

THE OFFICIAL GAZETTE 8TH OCTOBER, 2010

LEGAL SUPPLEMENT – C

BILL No. 17 of 2010

Friday 8th October, 2010

PARLIAMENT OFFICE
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Georgetown,
Guyana.

8th October, 2010.

The following Bill which will be introduced in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 17 of 2010

JUDICIAL REVIEW BILL 2010

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A BILL
Intituled

AN ACT to provide for an application to the High Court of the Supreme Court of Judicature for relief by way of judicial review and for related matters.

A.D. 2010 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Judicial Review Act 2010 and shall come into operation on a date appointed by order of the Minister.

Interpretation.

2. In this Act –

“act” includes any decision, determination, advice or recommendation made in accordance with a power or duty conferred or imposed by the Constitution, any written law, instrument of incorporation, rules or bylaws of any corporate or incorporate body or under a non-statutory scheme that is funded out of monies appropriated by Parliament;

“administrative act or omission” means an act or omission of a Minister, public body, public authority, tribunal, board, committee, or any person or body, exercising, purporting to exercise or failing to exercise any public power or duty conferred or imposed by the Constitution, any written law, instrument of incorporation, rules or bylaws of any corporate or incorporate body or under a non-statutory scheme that is funded out of monies appropriated by Parliament;

“decision” includes any commercial or contractual decision made in accordance with any power or duty conferred or imposed by the Constitution, any written law, any instrument of incorporation, rules or bylaws of any corporate or incorporate body or under a non-statutory scheme that is funded out of monies appropriated by Parliament.

PART II
JUDICIAL REVIEW

Application for
judicial review.

3.(1) An application to the Court for relief against an administrative act or omission shall be made by way of an application for judicial review in accordance with this Act and with rules of court.

(2) The act or omission against which relief is sought under subsection (1) must have a public element in the sense that it affects public law rights, obligations or expectations.

(3) In considering whether an act or omission has a public element, the Court shall have regard to the following matters –

- (a) the source of the power or duty exercised;
- (b) the nature of the power or duty exercised;
- (c) the object or purpose of the act or omission;
- (d) the consequences of the act or omission not being amenable to judicial review; and
- (e) any other matter the Court sees fit to consider.

Persons entitled to
relief.

4.(1) The Court may on an application for judicial review grant relief in accordance with this Act –

- (a) to a person whose interests are adversely affected by an administrative act or omission;
- (b) to a person or group of persons if the Court is satisfied that the application is justifiable in the public interest in the circumstances of the case.

(2) Where a person or group of persons adversely affected by an administrative act or omission is unable to file an application for judicial review under this Act on account of poverty, disability, or socially or economically disadvantaged position, any other person or group of persons acting bona fide may apply under this section for relief under this Act.

(3) Subject to section 3 (1), a person is entitled, when making an application for judicial review under subsection (1) (b) or (2), to make the application in any written or recorded form or manner and by any means.

Grounds for relief.

5.(1) The grounds upon which the Court may grant relief by way of the remedies mentioned in this Act include the following –

- (a) that an administrative act or omission was in any way unauthorised or contrary to law;
- (b) excess of jurisdiction;
- (c) failure to satisfy or observe conditions or procedures required by law;
- (d) breach of the principles of natural justice;
- (e) unreasonable, irregular or improper exercise of discretion;
- (f) abuse of power;
- (g) fraud;
- (h) bad faith, improper purposes or irrelevant consideration;
- (i) acting on instructions from an unauthorised person;
- (j) conflict with the policy of an Act;
- (k) error of law, whether or not apparent on the face of the record;
- (l) absence of evidence on which a finding or inference of fact could reasonably be based;
- (m) breach of or omission to perform a duty;
- (n) failure to satisfy or observe conditions or procedures required by the Constitution;
- (o) breach of the principle of proportionality;
- (p) error of fact;
- (q) deprivation of a legitimate expectation; and
- (r) misfeasance in public office.

(2) An applicant is not limited to the grounds set out in the application for judicial review but if the applicant wishes to rely on any other ground not so set out, the Court may, on such terms as it thinks fit, direct that the application be amended to specify such other ground, after giving any other party an opportunity to be heard in respect of the amendment.

Appointment of
persons to
investigate.

6.(1) Where an application is filed under section 4 (1) (b) or 4 (2), the Court may suspend the hearing of the application for such time as it considers just, and appoint a person or such number of persons possessing such training or qualifications as the Court considers just and as the circumstances warrant, to investigate the complaint or matter and to submit a report on its finding to the Court within such time as is specified by the Court.

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

Notice of
application in
public interest.

7.(1) Upon the filing of an application for judicial review under section 4 (1) (b), the Registrar shall immediately cause notice of the application to be published on two Sundays in any daily newspaper circulating in Guyana.

(2) A notice under subsection (1) shall specify the name of the applicant, the administrative act or omission which is the subject matter of the application, the nature of the relief being sought, and any other relevant matter, and invite any person with a more direct interest in the matter to file a similar application, or to apply to be joined as a party to the proceedings, within fourteen days of the last publication of the notice.

(3) Where an application is filed within the time specified in subsection (2) and the Court is satisfied that –

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

the Court may strike out the first applicant and accept the application of the second applicant, but in that event the second applicant shall not be liable to pay the costs of the first applicant.

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

- (a) the need to exclude a mere busybody;
- (b) the importance of vindicating the rule of law;
- (c) the importance of the issue raised;
- (d) the genuine interest of the applicant in the matter;
- (e) the expertise of the applicant and the applicant’s ability to adequately present the case; and
- (f) the nature of the decision against which relief is sought.

(5) Where an application is filed under section 4 (2), the Court shall not make an award of costs against an unsuccessful applicant, except where the application is held to be frivolous or vexatious.

(6) Where an unsuccessful applicant under subsection (5) appeals the decision, the Court of Appeal shall not make an award of costs against that appellant.

Remedies.

8.(1) The remedies that the Court may grant by way of relief on an application for judicial review are –

- (a) an order of certiorari, for quashing unlawful acts;
- (b) an order of prohibition, for prohibiting unlawful acts;
- (c) an order of mandamus for requiring performance of a public duty, including a duty to make a decision or determination or to hear or determine any case; or
- (d) such other orders, directions or writs as it considers, just and as the circumstances warrant.

(2) The Court may, having regard to the scope of the remedies mentioned in subsection (1), grant in addition or alternatively –

- (a) a declaratory judgment or an advisory declaration or a prospective declaration;
- (b) an injunction;
- (c) a conservatory order, in the case of the State;
- (d) restitution or damages in money; or
- (e) an order for the return of property, immovable or movable.

(3) Any of the remedies mentioned in subsections (1) and (2) may be applied for together or in the alternative in an application for judicial review; and the Court may grant one or more of them as law and justice may require, and whether sought in the original application or not.

Exhaustion of alternative remedies.

9. The Court shall not refuse judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision.

Interlocutory applications.

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

Private law action.

11. Where the Court is of the opinion that the application is not amenable to judicial review, the Court may allow the proceedings to continue, with any necessary amendments, as proceedings not governed by this Act subject to such terms and conditions as the Court thinks fit.

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

12. Where the Court is of the opinion that an action commenced by way of writ of summons should be by way of application for judicial review, the Court may give such directions and make such orders as it considers just to allow the proceedings to continue as proceedings governed by this Act.

Application to be made party to the proceedings.

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

(2) The Court may grant the application either unconditionally or subject to such terms and conditions as it thinks just or refuse the application.

Application in respect of failure to make a decision.

14.(1) Where –

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

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

(2) Where –

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

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

Reasons for decisions.

15.(1) It is the duty of any person or body making an administrative decision, if requested in accordance with this section by any person adversely affected by the decision, to supply that person with a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(2) A request for a statement under subsection (1) must be made on the date of giving or notification of the decision or within fourteen days after that date.

(3) A request for a statement must be made in writing, except that where an oral hearing is held and no reason is given for the decision, the request may be made orally at the conclusion of the oral proceedings.

(4) In the case of postal communications, a request shall be deemed to be made at the time when it is posted and a notification of a decision at the time when it reaches the addressee.

Statement of reasons.

- 16.(1) A statement, requested under section 15 shall –
- (a) be in writing;
 - (b) be supplied within a reasonable time;
 - (c) be deemed to be part of the decision and to be incorporated in the record; and
 - (d) shall not include any confidential information regarding the personal or business affairs of anyone other than the person seeking the statement.

PART III MISCELLANEOUS

Stay of proceedings.

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

Interim injunction to restrain persons from acting in office.

- 18.(1) Where a person brings proceedings alleging that another person is not entitled to act in an office to which this section applies, the Court may –
- (a) grant an injunction or a conservatory order in matters against the State restraining that other person from so acting; and
 - (b) if the case so warrants, declare the office to be vacant.
- (2) This section applies to –
- (a) a public office;
 - (b) an office created by any written law;
 - (c) an office in which the public has an interest; and
 - (d) any other office as the Court considers it is in the public interest to grant relief.

(3) Informations in the nature of *quo warranto* are hereby abolished.

- Natural justice. 19. Any person or body in the exercise of an administrative act, to which this Act applies, shall perform that act in accordance with the principles of natural justice or fairness.
- Power to remit. 20. Where on an application for relief against an administrative act or omission, the Court is satisfied that the applicant is entitled to relief under section 8, it may in addition or instead of granting any other relief, remit the matter to the Minister, public body, public authority, tribunal, board committee, person or body concerned with a direction to reconsider and determine, either generally or in respect of any specified matters, the whole or any part of it, in accordance with the Court's order.
- Power of Court to refuse relief. 21. The Court may, if it thinks fit, refuse to grant any relief under this Act if it considers that there has been undue delay in making the application for judicial review, and that the grant of the relief sought would cause substantial hardship to, or would substantially prejudice the rights of, any person, or would be detrimental to good administration.
- Right to appeal. 22. Notwithstanding anything in any other written law, there shall be a right of appeal from a judge of the Court in any application, including one arising from a criminal cause or matter, to the Court of Appeal.
- Act binds the State. 23. This Act binds the State.

EXPLANATORY MEMORANDUM

The Judicial Review Bill 2010, as the name implies, provides for an application to the High Court for relief by way of judicial review. It deals with other related matters.

Clause 1 states the short title and provides that the Minister may by order bring the Act into operation.

Clause 2 defines words used in the Act.

Clause 3 provides for application for judicial review. It states that an application to the Court for relief against an administrative act shall be made by way of an application for judicial review. An act against which relief is sought must have a public element.

Clause 4 states that the Court may grant relief to a person whose interests are adversely affected or to a person or a group of persons where an application is justifiable in the public interest. A person is entitled to make an application for judicial review in any written form or manner.

Clause 5 states the grounds for judicial review. These grounds include an administrative act or omission contrary to law or unauthorised; breach of the principles of natural justice; fraud, bad faith, improper purposes or irrelevant consideration; error of law; breach or omission to perform a duty.

Clause 6 states that where an application is filed for judicial relief, the Court may suspend the hearing of the application and appoint a person to investigate the complaint and submit a report of its finding to the Court.

Clause 7 states that where an application for judicial review is filed by a person or a group of persons in the public interest, the Registrar shall cause notices of the application to be published on two Sundays in any daily newspaper circulating in Guyana. The notices shall specify the name of the applicant, the act or omission which is the subject matter of application, the relief sought and invite any person with a more direct interest in the matter to file a similar application within fourteen days of the last publication of the notice.

When an application is filed and the Court is satisfied that a second person applying has a more direct interest in the matter than the first applicant the Court may strike out the first applicant and accept the application of the second applicant.

Clause 8 states the remedies the Court may grant by way of relief on an application for judicial review. These include an order of certiorari, prohibition or mandamus. In addition, the Court may grant a declaratory judgment, an injunction, a conservatory order, in the case of the State, restitution or damages in money or an order for the return of property.

Clause 9 states that the Court shall not refuse judicial review where the law provides an alternative procedure.

Clause 10 states that an interlocutory application may be made in an application for judicial review. The Court may make an interlocutory order and may grant interim relief, including an interim conservatory order.

Clause 11 states that where an application is not amendable to judicial review, the Court may allow the proceedings to continue as proceedings not governed by this Act.

Clause 12 states that the Court has power to convert a private law action into a public law action.

Clause 13 states that any person who has an interest in a decision which is subject of an application for judicial review may apply to the Court to be made a party to the proceedings.

Clause 14 states that where a person who has a duty to make a decision and has failed to make it, the person adversely affected by the failure may apply for judicial review.

Clause 15 states it is the duty of a person making an administrative decision, if requested by a person adversely affected by the decision, to supply that person with a statement setting out the findings on material questions of fact on which those findings were based.

Clause 16 states that a statement requested under Clause 15 shall be in writing, supplied within a reasonable time and shall be deemed part of the decision.

Clause 17 states that the Court may at any stage direct that proceedings for judicial review be stayed.

Clause 18 provides for the grant of an interim injunction to restrain a person from acting in a public office and if the case so warrants, declare the office to be vacant.

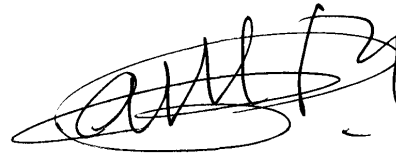
Clause 19 provides that a person in the exercise of an administrative act under this Act shall perform that act in accordance with the principles of natural justice.

Clause 20 provides that where on an application for relief against an administrative act the Court is satisfied that a person is entitled to relief, the Court may grant the relief and remit the matter to the public body, tribunal, or board to reconsider and determine the whole or part of it in accordance with the Court's order.

Clause 21 states that the Court may refuse to grant any relief where, for instance, the grant of the relief would substantially prejudice the rights of any person or would be detrimental to good administration.

Clause 22 states that there shall be a right of appeal from a judge of the Court in any application, including one arising from a criminal cause or matter to the Court of Appeal.

Clause 23 states that the Act binds the States.



Attorney General and Minister of Legal Affairs