IN THE SUPREME COURT OF BELIZE, A.D. 2021

CLAIM NO. 563 OF 2021

BETWEEN

SENATOR MICHAEL PEYREFITTE	**CLAIMANT**
AND	
MINISTER OF FINANCE	**1st DEFENDANT**
FINANCIAL SECRETARY	**2nd DEFENDANT**
ATTORNEY GENERAL	**3rd DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:
4th March 2022

Appearances:

Mr. Dean Barrow SC with Mr. Adler Waight, Counsel for the Claimants.

Mr. Douglas S. Mendes SC with Ms. Iliana Swift, Counsel for the Defendant.

Intervenors:

National Trade Union Congress of Belize: Mr. Darryl Bradley

Speednet Communications Ltd: Mr. Andrew Marshalleck SC

KEYWORDS: Judicial Review - Rolled up Hearing - Application for Leave - Standing - Award of Procurement Contract - Microsoft Licenses - Illegality - Breach of Finance and Audit (Reform) Act, Cap 15 - Impartiality - Bias - Claytona Principle - Ultimate decision Maker - Remedy

JUDGMENT

1. This is a decision following a rolled-up hearing of both the Application for Leave to bring judicial review proceedings and the judicial review proceedings.

2. This is, admittedly, the first of its kind that this Court has done and I embarked with some reluctance at the agreement of Senior Counsel on both sides. It was really no easier but was perhaps less time consuming than the usual two-step process.

3. The basis of the Application concerns the decision of the First and or Second Defendants to award a contract for procurement of Government of Belize's (GOB) Microsoft subscription renewal licences (the Licences) and support services to Speednet Communications Company Limited DBA Smart! (Smart!).

4. The Applicant, an Opposition Senator in the Senate of Belize and as such a Parliamentarian and Legislator says that from 2017 to 2021, the GOB contractually procured all Microsoft 365 licences through BTL/Digi (Digi) the nationalized telecommunications company of which GOB owned more that 90%.

5. In 2021, before the term of that contract expired, the Ministry of Finance (the Ministry) sought a proposal from Digi for a new two-year term agreement.

6. By June 9th, 2021, before the proposal was received, the Ministry indicated that the contract would instead be put to tender using the selective tendering process

and submissions were to be made for a preferred three-year bid although one-year bids would also be considered.

7. Digi, Smart! and Innova (a Trinidadian company who had provided licences for the Government prior to Digi) were invited to bid.

8. In the meantime, a three-month extension was signed with Digi.

9. Digi and Innova both submitted three-year and one-year bids while Smart! submitted only a one-year bid. The contract was awarded to Smart! and was executed to the extent where $3.37 million, the full sum payable thereunder has been paid over and the licences have been provided.

10. GOB subsequently cancelled Digi's three-month extension, incurring a payment of $295,015.50 to Digi.

11. The Applicant says that the decision to enter into the Contract was illegal for two reasons. The Contract was never submitted to the Contractor General for his certificate or written comment contrary to section 18(2) of the Finance and Audit (Reform) Act, Cap 15 (FARA).

12. Further, in violation of section 19(5) of the FARA, the selective tendering process was used in circumstances where the Ministry must have known that the three-year bid being requested would have exceeded $5 million and such a bid, by law, required the open tendering process.

13. He also says that the decision was unreasonable since Digi was a silver Microsoft partner since 2017, while Smart! was only a basic partner without Digi's track record or experience in procuring and servicing the licences.

14. He added that Digi's bid was lower than Smart's when the add-ons offered and set-offs of dividends owed to GOB were considered. This is compounded by the amount paid to Digi on cancellation of the three-month extension.

15. By awarding the Contract to Smart! GOB was depriving Digi and therefore itself, as majority shareholder, of a significant revenue base, adversely affecting Digi's profits and the Belizean Public's dividend yield.

16. Finally, the Applicant alleged impropriety through taint of actual or apparent bias. He stated that the First Respondent was the ultimate decision maker regarding the award of the Contract.

17. The First Respondent had publicly admitted that he owed an immense debt to his brother Jaime Briceno for financing the Party. Jaime Briceno and the First Respondent's first cousin are both part owners of Smart! with Jaime Briceno being the Chairman.

18. In his Fixed Date Claim Form, the Claimant seeks declarations that the First and Second Defendants acted unlawfully in awarding the Contract and paying the entire contract price without legally and properly executing the contract; that the award of the Contract was in breach of the FARA; and that the decision to award the Contract was wholly irrational and infected by bias.

19. He also prays an order of *certiorari* to quash the award of the Contract.

20. The Respondent/ Defendant conceded in their submissions that the Applicant/Claimant is entitled to *"an appropriately worded declaration that the 2nd Defendant acted in contravention of section 18(2) in failing to seek the Contractor General's review and comments prior to executing the contract…. and an accompanying order for costs…"*

21. They, however, deny that the Applicant ought to be granted leave to pursue an order for *certiorari* as he has no standing to do so. Similarly, leave should be denied him on the issue of the failure to conduct an open tender procedure since the Contract was for a sum less than $5,000,000.00. The provisions of Section 19(5) of the FARA were, therefore, never engaged.

22. As to the allegation of bias, the Second Defendant says he was the decision maker. He maintained throughout that he only discussed the issue with the Minister of State, in the Ministry of Finance, for his approval and the First Defendant never took any part whatsoever in the process.

23. The Claimant submits that even if that were true, the First Defendant continues to be the ultimate decision maker and his influence could come to bear on the Second Defendant whether consciously or subconsciously.

24. There was also raised for the first time in the Claimant's Affidavit in Reply to the Defendant's Affidavit the fact of a circular memorandum (no. 1 of 2021) issued by the Contractor General which required the Contractor General's pre-

approval for the use of the selective tendering procedure for amounts above $50,000.00.

25. An allegation of breach of this directive was not made in the Application for Leave or the Claim Form subsequently filed. Immediate objection was taken to its inclusion for these reasons by Senior Counsel for the Respondent in his submissions.

26. Although Senior Counsel for the Applicant had made written submissions on the matter, he abandoned it entirely when he presented his oral submissions. So, you will hear no more of that.

Intervenors:

27. There were two intervenors, Speednet (Smart!) to whom the Contract had been issued, and the National Trade Union Congress of Belize (NTUCB) which operates as a trade union federation. The NTUCB's membership is comprised of Association of Public Service Senior Managers, Belize Energy Workers Union, Belize Workers Union, Belize Communication Workers Union, Belize National Teachers Union, Belize Water Services Workers Union, Public Service Union, Southern Workers Union and Progressive Teachers Union, Christian Workers Union, University of Belize Faculty and Staff Union, Student Union of Belize, and Karl Heusner Memorial Hospital Workers Union.

28. The parties all agreed that the intervenors had a sufficient interest in the matter and ought to be heard.

29. While the Court considered submissions from both intervenors, it was made clear that they would be heard after the Application for Leave had been determined. The Court found this to be in accordance with Rule 56.11(1) and (2)(c) which reads:

"56.11 (1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.
(2) In particular the judge may -
(c) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;"

30. Any submissions which they may have made on leave was, therefore, not considered.

31. The NTUCB supported the Claim and submitted that both the provisions requiring the submission of the Contract to the Contractor General (Section 18(3)) and the use of the open tendering procedure (Section 19(5)) are mandatory.

32. The GOB's failure to comply was in clear violation of the Act and the Contract ought to be struck down.

33. The NTUCB also asserted irrationality in the government's decision to award the Contract to Smart!. They outlined in support that Digi had the lowest bid for the preferred three-year term, was a nationalized telecommunications company which raised revenue for the government and had proven itself by having its contract to provide the Licences previously renewed.

34. On the issue of bias, NTUCB opined that Digi had the lowest bid for the preferred three years. But that term was suddenly, and without explanation, rendered inoperative. A fair-minded observer, given the circumstances and being aware of the familial ties and the indebtedness admittedly owed, would say that there was a real danger or risk that the decision was attenuated by bias.

Smart!:

35. Smart! vehemently denied that there was any breach of section 19. While bids were invited for three years they had not been accepted or a contract awarded which was of or over the threshold amount.

36. Smart! felt that the irrationality ground was without merit and demonstrated a fundamental misunderstanding of the duties imposed by the FARA. The evidence in relation to bias was considered speculative at best, seeking without sufficient basis to draw conclusions about familial ties and make bold allegations in the face of undisputed facts.

37. They submitted that the Court ought to be mindful about the remedies granted and should refuse the quashing order as it would serve no useful purpose nor have any positive impact on good administration or the resources of the GOB. Furthermore, section 18(4) does not speak to legality or validity of a contract entered into in breach.

38. The Court takes this opportunity to thank all Senior Counsel and Counsel for their excellent and most helpful oral and written submissions.

The Issues regarding Leave:

1. **Should leave be granted to bring a claim for judicial review?**
2. **If leave is to be granted, then on what grounds?**

Should Leave be granted to bring a Claim for Judicial Review?

39. The Sharma formula, as laid out in ***Sharma v Brown-Antoine [2007] 1 WLR 780, 14***, details the threshold for obtaining leave. The applicant must have an *"arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy".*

40. This bar is understandably set very low. Some say, at a height which is necessary only to avoid abuse. This is because the application process seeks to weed out the hopeless or baseless cases. It is often done *ex parte* and is not intended to be a full trial of the issues. We begin the exercise with promptitude.

Promptly:

41. Rule 56.4 of the CPR mandates that an application for judicial review must be made promptly, and in any event, within three months from the date when the grounds first arose. There is no issue here as this application was filed within the three-month period required. The Contract had been executed on the 10th August, 2021 and the Application for Leave was filed on the 6th September, 2021.

Standing:

42. Rule 56.2(1) of the CPR states that *"an application for judicial review may be made by any person, group or body which has* ***sufficient interest*** *in the subject matter of the application." (Emphasis mine)*

43. Senior Counsel for the Respondents agreed that *"because of the serious nature of the allegations which have been made, particularly in relation to the alleged bias of the First Defendant (even if ultimately unsubstantiated), and the Claimant's position in the senate to which the Contractor General is empowered to refer any contract which he thinks is not in the national interest pursuant to section 18(3) of FARA, the Defendants accept that the Claimant has sufficient interest to challenge the decision to award the contract to SMART!."*

44. Senior also conceded that the Applicant/ Claimant is entitled to an appropriately worded declaration that the Second Defendant acted in contravention of section 18(3).

Standing to pursue an order of *certiorari:*

45. However, he raised that the Applicant lacked standing to claim an order of *certiorari*. He urged that the Applicant lacked a sufficient interest to seek a quashing order because he was not a bidder and had not demonstrated that he had been or would be financially or otherwise affected or impacted by having the Contract quashed.

46. He relied on the English Court of Appeal case of ***R (on the application of Chandler) v Secretary of State for Children, Schools and Families [2010] LGR 1*** and its application in ***Regina (Good Law Project Ltd and others) v Secretary of State for Health and Social Care [2021] PTSR 1251***.

47. Both these cases concerned the public procurement regime and considered in part whether a public law remedy was actually necessary. More specifically whether a person, who was not an economic operator had sufficient standing

(interest) or was simply attempting to use the judicial review system for some purpose for which it was not intended.

48. So that whatever interest they may have was not in the *"observance of the public procurement regime"* but was merely to use the review system as *"a tool with which to challenge a decision to which she or he was opposed…."* (**Chandler para 78**) or perhaps for the advancement of a political cause or to raise the profile of the litigation (**Good Law Project Ltd and others para 107**).

49. **Chandler** acknowledged that non-economic operators could bring a claim for judicial review but laid out a test for standing which seemed to require the applicant to demonstrate that had the conduct complained of not occurred, there may have been a different outcome which would have had a direct impact on the applicant.

50. In making this determination, however, the Court must also consider the merit of the challenge i.e., the gravity of the departure from public law obligations, the gravity of the breach, the absence of any other "responsible challenger," and more appropriate ways to litigate the breach.

51. Senior Counsel asked the Court to consider the slant and tone of the Applicant's Affidavit in support of his application, particularly at paragraphs 32, 33 and 36. He postured that they made it clear that the applicant's interest was not so much with ensuring a fair process but rather a venting of his grievance that Digi had not been contracted for a renewal of the Licenses or that Digi's bid had not met with success.

52. Those paragraphs state:

> *"32. As a Senator, Legislator and former Attorney General, I was and am concerned and disturbed by the fact that GO did not give the procurement contract for the Microsoft 365 renewal licenses to Digi, but instead awarded it to Smart.*
>
> *33. My consternation has several sources, not least of which is my knowledge that Digi's Microsoft partner status was hard won, key part of the strategy and arrangements negotiated by GOB in 2017, and intended at the time to empower Digi as the telecommunications provider owned by Government and people. I know the intention then was to renew the procurement contract with Digi when expired, in order to preserve the benefits of buying from Digi as Belize's only Microsoft-certified Silver partner, which benefits included GOB foreign exchange savings and the availability of at-home service and quality assurance.*
>
> *…*
>
> *36. I urge that the abrupt GOB decision not to proceed seamlessly with Digi but to invite tenders for the contract without any explanation or justification for the change of mind is incomprehensible."*

53. This, Senior Counsel said, showed that the Applicant had no real or no direct interest in having the Contract quashed. Further, on the test laid out in **Goodlaw** and **Chandler**, quashing the Contract would have no direct impact on him financially or otherwise. He, therefore, had no standing to claim such a remedy.

54. In his Reply, Senior Counsel for the Applicant called this a curious and irreconcilable argument which turned logic on its head. He advanced that an Applicant who is granted Leave to apply for judicial review may seek all the remedies he deems necessary.

55. The issue then becomes whether he is able to prove his case and persuade the Court to exercise its discretion accordingly. And that is an entirely different thing.

56. He added that the very cases on which Senior Counsel for the Respondent relied did not support his contention. The issue in both was always whether there was standing to bring judicial review proceedings, not whether there was standing

to apply for a particular type of remedy. He determined that if the Respondent concedes that there is standing to bring the proceedings that is in fact dispositive of the issue.

57. This Court was intrigued by the Respondent's submission of standing required to seek a particular remedy but really could not agree with it. Firstly, the application process is not where a Court ought to determine what remedy or remedies an applicant is entitled to. That is what the trial process is for.

58. If the Court determines that the Applicant has standing, which, in this case, the Respondent concedes, then leave ought to be granted.

59. This means that notwithstanding the fact that the Applicant is clearly not an economic operator, he would be allowed to bring a claim for judicial review. In that claim, he could then pursue whatever remedies are available including his claim for *certiorari*. Success is another matter entirely.

60. Now, this is not to say that there aren't circumstances when the remedy sought ought not to be thoroughly considered to determine standing generally.

61. ***R (JS) v Secretary of State for the Home Department [2021] EWHC 234 (Admin)*** discussed the need for sufficient interest as required by section 31(3) of the **Senior Courts Act 1981** (which reads similarly to our own Rule 56.2(1) of the CPR). It reads - *"no application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with the rules of court; and the courts shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates".*

62. In that case, the applicant challenged the Secretary of State's policy of not permitting family reunion applications from children who had been granted asylum, save in exceptional cases.

63. At the time of the application, the applicant was no longer a child, had no valid application made while he was a child so the policy did not then and would not ever apply to him. He was representing no interest other than his own and there were other challengers to the same policy in other matters before the court.

64. Mr. Justice Chamberlain stated at **paragraph 33** *"where the claimant does not purport to represent any interests but his own, s. 31(3) of the 1981 Act requires the court to focus on the relief sought and to consider, in light of the claimant's position at the point in time when permission (sic) considered, whether that relief is capable of conferring a benefit (not necessarily a pecuniary one) on him".*

65. The circumstances of cases like **R (JS) (ibid)** are glaringly different to the one at bar. The Applicant at bar represents interest beyond his own, the gravity of the issues raised are admittedly quite serious, so serious that the Respondent conceded that not only should leave be given but a declaration be made.

66. A declaration could not be made unless a claim is filed, and a claim can not be filed unless leave is granted. There have been no other challenges to the knowledge of the Court and the economic operator has not joined or sought to join these proceedings. This Applicant has no alternate way of ventilating his issues.

67. Under those circumstances, his alleged motivation or a particular relief sought can not be determinative of his standing.

68. The fact that there is to be no direct financial benefit to the quashing of the Contract does not mean there could be no other direct benefit to him. The Claimant has an interest in ensuring that public contracts are not entered into in violation of the FARA and in particular section 18(3) which engages the National Assembly of which he is a member.

69. This brings me to my second point. Standing concerns, the party's interest to question the decisions of public bodies. It is a thrashing process for separating and discarding those who have no interest at all or no sufficient interest.

70. This Applicant has shown that he does have a sufficient interest in the subject matter as a Senator, parliamentarian and legislator and the Respondent concedes this. In those circumstances the Court's enquiry into standing to bring a claim ends.

Arguable Grounds:

71. The matters as set out briefly above certainly fall within the ambit of judicial review as it concerns the public procurement process and breach of the FARA. The Applicant has demonstrated that he has arguable grounds for judicial review.

72. The Respondents' concession that they did not abide by section 18(2) of the FARA is sufficient to satisfy this Court on that ground. They have also accepted

in their submissions that the threshold has been met in relation to the grounds of irrationality and bias.

73. The Court need delve no further on those matters.

74. What remains for consideration now is whether Leave should be granted to pursue the allegation of illegality for breach of section 19 of the FARA - failure to use the open tender.

Open tender:

75. Senior Counsel for the Respondent asked that leave be denied in relation to the ground of the failure to use the open tender process in accordance with section 19 of the FARA.

76. Because this is a rolled-up hearing, the Court perceives no real difference in dealing with this issue here on the application for leave or as an issue on trial. Moreover, full submissions were made by all. In fact, the lengthy submissions received on the issue compels the view that there was in fact an arguable case which ought not to have been determined at the leave stage before all the evidence was before the Court.

Leave:

77. Leave is granted to the Applicant to file a Claim for judicial review in terms of the draft order filed with his Application, save that clause f is deleted as it was never pursued.

The Claim

78. The Claim sought the following reliefs:

"1. A declaration that the First and Second Defendants acted unlawfully between 25th June, 2021 and 10th August, 2021 in awarding a contract for procurement of Government of Belize (GOB) Microsoft 365 Subscription renewal license, and paylenghts entire contract price, to Speednet Communications Limited DBA Smart (Smart) without legally and properly executing the contract.

2. A declaration that the First and Second Defendants acted unlawfully between the 25th June 2021 and the 10th August, 2021 by awarding for contract for procurement of GOB Microsoft 365 Subscription renewal licenses to Smart in breach of the Finance and Audit (Reform) Act, Chapter 15 of the Laws of Belize, Revised Edition, 2011.

3. A declaration that the First and Second Defendants acted unlawfully between 25th June, 2021 and the August 10th, 2021 by awarding to Smart a contract for procurement of GOB Microsoft 365 Subscription renewal licenses in circumstances where the decision to do so was wholly irrational.

4. A declaration that the First and Second Defendants acted unlawfully between 25th June, 2021 and the August 10th, 2021 by awarding to Smart a contract for procurement of GOB Microsoft 365 Subscription licenses in circumstances where the decision to do so was infected by actual or apparent bias.

5. An order of certiorari quashing the contract for procurement of GOB Microsoft 365 Subscription renewal licenses awarded by the First and Second Defendants to Smart.

6. Such further or other reliefs as this Honourable Court may deem just.

7. Costs."

Claims conceded by the Respondent:

79. The Defendants have conceded their failure to comply with section 18(2) of FARA and proposed that in the Court's discretion an appropriately worded declaration be made which would give effect to this non-compliance with an order for costs.

The Remaining Issues on the Claim:

1. **Is the Claim academic and not subject to judicial review?**
2. **Did the Defendants breach section 19 of FARA in failing to utilize the open tender process?**

3. **Is the alleged section 20 breach in issue and if it is, has it been made out**
4. **Did the Defendants act irrationally in awarding the Contract to SMART!?**
5. **Was the decision to award the Contract to SMART! vitiated by actual or apparent bias?**
6. **What relief should be granted if any?**

The facts as the Court finds them in relating to the creation of the Contract:

80. For at least four years prior to the Government's decision to use a selective tendering procedure Microsoft licences were procured through the limited tendering procedure where an individual supplier Digi was invited to submit a quote for contract.

81. In June 2021, the Director of CITO recommended and the second Defendant decided that the selective tendering process would be used. CITO also recommended Innova and Digi (companies that had been contracted before by the GOB to provide the said service) and the second Defendant recommended Smart!.

82. The Second Defendant says he made this recommendation as *"the Government had recently obtained ICT services from …. Smart!" and he felt that "the addition of another local provider would add a greater level of competition."*

83. Mr. Smith, in his affidavit, says that he proposed Innova and Digi due to their track record and the size and nature of the contract. However, he presented nothing which indicated that these were part of the requirements to tender. In fact, the quote requirements which form part of the exhibit marked IS 7 states

only that the supplier was to be a Microsoft reseller.

84. So, it appears that the only prerequisite to offer a bid was that the bidder should have a Microsoft partnership. The Contractor General's report dated October 20th, 2021, stated at A.5 that if Smart did not meet that requirement their bid would have been "non-performing."

85. The three suppliers were invited to tender bids where three years was stated as preferred although one year would also be considered.

86. No bidder could be confused, and no bidder was. Each bidder, save Smart!, provided bids for both three years and one year. Each bidder would have been well aware that if the three-year bid was accepted then the one-year bid could not also be accepted and vice versa.

87. This Court has not seen any evidence which provided any criteria on which the bids were to be considered.

88. The letter from the Director of the Procurement Unit to the First Defendant thru both the Financial Secretary and the Minister of State for Finance dated June 22, 2021, states that *"(t)he defining criteria for selection of supplier was based solely on price."*

89. The Director of CITO's letter to the Financial Secretary also stated at section III that price was the only criterion that was used to determine the rank of the bid.

90. The Court accepts that the lowest price would therefore win the bid.

91. The bids were received password protected. Each bid was revealed at the bid open when the password was entered as provided by each bidder in turn. This was done in the presence of each bidder and the bid committee.

92. Digi tendered the lowest bid for three years and Smart! the lowest bid for 1 year.

93. By letter dated the 21st June, 2021, the Director of CITO recommended Smart and asked that a contract be granted for the period June 25, 2021 to June 24, 2022.

94. On 23rd June, Mr. Smith requested and received the Second Defendant's approval to sign a 3-month renewal with Digi to avoid disruption. He does not state whether he signed or not.

95. The Director of Procurement, in his June 22nd letter, referred to above also recommended Smart! and stated *"CITO has provided assurances that, given the standard maintained by Microsoft, the newcomer Smart, will be able to provide the services satisfactorily (email attached)."* There was no email attached to the exhibit.

96. On receipt of the correspondence from the Director of Procurement, the Second Defendant says he approached the Minister of State who gave his approval for Smart! to be awarded. He then notified the Director of CITO of this decision on the 25th June, 2021 and requested that Smart be notified.

97. The Director did so by email the same day stating *"the Ministry of Finance has no-objection to enter into a contract agreement with Smart for the renewal of MS Business Subscriptions in the amount of $3,373,154.73. The Ministry of Finance requires a few more days to complete the procurement report and immediately thereafter, will engage with Smart to sign the contract."*

98. That same day he received a letter link to access the Licences from Smart!. He responded by phone saying they were unable to allow them access because the contract had not yet been signed.

99. On 29th June 2021, what he had been informed by Smart! to be a test of the provisioning of licences was by the 30th June realised to be the actual provisioning. There was then a duplication of licences as those provided by Digi under the three-month extension were still in effect. He reported this to the Second Respondent.

100. The Second Respondent after communicating with both Digi and Smart, opted to reduce the three-month extension to one month with a one-month cancellation fee of $590,031.00.

101. This, he said, was more reasonable than Smart!'s settlement which offered to vary its start date from July 1st to 24th. They sought a sum of $188,937 which was exclusive of GST and agreed to its payment through the provision of telecommunication services to certain ministries for a contracted period of three years.

102. On the 10th August, Smart! was paid the Contract price. The Contract was executed on the 20th August, 2021 and was made retroactive to the 1st July, 2021 and ending on June 30th, 2022.

103. The Contract was not submitted to the Contractor General before it was signed. It was submitted on the 31st August and he issued a report on the 20th October, 2021.

Is the Claim Academic?

Smart!'s Argument:

104. Senior Counsel for the intervenor Smart raised that the Claim was academic and not subject to judicial review because it had altogether been performed.

105. The Court, having heard the cross-examination of the Second Defendant, can not find that the Claim is academic. The full Contract price has indeed been paid and the Licences provided and put to use since June of 2021. However, the Contract does also concern support and maintenance which I am not convinced could have been or has been completed. That to my mind must be an indispensable ongoing obligation until the Contract ends.

Did the Defendants breach section 19(5) of FARA in failing to utilize the open tender process?

106. This issue really turns on the interpretation of the particular section. To aid in that exercise and throughout this judgment the following sections of the FARA included below are relevant:

"2.—(1) In this Act, unless the context otherwise requires,
"contract" or" government contract" means a written or oral agreement for the procurement or sale by the Government of goods or services, or a combination of goods and services, setting out the conditions of the contract, the specification or description of the goods or services, or the goods and services, procured or sold under the contract, but

does not include anything regulated under the National Lands Act, Cap. 191 or Regulations made thereunder, which shall subject to the provisions alibis Act to the contrary, continue to be regulated by the procedures specified in, and the provisions of, the National Lands Act, Cap. 191 and Regulations made thereunder to the exclusion of this Act; It was expected that the GOB would continue to procure its Microsoft licences through Digi which was a partner of Microsoft.

"procurement" means a procurement of goods or services, or a combination of goods and services by contract by the Government;

17.—(I) Subject to this Act, the Government shall have power to acquire, hold and dispose of, by sale or otherwise, property of any kind, and all property owned by the Government shall be held in the name of the Government of Belize,
(2) The Government shall have power to enter into procurement or sale contracts using either the limited tendering procedure, the open tendering procedure, or the selective tendering procedure.
(3) All contracts made, whether in or outside Belize, for and on behalf of the Government shall, if reduced to writing, be made in the name of the Government and may be lawfully signed by a Minister, or an Ambassador or High Commissioner or Chief Executive Officer or Permanent Representative,
Provided however, that any other public officer may sign a contract if duly authorized in writing by the Minister, either specifically in any particular case, or generally for all contracts below a certain value in a Ministry

18.—(1) The Government shall, before disposing of any public assets of or above the value specified in section 22(1) of this Act, seek the written comments of the Contractor General, which shall be submitted to the National Assembly before the disposal of the assets is effected.
(2) The Government shall submit any contract referred to in section 19, 20 or 21 of this Act, to the Contractor-General for review and comments before the contract is executed.
(3) If the Contractor-General is of the view that any contract referred to in this section is not in the best interests of the Government, or is not in the national interest of Belize, he shall state that fact and the reasons therefor in writing, and submit his comments to each House of the National Assembly for debate before the contract is executed.
(4) If the Contractor-General is of the view that any contract referred to in this section is in the national interest, he shall issue a certificate to that effect and submit it to the Financial Secretary. Such a certificate shall be conclusive evidence that the contract is in the national interest.

19.—(1)Whenever the Government decides to enter into a contract using the open tendering procedure, the Government shall ensure that,
(2) .....
(5) Any procurement or sale contract of or above five million dollars shall be subject to the open tendering procedure.

20.—(1)When undertaking a procurement or sale using the selective tendering procedure, the Government shall ensure that the number of applicable suppliers or purchasers invited to submit a tender is sufficient to ensure competition without affecting efficiency in the tendering process.
(2) The Government shall select suppliers or purchasers to be invited under this section to submit a tender in respect of a procurement or sale using, among others, the following guidelines,
(a) the need for fairness. and non-discrimination;
(b) the relevant market for the procurement or sale;
(c) the need for expediency in the public interest;
(d) the number of suppliers or purchasers available in Belize in the relevant market;
(e) the knowledge of government procedures by the applicable suppliers or purchasers; and
(f) any other relevant factors.
(3) Where a permanent list of qualified suppliers or purchasers is maintained, the Government may select the supplier or purchaser from that list, and award the contract accordingly."

The Claimant's Argument:

107. The Claimant says that the Defendants requested three-year bids. They knew that such a bid would have been well in excess of $5,000,000.00 therefore they should have employed the mandatory open tendering procedure in accordance with section 19(5).

108. This failure was consequential. It rendered the use of the selective tendering procedure and the award of the Contract *ultra vires* and deprived the process of transparency, accountability, and competition.

109. Senior Counsel concluded that the tendering procedure was an initiating process not just a conclusionary one.

110. At **paragraph 52** to **53** of his submissions in reply he states, *"Since a contract could only be concluded at the end of the tendering procedure the section requires the choice and utilization of one of the tendering procedures in order to commence the exercise that is to lead to a contract.*

Then selection of a tendering procedure logically has to take place before, and in order that a contract may be signed…. It therefore has to be determined by the type of contract that is contemplated at the beginning, not by the one that is signed in the end."

The NTUCB Argument:

111. The NTUCB supported the Claimant's argument and said that the preferred three-year bid *"should have informed and dictated the choice of the tendering procedure as the mandatory open tender."*

The Defendants' Argument:

112. The Defendants said simply that the Contract was for $3,373,154.73, a sum less than $5,000,000.00. This rendered section 19 inapplicable. The Government was, therefore, not legally required to use the open tender procedure and was free to use the selective tendering procedure as was done. The only prerequisite needed was that the procurement be less than $5,000,000.00.

113. They also relied on evidence from the second Defendant that the national budget line item contained only $3.9 million so they knew that a bid above that could not be accepted, and the selective tendering procedure would be adequate.

Smarts! Argument:

114. Smart! submitted that since the Government did not accept a bid of or over $5,000,000.00 or purport to enter into a contract for the preferred three-year period, the open tender process was not required.

115. The section, he urged, refers specifically to a contract which comes after the process and not the process itself. So, the abandonment of the process without

a contract is not a breach. Since the Government clearly abandoned the process for the three-year licence, there was no contravention.

The Court's Consideration:

116. By section 17 of the FARA, the government is empowered to enter into procurement contracts using either the selective, open or limited tendering procedure. Section 19(5) ensures that any contract of or over $5,000,000.00 must be preceded by use of the open tendering procedure.

117. This says to me that the Government is not allowed to enter into a contract of or over $5,000,000.00 unless the open tendering process had been used. This calls for thought on inception of the process and a deep consideration of the value of the bids expected. So, in this regard I agree with Senior Counsel for the Claimant.

118. But I do not agree that there could be a breach unless the open tendering procedure had not been used and a contract was then entered into for a sum above the stated threshold. It is two-fold and both parts are necessary for a breach.

119. The section speaks specifically to a contract. Senior Counsel's interpretation seems somehow to minimize the word contract making the process more important. A contract is certainly not existent when invitations are issued to tender.

120. The Court also looks at the wording used in section 20(1) of the FARA which states, *"When undertaking a procurement or sale using the selective tendering procedure…."*

121. This clearly indicates that the drafter appreciated the difference between a procurement or sale contract and the undertaking of a procurement or sale.

122. Senior Counsel's interpretation would perhaps call for words to the effect that *'When undertaking a tender in procurement or sale where the bid would be $5,000,000.00 or over, the open tendering procedure must be used and no contract of or over $5,000,000.00 may be entered into unless the open tendering procedure had been used.'* The section under scrutiny falls significantly short.

123. I agree with the Defendants and Smart! that where a process is abandoned, and the possibility of a three-year licence agreement was most certainly abandoned, then there is no breach. To interpret otherwise would be to create an unnecessary mischief.

124. So, had the GOB entered into a contract for $5,000,000.00 or over, the section would certainly have been triggered and they would have fallen afoul. Senior Counsel for the Claimant himself knew this as he states at **paragraph 55** *"(o)therwise, it would be illegal to sign such a contract if the five-million-dollars bid were accepted."*

125. For this Court, to find otherwise would be to impute meaning where the words are clear and create chaos where none now exists. This ground fails.

Is the alleged section 20 breach in issue and if it is, has it been made out?

The Claimant's Argument:

126. In his submissions in Reply, the Claimant specifically addressed for the first time that section 20 of the FARA had not been complied with and added this to the Defendant's *"catalogue of serial non-compliance"*.

127. The thrust of the Claimant's argument was that the Defendants never said or demonstrated that they had considered the mandatory terms of section 20 when they made their choice of entrepreneurs for the selective tendering process. This breach ought also to result in a quashing of the decision.

128. The Claimant, in anticipation of the Defendants' objections stated at paragraph 69 - 76:

"69. Further, the Defendants cannot dodge or hide from this breach of Section 20 by saying that it was not particularised in the 'pleadings'.

70. This matter brought by fixed date claim form containing grounds on which relief is sought and supported by affidavits. In those affidavits, the Claimant assails the addition of Smart! to the pool of bidders; and has in general terms described the basis upon which it was improper to use the selective tendering process.

71. Thus, the matrix of facts and circumstances surrounding the use of the selective tender procedure was attacked in a general way by the Claimant right from the start. This was at a time, though, when the Claimant was not privy to the in-house details of the manner in which the process was conducted.

72. Still, his raising wrongful use of the selective tendering procedure at the initial stage of his action, meant that the Claimant was entitled later on to spotlight any additional instances of such wrongdoing that, as the case unfolded, arose from closer look.

73. This is especially so because, in this matter, that closer look was occasioned by the Defendant themselves.

74. In welcome consonance with a "cards face up" approach, CITO Director Ian Smith's evidence went into much detail about the way the Defendants deployed the selective tendering procedure. He did so particular at paragraphs 4 through 20 of his affidavit.

75. In the result, the Claimant looked anew at his FARA Section 20 complaints. He had initially advanced his allegations and primary facts in the round. However, he was able to go further after the disclosures in Mr. Smith's affidavit.

76. The Claimant did so by way of his third affidavit at paragraphs 4 through 14. The Defendants cannot, in view of the foregoing, be heard to say that any of this takes them by surprise. It is settled law that it is perfectly permissible for witness statements (affidavits in judicial review) to add to originally pleadings as in Boyea."

129. His reference to *Boyea* was a reliance on the ***Eastern Caribbean Flour Mills Ltd v Ormiston Ken Boyea (St. Vincent and the Grenadines Civil Appeal No. 12 of 2006, judgment delivered 16 July 2007)***, where Barrow JA commented (at paras. [43]) on statements made by Lord Woolf MR's and Lord Hope's observations as follows:

"[43] Lord Hope's reproduction and approval of the exposition by Lord Woolf MR in McPhilemy v Times Newspapers Ltd on the reduced need for extensive pleadings now that witness statements are required to be exchanged, should be seen as a clear statement that there is no difference in their Lordships' views on the role and requirements of pleadings. The position, as gathered from the observations of both their Lordships, is that the pleader makes allegations of facts in his pleadings. Those alleged facts are the case of the party. The "pleadings should make clear the general nature of the case," in Lord Woolf's words, which again I emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose. But there is no longer a need for extensive pleadings, which I understand to mean pleadings with an extensive amount of particulars…."

The Defendant's Argument:

130. The Defendants held steadfast to the view that the Claimant could not simply insert a whole new ground in his submission in reply. He ought properly to have set this allegation out in his application or its affidavit in support. He should in fact have amended.

131. Even from what the Claimant said had been pleaded, the Defendants would not reasonably have known that any such allegation was being made because the paragraphs which Senior Counsel for the Claimant referred to contain no allegations of this kind.

132. He drew the court's attention to ***The Attorney General of Trinidad and Tobago v Akili Charles Civil Appeal No P-129 of 2020 delivered July 15, 2021***, which emphasized that in judicial review proceedings the Court must be guided by the grounds for relief stated.

133. The court at paragraph 58 of that case pointed out that it was the affidavit which ascertained the case to be answered. This provides notice to the other side and is rooted in natural justice. *"(A)ccordingly it will be unfair for a Judge to decide a claim on the basis of material that was not set out in the affidavit."*

134. The Defendants also presented ***R (on the application of Talpada) v Secretary of State for the Home Department [2018] EWCA Civ 84*** which underscored the need for an appropriate *"degree of procedural rigour"* and *"formality and predictability"* in public law litigation as well as the overarching need for fairness and order throughout the process.

The Court's Consideration:

135. The issue of the precise role or requirements of pleadings will perhaps always be in contention. But I do not believe that in the post CPR era it was ever intended to throw the proverbial baby out with the bathwater.

136. Perhaps, what is required is the striking of a balance. It must not be fed to excess creating an unnecessarily bloated beast nor must it be so significantly starved that its bare bones are incapable of revealing its aspect. Rather, it must be given suffice so that its features and species are easily recognizable.

137. As was explained by way of a caveat on a discussion of the pleading requirements of the CPR at **paragraph 64** of ***DMV v Tom L Vidrine Belize Civil Appeal No 1 of 2010***, (a case which referred to and quoted **Boyea**(ibid) with approval): *"As Lord Woolf MR said in McPhilemy (at page 793), pleadings "are still required to mark out the parameters of the case that is being advanced by each party" and there will in the majority of cases be no good reason for, or advantage in, gratuitous inventiveness in this regard."*

138. The case of ***Talpada (ibid)*** presented by the Defendants, although speaking in the context of an appeal, is a lesson that resonates particularly because this Court holds the same view but specifically because it deals with public law litigation.

139. It explained that only the grounds for which leave has been granted should be pursued and the Court should be mindful not to allow those grounds to evolve, as they are prone to do, throughout the proceedings. I am guided and strengthened by paragraph 69 which discusses the potential for evolution or development of grounds. It implores and assures that:

"69. These unfortunate trends must be resisted and should be discouraged by the courts, using whatever powers they have to impose procedural rigour in public law proceedings. Courts should be prepared to take robust decisions and not permit grounds to be advanced if they have not been properly pleaded or where permission has not been granted to raise them. Otherwise there is a risk that there will be unfairness, not only to the other party to the case, but potentially to the wider public interest, which is an important facet of public law litigation." (Emphasis added)

140. This Court finds that the breach of section 20 was never in issue on the pleadings even when they are taken at their highest. Certain aspects of the procurement process and award were definitely raised but the Claimant's own

failure to address that particular section in the original written submissions (only appearing in submissions in reply) speaks volumes.

141. It is unfair for this Court to consider it as a live issue between the parties where the Defendants never had an opportunity to respond in the usual way. The Court is obligated to tightly manage these proceedings to ensure fairness. So, it finds that the section 20 breach is not in issue in this matter and no finding will accordingly be made.

This moves us to the irrationality ground.

Did the Defendants act irrationally in awarding the Contract to SMART!?

The Claimant's Argument:

142. Senior Counsel quoted Lord Diplock from ***Council of Civil Service Unions v Minister of the Civil Service [1984] 3 All ER 935 at 951*** and asserted that the decision to award the Contract to Smart! was *"so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

143. He raised that Digi's bid was the lowest for the *"preferred"* three-year term. His argument thereafter was primarily premised on all that placed Digi and its bid in a more competitive position than Smart! or Smart!'s bid.

144. He spoke to Digi's silver partnership with Microsoft, its four-year experience which assured the Government of quality backup service and the revenue stream which it provided to the Government as a majority shareholder through

dividends. Digi had also offered valuable extras free of cost.

145. To make matters worse, the Government had had to pay Digi handsomely to get out of the three-month extension agreement so that the award to Smart! ended up costing the Government more than awarding the Contract to Digi.

146. He concluded that the decision to award the Contract to Smart! could certainly not be in the national interest as section 18 of the FARA obligates. He asked the Court to consider that even the Contractor General had been denied the opportunity to comment or certify whether the Contract was in fact in the national interest.

NTUCB's Argument:

147. The NTUCB also relied on the test for irrationality set out in the ***Council of Civil Service Unions case (ibid)***. They submitted that it was irrational to award the Contract to Smart! because Digi is a nationalized company which had an ongoing contractual relationship with the GOB from 2017. By giving business to a competitor the GOB was depriving itself of revenue and damaging its interest in a government asset.

The Defendants' Argument:

148. Unsurprisingly, Senior Counsel for the Defendants also began his argument with Lord Diplock's statement of irrationality or wednesbury unreasonableness in ***Council of Civil Service Unions case (ibid)***.

149. He reminded the Court that it must look at the circumstances in existence at the date of the decision and that a decision which fell short of perfection was not automatically irrational.

150. The relevant circumstances, he submitted, were that the existing licence was due to expire on the 24th June, 2021, Smart! was the lowest bidder for one year. The three-year contracts could not be considered as they were over $5,000,000.00. The set off offered by Digi was done after the bids had been submitted and it would have been unfair to the other bidders to even consider it.

151. The Government's intention was to renew the contract with Digi for a brief period and then enter into a one-year contract with Smart! and both CITO and the Procurement Unit had recommended that the Contract be awarded to Smart!.

152. There was, therefore, nothing illogical or outrageous in the decision.

153. He pressed on, explaining that the non-compliance with the statutory obligations of section 18 of the FARA could not be considered part of the decision-making process for two reasons. The decision to make the award must precede any required submission to the Contractor General.

154. So, his review and comments must necessarily come after the award had been made but before execution of the contract. Therefore, the Contractor General's review and comment may impact execution but certainly not the decision to award.

Smart!'s Argument:

155. Simply put Smart! felt that none of the arguments put forward by the Claimant demonstrated irrationality.

156. Rather, it was irrational for the Claimant to say that Digi should be afforded preferential treatment, particularly where Digi was almost a monopolistic giant and Smart!'s marginalization had been state sanctioned and practically normalised. The new administration's decision not to adopt this policy was certainly not irrational.

157. Even if Smart! had no track record, the technical arm CITO was satisfied that Smart! could perform the terms of the Contract satisfactorily. There was no evidence whatsoever presented to suggest that Smart! did not qualify to bid or did not satisfy the bid committee.

158. The GOB's loss of revenue through Digi dividends is also an irrational argument as GOB's function is not to give preferential treatment to any one of its corporate citizens over another.

159. Finally, the rationality of the decision is reviewed by reference to the date of the decision and evidence of what was known by the decision maker. The cost of cancellation of the extension agreement with Digi arose after Smart! had already been notified of the award and did not arise from the procurement process itself.

The Court's Consideration:

160. In the ***Council of Civil Service Unions case (ibid)*** paragraph 410 -411 irrationality was defined as *"what can now be succinctly referred to as 'Wednesbury unreasonableness.' It applied to a decision which is so outrageous in its defiance of logic or of acceptable moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system… Irrationality by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review."*

161. With that said, the Court must now consider the circumstances as they existed and determine whether it is sufficiently stirred to outrage.

162. The Claimant says Digi had the lowest bid. The Court is aware that Digi had the lowest three-year bid, but it did not have the lowest one year. I was unsure whether the full argument was that Digi's bid was lower, or the value of Digi's bid was higher than Smart!'s; or the out-of-pocket cost to the Government of Digi's bid was lower than Smart!'s or even that the ultimate price to award the bid to Smart! was higher?

163. It seems that Digi in its own wisdom, having not been asked to offer anything extra, did offer extras. A sweetening of the pot, perhaps. This Court can not consider the value of those extras since they were never solicited and had no real value in the bid process. They ought properly not to have been considered if the criteria was only the lowest bid.

164. The dividends which the Government stood to earn through profits made by Digi or the sums which it stood to have set off can not form part of the Court's

consideration either as they formed no part of the tendering process now under scrutiny.

165. In any event, a set off is not a savings it is money due and owing. The Government would simply have been saved a direct out of pocket payment. But it would have been paying, nonetheless. The decision makers would again have fallen into error had they allowed any of this to form part of the decision-making process.

166. More importantly, the Government can certainly not be seen to show preference to a bidder because the Government stands to gain otherwise from that bidder (dividends). To my mind that reeks of favoritism and is probably why wisdom prevailed and the Claimant abandoned that position entirely.

167. That the Government paid Digi a substantial sum to get out of the original extension agreement, has nothing to do with the bid process or the award of the Contract. We must not get it twisted. It is the decision-making process which is under review. Events which occur after the decision was made, lack relevance.

168. It may seem perhaps to be an irrational act on the part of the Government to enter into a contract only to withdraw a short time later while incurring such an expense or to find itself in a situation where licences which cost so much are duplicated.

169. But this Court is in no position to make such a determination nor is it called upon to do so in these proceedings. Most certainly, however, it was not an

irrational act as it relates to the success of Smart!'s bid or the eventual award of the Contract.

170. Digi had four years' experience providing licences for the GOB and was assisted through the GOB's efforts to be made a Silver partner with Microsoft. This Court recognizes, however, that the most experienced among us was not born or created experienced.

171. While there is some evidence from Mr. Jones about the importance of experience and a Silver partnership, there is nothing before the Court to indicate that the amount of experience as a Microsoft partner or the type of Microsoft partnership was ever a criteria. At the very best, the Court can only say that a Microsoft partnership was a requirement for inclusion and Smart! met it.

172. That the Government ignored its statutory obligation under section 18 of the FARA, as egregious as it may be, does not on its own speak to irrationality. Imperfection yes, irrationality, no. More importantly this formed no part of the decision-making process or the award.

173. The Court also considers that had the award been made to Digi on the very bid submitted, then the Government would have been equally in breach. That alone would certainly not have made the award irrational.

174. The fact is that Smart! qualified and had the lowest bid for a one-year contract. The technical advisers chose Smart!. Digi also had an opportunity to bid for one year and it did so. It's bid exceeded Smart!'s and the Contract was awarded to Smart!.

175. In those circumstances, this Court is not persuaded that there was any irrationality whatsoever in the decision made to award the Contract to Smart! This ground also fails. So, we now consider bias.

Was the decision to award the Contract to SMART! Vitiated by actual or apparent bias?

The Claimants Position:

176. Senior Counsel wasted no time in submitting that *"…. the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that [the decision to award the Contract to Smart!] was biased"*.

177. He drew the Court's attention to the well-known two step test for apparent bias outlined in ***Tibbett's v The Attorney General of the Cayman Islands [2010] UKPC 8*** and applied in ***Belize Electricity Limited v Public Utilities Commission Civil Appeal No.8 of 2009***. The Court must first find the facts as proven to the civil standard (on a balance of probability) and using that same standard, then determine whether the fair-minded observer armed with the knowledge of those facts would conclude that the decision maker was biased.

178. This fair-minded observer is a reasonable member of the public, neither unduly complacent or naive nor unduly cynical or suspicious. It is the fair-minded observer's perception that is key and not what actually operated in the mind of the decision maker.

179. As stated in ***R v. Abdroikof 2007 UKHL 37*** at parag 15 and quoted in ***Belize Electricity Limited (ibid)*** at parag 6:

"Lord Goff of Chieveley, in R v Gough [1993] AC 646, formulated the test of apparent bias in terms a little different from those now accepted, but echoed (at p 659) Devlin LJ's observation in the Barnsley Licensing Justices case in referring to "the simple fact that bias is such an insidious thing that, even though a person may in good faith believe that he was acting impartially, his mind may unconsciously be affected by bias . . .". Following the decision of the Court of Appeal in In re Medicaments and Related Classes of Goods (No 2) [2001] 1 WLR 700, the accepted test is that laid down in Porter v Magill [2001] UKHL 67, [2002] 2 AC 357, para 103: "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased". As the House pointed out in Lawal v Northern Spirit Ltd, above, para 14, "Public perception of the possibility of unconscious bias is the key", an observation endorsed by the Privy Council in Meerabux v Attorney General of Belize [2005] UKPC 12, [2005] 2 AC 513, para 22. The characteristics of the fair-minded and informed observer are now well understood: he must adopt a balanced approach and will be taken to be a reasonable member of the public, neither unduly complacent or naïve nor unduly cynical or suspicious: see Lawal v Northern Spirit Ltd, above, para 14; Johnson v Johnson (2000) 201 CLR 488, 509, para 53."

180. The facts, as he asks the Court to find them, was that the Head of the Ministry and Government made the decision to award the contract to Smart!. Whatever the mechanics of the process, the First Defendant as Minister bears ultimate responsibility.

181. The First Defendant is the Second Defendant's boss and brother to the Chairman and substantial shareholder of Smart!. It was the Second Defendant who, after a change of Government, made the decision to change the outstanding arrangement where Digi had been the procurer of the Licences for four years.

182. The Second Defendant made the decision to include Smart! as a bidder contrary to the advice of CITO and knowing that SMART! had no track record or history as a service provider to the Government. This was done at a time when the Claimant says there was public disquiet over the Government's apparent determination to switch business from Digi to Smart!.

183. The Second Defendant had informed CITO twice by email that he was consulting with the first Defendant but then testified that that was an error, and he was in fact consulting with the Minister of State who was the person who really approved the Contract. That Minister is also responsible to the first Defendant.

184. In any event, based on the Carltona principle, the decisions of a Minister's officials are indeed decisions of the Minister. Senior Counsel stated at **paragraphs 113 -115**:

"113. The principle has become colloquially known as the Carltona doctrine. There, Lord Green MR said:

'In the administration of government… the functions which are given to ministers (and properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them… The duties imposed upon ministers and the power given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Constitutionally, the decisions of such an official is, of course, the decision of the minister. The minister is responsible.'

114. This 'Carltona doctrine' was recently discussed by the United Kingdom Supreme Court in the case of R (on the application of Bancoult No 3).

115. Delivering the judgment for the majority, Lord Mance said at paragraph 47:

'Carltona… stands for the proposition that ministerial powers are commonly delegable and that, where this is the case and delegation occurs, the decision of an authorised official falls to be treated as the decision of the minister.'

116. This proposition, the Claimant submits, is one that the fair-minded and reasonable observer would be taken to know."

185. Finally, the Defendants have put forward no evidence to rebut any adverse inferences which the Court might draw, or to allay any doubt or suspicion which the fair minded observer may harbor that the Second Defendant acted as he did, whether consciously or subconsciously, because of his relationship with the First Defendant and the First Defendant's relationship with Smart!.

NTUCB's Submissions:

186. Reliance was placed on ***The Good Law Project v Minister for the Cabinet Office and Public First Ltd [2021] EWHC 1569*** the facts of which Counsel said were similar to the case at bar.

187. This was a case for judicial review of a decision to award a direct procurement contract to Public First Ltd. on the recommendation of a certain member of the Conservative Party. Bias was alleged having regard to the supplier's close personal and professional relationship with members of and the Conservative party itself.

188. Public First Ltd. was contracted to perform Covid-19 related services. The Defendants gave extensive reasons why the direct award was made which included the urgency and exigencies of the escalating pandemic, the fact that the supplier was already performing research work for the Ministry and the research work procured was urgently needed. Additionally, the supplier had the necessary experience and knowledge and fulfilled the requirements through registration.

189. The Court found that the well-known relationship between the supplier and the members of the Party did not prove actual bias. But held that the award was unlawful due to apparent bias.

190. Although the circumstances were accepted as exceptional the court felt that even the urgency *"did not exonerate the defendants from conducting the procurement so as to demonstrate a fair and impartial process of selection"* (**paragraph 64**). Moreover, the Defendant's failure to consider any other supplier *"would lead a fair minded*

and informed observer to conclude that there was a real possibility, or a real danger, that the decision-maker was biased."

191. Reliance was also placed on ***Costas Geogiou v London Borough of Enfield, Cygnet Healthcare Ltd and Rainbow Developments [2004] EWHC 779*** which also dealt with apparent bias in relation to a decision to grant building consent taken by a Planning Committee.

192. In accordance with the Planning Committee's Constitution, the committee comprised persons, three of whom had dual membership in the Council's Conservation Advisory Group. The applications had all been discussed and voted on by the Advisory Group just before the Planning Committee, including the three dual members, met to deliberate.

193. At **paragraph 31** the court said *"I therefore take the view that in considering the question of apparent bias in accordance with the test in Porter v Magill, it is necessary to look beyond pecuniary or personal interests and to consider in addition whether, from the point of view of the fair-minded and informed observer, there was a real possibility that the planning committee or some of its members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant planning issues. That is a question to be approached with appropriate caution, since it is important not to apply the test in a way that will render local authority decision-making impossible or unduly difficult. I do not consider, however, that the circumstances of local authority decision-making are such as to exclude the broader application of the test altogether."*

194. Counsel also discussed ***Porter v McGill (ibid)*** and its approach to making a determination of bias as well as its application in ***George Meerabux v Attorney General of Belize [2005] UKPC 12***. He also relied on the ***Belize Electricity Ltd***

case (ibid) and asked the Court to first ascertain the relevant circumstances and then determine whether a fair minded, and informed observer would conclude that there was a real possibility or a real danger of bias.

195. He outlined 12 circumstances which should be relevant to the fair-minded observer. What really drew my interest was his reference to the entire bidding process seeming rushed and that there was no clear record of objective criteria used. But the bidding process itself was never in issue in this case.

Defendants' Submissions:

196. They too relied on the test for appearance of bias in a procurement context as outlined in the ***Good Law Project (ibid)***.

197. Senior Counsel submitted that the evidence presented by the Defendants, through the Financial Secretary and the Minister of State was that the First Defendant had played no role in the decision-making process. Senior Counsel insisted that this must be accepted as an undisputed fact as neither witness had been cross-examined.

198. Furthermore, when one looks to the Claimant's pleadings, all the allegations of bias relate to the First Defendant although the Second Defendant is named alongside. In fact, the Claimant was not allowed to cross-examine the Second Defendant on why he had included Smart! in the selective tender because the Court found that there were no pleadings on which to ground such an application.

199. He insisted that the Carltona principle could not be applicable to these circumstances either. The very case on which Senior Counsel for the Claimant relied ***Bancoult (ibid)*** stated at **paragraph 47** *"Carltona does not have any bearing on this situation. It stands for the proposition that ministerial powers are commonly delegable and that, where this is the case and delegation occurs, the decision of an authorised official falls to be treated as the decision of the minister. Here, therefore, it may readily be accepted that, if a minister were simply to rely on a civil servant, in effect to take a decision in the minister's name, then it would be the knowledge, motives and consideration held by and influencing the civil servant that would be relevant."*

200. The facts, as they asked the Court to find them, were that the decision to award the Contract to Smart! was made by the Minister of State in the Ministry of Finance and the Second Defendant, against whom no allegations of familial relationship with the principles of Smart! had been made.

201. Neither decision maker had discussed the tendering process or award with the First Defendant. They had both acted in accordance with the recommendation of CITO and the Procurement Unit in the Ministry of Finance, two entities against which no allegation of familial ties had been made. Smart! had the lowest bid and the recommendation by the Procurement Unit was made on that basis.

202. The fair-minded observer, being aware of and carefully considering these facts especially that Smart! was the lowest bidder, would not conclude that there was a real possibility of bias by the Ministry of Finance as represented by the Second Defendant and the Minister of State.

203. He also asked the Court to consider the contents of the Contractor General's report that he had found no evidence of actual conflict of interest, any consultation with the Minister of Finance or that he was party to the decision-making process and no evidence of overrides in the process. The Ministry of Finance had acted solely on the recommendations of the evaluation committee and the competitive procurement decision had not been *"deliberately and unduly influenced"*.

204. Senior Counsel maintained that the Court should consider all the circumstances, with focus being on the actual decision maker and the existence of a real possibility of danger rather than possible danger of bias.

Smart's Submissions:

205. Senior Counsel relied on ***Porter v Magill (ibid)*** and the ***Belize Electricity*** case ***(ibid)***. He too asked the Court to consider all the relevant facts when determining what the fair-minded observer knows.

Court's Consideration:

206. Any allegation of bias, whether actual or apparent, is serious. It attacks the validity of the decision-making process and the decision itself. The decision and in this case the award of the Contract can not stand in the face of a successful claim of bias.

207. Actual bias is based on a subjective test or factual proof of bias. This is a difficult undertaking. Apparent bias, on the other hand, does not need factual proof of bias only that on the facts as the Court finds them, a fair-minded and informed observer would have doubts about the impartiality of the decision

maker and the decision. This is referred to as the objective test since that doubt must be objectively justified.

Actual Bias:

208. Before going further, the Court admits that it is uncertain whether the actual bias ground was pursued with conviction or at all by the Claimant. His submissions seemed confined for the most part to apparent bias. Nonetheless, for completeness it will be addressed here.

209. The Court must first determine who the actual decision maker or makers are. Having considered all that was before it and the submissions made, the Court finds that the actual decision makers were the Second Defendant and the Minister of State.

210. This decision was not an easy one to make, as there is before the Court two pieces of correspondence written in rapid succession by the Financial Secretary, which state that he would confer with and had received instructions from the First Defendant in relation to the award.

211. On the 23rd June, 2021, in response to Mr. Smith's query about signing the three month extension with Digi (BTL) to secure the services and avoid disruption, the Financial Secretary wrote:

"We received a last minute proposal from BTL (which would involve a set-off of a portion of the licence cost against monies BTL owes the GOB – assuming that GOB would award the contract to BTL!) and this will take some time to consider.

It may mean going back out to ask for fresh bits but I will first have to see what is the view of the Minister of Finance

So in the interim I asked for a three month extension.

Please therefore proceed to sign the extension"

212. Two days later on the 25th June, 2021 he again wrote to Mr. Smith:

"The Hon Minister of Finance has asked that we proceed to notify SMART of the award of the Microsoft contract and that I minimize the extension of contract with BTL only to the time needed to finalize the new contract with SMART

I will need to advise BTL that the extension of three months will need to (sic) reduced to a much shorter period. "

213. The Second Defendant says this reference to the Minister of Finance was done in error.

214. In making its finding, the Court considered that he had not been cross-examined about this purported error, the emails had been provided by the Defendants, there had been no attempt to hide or deny them and the Second Defendant appeared forthright about all else.

215. The Court carefully weighed and measured as all judicial officers are called upon to do and failed to find reason to impeach his testimony or that of the Minister of State who also testified that he had been verbally consulted and gave his approval for the award of the Contract to Smart!.

216. This is an important finding as it takes us to a consideration of the *Carltona* principle raised by the Claimant and whose knowledge, motives and considerations are relevant to a finding of actual bias. It must immediately be stated, with respect, that the Carltona principle can not apply here.

217. The principle places both political and legal responsibility on the Minister for actions taken by the departments for which he is the head. But actual bias relates to the actual decision maker and no one else.

218. The Court could find no evidence of actual bias on the part of the First Defendant. There is nothing which prohibits a family member of a Minister or even the Prime Minister from contracting with the Government. The Claimant appreciates this.

219. Belize is such a small society that one would be amazed at the spider web of family ties which exists here. However, where such a contract is being considered there are certain safeguards which ought to be in place.

220. For example, that Minister can not participate in any way in the decision-making process if he has such an interest in the matter. It must be remembered that it is not the nature of the interest or influence but its possible effects - the conflicts of interest.

221. The Claimant has brought no evidence whatsoever which demonstrated that the First Defendant participated or acted as the decision maker. They relied on the *Carltona* principle which this Court has found does not apply so his state of mind and motives are of no import.

222. It is incredible to think that where a Minister makes a decision to remove himself from a decision-making process to avoid any actual or apparent conflict of interest, he would somehow still be held responsible through the application of the *Carltona* Principle.

223. Even when heavily scrutinized, the Court could find no proof of actual bias against the Second Defendant either. His decision was based on the technical advice received following a tendering process and the directive given by the Minister of State.

224. His recommendation to add Smart! to the pool only served to increase the competition. There is no evidence that Smart was unqualified, not capable or unreliable and not having the experience or track record of a competitor does not make it so. Smart! was the lowest bidder for the one year and the Second Defendant adequately rationalized the decision to accept only the one-year bids.

Apparent Bias:

225. The Court is guided by the test set out in the submissions of both parties and the intervenors. So, first, the relevant circumstances as the Court ascertains them:

1. Prior to 2021, the limited tender process had been used to procure the Licences with only Digi being asked to submit a quote.
2. The licenses had been provided by Digi for four years prior and up to 2021.
3. Digi is a Microsoft Silver partner.
4. The Government is a majority shareholder in Digi which was nationalized and receives revenue through dividends.
5. The Government changed.
6. The Second Defendant, on the advice of the Director of CITO, decided to use the selective tendering process.
7. The Second Defendant directed that Smart! be added to the pool as Smart! had recently provided ICT services to the GOB.

8. Smart! is owned in part by the First Defendant's brother and cousin. His brother is the Chairman.
9. The First Defendant is the Second Defendant's boss.
10. The First Defendant did not participate in the decision-making process or award.
11. Neither the First Defendant nor the Second Defendant had any discussion with the Minister of Finance concerning the decision-making process or award.
12. Smart! was qualified to bid and is a Microsoft partner.
13. Smart had no experience or track record providing licences to the GOB
14. There were three bidders.
15. The bid was originally for one year and was subsequently changed to be for three years preferred although one year would be considered
16. Digi and Innova submitted both 1- and 3-year bids. Smart submitted only a one-year bid.
17. Smart! had the lowest bid for one year and was chosen on this basis by the bid committee.
18. On the advice of the Director of Procurement and CITO the Minister of State directed that Smart! be awarded.
19. Smart! was notified, provided the Licences and was paid in full.
20. The Contract was signed after payment was made in full.
21. The Contract was never submitted to the Contractor General before it was executed as required by the FARA.

The fair-minded Observer:

226. The Fair-minded observer is not to be underestimated. He is not an 'empty vessel'. He brings his life experiences and biases, so he is not neutral, but neither is he unduly suspicious. He is discerning, with the ability to reason and

deduce. He is not easily or quickly swayed but calmly considers all that is relevant and reserves judgment until he is fully informed. We place the relevant facts before him.

227. His first impulse may be a suspicion that the familial ties between the First Defendant and Smart! predisposes the First Defendant to make a decision which would favor those relatives who had been helpful to him in the past. But then, he would consider that the First Defendant had no part in the decision-making process or the eventual award. He would understand and appreciate the First Defendant's need to give no impression of impartiality which could taint the process.

228. He would then turn his attention to the other two decision makers. The Second Defendant and the Minister of State. He would be aware that they work in the same Ministry as the First Defendant and think that perhaps they may be influenced by him, whether consciously or subconsciously. But then he would remind himself of the First Defendant's real distance from the process, that Smart!'s bid was lowest for the one year and Smart! had been chosen by the bid committee on this basis.

229. He would also realise that it was the bid committee which advised the Minister of State of its findings as did the Director of CITO. That these were the technical persons, the ones with sufficient knowledge and expertise to make the choice.

230. He would spend significant time pondering that the GOB would lose revenue as Digi's profits would not be as significant with the loss of this particular

contract. First, he may think that restricting participation is more in the public interest as greater revenue would be generated.

231. But he soon realizes that competition is a pillar of public procurement. It ensures better prices and solutions. What had been done actually created increased competition in a process where the practice of using only a state-owned entity through direct public procurement is now reduced.

232. He would rationalize that since Digi had lost this contract, it would be prompted to present a more cost-effective quote next time which could only be of benefit to the GOB. Smart! would also have to do all it can if it wished to maintain its hold. It will be incentivized to attempt to provide a service and present a bid which is better than Digi and any other potential supplier. That is the nature of competition.

233. He would then consider that there is now increased transparency and effective competition for this public contract. Equal treatment of the suppliers involved in the procurement procedure, where previously there was but one preferred player.

234. He would not know the difference between a Silver Microsoft partnership and a Microsoft partnership since nobody has taken the time to inform him and he is not a technical person. But he trusts that if the technicians are satisfied with a Microsoft partnership, then that is acceptable to him.

235. He recognizes that the wording of the bid invitation is less than stellar. But he recognizes too that all bidders were aware that the possibility existed that only

a one-year contract would be awarded. No one was taken by surprise or unfairly treated. Transparency did not demand anything more.

236. He realizes that the Licences had been supplied weeks before payment had been made. The inefficient preparation and execution of the Contract does not overly concern him because he is aware that oral contracts are legally binding. However, he is exasperated and disturbed that the Contract had not been submitted to the Contractor-General but without more he can not accept that there is some appearance of bias.

237. He has considered all that is relevant and can find no proof or real possibility of bias.

Remedy:

238. The Claimant and NTUCB both say that on the illegality ground conceded, the Contract must be quashed. The requirement of section 18(2) is mandatory so that payment and performance is irrelevant as the GOB would have had no lawful authority to enter into the Contract.

239. Counsel for NTUCB presented ***Belize Bank Ltd v The Association of Concerned Belizeans et al Civil Appeal No.12 of 2009*** in support of his proposition that any contravention of a mandatory provision of the FARA renders the transaction invalid. With respect, I do not believe that is what that case actually says and certainly its application can not be that wide.

240. A particular section of FARA (section 7) was considered and it reads quite clearly and unequivocally at subsection 2 that an agreement, contract, or

instrument effecting a loan to the Government is only valid if made pursuant to a resolution of the National Assembly. The Court of Appeal held (and it was conceded at the Privy Council) that prior approval of the National Assembly was a precondition of the validity of the loan.

241. The very wording of that section is in distinct contrast to our section 18(2) now under review.

242. The Court does have a discretion which Senior Counsel for the Claimant reminded must be judicially exercised. Before the Court decides not to quash, it must be assured that it would cause substantial hardship, substantially prejudice to the rights of any person or be detrimental to the good administration (Rule 56.5(2)). The quashing must also prove futile. In any event, the Court must ensure that the remedy decided is appropriate.

243. The Defendants pray that only a declaration with an order for cost be issued.

244. They submit that while parliament intended that section 18(2) be dutifully complied with, there was nothing in the FARA which discloses that a violation would render the contract invalid. Senior Counsel explained that the old categorization of mandatory and directory was no longer the relevant test.

245. He relied on ***Central Tenders Board and Anor v White (t/a White Construction Services [2016] LRC 540*** for the modern more flexible approach in determining the effect a breach should have in the context of procurement:

> *"[21] Some statutory powers are accompanied by statutory procedural requirement. The courts used to categorise procedural requirements in the exercise of a statutory jurisdiction as either mandatory or directory. A breach of the former would make the act invalid, but a breach of the latter would not. But over time the disinction was found in practice to be unsatisfactory. In London & Clydyside Estates Ltd v Aberdeen DC [1979] 3 All ER 876,*

Lord Hailsham of St. Marylebone LC said (at 883) that in many cases – 'though language like 'mandatory', 'directory', 'void', 'viodalble', 'nullity' and so forth may be helpful in argument, it may be misleading in effect if relied on to show that the coourts, in deciding the consequence of a defect in the exercise of power, are necessarily bound to fit the facts of a particular case and a developing chain of events into rigid legal categories or to stretch or cramp them on a bed of Proscrustes invented by lawyers for the purposes to convenient exposition'.

[22] Over the ensuing 35 years the courts have adopted a more flexible apporach, which ***involves evaluatin the seriouness of the breach and the degree of any injustice and public inconvenience which may be caused by invalidating the act. It is also potentially relevant to consider any alternative remedies available to a person legitimately aggreived by the conduct of the public body****.*

[23]In R v Soneji [2005] UKHL 49, [2005] 4 All ER 321 Lord Steyn examined the development of this branch of the law, not only in the United Kingdom but in other common law countries including Australia, Canada and New Zealand. He cited with approval (at [22]) the statement of Evans JA in Society Promoting Environmental Conservative v Canada (A-G) (2003) 228 dlr (4th) 693 at 710 that –

'the more serious the public incovenince and injustice likely to be caused by invalidating the resulting administrative action, including the frustration of the purposes of the legislation, public expense and hardship to third parties, the less likely it is that a court will conclude that legislative intent is best implemented by a declaration of invalidity'.*"*

246. In assessing parliament's intention, the Court must consider the seriousness of the breach, the injustice and public inconvenience which may be caused, any alternative remedies available to a person legitimately aggrieved by the breach, the public expense which would be caused by the invalidation and any hardship to third parties.

247. He also drew ***Australian Broadcast Corporation v Redmore PTY Ltd [1989] HCA 15; 166 CLR 454; 84 ALR 199*** to the Court's attention. There the statute under scrutiny read at section 70(1) that the Corporation *"shall not without the approval of the Minister"* enter into certain contracts. It was held that the preferable construction was merely directory not rendering the contract illegal.

248. To my mind, this section required approval which was an even greater or more serious requirement than a report as required by section 18(3) or certification section 18(4) of the FARA.

249. Senior Counsel continued that the FARA does not even require that the execution of the contract should await his comment or that his comments should be followed. They must only be sought. He contrasted this with the treatment given to the disposal of assets where the resolution of the National Assembly, published in the National Gazette was required.

250. He proffered that any remedy beyond the declaration would be futile as the Contract has been substantially performed. Therefore, no useful purpose would be served. Rather, the public purse would be visited with unnecessary additional expense.

251. He asked the Court to also consider that Digi has not brought any proceedings to challenge the award. There exists the possibility of an action on the breach if the other bidders were thereby treated unfairly or unequally and suffered consequential loss.

252. But Smart! a third party, who is in no way responsible for the breach and against whom no allegations have been made in this matter, would more likely than not be caused hardship. The Court, he assured, is allowed to have regard to Smart!'s interests.

253. He too reminded the court of its discretion to grant relief and that it ought not to grant any relief which constitutes an exercise in futility. He cited ***both R (Lee-Hirons) v Justice Secretary [2017] AC 52*** and its consideration in ***Good***

Law Project Ltd case (ibid) for the appropriateness of the remedy to be granted. The Court need not grant a remedy simply to show that a public body has not behaved properly. A declaration could well suffice where it is not appropriate to grant a prerogative order.

254. Smart! was also of the view that no useful purpose would be served by granting a quashing order. He relied on ***R v Secretary of State for Social Services, ex parte Association of Metropolitan Authorities [1986] 1 ALL ER 164, R v Hammersmith and Fulham London Borough ex parte Beddowes [1986] Lexis Citation 1531, Re Nupe and Cohse's Application [1989] IRLR 202*** and ***R v Secretary of State for Foreign and Commonwealth Affairs Ex parte Everett [1989] QB 811***.

255. He added that the Court should deny a remedy of a quashing order based on the effect on the Defendant and any third party. Here he relied on ***R (on the application of South-West Care Homes Ltd) v Devon County Council [2012] EWHC 1867***.

256. He urged that Smart! had presented a highly competitive bid and won. Smart! would be gravely harmed as it has already paid for and provided the Licences which the Government has used for almost seven months.

257. Senior Counsel concluded that this was an appropriate case where the Court should exercise its discretion to refuse a quashing order.

Determination:

258. The Court has considered all the submissions on this issue. It also considers that section 18(2) has been breached which is a most serious matter. The

Court will not be seen to condone behavior of this kind particularly in the procurement process where the built-in safeguards are intended to ensure accountability, protect the fairness and transparency of the process and the proper award of contracts.

259. The role of the contractor-general is not one of insignificance. Where he is not allowed to perform, as the statute requires an entire protective layer is demolished. Each house of the National Assembly may be denied the opportunity to openly debate a contract which he finds has failed to meet the required standard. This denial is not to be condoned.

260. But the Court appreciates all that was said by Senior Counsel for both the Defendant and the Intervenor Smart!. The test of whether a section invalidates is far more flexible than it was before. The emphasis is no longer on the mandatory wording but rather seriousness of the breach and the effect it may cause.

261. This breach is serious, but the section does not say it will invalidate the contract. Significantly, nowhere in the FARA does it say what will happen to a contract which is signed before it is or which is never submitted for scrutiny. The offender may suffer the peril of criminal prosecution, but what of the contract. If these contacts could all be invalidated that could cause serious problems not only to the Government but also to the other party or parties to the contact and how fair would that be generally.

262. I am of the view that if Parliament intended that a contract which was not submitted to the Contractor General would be invalid it would have said so

clearly as was said in section (7). I am not convinced that a contract signed in breach of section 18(2) of the FARA renders it invalid.

263. The question remains whether the Court ought to exercise its discretion to quash. The Contract has been in effect for seven months. The taxpayers are the ones who will suffer most if this Contract is quashed as monies have already been paid out and services provided. How would the GOB recover those funds under such circumstances? The Digi cancellation of a three month extension tells an impressive tale from which lessons ought to have been learnt. And if GOB were able to recover the funds what position then would that leave Smart! in.

264. I can not find any useful purpose which would be served by granting a quashing order. The Claimant's interest could be vindicated through a declaration and a purposeful cost order.

265. Ordinarily, where a party is successful in part his cost may be reduced accordingly. This Claimant was successful in part and in circumstances where the Defendant had made a concession. However, this Application was important. It was brought to test compliance with the procurement provisions of the FARA amidst allegations of bias which were not frivolous. It reminds the Government that they are being scrutinized and recourse would be sought when deemed necessary. For this reason, the Claimant shall have his full cost fit for one Senior and a junior.

Disposition:

It is ordered on the Application for permission to apply for Judicial Review:

1. Permission is granted to the Applicant to file a claim for judicial review for:

a. A declaration that the First and Second Respondents and their Ministry of Finance acted unlawfully between June 28th, 2021 and August 10th, 2021 in awarding a contract of 29.5 million dollars, and making the entire payment therefore plus general sales tax, to the company known as Speednet Communications Limited DBA Smart! (Smart) for the procurement of the Government of Belize's (GOB) Microsoft 365 renewal licenses;

b. A declaration that the First and Second Respondents and their Ministry of Finance acted unlawfully by, inter alia, awarding to Smart and paying the entire sum thereunder, a contract for the procurement of GOB's Microsoft 365 renewal licenses, which contract was in breach of the Finance and Audit (Reform) Act, CAP 15 of the Laws of Belize, Revised Edition, 2011;

c. A declaration that the First and Second Respondents and their Ministry of Finance acted unlawfully by, inter alia, awarding to Smart a contract for the procurement of GOB's Microsoft 365 renewal licenses in circumstances where the decision to do so was wholly irrational;

d. A declaration that the First and Second Respondents and their Ministry of Finance acted unlawfully by, inter alia awarding to Smart a contract for the procurement of GOB's Microsoft 365 renewal licenses in circumstances where their decision to do so was infected with actual or apparent bias;

e. An order of certiorari to quash the decision made by the First and Second Respondents and their Ministry of Finance to award a contract to Smart for the procurement of GOB's Microsoft 365 renewal licenses, and to quash the consequential contract.

2. Cost in this application be cost in the cause.

It is declared and ordered on the hearing of the judicial review:

1. The Defendants have acted unlawfully and in breach of section 18(2) of the Finance and Audit (Reform Act) CAP 15, in failing to seek the Contractor General's review prior to executing the Contract.

2. All other grounds are dismissed.

3. Full costs is awarded to the Claimant fit for one Senior and a Junior, such costs to be assessed by the Registrar if not agreed.

SONYA YOUNG
SUPREME COURT JUDGE