

**THE CHARITIES ACT (NORTHERN IRELAND) 2008  
THE CHARITIES ACT (NORTHERN IRELAND) 2013  
THE CHARITIES ACT (NORTHERN IRELAND) 2022  
THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010**

**The Charity Tribunal for Northern Ireland**

**Application Reference: 1/22**

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**BETWEEN**

**DISABLED POLICE OFFICERS' ASSOCIATION OF NORTHERN IRELAND**

Applicant

**-and-**

**THE CHARITY COMMISSION FOR NORTHERN IRELAND**

Respondent

**APPLICATION BY APPLICANT FOR PERMISSION TO APPEAL TO THE HIGH COURT AGAINST A RULING OF THE TRIBUNAL FOLLOWING A DIRECTIONS HEARING HELD ON 17/10/2022.**

**DIRECTIONS NOTICE**

1. The Applicant, by way of an application dated 03/11/2022, has applied for permission to appeal to the High Court, pursuant to Rule 35 of the Charity Tribunal Rules (Northern Ireland) 2010 ('the Rules') against a ruling of the Tribunal, made on 26/10/2022, following a remote oral Directions Hearing held on 17/10/2022, holding that the application for review brought by the Applicant ('the Substantive Application') dated 15/04/2022, pursuant to section 22 of the Charities Act 2008 ('the 2008 Act'), and section 1 of the Charities Act (Northern Ireland) 2022 ('the 2022 Act'), challenging the decision of the Respondent dated 14/02/2014 to institute a statutory inquiry into the affairs of the Applicant.
2. The said decision of the Respondent was claimed by the Applicant to be a 'relevant action' within the meaning of section 1 of the 2022 Act that provides for refreshed appeal rights (that includes an application for review of a

reviewable decision made by the Respondent), including allowing a refreshed appeal to be made to the Tribunal within 91 days of the coming into operation of the 2022 Act, that is, 91 days from 30/03/2022.

3. The Applicant also applied for a Direction pursuant to Rule 3 and Rule 14 of the Charity Tribunal Rules (Northern Ireland) 2010 ('the 2010 Rules') that a preliminary hearing be held by the Tribunal to consider –
  - (1) whether a lawfully constituted committee of [presumably] the Respondent, in accordance with paragraph 9 to Schedule 1 of the 2008 Act, made the said decision on 14/02/2014 to institute a statutory inquiry into the Applicant;
  - (2) if no such committee existed, whether the said decision was, therefore, *ultra vires* the powers of the Respondent and, accordingly, void.
4. The Respondent, by correspondence dated 10/06/2022, received by the Tribunal on that date, denied that the said decision, the subject of the Substantive Application, was a 'relevant action', pursuant to the 2022 Act as it was not a decision made, or purported to be made, by a member of staff of the Respondent and, instead, was a decision made by a committee comprising three Commissioners of the Respondent, and that, therefore, fresh appeal rights, as envisaged by the 2022 Act, did not arise and the Substantive Application was, therefore, out of time (subject to an application being made by the Applicant to the Tribunal to extend time and any such application being granted by the Tribunal). The Respondent further submitted, in those circumstances, that a preliminary hearing to determine whether the said decision was made by a lawfully constituted committee of it was not required since it was of no consequence, in any event, whether or not the committee of Commissioners of the Respondent was properly convened as the provisions of section 1 of the 2022 Act only apply to a 'relevant action' taken by staff of the Respondent and not to decisions taken by Commissioners of the Respondent.
5. The Respondent, too, applied for a Direction, presumably pursuant to Rule 3 of the Rules, that the Tribunal require the Applicant to request a direction under Rule 3 to extend time in which to bring the application, time to do so having expired, it stated, pursuant to Rule 17(8) of the Rules and declined to furnish its Response until the Tribunal made a decision on its submission to that effect.
6. By letter dated 11/07/2022, sent by email on that date to the Tribunal, but not copied to the Respondent, the authorised representatives of the Applicant submitted, *inter alia*, that Rule 18 of the Rules required the Respondent to submit its Response within 28 days of being sent the papers by the Tribunal but had failed to do so but instead, on 10 June 2022, made an application seeking the making of the said Direction by the Tribunal addressed to the Applicant, and advised that the Applicant had made certain observations to the Respondent on 15/06/2022 on the position adopted by the Respondent, but had received no acknowledgement of this - representations that were not copied to the Tribunal - and submitted that in the absence of any permission

from the Tribunal to apply any longer timescale, the Respondent was in breach of its statutory obligation pursuant to Rule 18(2) of the Rules.

7. The Attorney-General for Northern Ireland ('the Attorney-General'), by letter dated 19/07/2022 from her solicitor, to the Respondent, copied to the Tribunal, declined to participate in these proceedings (meaning, the Tribunal decided, that she declined to join the proceedings as an Intervening Party), but confirmed that she would be willing to assist the Tribunal, if required, a role governed by Rule 23 of the Rules. The Attorney-General did, at the request of the Tribunal, furnish written submissions to the Tribunal on 26/09/2022, copied to the parties.
8. The Tribunal declined to hold a preliminary hearing as envisaged by Rule 14 of the Rules. However, the Tribunal directed on 30/08/2022, that, pursuant to Rule 3(7) of the Rules, a remote oral Directions Hearing take place by WebEx on 17/10/2022 to determine the applications brought by each party for a Direction in respect of the respective matters set out above. The parties, through their representatives, were present, and made oral submissions supplementing their respective written submissions. The Attorney-General was also represented and her representative made oral submissions. The two parties were represented at the Directions Hearing (the Applicant through joint duly-authorized representatives who had to be authorised in writing as they were not legal representatives, that is, the representatives were not solicitors or counsel).
9. At the suggestion of the parties and the Attorney-General's representative, and with their agreement, the Directions Hearing addressed only the question of whether the application was a 'relevant action' within the terms of the 2022 Act as, the parties submitted, the Tribunal's determination of that question would determine how these proceedings might progress. (This was outside the terms of the Applicant's original request for Directions but agreed by its representatives at the Directions Hearing as the most appropriate way to proceed).
10. The Directions Hearing was never intended to, and did not, address the determination of the Substantive Application, namely, whether the Respondent was justified in instituting a statutory inquiry on 14/02/2014 into the Applicant, pursuant to section 22 of the 2008 Act and whether that decision was lawfully made by the Respondent.
11. By agreement of the parties, and the Attorney-General, the issue of *res judicata* did not arise in the context of this Directions Hearing.
12. The Tribunal heard oral argument and submissions from the parties, and the Attorney-General, supplementing the written submissions of each, on the agreed issue for determination in the said Directions Hearing, namely, whether the Substantive Application of the Applicant was a 'relevant action' pursuant to section 1 of the 2022 Act.

13. The Tribunal found that the said decision was not a 'relevant action' since it was satisfied, on the balance of probabilities, on the written evidence and the written and oral submissions of the parties, and the written and oral submissions of the Attorney-General, that the impugned decision was made by the Respondent and not by staff of the Respondent. This discrete issue had to be considered as, otherwise, no ruling could be made by the Tribunal on the 'relevant action' question as jointly invited by the parties and the Attorney-General. This did not, however, amount to a determination by the Tribunal of the Substantive Application.
14. The Tribunal made no ruling on the original application of the Respondent to direct the Applicant to take any other particular action with a view to it pursuing its Substantive Application since the parties agreed that the only matter to be considered and determined at the Directions Hearing was whether the Substantive Application was a 'relevant action'.
15. The Tribunal, by its ruling at the Directions Hearing, made no decision on the Substantive Application but merely whether the Substantive Application was a 'relevant action'.
16. At the invitation of the Tribunal, following the publication of its written ruling on the agreed issue for determination in the Directions Hearing, the Applicant, in its application for permission to appeal that ruling to the High Court, confirmed that it intends to pursue the Substantive Application, but has taken no further steps to date in that regard. It remains open to the Applicant, as was always the case, to continue to pursue the Substantive Application, subject, presumably, initially, to determination by the Tribunal of any issues concerning time limits and, if permitted to proceed, determination by the Tribunal of the Substantive Application itself, that is, solely, whether, in opening a statutory inquiry into the affairs of the Applicant on 14/02/2014, the Respondent, in making its decision to open the said statutory inquiry, was a decision that no reasonable decision-maker could have made at the time it did, following the persuasive authority of the Upper Tribunal in the jurisdiction of England and Wales in *Regentford Limited v. The Charity Commission for England and Wales and Her Majesty's Attorney-General* [2014] UKUT 0364 (TCC).
17. The Applicant did not, as was its entitlement, if it felt grounds existed, choose to make an application for review of the outcome of the said Directions Hearing, pursuant to Rule 34 of the Rules (if, indeed, the outcome of the Directions Hearing can be regarded as a 'Decision' of the Tribunal at all – an issue that, equally, arises in the context of the instant application for permission to appeal that outcome to the High Court, pursuant to Rule 35). Presumably, however, the Applicant considers the ruling made by the Tribunal following the said Directions Hearing was not wrongly made as a result of any alleged administrative error on the part of the Tribunal and, therefore, no grounds existed to apply for review.
18. There is no statutory definition of a 'Decision' made by the Tribunal in any of the legislative provisions governing the proceedings of the Tribunal. However, it must be envisaged, on any reading of the legislation, that a 'Decision' of the

Tribunal is a Decision on a substantive appeal, application for review, or Reference that comes before the Tribunal, that represents a final disposal of an appeal, application for review or Reference, rather than a ruling made by the Tribunal in a Directions Hearing, or in a pre-hearing review or in a preliminary hearing. In the instant matter, the Applicant confirmed, in writing, after the publication of the ruling of the Tribunal following the said Directions Hearing, that it intended to pursue its Substantive Application.

19. Rule 36 of the Rules dictates that an application for permission to appeal to the High Court against a Decision of the Tribunal must be decided on the papers unless the Tribunal considers that special circumstances make a hearing desirable. I have decided that special circumstances do exist in this case, namely, that these proceedings involve a unique and novel legislative provision that does not exist in any other charity jurisdiction, that make a hearing desirable before making a decision on the application of the Applicant for permission to appeal to the High Court against the ruling made by the Tribunal following the said Directions Hearing.

## 20. Directions

- (1) A remote oral Directions Hearing, by WebEx, shall be held on Friday, 20/01/2023, at 2:00 pm, with a time slot of up to a maximum of two hours, to consider the Applicant's application for permission to appeal to the High Court against the ruling made by the Tribunal in a Directions Hearing that the Substantive Application was not a 'relevant action' within section 1 of the 2022 Act where there has been no final disposal of the Substantive Application and where
- (2) The Attorney-General is invited to attend also, through her representative, as she was represented at the said Directions Hearing, to offer advice on this issue.
- (3) The exceptional circumstances in this case arise by reason of the fact that this application for permission to appeal arises out of a unique and novel issue of charity law, that arises only in the geographical jurisdiction of Northern Ireland, and only in the context of determining appeals or applications for review in the context of charity law, namely, the concept of extended appeal rights arising out of a claimed 'relevant action', together with the question, not considered before, of whether a ruling by the Tribunal in a Directions Hearing on a question that was agreed by the parties to be the net issue for determination in that hearing, is a 'Decision', as envisaged in Rule 35 of the Rules, since that ruling did not make a final disposal of the Substantive Application.
- (4) The Applicant's application for permission to appeal the ruling of the Tribunal in the said Directions Hearing shall be furnished forthwith by the Secretary to the Tribunal to the Respondent and the Attorney-General.
- (5) Within no less than 14 days before the said hearing, the Respondent shall furnish written representations to the Tribunal on the Applicant's application for permission to appeal the ruling of the Tribunal following the said Directions

Hearing held on 26/10/2022, to the High Court and furnish a copy to the Applicant and to the Attorney-General. Those representations should include addressing the issue of whether the ruling of the Tribunal in a Directions Hearing is appealable to the High Court when no decision has yet been made by the Tribunal making a final disposal of the Substantive Application and where the Applicant has stated that it intends to pursue the Substantive Application.

- (6) The Attorney-General, within the same time limit, is invited, if she wishes, to similarly furnish written representations to the Tribunal and furnish a copy to the Applicant and the Respondent.

Signed

A handwritten signature in black ink, appearing to be 'Damien J. McMahon', written in a cursive style.

**Damien J. McMahon**  
**President,**  
**Charity Tribunal for Northern Ireland.**

Date: 12 December 2022