular context does not lead to the conclusion that the words used have more than one meaning, or a different meaning from the natural grammatical meaning.

[51] In construing the context in which these provisions arise, the Court has had regard to the enactment as a whole as well as all of the facts relevant to the issues before this Court. Of note is Regulation 6C of the 2009 Regulations which compliments the Commission's role. It provides that an Inspector may receive and record complaints filed by customers regarding taxi or livery operators and to prepare reports on the complaints for the Commission. This provision confirms that the Legislature's intent is for the Commission to consider **customer** complaints.

[52] The Court has also considered the provisions of regulation 6D(1)¹³ which provides that in accordance with regulation 4A(1)(c), (d) and (e) the Commission shall authorize an inspector to issue taxi and livery tickets for the purpose of imposing administrative penalties for offences committed under these Regulations.

[53] An informed interpretative review discloses that the Legislature contemplated a regulatory and enforcement regime which is diverse and layered. The regulatory regime reveals multiple investigative and enforcement entities. Under the Regulations the Minister, the Commission, the Licensing Officer, the director, inspectors, and traffic wardens all have varying enforcement powers and functions.

¹³ Introduced in S.I. 2017/No. 9 Road Traffic (Taxi and Livery Commission) (Amendment) Regulations 2017 after the complaint was lodged

[54] The Regulations also maintain a clear distinction between administrative hearings which deal with complaints from a member of the public or by a public transport operator and those which deal with customer complaints. In addition to the functions and powers conferred on the Commission, the director of the Commission has specific and defined powers which run are collateral to that of the Commission. The director's role is established in the 2009 Regulations and under Regulation 6A, he is also empowered to conduct administrative hearings for the purpose of making determinations of customers complaints and to impose administrative penalties for violations of the 1993 Regulations. **Regulation 6A(c)** –prescribes that director shall have power to:

“conduct Administrative Hearings for the purposes of making determinations of customers’ complaints and to impose administrative penalties for violations for the Taxi-Cab Regulations” (underlined portion deleted by S.I. 2017/No. 9, “the 2017 Road Traffic (Taxi and Livery Commission) (Amendments) (Regulations).

[55] In addition to customer complaints, the director is empowered under Regulation 15A to conduct an administrative hearing to resolve complaints filed by a member of the public against a public against a public transport operator, or one public transport operator or against the other. **Regulation 15B** then prescribes the procedure for initiating an administrative hearing upon the request of a person who files a formal written complaint at the secretariat of the Commission. The secretariat is to then notify the other party within seven days from the date the complaint is filed, indicating the alleged violation or misconduct in the notice.

[56] It follows that there is a multifaceted regulatory regime which adequately achieves the ends intended by the Legislature. The Legislature has ensured that the legislated actors are well equipped with the powers necessary to properly monitor the conduct of taxi-cab operators. The Commission's powers under regulations 4, 8 and 13 of Commission Regulations (read as a whole) permit it to monitor the conduct of taxi-cab operators to ensure compliance with the 1993 Regulations which of course includes Regulation 29.

[57] Collateral to this is a regime of administrative hearings introduced in 2009 for the purpose of resolving complaints made by customers and members of the public and public transport operators themselves. Administrative hearings are increasingly used to ensure compliance and cooperation from the regulated sector and to secure consumer protection. Administrative fines and penalties are used in these cases to enforce the terms of the regulatory regime. In this way, the delay and

costs of court proceedings are avoided and decisions are made by persons who are intimately familiar with the aims of the legislation.

[58] The Court is compelled to reiterate that under the present scheme, there is a clear distinction made between complaints made by customers and those made by members of the public and public transport operators. Regulation 6A empowers the director to conduct administrative hearings to determine customer complaints but he currently has no power to impose administrative penalties and fines. The Commission also has the power to receive and investigate complaints made by taxi and livery customers but it also has the additional power to impose administrative fines and penalties.

[59] Of necessity, this will require strict adherence to the principles natural justice to ensure that procedural fairness is met in this regulatory context. This demands that administrative rules be applied in an unbiased manner and that persons subject to them should have an opportunity to be heard before a decision is taken. If an administrative penalty fails to meet this test, then it will be subject to review by the courts. On the other hand, complaints from members of the public and public transport operators fall within the sole purview of the director of the Commission.

[60] The Court agrees that generally judicial officers should seek to avoid a construction of an enactment that produces an absurd and unworkable or impracticable result since it is unlikely to have been intended by the legislature. However, in the case at bar, the literal grammatical meaning of the relevant provisions are overwhelmingly clear and unequivocal and the Defendant has failed to demonstrate on a balance of probabilities that they are unworkable or impracticable. In fact, the multifaceted regulatory regime provides a convenient means by which breaches of the Regulations may be investigated and enforced. In the Court's judgment, the provisions which deal with administrative hearings are not ambiguous as they appear to address specific situations and complaints.

[61] Counsel for the Defendant has urged the Court to adopt what she described as a purposive interpretation of the relevant legislation. In the Court's judgment, it would be inappropriate to extend the Court's jurisdiction by interpretation to cases which are not clearly provided for by the legislation. A court should not be expected to extend the language of a statute beyond its natural

meaning for the purpose of including powers which have been obviously avoided simply because no good reason has been advanced to explain its exclusion. See: **The Corporation of The County of Vercheres v The Corporation of The Village of Varennes (1891) 19 SCR 365.**

[62] As at the date when this complaint was lodged, the Commission was empowered to prepare a demerit point system dealing with disciplinary measures for the Minister's approval. It is only when the Minister has approved this system that he may then authorize the Commission to enforce it on such terms as the Minister may direct. The Commission also had the power under Regulation 9 to prepare guidelines and to adopt such measures as may be necessary to ensure compliance with these guidelines which could include issuing notices to comply or to desist from contravening these guidelines or making recommendations to the Minister for disciplinary action or for the suspension or cancellation of taxi cab licences.

[63] Further, the Commission had the power to monitor the conduct of taxi cab operators to ensure that they comply with the 1993 Regulations - but here, its role is to conduct an investigation into alleged breaches and submit a report to an appropriate enforcement agency such as the Minister, the Licensing officer. The Commission also had the power to monitor taxi stands and ports to ensure compliance with the 1993 Regulations by issuing tickets to operators or dispatchers. Such tickets would mandate the payment of fixed penalties in default of which the operator or dispatcher could be prosecuted under regulation 30. Finally, it is always within the power of the Commission to refer the matter to prosecution under regulation 30 in any event.

[64] With regard to the conduct of administrative hearings however, the Commission's role is confined to the investigation of complaints made by customers. The legislative regime simply does not prescribe for the resolution of complaints of misconduct made by inspectors of the Commission via an administrative hearing convened by the Commission under regulation 6A or 15A. However, for the avoidance of doubt, there is no doubt that the Commission would in fact have the power to deal with alleged breaches of regulation 29 under the plethora of other powers which were available to it as at the date of the complaint. The fact that the Commission has thus far failed to establish the demerit point system under regulation 8 or establish guidelines and enforcement measures under regulation 9 would not entitle it to otherwise broaden its statutory powers to

convene an administrative hearing to investigate a complaint by its inspector on the pretext that he is in fact a member of the public.

[65] Indeed, the Court has some difficulty in discerning why the alleged breach of the 1993 Regulations would warrant an administrative hearing. It seems to the Court that the struggle to mould the Commission Regulations to fit a narrative which effectively relegates an inspector to that of an ordinary member of the public is surprising and wholly unnecessary.

[66] When a power vested in a decision-maker by statute is exceeded, acts done in excess of the power are invalid as being *ultra vires*. This is generally assessed with reference to and against legislative intent. It is a court's duty to ensure that the powers conferred by the Legislature are not exceeded that administrative bodies act within the four corners of their prescribed powers and duties and this has been demonstrated in a number of cases including that of **Anisminic Ltd. v Foreign Compensation Commission and Anor.**¹⁴ In that case the plaintiffs brought an action for a declaration that a decision of the Foreign Compensation Commission was a nullity. The Commission replied that the courts were precluded from considering the question by section 4(4) of the 1950 Act which provided: 'The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law.' The respondent said these were plain words with one meaning: 'Here is a determination which is apparently valid: there is nothing on the face of the document to cast any doubt on its validity. If it is a nullity, that could only be established by raising some kind of proceedings in court. But that would be calling the determination in question, and that is expressly prohibited by the statute.' This argument was rejected by the English House of Lords. At page 174 of the Judgement Lord Reid observed the following:

"It cannot be for the commission to determine the limits of its powers. Of course if one party submits to a tribunal that its powers are wider than in fact they are, then the tribunal must deal with that submission. But if they reach a wrong conclusion as to the width of their powers, the court must be able to correct that - not because the tribunal has made an error of law, but because as a result of making an error of law they have dealt with and based their decision on a matter with which, on a true construction of their powers, they had no right to deal. If they base their decision on some matter which is not prescribed for their adjudication, they are doing something which they have no right to do and, if the view which I expressed earlier is right, their decision is a nullity. So the question is whether on a true construction of the Order the applicants did or did not have to prove

¹⁴ [1969] 2 A.C. 147

anything with regard to successors in title. If the commission were entitled to enter on the inquiry whether the applicants had a successor in title, then their decision as to whether T.E.D.O. was their successor in title would I think be unassailable whether it was right or wrong: it would be a decision on a matter remitted to them for their decision. The question I have to consider is not whether they made a wrong decision but whether they inquired into and decided a matter which they had no right to consider.”

[67] In **Bromley London Borough Council Respondents v Greater London Council and Anor**,¹⁵ the Greater London Council (“G.L.C”) pursuant to a resolution passed in implementation of an election manifesto issued a precept to all London boroughs to levy a supplementary rate of 6.1p in the pound to enable the G.L.C. to finance by grant to the London Transport Executive (“L.T.E.”) the cost of reducing L.T.E. bus and tube fares by 25 per cent. The London Borough of Bromley applied for judicial review by way of certiorari. The decision of the Divisional Court of the Queen’s Bench Division refusing the application was reversed by the Court of Appeal which quashed the precept as null, void and of no effect. The English House of Lords found that on the true construction of the Transport (London) Act 1969, in particular sections 1, 3, 4, 5, 6, 7 and 11, the G.L.C. and the L.T.E. were under an obligation to conduct the transport services on business principles attempting to avoid a deficit and that accordingly, although grants might be made for revenue as well as capital purposes, ensuring, so far as practicable, that outgoings were met by revenue, both the G.L.C. and L.T.E. had acted ultra vires the Act.

[68] The House of Lords in that case emphasized that although it is a powerful body, the G.L.C is the creation of statute and only has powers given to it by statute. Having critically examined the relevant statutory framework, the House of Lords found that the GLC misdirected itself in law and concluded that the decision must be quashed as having proceeded upon an error of law.

[69] **Laker Airways v Department of Trade**¹⁶ presents another example in which the English secretary of state’s policy guidance was held unlawful because it cut across the statutory objectives which made it clear that the British Airways Board was not to have a monopoly. The court found that the secretary of state should have amended the Act, rather than issuing guidance.

¹⁵ [1983] 1 A.C. 768

¹⁶ [1977] QB 643 CA

[70] For the reasons set out, the Court finds that the Defendant acted ultra vires in attempting to initiate an administrative hearing into the allegations which arise in this Claim. It follows that the decision to do so is ultra vires and must be quashed. In these circumstances, it is unnecessary to consider any supplementary issues which may have arisen in the event of a contrary finding that while not acting outside its statutory powers, the Commission nevertheless exercised its discretion in a manner which was irrational, unreasonable or contrary to the principles of natural justice.

[71] **It is therefore ordered and declared as follows:**

- i. Judgment for the Claimant on the Fixed Date Claim Form filed herein on the 17th March 2017.
- ii. That the decision of the Defendant to conduct an administrative hearing into an alleged breach of regulation 29 by the Claimant is ultra vires the powers of the Defendant and is illegal.
- iii. The Defendant's decision to conduct an administrative hearing into the alleged breach of regulation 29 is quashed.
- iv. Costs to the Claimant to be assessed in accordance with Part 65.12.

**Vicki Ann Ellis
High Court Judge**

By the Court

Registrar

