

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MR JUSTICE D FRASER JA
THE HON MR JUSTICE LAING JA (AG)**

SUPREME COURT CIVIL APPEAL NO COA2023APP00055

MOTION NO COA2023MT00016

BETWEEN	DONOVAN BROWN	APPLICANT
AND	THE MINISTER OF LABOUR AND SOCIAL SECURITY	RESPONDENT

Phillip Bernard instructed by Bernard and Co for the applicant

Stuart Stimpson and Ms Jevaughnia Clarke instructed by the Director of State Proceedings for the respondent

9 December 2024 and 6 March 2026

Conditional leave to appeal to His Majesty in Council – Application for leave to apply for judicial review – Whether Minister’s refusal to refer the employment dispute to the Industrial Disputes Tribunal is reviewable for irrationality – Whether Minister’s decision is amenable to judicial review – Whether decision dispute falls within visitatorial jurisdiction of the University of the West Indies – Whether appeal raises question of great general public importance or otherwise – Section 110(2)(a) of the Constitution

MCDONALD-BISHOP P

Introduction

[1] By a relisted notice of motion filed on 30 July 2024, the applicant, Donovan Brown, seeks conditional leave to appeal to His Majesty in Council pursuant to section 110(2)(a) of the Constitution from the judgment of the Court of Appeal (Brooks P, Simmons and V Harris JJA) delivered on 24 November 2023 in **The Minister of Labour and Social Security v Donovan Brown** [2023] JMCA App 35.

[2] The Court of Appeal set aside the decision of Pettigrew-Collins J ('the learned judge') granting the applicant leave to seek judicial review of the decision of the Minister of Labour and Social Security ('the Minister') to refuse to refer an employment dispute between the applicant and the University of the West Indies ('the University') to the Industrial Disputes Tribunal ('the IDT'). The Minister's decision was based on the view that the dispute between the applicant and the University should be resolved by the Visitor of the University ('the Visitor') appointed under the Royal Charter establishing the University ('the Royal Charter').

[3] The court has given careful consideration to the present application, recognising that its resolution presents a challenge given the novel issues involved and their implications for the applicant's access to justice. Regrettably, the process involved an extensive period of deliberation, which was further delayed by competing demands on the court's time. For this, an apology is proffered. Ultimately, for several reasons discussed below, the court has concluded that the distinctive and novel circumstances of this case warrant a referral to His Majesty in Council pursuant to section 110(2)(a) of the Constitution.

[4] A detailed account of the factual and procedural background to the motion is required for a full understanding of the issues in litigation. That background is now provided.

The factual background and procedural history

[5] The circumstances leading to the court proceedings were as follows. The applicant was employed by the University in 1987. In or around 2016, serious allegations of conflict of interest and misconduct were made against him in his capacity as Senior Budget Analyst and Purchases Manager. These allegations culminated in disciplinary proceedings and his dismissal from the University by letter of termination dated 24 February 2017.

[6] The applicant took the view that his dismissal was unjust and in breach of the Labour Relations and Industrial Disputes Act ('the LRIDA') and the Labour Relations Code

(the LRC'). This was because the allegations made against him would have constituted his first infraction, yet he received the maximum penalty of dismissal. The applicant primarily contended that, given section 22(ii)(b) of the LRC, he ought not to have been dismissed unless there was gross misconduct on his part, and, as far as he is concerned, there was no such misconduct. On that basis, the applicant appealed his dismissal to the Vice-Chancellor of the University on 3 March 2017. The Vice-Chancellor dismissed the appeal on 30 November 2017.

The first attempt to have the dispute referred to the IDT

[7] Before being notified of the outcome of his appeal to the Vice-Chancellor, the applicant sought the intervention of the Ministry of Labour and Social Security ('the Ministry') on 6 November 2017. Thereafter, several conciliatory meetings were held between the applicant and the University from November 2017 to June 2020. However, these meetings did not resolve the dispute.

[8] On 4 June 2020, the applicant submitted a request to the Ministry to have the dispute referred to the Industrial Disputes Tribunal ('the IDT'). But on 6 July 2020, the Ministry refused his request and advised him to consider placing the matter before the University's Visitor. The applicant then decided to engage the University's processes with a view to having the matter resolved.

The proceedings at the University

[9] The applicant first sought to appeal the Vice-Chancellor's decision to the Chancellor. The Chancellor, however, directed him to refer the matter to the Visitor. The applicant lodged his petition with the Visitor on 19 April 2021.

[10] The petition was placed before the sitting Visitor, the Honourable Mr Justice Rolston Nelson, retired judge of the Caribbean Court of Justice (hereinafter referred to as 'Justice Nelson', 'the Visitor' or 'the current Visitor'). Justice Nelson was appointed Visitor on 1 May 2019. Before his appointment, Her Majesty Queen Elizabeth II was the University Visitor under the Royal Charter, and the Honourable Mr Justice Paul Harrison

(Justice Harrison'), retired President of this court, carried out the visitatorial function as her delegate from 10 August 2017 to the date of Justice Nelson's appointment (see para. 35 of the Court of Appeal's judgment and **Deborah Chen v The University of the West Indies** [2022] JMCA Civ 19 at paras. [9] and [10]).

[11] In a written decision issued on 22 September 2021, Justice Nelson dismissed the applicant's petition. In his decision, Justice Nelson identified three issues for resolution arising from the parties' submissions:

"i) Whether the Petitioner as a former member of staff of [the University] had locus standi to lodge a Petition before the University Visitor ('the locus standi issue')

ii) Whether the Petition is time-barred as it challenged the decision of the Vice Chancellor dated November 30, 2017 ('the jurisdiction issue'); and

iii) Whether the University Visitor has jurisdiction to hear a Petition involving circumstances of wrongful dismissal and/or unfair [dismissal] pursuant to section 22(ii)(b) of the [LRC] and the general principles of natural justice ('the dismissal issue')."

[12] Justice Nelson concluded that the applicant had the requisite *locus standi* to lodge the petition before the Visitor. There was no challenge to this conclusion in either the Supreme Court or the Court of Appeal. The question of the applicant's *locus standi* will not, therefore, attract any further discussion in this judgment. Justice Nelson, however, resolved the remaining issues against the applicant, concluding that the petition was time-barred and that the University Visitor had no jurisdiction to hear the petition.

[13] In arriving at his conclusions, Justice Nelson cited the relevant provisions concerning his visitatorial jurisdiction, which were contained in the Royal Charter, the schedule to the Royal Charter and the Procedural Rules for Lodging Petitions to the University Visitor ('the Procedural Rules'). Specifically, he referred to article 6 of the Royal Charter (as amended in 2018), which established the regime of appointments to the office of Visitor. Article 6 states, among other things, that the person appointed Visitor shall be responsible for:

“...considering and resolving petitions, **including those lodged prior to the date of his or her appointment which remain unresolved**; save only that petitions lodged prior to the date of the first Visitor appointment under this provision and remaining unresolved shall be so resolved by the previous Visitor (or a delegate thereof, as the case may be) whose decision shall be final.” (Emphasis added)

[14] Justice Nelson cited articles 4, 5, 6 and 8 of the Schedule to the Royal Charter, which was amended in 2019 by University Statute 2A. Those articles read:

“4. Staff and students aggrieved by a decision of the University may appeal to the Visitor, after all other prescribed internal remedies have been exhausted.

5. The Visitor shall have authority to adjudicate on matters from Staff and students on the interpretation and application of the University’s Charter, Statutes, Ordinances, Regulations and other governing instruments.

6. Appeals lodged by way of petition prior to April 30, 2019 and remaining unresolved shall be resolved by any person performing the functions of Visitor prior to the appointment of the Visitor under this statute.

...

8. The decision of the Visitor shall be final.” (Emphasis added)

[15] Rule 6 of the Procedural Rules was also cited. It provides:

“Any decision made before May 1, 2019 which was already being adjudicated by the previous Visitor or a delegate of the previous Visitor will not be reviewable by the Visitor.”

[16] Having recited those provisions, Justice Nelson dismissed the applicant’s petition on the following bases:

- i) In accordance with the governance framework of the University established by the Royal Charter and statutory instruments of the University, the remit of his jurisdiction as the current Visitor extends only to decisions made after May 1, 2019 (para. 25 of the decision).

ii) The petition sought to appeal a decision of the Vice-Chancellor made prior to 1 May 2019, the date of his appointment; therefore, the decision falls “wholly outside” his remit as the current visitor. The Procedural Rules clearly stipulate that matters which predate his appointment are not “cognizable” before him. (paras. 34 – 37 of the decision).

iii) In any event, even if he had jurisdiction by virtue of the date of the Vice-Chancellor’s decision, he had no jurisdiction to hear the petition because the-

“gravamen of the [applicant’s] complaint was that the actions of the University are in breach of section 22 of the [LRC] of Jamaica and the principles of natural justice as the actions are not just, fair and reasonable and amount to unjustified dismissal.”

These are matters that fall outside his jurisdiction, and to adjudicate on them would be *ultra vires* the ambit of his jurisdiction (para. 41 of the decision).

iv) The visitatorial jurisdiction was limited to issues concerning the University Charter and other internal (or domestic) laws of the University, and the applicant did not allege any breaches of the University's internal laws. The Visitor does not have jurisdiction over the general law of the land and is not empowered to ensure that these general laws are obeyed. Therefore, he could not adjudicate upon an alleged breach of the LRC which is part of the laws of Jamaica and does not form part of the internal laws of the University (paras. 43 and 45 of the decision).

v) Accordingly, even if he had jurisdiction based on the timing of the petition, for the same reasons he gave above, he could not adjudicate on whether the dismissal was wrongful according to the general law of Jamaica. The applicant had advanced no breach of any internal laws of the University in framing his claim for wrongful dismissal. A private law claim in wrongful dismissal is not justiciable before the University Visitor (paras. 47 – 48 of the decision).

vi) The rules of natural justice are infused into the disciplinary procedures contained in University Ordinance 8, Part 3. However, there was no alleged breach of the Ordinance (para. 49 of the decision).

[17] Although Justice Nelson declined jurisdiction to determine the applicant's complaints, he nevertheless considered whether there was a breach of natural justice in violation of Ordinance 8. He concluded that he could not discern any such breach on the material before him.

[18] In sum, Justice Nelson decided that he had no jurisdiction to consider the petition because it fell outside his remit based on the date of his appointment and the date of the decision being appealed. Furthermore, he had no jurisdiction to resolve the applicant's complaints, because they involved allegations of wrongful or unjustifiable dismissal as well as breaches of the rules of natural justice, contrary to the general laws of Jamaica, all of which fall outside his visitatorial jurisdiction. Alternatively, even if the aspect of the petition alleging a breach of the rules of natural justice fell within the visitatorial jurisdiction, there was no discernible breach of the principles of natural justice in violation of Ordinance 8, Part 3.

The second attempt at a referral to the IDT

[19] Following Justice Nelson's decision, the applicant wrote several letters to the Ministry, once again requesting that his matter be referred to the IDT. On 3 March 2022, the applicant was advised of the Minister's refusal to do so, on the basis that the applicant's dispute falls within the visitatorial jurisdiction.

The application for leave to apply for judicial review in the Supreme Court

[20] Dissatisfied with the Minister's refusal to refer the dispute to the IDT, the applicant sought leave from the Supreme Court to apply for judicial review of the Visitor's decision and the Minister's refusal to refer the dispute to the IDT. On 16 February 2023, the learned judge granted the applicant leave to apply for judicial review on the ground that there is an arguable ground with a realistic prospect of success that the Minister's decision

was irrational. She, however, refused leave to apply for judicial review of the Visitor's decision on the basis that it was final and not amenable to judicial review.

[21] The learned judge's findings on the issues most germane to these proceedings are conveniently summarised at para. [10] of the Court of Appeal's decision and are reproduced below:

- i) The applicant properly invoked the Visitor's jurisdiction because the disciplinary complaint against him concerned the interpretation of the University's domestic law, including their policies and procedures under the University's Financial Code (2013), the Procurement Policies and Procedural Manual (2003) and the Statement of Principles/Code of Ethics for Academic and Senior Administrative Staff.
- ii) The Visitor's conclusion that his jurisdiction to consider the applicant's petition was ousted was correct in the light of article 6 of the Royal Charter (as amended in 2018) and Statute 2A, which amended the schedule to the Royal Charter, given that the decision being challenged by the applicant predates the Visitor's appointment.
- iii) The Visitor's decision declining jurisdiction to consider the applicant's petition is final and not amenable to judicial review, since the Visitor was interpreting and applying his views of the domestic law of which he is the sole judge.
- iv) There was no concurrent jurisdiction between the Visitor and the court, and the jurisdictions were mutually exclusive. As a matter of law, the court cannot "entertain a claim, the subject matter of which falls within the jurisdiction of the Visitor", and "in the ordinary course of things", it would have been an improper exercise of the Minister's discretion to refer a matter to the IDT over which the Visitor had jurisdiction. The Minister was, therefore, correct when he initially refused to refer the matter to the IDT.

- v) It was not advanced that the applicant had a viable alternative remedy that he failed to pursue, and his ability to have his case considered by a previous University Visitor is remote and highly unlikely.
- vi) It was debatable whether the applicant's case fell within the purview of the LRIDA. As a result, when the Visitor declined to exercise his jurisdiction to hear the applicant's petition, it is arguable that it was then open to the Minister to refer the matter to the IDT if his "only perceived bar was the exclusivity of the Visitor's jurisdiction". In the circumstances, the Minister's decision not to do so provides the basis for the applicant to be granted leave to apply for judicial review on the ground of irrationality.

[22] In coming to her decision that the Minister's decision not to refer the dispute is amenable to judicial review, the learned judge at para. [64] of her judgment had regard to the circumstances in which the Minister's power of referral was exercisable according to law, which were, that: (i) there is an industrial dispute; (ii) the Minister is satisfied that the parties attempted to settle the dispute without success; or (iii) there is an urgent or exceptional situation that would make it expedient for the Minister to make the referral. She then concluded:

"It may fairly be said that there is an industrial dispute. It may also fairly be said that attempts were made without success to settle the dispute by other means which were available. The first respondent has not argued the question of whether there was an industrial dispute but simply rested the case on lack of jurisdiction by the minister on the basis that the Visitor had exclusive jurisdiction."

[23] This observation led the learned judge to opine that, when entreaty was made after the Visitor declined jurisdiction to hear the petition, there was an arguable case that it was then open to the Minister, in the light of the Visitor's ruling declining jurisdiction, to refer the matter to the IDT, if the only perceived bar to such a referral was the visitatorial jurisdiction (para. [65] of the judgment).

The appellate proceedings

[24] On 2 March 2023, the Minister applied to this court for permission to appeal the learned judge's decision granting permission to seek judicial review of his decision not to refer the dispute to the IDT. Neither the Minister nor the applicant sought to challenge any aspect of the learned judge's decision that the Visitor's decision was not reviewable. The Visitor's decision is, therefore, final in keeping with article 6 of the Royal Charter (as amended). This means that any opportunity, which the applicant had to invoke the visitatorial jurisdiction, current or previous, has been foreclosed upon by Justice Nelson's reasoning that the applicant's complaints do not fall within the internal laws of the University.

[25] By consent, permission was sought and granted for the court to treat the application for permission to appeal as the hearing of the appeal.

[26] At para. [4] of its written judgment, this court identified two broad issues for determination from the grounds of appeal, which were:

- i) whether the decision of the Visitor declining jurisdiction to consider the applicant's petition falls within the scope of judicial review; and
- ii) whether the Visitor and the IDT have concurrent jurisdiction over the dispute between the applicant and the University.

[27] Following a comprehensive review of the principles governing the visitatorial jurisdiction, V Harris JA, writing on behalf of the court, identified the starting point for the analysis to be an appreciation of the Visitor's decision on the jurisdictional issue that was raised before him. She then concluded on that sub-issue that the Visitor was correct to decline jurisdiction on the basis of his interpretation of the 2018 Amendment to section 6 of the Royal Charter. By virtue of that provision as interpreted, the decision being challenged by the applicant predated the Visitor's appointment, and the Visitor's remit extended only to decisions made after 1 May 2019 (see para. [33] of the judgment).

[28] The court proceeded to note at para. [34] of the judgment:

“The Visitor, however, was by no means conveying that the visitorial jurisdiction of the University Visitor, per se, was ousted; simply, that he had no authority to adjudicate on the dispute between the respondent and the University based on the date of the impugned decision and the remit of his jurisdiction. Therefore, it seems to me that the inescapable inference is that the respondent’s petition was to be placed before a previous University Visitor who had the jurisdiction to consider it based on the date of the decision being challenged.” (Emphasis added)

[29] However, given the date on which the applicant’s petition was filed, and the words of section 2A(6) of the University Charter, the sitting Visitor did not have jurisdiction to determine the petition on its merits. Instead, the petition ought to have been considered by the previous Visitor, Her Majesty Queen Elizabeth II, through her designate, Justice Harrison. Given that both Her Majesty Queen Elizabeth II and Justice Harrison are now deceased, the visitatorial authority for the determination of the applicant’s petition would pass by succession to His Majesty King Charles III by virtue of section 6 of the Royal Charter (paras. [35] – [37] of the judgment).

[30] The court also opined that, given the nature of the dispute, the Visitor had exclusive jurisdiction over the petition. No concurrent jurisdiction exists in this case between the Visitor, the court and the IDT. Therefore, the applicant was obliged to invoke the appropriate University Visitor’s jurisdiction (in this case, that of His Majesty) to investigate and decide on the dispute if he so wished. The court stated that the applicant has not attempted to petition His Majesty but has instead “sought refuge” in the court below. In the court’s view, this approach was flawed as “neither the court nor the IDT can give him the solace he seeks” (para. [38] of the judgment).

[31] The court then concluded that the Minister’s discretion to refer a dispute to the IDT is conditional upon his being satisfied that the parties attempted to settle the dispute by such other means that were available to them without success. The applicant did not attempt to utilise the option of petitioning His Majesty King Charles III, who would have

been the University Visitor with exclusive jurisdiction to deal with the matter. Consequently, there was no industrial dispute that the Minister could properly refer to the IDT, and he correctly exercised his discretion not to do so (paras. [42] and [43]).

[32] For those principal reasons, the court concluded that the learned judge erred when she granted leave to the applicant to apply for judicial review of the Minister's refusal to refer the matter to the IDT. The court, accordingly, granted the application for permission to appeal, treated the hearing of the application as the hearing of the appeal, allowed the appeal, set aside the learned judge's orders, and refused the application for permission to apply for judicial review.

The present proceedings for conditional leave to appeal

[33] The applicant, aggrieved by the court's decision, seeks to appeal to His Majesty in Council to have the decision reversed. Of necessity, the motion must be considered within the framework of the applicable law governing appeals to His Majesty in Council.

The applicable law

[34] Section 110(2)(a) of the Constitution provides that an appeal shall lie to His Majesty in Council with the leave of the Court of Appeal-

“(a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to [His Majesty] in Council, decisions in any civil proceedings... .”

[35] An applicant for conditional leave, pursuant to section 110(2)(a), may seek to establish either that the question involved in the proposed appeal is one of great general or public importance or that the proposed appeal falls within the “or otherwise” category to be submitted.

[36] Several cases from this court have addressed the principles governing the court's discretion to grant leave to appeal in matters arising from its decisions that involve a question of great general or public importance. The principles were summarised by the

court in **The General Legal Council (ex parte Elizabeth Hartley) v Janice Causwell** [2017] JMCA App 16 and **Shawn Campbell and others v R** [2020] JMCA App 41 to be as follows:

- (a) Section 110(2) involves an exercise of the Court of Appeal's discretion. For the section to be triggered, the court must be of the opinion that the questions, by reason of their great general or public importance or otherwise, ought to be submitted to His Majesty in Council.
- (b) There must first be the identification of the question involved. The question identified must arise from the decision of the Court of Appeal, and must be a question, the answer to which is determinative of the appeal.
- (c) It must be demonstrated that the identified question is one that can be properly said to raise an issue, which requires debate before His Majesty in Council. If the question involved cannot be regarded as subject to serious debate, it cannot be considered one of great general or public importance.
- (d) The court should not refer a question to the Privy Council if the Board has previously given its opinion on that question. If the issue has been previously decided by the Board, in respect of materially similar circumstances, then it cannot be regarded as being open to serious debate.
- (e) It is for the applicant to persuade the court that the question identified is of great general or public importance or otherwise.
- (f) It is not enough for the question to give rise to a difficult question of law; it must be an important question of law or involve a serious issue of law.

- (g) The question must be one which goes beyond the rights of the particular litigants and is apt to guide and bind others in their commercial, domestic and other relations.
- (h) The question should be one of general importance to some aspect of the practice, procedure or administration of the law and the public interest.
- (i) Leave ought not be granted merely for a matter to be taken to the Privy Council to see if it is going to agree with the court.
- (j) Leave ought not be granted merely for the Privy Council to act as a second court of appeal.

[37] Under the rubric of "or otherwise", the guidance of Wolfe JA (as he then was) in **Olasemo v Barnett Limited** (1995) 51 WIR 191 at page 201 is usually adopted. There, the learned judge stated that the phrase "or otherwise" was included by the legislature:

"...to enlarge the discretion of the court to include matters which were not necessarily of great general or public importance, but which in the opinion of the court might require some definitive statement of the law from the highest judicial authority of the land."

[38] In Wolfe JA's opinion, the phrase "is a means whereby the Court of Appeal can, in effect, refer a matter to their Lordships' Board for guidance on the law".

The applicant's case in support of the motion

[39] The notice of motion lists the following seven questions, which the applicant asserts to be of great general or public importance or which otherwise ought to be submitted:

"i. Was the current visitor, the Hon. Mr. Rolston Nelson (retired), and by extension the Court of Appeal, correct in interpreting Section 6 of the Royal Charter (as amended in 2018) and Statute 2A and finding that he lacked jurisdiction to hear the [applicant's] Petition because

the decision being challenged pre-dated his appointment on May 1, 2019?

ii. Does [sic] the provisions of the Labour Relations and Industrial Disputes Act ('the LRIDA') as well as Section 22 of the Labour Relations Code ('LRC') govern the relationship between employers and employees of the University of the West Indies?

iii. Does the Visitor have jurisdiction to adjudicate upon matters touching and concerning the Labour Relations and Industrial Act and an alleged breach of Section 22 of the Labour Relations Code of Jamaica?

iv. Does concurrent and/or co-existing jurisdiction exist between the IDT and the University Visitor in disputes alleging unfair or unjustified dismissal of an employee of the University of the West Indies; and should the exceptions established in *Re Wislang's Application* [1984] NI 63 and confirmed in *Thomas v University of Bradford* [1987] H.L apply?

v. Whether in the circumstances of the [applicant's] case there is an industrial dispute in the context of the LRIDA that could properly be referred to the IDT by the [Minister]?

vi. Whether it was open to the [Minister] to refer the dispute between the Applicant and the University of the West Indies to the IDT when the Visitor declined jurisdiction?

vii. Whether the [applicant] has been denied his constitutional right to a fair hearing within a reasonable time by an independent and impartial court or authority established by law pursuant to Section 16(2) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 in circumstances where the University Visitor has denied jurisdiction and the [Minister] has refused and/or failed to refer the dispute between the [applicant] and the University to the IDT and there is no other avenue available to the [applicant] to have his dispute heard and determined?"

[40] Counsel for the applicant, Mr Phillip Bernard, submitted that the questions proposed met the established threshold for the grant of conditional leave to appeal. The principal planks of his submissions were that:

- i) The applicant disagrees with the Visitor's ruling that the applicant has no standing to invoke the jurisdiction of the Visitor and that the Visitor cannot adjudicate on matters alleging a breach of section 22 of the LRC or claim for unjustifiable dismissal.
- ii) The Visitor, the Supreme Court and this court misinterpreted article 6 of the Amended Royal Charter and Statute 2A and incorrectly concluded that the Visitor's jurisdiction was based on the date of the decision being challenged instead of the date the petition was lodged with the Visitor. Given the date the petition was lodged, 19 April 2021, it was properly before the Visitor whose appointment became effective on 1 May 2019.
- iii) While the Visitor could have adjudicated on the dispute, the applicant accepts that the Visitor's ruling on jurisdiction is final and not amenable to judicial review.
- iv) The learned judge of the Supreme Court was correct when she concluded that entreaty was made when the Visitor declined to exercise jurisdiction to hear the petition. The dicta of Kelly LJ in **Re Wislang's Application** [1984] NI 63 recognises that in appropriate circumstances, such as the applicant's case, the jurisdiction of the Visitor and a statutory tribunal co-exists. This exception acknowledged in **Re Wislang's Application** is buttressed by the dicta of Lords Griffiths and Ackner in **Thomas v University of Bradford** [1987] AC 795.
- v) The jurisdiction between the Visitor and the IDT co-exists, and the court erred in its application of the law to the applicant's specific factual circumstances. Accordingly, the findings of the court at paras. [32] – [45] of the judgment are being challenged by the applicant as the jurisdiction of the IDT was invoked once the Visitor declined jurisdiction.

vi) In the circumstances where the Visitor has denied jurisdiction, and the Minister has refused to refer the dispute to the IDT, there is no other avenue available to the applicant to have his dispute heard and determined. The applicant's right to due process is protected by the Jamaican Constitution under section 16(2) of the Charter of Fundamental Rights and Freedoms, 2011. The Minister's actions have denied and deprived the applicant of his right in law to have the dispute surrounding his dismissal heard by an independent and impartial tribunal established by law in accordance with the section.

[41] For these main reasons, Mr Bernard maintained that there are questions of significant public importance, as there is uncertainty as to whether labour disputes involving the University should be referred to the IDT, in circumstances where all avenues to resolve a dispute have been exhausted and the Visitor has determined that he lacks jurisdiction to hear disputes grounded in the LRC.

The Minister's opposition to the motion

[42] The Minister does not agree with the applicant's position. On his behalf, counsel, Mr Stuart Stimpson, contended that none of the questions the applicant proposed for submission meets the requirements for submission to His Majesty in Council, and so the motion should be refused. According to Mr Stimpson, the proposed questions fall into one or more of the following categories: (a) questions, which do not arise on the appeal; (b) questions arising on the appeal, the answers to which are not determinative of the appeal; (c) questions with answers long settled by the Privy Council or a court of concurrent jurisdiction; and/or (d) questions, which only give rise to difficult questions of law but do not satisfy the requirements of an appeal to His Majesty in Council.

Analysis and findings

[43] The proposed questions have been considered in light of the Court of Appeal's decision, the parties' submissions, and the principles distilled from the relevant authorities

cited above regarding the threshold for submitting a question of great general public importance or otherwise to His Majesty in Council.

[44] The questions as posed by the applicant have been examined in turn, singly or consolidated, where necessary, and their suitability for submission assessed within the context of the relevant law.

- A. Whether the Visitor and the Court of Appeal erred in their interpretation of section 6 of the Royal Charter and Statute 2A, and their findings that the Visitor lacked jurisdiction because the decision being challenged pre-dated his appointment on 1 May 2019 (proposed question i)

[45] Proposed question i seeks to interrogate the correctness of both the Visitor and the Court of Appeal's findings that the Visitor lacked jurisdiction because the decision challenged pre-dated his appointment. In these proceedings, however, we are concerned with matters arising from the decision of the Court of Appeal in the light of the applicant's discontent with the decision. Therefore, in formulating the questions for His Majesty in Council, the focus has to be primarily on the appellate decision and not on the Visitor's decision, except to the extent the Visitor's decision is endorsed and adopted by the court. This is even more so, since the applicant had not challenged the Supreme Court's decision regarding the Visitor, and, on appeal, he had conceded that the Visitor's decision is final and not amenable to judicial review.

[46] Having considered the court's reasoning and conclusion on the issue, I conclude that the applicant's concern about this court's agreement with the Visitor's conclusion that, on an interpretation of the statutory framework, the Visitor had no jurisdiction, is legitimate for the reasons that follow.

[47] The Court of Appeal (like the Visitor) construed article 6 of the Royal Charter and Statute 2A to mean that if the decision appealed against predates the Visitor's appointment, the Visitor has no jurisdiction to adjudicate on the petition. However, the section relied on by this court to find the Visitor's jurisdiction ousted speaks to the date the petition was lodged and not the date of the decision, as the qualifying criterion. In

this case, the petition was lodged during the Visitor's tenure. Therefore, if it is the date of the lodging of the petition that would determine which Visitor had the jurisdiction, as contended by the applicant, then it is reasonably arguable that the court erred in using the date of the decision to hold that the Visitor's jurisdiction was ousted.

[48] Even more crucial, however, is that the court's finding on this critical question of the criterion for the exercise of jurisdiction by the Visitor directly led it to reverse the decision of the learned judge of the Supreme Court. The learned judge opined that because the Visitor had declined jurisdiction and his decision is final, no other practicable avenue existed for the applicant to seek redress other than the IDT through the Minister. Therefore, the Minister's action in refusing to refer the dispute to the IDT upon becoming aware that the Visitor had declined jurisdiction is debatable as being irrational.

[49] Following on this, the ultimate issue for resolution on the appeal was whether the learned judge was correct to find an arguable case of irrationality on the part of the Minister, thereby justifying the grant of leave to judicially review his decision not to refer the matter to the IDT.

[50] The court disagreed with the learned judge of the Supreme Court on the basis that once the avenue existed for resolving the applicant's dispute with the University through the previous Visitor (now His Majesty King Charles III), the Minister cannot be faulted for refusing to submit the matter to the IDT.

[51] The court's determination that the dispute was a domestic matter falling exclusively within His Majesty's jurisdiction was pivotal, as it concluded based on that finding that the Minister could not have lawfully referred the matter to the IDT. In the premises, the possibility of irrationality on the part of the Minister in declining to refer the dispute to the IDT was effectively ruled out, as the legal framework, according to the court, did not permit such a referral. This reasoning became the primary basis for the court's decision that the learned judge of the Supreme Court erred in granting the applicant leave to seek judicial review of the Minister's decision.

[52] Also, as it now stands within our jurisdiction, the Visitor, the Supreme Court and the Court of Appeal are in conflict over the availability to the applicant of an avenue for redress, despite their concurrence on the interpretation of the law governing the Visitor's jurisdiction. In my view, whether this court erred in its interpretation of the relevant statutory provisions and its ultimate finding that jurisdiction lies with His Majesty the King is a very important question that warrants investigation and settlement by the highest court. This is because the court's interpretation of the relevant statutory provisions not only validates the Visitor's interpretation, which could affect similar pending matters before him, but, more importantly, will be the interpretation to bind lower courts and tribunals within the jurisdiction in which the ambit of the Visitor's jurisdiction may be in issue. It is, therefore, necessary for the correctness of this interpretation and the decision based on it to be determined and pronounced on by His Majesty in Council for certainty and finality.

[53] Accordingly, I would hold that the pertinent issues that arise for consideration within the ambit of this proposed question under review that are considered appropriate for submission to His Majesty in Council are captured in these terms:

a. Whether the Court of Appeal erred in its construction and application of article 6 of the Royal Charter of the University of the West Indies (as amended in 2018) and Statute 2A, and in its resultant findings that:

i. The Visitor, Justice Rolston Fitzherbert Nelson, lacked jurisdiction to adjudicate on the applicant's petition lodged on 19 April 2021 because the decision being challenged predated his appointment on 1 May 2019.

ii. The proper Visitor to adjudicate on the applicant's petition is His Majesty King Charles III, who is the successor of the previous Visitor, Queen Elizabeth II, and in whose jurisdiction the petition lies.

iii. Given the statutory framework governing the visitatorial jurisdiction, the only available avenue for the applicant to obtain redress is through the

visitatorial jurisdiction of His Majesty King Charles III, and so judicial review of the Minister's decision is not available as the Minister could not have acted irrationally in refusing to refer the dispute to the IDT as a matter of law.

B. Whether the provisions of the LRIDA and section 22 of the LRC govern the relationship between the University of the West Indies and its employees (question ii)?

If so, whether the IDT, the Visitor, or both have jurisdiction to adjudicate disputes involving the LRIDA, section 22 of the LRC and unjustifiable dismissal of a University employee (questions iii and iv).

Whether it was lawful for and open to the Minister to refer the matter to the IDT when the visitor declined jurisdiction (questions v and vi)

[54] The applicant's questions (ii) – (vi) have been consolidated, compressed and reformulated for convenient consideration, given their commonality in relation to the availability of the IDT (and by extension, the Minister) as an avenue for redress.

[55] The questions are criticised by counsel for the Minister as inappropriate for submission. According to Mr Stimpson, question ii does not arise on the appeal and furthermore, the settled line of authorities makes it clear that the relationship between the University and its staff is governed by its internal laws. Questions iii and iv, though arising from the decision of the court, are not determinative of the appeal and, in any event, the answers to those questions have long been settled by the House of Lords in **R v Lord President of the Privy Council, ex parte Page** [1993] AC 682, **Thomas v University of Bradford** and **Philips v Bury** (1694) [1558-1774] All ER 53. There is no legal authority for the applicant's proposition that there is concurrent jurisdiction between the IDT and the Visitor, as none of the exceptions set out in **Re Wislang's Application** and **Thomas v University of Bradford** are applicable to the case. Questions v and vi do not arise on the appeal; but even if question v arises from the decision of the court, it is "too narrow as framed and/ or restrictive to be regarded as being of great or general importance". Alternatively, "it rises only to the level of a difficult question of law but does

not satisfy the requirements for an appeal to the Privy Council". Accordingly, the motion should be denied.

[56] I have had due regard to counsel's helpful submissions. I am, however, led to opine that although the questions may not have been formulated in the best possible way, they are connected to and relevant to the matters considered by the court and which informed its decision, and are thus worthy of debate before the highest court. I, therefore, find the Minister's objection to the grant of leave on the basis of these questions unsustainable, primarily for the reasons outlined below.

[57] First, it is observed that the Visitor did not consider the merits of the petition because, in his view, the gravamen of the applicant's complaint was a claim of unjustifiable dismissal and breach of section 22 of the LRC, which fell outside his remit. The Visitor, therefore, concluded that the matter lacked the requisite domesticity and fell, instead, within the purview of the general law of the land. Given the remit of the IDT, it stands to reason that the Visitor was saying (without expressly saying so) that the applicant's redress lies elsewhere, which, as a matter of law, would mean within the remit of the IDT, the body established to address industrial disputes alleging unjustifiable dismissal by employees. Accordingly, the Visitor did not consider the applicant's complaint regarding the nature of his dismissal.

[58] Second, and more importantly, the court, in considering the Visitor's decision declining jurisdiction, did not take into account this aspect of his decision, regarding the subject matter and nature of the applicant's complaint. This seems to be an oversight, as evidenced by the court's pronouncements at para. [34] of the judgment that:

"The Visitor, however, was by no means conveying that the visitorial jurisdiction of the University Visitor, *per se*, was ousted; simply, that he had no authority to adjudicate on the dispute between the [applicant] and the University based on the date of the impugned decision and the remit of his jurisdiction. Therefore, it seems to me that the inescapable inference is that the [applicant's] petition was to be placed before a previous University Visitor who had jurisdiction

to consider based on the date of the decision being challenged.”
(Emphasis added)

[59] Regrettably, this was not an accurate interpretation of the Visitor's reasoning because he, in effect, had concluded that the visitatorial jurisdiction was not engaged at all by the applicant's complaint. On this premise, it would stand to reason that neither he nor the previous Visitor would have had jurisdiction to hear the matters complained of. The Visitor unequivocally stated that the gravamen of the petition concerned matters within the general law of the land, not the visitatorial remit, which is restricted to the internal laws of the University. Therefore, contrary to the views of the court, he did convey that “the [visitatorial] jurisdiction of the University Visitor, *per se*, was ousted”.

[60] Third, this court, in also finding, like the learned judge, that the petition fell exclusively within the internal laws of the University, did not find, as the learned judge did, that the Minister had any jurisdiction to deal with the matter as one falling within the jurisdiction of the IDT when the Visitor declined jurisdiction. In finding that the Visitor (albeit the previous Visitor) has exclusive jurisdiction over the petition, the court was in effect stating that it did not agree with the Visitor that the applicant's petition fell within the general laws of the land rather than the University's internal laws.

[61] It is on the basis of the court's finding of the domesticity of the dispute and the exclusivity of the Visitor's jurisdiction (albeit the previous Visitor) that it concluded that there could be no question of irrationality on the part of the Minister, as the Minister could not have lawfully referred the matter to the IDT. This finding formed the central plank of the court's decision that the Supreme Court erred in granting leave for judicial review.

[62] Whether the court was correct to reverse the Supreme Court's decision to grant leave for judicial review of the Minister's decision on the basis it did will necessitate an enquiry into the applicability of the LRIDA and LRC to the applicant's petition to the Visitor, and thus whether the Minister would have the jurisdiction to treat with the dispute as one referable to the IDT. The decision, insofar as it conflicts with that of the Visitor, and reverses the decision of the learned judge of the Supreme Court, does give rise to the

need for an authoritative determination of the question as to where jurisdiction lies for the resolution of the applicant's dispute with the University on its merits.

[63] Therefore, the ultimate question is this: does the dispute fall within the exclusive jurisdiction of the Visitor or the IDT, or within the concurrent jurisdiction of both? The central issue arising from this question is whether the dispute between the applicant and the University lawfully falls within the Visitor's exclusive jurisdiction, as found by the court. If so, it would exclude the IDT's jurisdiction. The exclusion of the IDT would, in turn, exclude the basis for the exercise of the Minister's discretion, thereby validating the court's decision that the learned judge of the Supreme Court was wrong to grant permission for an application to be brought for judicial review of the Minister's decision.

[64] If, on the other hand, the court erred in finding that exclusive jurisdiction lies with the Visitor, then it would follow that the matter could well fall within the jurisdiction of the IDT, thereby giving rise to the crucial question as to whether there is an arguable case of irrationality on the part of the Minister when he refused to exercise his discretion to refer the case to the IDT. Accordingly, in my view, the court's finding of the exclusivity of the visitatorial jurisdiction over the applicant's petition warrants the scrutiny of His Majesty in Council in light of the Visitor's conclusion that the visitatorial jurisdiction is ousted.

[65] There is a fourth and related basis for the conclusion that the issues giving rise to the proposed questions ought to be submitted to His Majesty for resolution. This concerns the broad framing of some of the proposed questions to incorporate the University's employees in general. Although this formulation of the questions appears broad on the face of it, it may be said that the questions have been informed by this court's reasoning at paras. [39] and [40] of the judgment, where the court stated, in part:

"[39] ...In this case, the possibility of the Visitor and the IDT sharing concurrent jurisdiction over disputes arising from disciplinary proceedings initiated by the University's internal policies, regulations, and domestic laws that lead to the dismissal of members of the University is non-existent.

[40] As the authorities and provisions of the Royal Charter clearly illustrate, any decision made by the University Visitor interpreting and applying the University's internal rules is final. **So, for instance, if the University Visitor decides that an employee of the University was fairly and rightly dismissed, that decision is final. There is no recourse to the courts, or IDT, because as a member of the University, the employee has undertaken to be bound by its internal rules and, in my view, the decisions of the University Visitor emanating from them.**" (Emphasis added)

[66] As seen, the court's analysis was not confined to the applicant's individual circumstances but was framed broadly enough to encompass disputes between the University and its employees that may be adjudicated before the Visitor. In doing so, the court made clear that its interpretation and conclusions were intended to apply generally to all employees with similar complaints to those of the applicants.

[67] Furthermore, the court's reasoning indicates that the Visitor has the authority to determine whether a University employee's dismissal was "fair" and "right", thereby encompassing disputes alleging unjustifiable dismissal against the University. This interpretation of the ambit of the Visitor's jurisdiction within the context of the applicant's petition positively asserts the Visitor's competence to adjudicate on the "fairness" or "rightness" of the dismissal of the applicant or any other employee. This directly contradicts the Visitor's own view that such matters fall outside his remit.

[68] In my opinion, the Visitor's decision that the visitatorial jurisdiction was ousted on the basis of the subject matter of the complaint, and the implications of the court's decision to return the petition to the exclusive jurisdiction of the previous Visitor for his adjudication on the same subject matter, raise a critical issue about how disputes between the University and its employees, in which unjustifiable dismissal or breach of the LRC is alleged, should be resolved.

[69] Finally, on a further related issue: the court, in concluding that the proper forum is the previous Visitor in the person of His Majesty, raises the question whether His Majesty, in the exercise of his visitatorial jurisdiction, can lawfully determine allegations

of unjustifiable dismissal and breaches of the LRIDA and LRC, which the Visitor found to have been the gravamen of the applicant's complaint in his petition. The Visitor has already decided that he (and by extension, the previous Visitor) cannot do so. In the light of this decision of the Visitor that the court regards as final, another pressing question worthy of debate before His Majesty is whether the same issues can now be adjudicated within the visitatorial jurisdiction by the previous Visitor following the current Visitor's pronouncements.

[70] In sum, the ultimate question, arising from the consolidation of all the questions under review, concerns the proper forum for adjudicating the applicant's petition. The determination of whether the previous Visitor alone has jurisdiction, as concluded by the court, is pivotal, as it affects the scope for ministerial intervention, which is the subject of the application for permission to apply for judicial review. Put another way: the answer to the question of where jurisdiction lies, based on the subject matter of the applicant's complaint, will inevitably determine whether it was lawful and open to the Minister to refer the matter to the IDT (question vi). This enquiry would, in turn, necessarily include a consideration of whether there is an industrial dispute within the meaning of the law, which was contested by the Minister in the appellate proceedings (see para. [13] of the Court of Appeal's judgment and question v). These are relevant considerations in determining whether the court was correct in its decision, and so the applicant's proposed questions are not wholly devoid of merit.

[71] Mr Stimpson has submitted that the law regarding the exercise of the visitatorial jurisdiction is well settled in this jurisdiction, and that the question of what constitutes a sufficiently domestic dispute to fall within the visitatorial jurisdiction has been discussed in several cases, emanating from the highest courts in the United Kingdom and Jamaica. Furthermore, he said, the IDT's jurisdiction and the principles governing the University's visitatorial jurisdiction have been discussed in several cases in this and other jurisdictions. Therefore, it cannot be said that the courts are devoid of any guidance as to what

constitutes a domestic dispute for the purpose of the visitatorial jurisdiction or an industrial dispute capable of referral to the IDT.

[72] Regrettably, while counsel's observations are correct regarding the existence of authorities addressing the visitatorial and IDT jurisdictions, I cannot accept his arguments as providing compelling reasons for rejecting the motion. Counsel has failed to cite any authority directly on point or addressing the critical issues at hand in the instant case. While there is the authoritative decision of the Judicial Committee of the Privy Council in the **University of Technology, Jamaica v Industrial Disputes Tribunal and others** [2017] UKPC 22, which illustrated the applicability of the IDT jurisdiction to an employment dispute at the University of Technology, Jamaica where visitatorial jurisdiction existed, the issues raised in the instance case were never before the Privy Council for consideration. In essence, there were no issues in that case regarding the exercise of the visitatorial jurisdiction at that university.

[73] The present case is characterised by conflicting interpretations and inconsistent applications of the legal principles governing the University's visitatorial jurisdiction to the applicant's circumstances. Such inconsistencies directly affect the applicant's ability to access justice. In these circumstances, it is incumbent upon the court to seek definitive guidance from the highest appellate authority. This is especially important before foreclosing a legal avenue for the applicant and others in similar positions to seek redress for their grievances against the University. Obtaining clear guidance from His Majesty in Council is, in my view, essential to maintain confidence in the legal process and to secure the rights of those affected or likely to be affected by the court's decision.

[74] Accordingly, the question of whether the Court of Appeal erred in finding that the applicant's dispute falls within the exclusive jurisdiction of the previous Visitor, thereby rendering the Minister's decision not amenable to judicial review, is one fit for the consideration of His Majesty in Council.

[75] Even if it may be argued that the question is not one of great or general importance (which I think it is), it is nevertheless one on which the definitive word of His Majesty in Council is required for our guidance and the benefit of our jurisprudence. Such guidance is essential for the continued development and clarity of our jurisprudence on the scope and limits of visitatorial and ministerial jurisdictions in employment disputes at the University. It would therefore be accommodated in the “or otherwise” rubric under section 110(2)(a) of the Constitution.

[76] I am fortified in my view that there should be a further appeal to His Majesty in Council, given the pronouncements of Rowe P in **The Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Limited** (1989) 26 JLR 390, which I endorse. Rowe P, with the concurrence of other members of the court, held that the seriousness of a question of law, together with the fact that a statutory provision was being judicially interpreted for the first time, were sufficient reasons to reject submissions made in opposition to an application for conditional leave to appeal pursuant to section 110(2)(a) of the Constitution. In the same vein, I conclude that the conflicting interpretation of the relevant provisions of the amended University Charter and its related statutory instruments, which have not been the subject of much judicial scrutiny, together with all the issues identified above as warranting further inquiry, constitutes a compelling basis for granting conditional leave to the applicant to pursue a further appeal.

[77] As a consequence of the foregoing analysis and conclusions to which I have arrived, I would allow the proposed questions ii to vi be considered by His Majesty in Council under three broad, discrete but interrelated questions, framed as follows:

- a. Whether the Visitor (current or previous) has jurisdiction to adjudicate upon a dispute between the University and its employees involving the Labour Relations and Industrial Disputes Act (‘LRIDA’) and Labour Relations Code (‘LRC’) and allegations of unjustifiable dismissal.

b. Whether concurrent or co-existing jurisdiction exists between the Visitor and the Industrial Disputes Tribunal ('IDT') in relation to the Applicant's dispute with the University alleging breach of the LRIDA and LRC and unfair or unjustified dismissal, and whether the exceptions established in **Re Wislang's Application** [1984] NI 63 and affirmed in **Thomas v University of Bradford** [1987] AC 795 apply.

c. Whether it was open to or lawful for the Minister to exercise his discretion to refer the dispute between the applicant and the University to the IDT when the Visitor declined jurisdiction to consider the applicant's petition.

C. Whether the decisions of the Minister and the Visitor denying jurisdiction denied the applicant his constitutional right to a fair hearing within a reasonable time by an independent and impartial court or authority established by law pursuant to Section 16(2) of the Constitution (proposed question vii)

[78] The applicant has raised the question of a breach of his constitutional right to a fair hearing before an independent and impartial court or tribunal established by law, arising from the Visitor's and the Minister's decisions. That right is protected under section 16(2) of the Constitution. The applicant, however, did not challenge the constitutionality of the decisions of the Minister and the Visitor, either in the Supreme Court or in the Court of Appeal. Therefore, the issue is being raised for the first time in these proceedings. Accordingly, the question does not arise from the court's decision and, as such, does not satisfy the criterion for granting conditional leave to appeal to His Majesty in Council. I would therefore decline to refer this question to His Majesty in Council, even while acknowledging that the applicant's right of access to justice is engaged in the proceedings.

Conclusion

[79] After reviewing the matter and considering counsel's submissions, I find that, although the applicant's questions may not, in their current form, be referred to His Majesty in Council, they are not devoid of merit. Having distilled, in my view, the pertinent

issues arising from them, I conclude, for all the reasons discussed above, that the case is an appropriate one in respect of which this court should not have the final word. The questions at stake are not only significant for the parties involved but also have wide-ranging implications for the interpretation of visitatorial and ministerial jurisdictions in the context of employment disputes at the University. The novelty of the questions arising from the interpretation of article 6 of the Royal Charter and the demonstrated unresolved state of the law in this area, with potentially serious consequences for the applicant and other employees of the University, are factors that support my conclusion that the questions identified herein should be referred to His Majesty in Council. Additionally, the absence of clear procedural guidance for the applicant, who is said to have an available avenue for redress through the visitatorial jurisdiction of His Majesty the King, as the previous Visitor, underscores the necessity for an authoritative resolution of this case by our highest court.

[80] So, bearing in mind the well-established principles of law governing the consideration of the application for conditional leave to appeal to His Majesty in Council, and the special circumstances of the case as outlined in this judgment, the applicant has demonstrated that there are questions arising from the decision of this court that by reason of their great general or public importance or otherwise should be referred to His Majesty in Council in accordance with section 110(2)(a) of the Constitution.

[81] Consequently, I would grant conditional leave to appeal to His Majesty in Council in respect of the questions /issues detailed above at paras. [53] and [77], which I propose should be incorporated in the final order of this court.

D FRASER JA

[82] I have read, in draft, the judgment of McDonald-Bishop P and agree with her reasoning and conclusion. There is nothing that I wish to add.

LAING JA (AG)

[83] I, too, have read the draft judgment of McDonald-Bishop P. I agree with her reasoning and conclusion.

MCDONALD-BISHOP P

ORDER

1. Leave is granted to the applicant, Donovan Brown, to appeal the decision of the Court of Appeal, dated 24 November 2023, to His Majesty in Council pursuant to section 110(2)(a) of the Constitution in respect of the following questions/issues:
 - a. Whether the Court of Appeal erred in its construction and application of article 6 of the Royal Charter of the University of the West Indies (as amended in 2018) and Statute 2A, and in its resultant findings that:
 - i. The current Visitor of the University of the West Indies (‘the University’), Justice Rolston Fitzherbert Nelson, lacked jurisdiction to adjudicate on the applicant’s petition lodged on 19 April 2021 because the decision being challenged predated his appointment on 1 May 2019.
 - ii. The proper Visitor to adjudicate on the applicant’s petition is His Majesty King Charles III, who is the successor of the previous Visitor, Queen Elizabeth II, and in whose jurisdiction the petition lies.
 - iii. Given the statutory framework governing the visitatorial jurisdiction, the only avenue for the applicant to obtain redress is through the visitatorial jurisdiction of His Majesty King Charles III, and so judicial review of the decision of the Minister of

Labour and Social Security ('the Minister') is not available as the Minister could not have acted irrationally in refusing to refer the dispute to the IDT as a matter of law.

- b. Whether the Visitor (current or previous) has jurisdiction to adjudicate upon a dispute between the University and its employees involving the Labour Relations and Industrial Disputes Act ('LRIDA') and Labour Relations Code ('LRC') and allegations of unjustifiable dismissal.
- c. Whether concurrent or co-existing jurisdiction exists between the Visitor and the Industrial Disputes Tribunal ('IDT') in relation to the Applicant's dispute with the University alleging breach of the LRIDA and LRC and unjustifiable dismissal, and whether the exceptions established in **Re Wislang's Application** [1984] NI 63 and affirmed in **Thomas v University of Bradford** [1987] AC 795 apply.
- d. Whether it was open to or lawful for the Minister to exercise his discretion to refer the dispute between the applicant and the University to the IDT when the Visitor declined jurisdiction to consider the applicant's petition.

2. Leave is granted on the condition that the applicant:

- a. within 60 days of the date hereof, enters into security in the sum of \$1,000.00 for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event he does not obtaining an order granting final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and

- b. within 120 days of the date hereof, takes the necessary steps for the purposes of procuring the preparation of the record and the dispatch thereof to England.
3. Costs of the motion for conditional leave to appeal to be costs in the appeal to His Majesty in Council.