



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2023: No. 182

BETWEEN:

MY PHARMACY LLC

Applicant

-and-

**THE MINISTER OF HEALTH
THE CHIEF MEDICAL OFFICER
THE PHARMACY INSPECTOR**

Respondents

Before:

The Honourable Chief Justice Hargun

Appearances:

**Mr Kyle Masters and Ms Mahogany Bean, Carey Olsen
Bermuda Limited for the Applicant**

**Ms Shakira Dill-Francois, Deputy Solicitor General for
the Respondents**

Date of Hearing:

20 October 2023

Date of Judgment:

22 November 2023

JUDGMENT

Whether the Chief Medical Officer (in his capacity as the Registrar) has the statutory authority to conduct annual and unannounced inspection of registered pharmacies; whether the Chief Medical Officer has the statutory power to require a successful inspection prior to issuing a registered pharmacy with a Certificate of Inspection; whether the Chief Medical Officer has the statutory authority to publish a list of registered pharmacies indicating pharmacies which have not obtained the annual Certificate of Inspection

HARGUN CJ

Introduction

1. These judicial review proceedings relate to the decision of the Chief Medical Officer (“**CMO**”), in his capacity as the Registrar with respect to registered pharmacies under the Pharmacy and Poisons Act 1979 (“**the Act**”), to publish a Register of Pharmacies dated 25 May 2023 which included a column referencing whether each pharmacy on the register had a valid annual Certificate of Inspection (“**Certificate**”) and that My Pharmacy LLC (“**the Applicant**”) did not have such a Certificate. The Applicant seeks, *inter-alia*, the following relief:
 - (1) An order of certiorari quashing the decision of the CMO to publish on 25 May 2023 in the Official Gazette a Register of Pharmacies (“**the Second List**”), including the Applicant inferring that the Applicant does not have a valid Certificate and is therefore in breach of its regulatory or other obligations and/or is otherwise not a registered pharmacy.
 - (2) An order of mandamus requiring the CMO to amend the Second List to remove the reference to a Certificate and any other suggestion that the Applicant is not in

compliance with its regulatory obligations as required by section 16 and 17 of the Act.

- (3) A declaration that there is no requirement for any pharmacy to be issued a Certificate by the CMO or the Third Respondent, as there is no legal basis for such a Certificate found in Bermuda law.

Factual background

2. The factual background to these proceedings is set out in the two affidavits of Dr Olivia Benyak-Pitcher, the Chief Pharmacist and a director of the Applicant and the affidavits sworn on behalf of the Respondents by Elizabeth Harrington, a pharmacy inspector appointed under the Act and the affidavit of Dr Ayoola Oyinloye, who was appointed as the CMO on 12 August 2020.
3. In her first affidavit Dr Benyak-Pitcher states that the Applicant opened its business operations in November 2019. She explains that the business model of the Applicant is to provide patients with specialty medicines at reasonable prices. The Applicant specialises in the supply of medicines to patients suffering from life-threatening illnesses, debilitating conditions and hard to obtain medications due to global shortages and regional restrictions. The Applicant is the sole supplier on the Island for many of these critical medicines in some instances and others, the Applicant's pricing allows patients to obtain the medicines they require where there would otherwise be unable to afford them.
4. The First Respondent is the Minister of Health, who leads the Ministry of Health, and is responsible for Bermuda's healthcare system. The Second Respondent is the CMO and is responsible for the pharmacy inspectors and has specific responsibility for maintaining and updating a list of registered pharmacies, pursuant to section 16 of the Act. The Third Respondent is shown as the Pharmacy Inspector, a person appointed

under the Act for the purposes of ensuring that the registered pharmacies are in compliance with various provisions of the Act.

5. Dr Benyak-Pitcher explains that the CMO published a list of registered pharmacies in Bermuda on 11 May 2023 (“**the First List**”) which did not include the Applicant, suggesting that the Applicant was not a registered pharmacy. However, on 25 May 2023 the CMO published a further list of registered pharmacies, the Second List, which comprised two columns setting out the names of “registered” pharmacies and whether they were in possession of a valid Certificate. The Second List includes the Applicant in column 1 and indicates that the Applicant does not have a valid Certificate, with the word “no” appearing in column 2 next to “My Pharmacy”. Dr Benyak-Pitcher understands that the only other pharmacies appearing on the Second List with a “no” in column 2 next to their name are pharmacies which do not operate currently. It appears that the First List was removed from publication on the Bermuda Government website.
6. Prior to the appearance of the Second List, Dr Benyak-Pitcher explains that on 24 March 2023, the Inspector attempted to conduct an unauthorised inspection of the premises of the Applicant. The Inspector was accompanied by an individual who she recognised as a former inspector, Mrs Lynanne Bolton. Upon their arrival Dr Benyak-Pitcher advised them that they would not be able to inspect the premises unless they presented her with their credentials, as required by section 51(3) of the Act. Mrs Bolton indicated that she had her credentials and was willing to provide them. However, the Inspector stated that she does not need to present credentials and that she should be allowed to inspect. The Applicant offered Mrs Bolton permission to inspect but did not allow the Inspector to inspect without credentials or authorisation. The Inspector left with Mrs Bolton and stated that the Applicant will be sent a letter as she had been denied inspection of the pharmacy.
7. Dr Benyak-Pitcher complains that the Second List is currently having significant adverse repercussions on the Applicant’s business and the Applicant is currently

suffering significant damage as a result of this regulatory uncertainty. She explains that the vendors and suppliers are questioning whether they can deal with the Applicant because it appears from the Second List, that there is no valid Certificate and thereby suggesting that it is non-compliant with Bermuda's laws and regulations. The Applicant has already received correspondence and communications from the vendors that they are unable to supply medicines on the basis of the Second List. The Applicant's reputation is currently being tarnished as a result of this uncertainty, vendors and suppliers' trust and confidence in the Applicant is being lost.

8. Dr Benyak-Pitcher states that the Applicant has suffered monetary losses as a result of this decision. The Applicant had agreements with at least one vendor to be supplied with medicines on a wholesale basis at a particular price point. As a result of the decision, this vendor has refused to deal with the Applicant forcing the Applicant to find alternative sources. Further, as a result of vendors refusing to supply the Applicant with medicines, patients' lives and health are being placed at risk. The Applicant is the sole importer of many of these medicines.
9. The present application by the Applicant raises following legal issues under the Act:
 - (1) Do the inspectors appointed under the Act have wider powers to enter the premises of any registered pharmacy in relation to an annual inspection than the power set out in section 51(3) of the Act. Specifically, does an inspector have the power to enter the premises of a registered pharmacy at will and without notice; and without having to comply with the statutory requirement under section 51(3) of producing his credentials.
 - (2) Does the Act provide statutory authority to the Registrar (the CMO) to conduct annual inspections of the pharmacies on the register kept under section 16(1) of the Act; and does it provide statutory authority to the Registrar (the CMO) to issue annual Certificates in respect of the said pharmacies and publish the results in the form of Second List.

The statutory framework under the Act

10. Registration of pharmacies is provided for in Part IV (sections 16 to 21) of the Act.

The relevant statutory provisions provide:

Register of pharmacies

16 (1) The Registrar shall establish and maintain a register of pharmacies for the purposes of this Act.

Registration of premises as registered pharmacies

17 (1) Where an application for the registration of premises as a registered pharmacy is made by any person (hereafter in this Part called an “applicant”) to the Registrar on the prescribed form accompanied by the appropriate fee, the Registrar shall, subject to sections 18, 20 and 21(1), enter the prescribed particulars relating to those premises in the register of pharmacies.

...

17(4) A list of registered pharmacies shall be published annually in the Gazette so soon as may be after the 1st day of January, and particulars of any alteration made in the register of pharmacies on or after that date in any year shall also be published in the Gazette.

Unfit premises: registered pharmacies

19 (1) Where the Minister is of opinion that a registered pharmacy fails in a material respect to comply with the requirements of regulations made under section 22(1)(a) which are for the time being in force, the Minister shall serve on the operator of the pharmacy a notice stating his intention to issue a certificate of unfitness under this section in respect of the pharmacy, and the Minister’s reasons therefor; and section 18(3) to (6) shall have effect mutatis mutandis in relation to notices and certificates under this section as they have effect in relation to notices and certificates of unfitness under that section.

Appeals

20 (1) Any person aggrieved by the issue of a certificate of unfitness under section 18 or 19 may, at any time within twenty-eight days after the service of the certificate upon him, appeal under this section to the Supreme Court, and upon any such appeal that Court shall have power to confirm or revoke the issue of the certificate.

Regulations for this Part

20 (1) The Minister may make regulations under this section with respect to registered pharmacies—

- (a) prescribing standards for their maintenance and operation, including provision for space, equipment and facilities;
- (b) imposing requirements as to the circumstances in which a registered pharmacist must, or (as the case may require) need not, be present in a registered pharmacy;
- (c) prescribing the books and records to be kept, and providing for the examination by or on behalf of the Minister of such books and records;
- (d) prescribing the returns to be made, and information to be forwarded, to the Minister.

11. Part VIII of the Act headed “MISCELLANEOUS” provides in section 51 for inspection of the registered pharmacies by the inspectors appointed under the Act:

Inspections

51 (1) It shall be the duty of the Minister, **by means of inspection and otherwise**, to take all reasonable steps to enforce, and secure compliance by registered pharmacists and others with the provisions of this Act or any regulation, and the Minister shall for that purpose appoint such number of inspectors as in his opinion is required.

(2) Any inspector may, for the purposes of enforcement of this Act or any regulations, make **test purchases or otherwise** ascertain whether any provisions of this Act or any regulations or of an order under this Act are being complied with.

(3) An inspector appointed under this section who has reasonable cause to believe that an offence under this Act or regulations has been committed shall, for the purpose of enforcing and securing compliance with the said provisions have power—

(a) at all reasonable times and on production, if required, of his credentials, enter any registered pharmacy or place of business (other than premises or parts of premises used as a dwelling house) and while there he may—

(i) inspect any drug or drug product found;

(ii) examine any procedure;

(iii) seize and detain drugs or drug products for testing; seize and detain goods or documents which he believes may be required as evidence in proceedings under this Act;

(iv) for the purpose of exercising his powers to seize drugs or drug products under this section and to the extent that it is reasonably necessary in order to ensure compliance with any provision of this Act, require any person having authority to do so to break open any container, and if the person does not comply, the inspector may do so himself.

12. The scheme of the Act is that section 16(1) requires the Registrar (the CMO) to establish and maintain a register of pharmacies for the purposes of the Act. An application for registration of premises as a registered pharmacy is made to the Registrar (section 17) and the Registrar being satisfied that the premises are suitable for registration as a registered pharmacy (section 18) and the application complies with the requirements of the regulations made under the Act (section 19 and 22), enters the prescribed particulars to those premises in the register of pharmacies.

13. Section 17(4) requires a list of registered pharmacies to be published annually in the Gazette. However, there is no provision in the Act providing for any inspection of the registered pharmacies on an annual basis or otherwise by the inspectors appointed under the Act in order to qualify for inclusion in that list. The Act contemplates that the annual list will merely reflect the changes in the register by the addition of new pharmacies entered in the register and by the deletion of those pharmacies which have ceased to carry on business. The Act and the regulations made thereunder do not contemplate an annual inspection of registered pharmacies so as to confirm that they are in compliance with the provisions of the Act and/or the Pharmacy and Poisons (Standards for Pharmacies) Regulations 1979 (“**the Regulations**”), in order for

inclusion in the annual list of registered pharmacies. There is no provision in the Act or the Regulations which provides for an annual Certificate referred to in the Second List published by the CMO on 25 May 2023.

14. Section 51(1) imposes upon the Minister a duty to take all reasonable steps to enforce, and secure compliance by registered pharmacists and others with the provisions of the Act. The Act does not mandate how the Minister should discharge this duty imposed upon him. Section 51(1) provides that for the purposes of ensuring compliance by registered pharmacists the Minister shall appoint such a number of inspectors as in his opinion is required. Section 51(1) directs that the Minister may discharge his duty “*by means of inspection and otherwise*” and section 51(2) provides that an inspector appointed under the Act may “*make test purchases or otherwise ascertain whether any provisions of this Act or any regulations of an order under this Act are being complied with*” (emphasis added).
15. Ms Dill-Francois, appearing for the Respondents, submits that section 51(1) gives the inspector the general power to inspect a pharmacy, to ensure that the pharmacy is in compliance with the Act and the Regulations. She further submits section 51(1) does not restrict when an inspection is to take place, and whether it is announced or unannounced and relies on the words “*or otherwise*” appearing in that sub-section.
16. Ms Dill-Francois also relies upon the words “*or otherwise ascertain*” in section 51(2) contending that this subsection gives the inspector a wide discretion, as she can enter the pharmacy to make test purchases but can also undertake other actions to ascertain whether the Act and the Regulations are being complied with. Ms Dill-Francois submits that general announced and unannounced inspections are a permissible alternative to making test purchases, when seeking to ascertain whether the Act and the Regulations are being complied with.
17. Ms Dill-Francois further submits that the statutory authority for the publication of the Second List identifying those registered pharmacies which have not received the

annual Certificate is also to be found within section 51(1) and the use of the words “*and otherwise*”.

18. Ms Dill-Francois relies upon *Jones v Wrexham BC* [2008] 1 WLR 1590, where Waller LJ, in the context of a conditional fee agreement, stated that “*I do not myself think that there are any pointers to a requirement to place some constrained meaning on “or otherwise”. If a claimant recovers its costs and some disbursements from the other side, as it is paid under an insurance policy in relation to some disbursements, it seems to me to be perfectly appropriate use of language that the claimant has “recovered” the latter disbursements under the policy. I would see no reason why, as a matter of language, “or otherwise” could not include recovery under an insurance policy.*”

19. Reliance was also placed on the Court of Appeal decision in *AB v The Minister of Education* [2023] CA (Bda) 2 Civ, where the court was considering whether the mandatory COVID 19 testing regime in Bermuda’s public schools was a breach of section 7 of the Bermuda Constitution. In that context Kay JA held at [12] that: “*Section 42 has provoked debate in this case. It imposes a duty on parents to cause children of compulsory school age “to receive suitable education either by regular attendance at a recognised school, or otherwise. The words “or otherwise”, acknowledged that there is a permissible alternative to regular attendance at the recognised school, for example, home schooling.*” (emphasis added)

Powers of the inspectors to enter the premises of registered pharmacies

20. As noted earlier, it is a submission of the Respondents that the words “*or otherwise*” in section 51(1) and (2) give the inspector a wide discretion to ascertain whether the Act and the Regulations are being complied with including general announced and unannounced inspection of the premises.

21. It is a cardinal rule of construction that an Act of Parliament must be read as a whole, in context, and the court should give consistent, harmonious, and sensible effect to all of the parts of a statute, to the extent possible. In the context of this rule, *Bennion, Bailey and Norbury on Statutory Interpretation*, eighth edition, noted at paragraph 21.4 that it is a principle of construction that, in the absence of a contrary intention, the general gives way to the specific:

*“Where the literal meaning of the general enactment covers a situation for which specific provision is made by some other enactment within the Act or instrument, it is presumed that the situation was intended to be dealt with by the specific provision.”*¹

The principle was articulated by Sir John Romily MR in Pretty v Solly (1859) 26 Beav 606 at 610:

“The general rules which are applicable to particular and general enactments in statute are very clear, the only difficulty is in their application. The rule is that wherever there is a particular enactment in the general enactment in the same statute, and the latter, taken its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.”

This principle is sometimes expressed in the maxim generalibus specialia derogant (special provisions overwrite general ones), or the converse, generalia specialibus non derogant (general provisions do not overwrite special ones)...

General and specific enactment in the same Act

*Acts often contain general provisions which, when read literally, cover a situation for which specific provision is made elsewhere in the Act. The principle mentioned above gives a rule of thumb for dealing with such a situation: it is presumed that the general words are intended to give way to the particular. This is because the more detail the provision is, the more likely is it to have been tailored to fit the precise circumstances of the case falling within it.”*²

22. The difficulty faced by the Respondents’ submission in this regard is that section 51 itself specifically deals with the powers of an inspector to enter the premises of a

¹ *Vinos v Marks & Spencer plc* [2001] 3 All ER 784 at [27]. The sentence to which this footnote relates has been judicially approved: *Building Authority v Appeal Tribunal (Buildings)* [2012] HKCFI 1812 at [76] (Hong Kong Court of First Instance).

² *Lofft’s King’s Bench Rep* (1772-74) 351 (98 ER); *Kidston v Empire Marine Insurance Co Ltd* (1866) LR 1 CP 535 at 546; and *R v J* [2004] UKHL 42.

registered pharmacy. These powers are set out in section 51(3) and are only exercisable when the inspector “*has reasonable cause to believe that an offence under this Act or regulations has been committed.*” Section 51(3) makes it clear that the power to enter a registered pharmacy cannot be exercised at will. Section 51(3) further requires that the power is only exercisable on production, if required, of the inspector’s credentials. In the judgment of the Court, the detailed and specific provisions in section 51(3) dealing with the inspector’s power to enter the premises of registered pharmacy, negate the suggestion that the words “*or otherwise*” appearing in section 51(1) and (2) provide a general power to the inspector to enter any registered pharmacy for the purposes of enforcing the provisions of the Act and/or the Regulations.

23. Ms Dill-Francois contends that section 51(3) requires “*reasonable cause to believe*” that an offence under the Act has been committed since it is dealing with the extreme power to seize and detain drugs or drug products for testing, as well as goods or documents which she believes may be required as evidence in proceedings under the Act. However, it is to be noted that whilst the inspector has the power to inspect, examine and seize drugs or drug products under section 51(3)(a)(i) to (iv) if she considers appropriate to do so in any particular case, her right to enter the registered premises is not dependent upon her desire to exercise these powers.

24. Furthermore, it is to be noted that the Bermuda Act appears to be based upon the English Poison Act 1972. Similar to section 51(1) of the Bermuda Act, section 9(1) of the English Act provides that:

“Inspection and enforcement

*9 (1) It shall be the duty of the Pharmaceutical Society of Great Britain (in this section referred to as " the Society ") to take all reasonable steps **by means of inspection and otherwise**—*

(a) to enforce the provisions of subsections (2) and (3) of section 20 of the [1954 c. 61.] Pharmacy Act 1954 (offences relating to certificates), and

(b) to secure compliance by pharmacists and persons carrying on a retail pharmacy business with the preceding provisions of this Act and with the Poisons Rules;

and the Society shall for that purpose appoint such number of inspectors as the Privy Council may direct.” (emphasis added)

25. Despite the wording “*by means of inspection or otherwise*” in section 9(1) of the English Act, it defined in section 9(4) the powers of an inspector to enter the registered pharmacy (a) for the purposes of securing compliance with particular provisions of earlier legislation; and (b) where the inspector had “*reasonable cause to suspect that a breach of the law has been committed*” in relation to such substances. Section 9(4) of the English Act provided:

“(4) An inspector appointed by the Society under this section—

(a) shall, for the purpose of enforcing the provisions of subsections (2) and (3) of section 20 of the Pharmacy Act 1954 and for securing compliance by pharmacists and persons carrying on a retail pharmacy business with the preceding provisions of this Act and with the Poisons Rules, have power at all reasonable times to enter any registered pharmacy, and

(b) shall, for the purpose of securing compliance by other persons with the preceding provisions of this Act and with the Poisons Rules, so far as those provisions and Rules relate to substances included in Part I of the Poisons List, have power to enter any premises in which he has reasonable cause to suspect that a breach of the law has been committed in relation to any such substances,

and in either case shall have power to make such examination and inquiry and to do such other things (including the taking, on payment, of samples) as may be necessary for ascertaining whether those provisions and Rules are being complied with.” (emphasis added)

26. It is noteworthy that the English Act expressly provided for power of entry to ensure compliance and did not simply rely upon the words “*or otherwise*” and the power to enter for the purposes of compliance was limited to the enforcement provisions of sub-sections (2) and (3) of section 20 of the Pharmacy Act 1954³ (concerned with

³ Section 20 (2) and (3) of the Pharmacy Act 1954 provides that:

(2) *If, with intent to deceive, any person—*

offences relating to forging, using or lending any certificate issued under the Pharmacy Acts with intent to deceive any person). The existence of the express provision in section 9(4)(a) of the English Act would appear to detract from the general submission of the Respondents that the words “*or otherwise*” in section 51(1) and (2) are to be construed as allowing the inspector with the general power to enter registered pharmacies at will and unannounced so as to conduct an inspection to ensure compliance with the Act and the Regulations.

Authority to issue annual Certificates of Inspection and publication of the Second List

27. As noted earlier, the Respondents contend that the statutory authority for the issue of annual Certificates and the publication of the Second List identifying those pharmacies which have not received the annual Certificate is also to be found within section 51(1) and the use of the words “*and otherwise*”. As also noted earlier, there is no express provision in the Act providing for an annual Certificate and the publication of the Second List.

28. The Court considers that the contention of the Respondents in this regard is contrary to the scheme of the Act. As noted earlier, the Act recognizes that an adverse decision in relation to compliance by a registered pharmacy with the provisions of the Act and the Regulations can have severe adverse impact upon the business operations of a

(a) forges, or uses, or lends to or allows to be used by any other person any certificate issued under the Pharmacy Acts; or

(b) makes or has in his possession any document so closely resembling such a certificate as to be calculated to deceive,

he shall be liable on summary conviction, in respect of each offence, to a fine not exceeding twenty pounds and, in the case of a continuing offence, to a (further fine not exceeding five pounds for every day subsequent to the day on which he is convicted of the offence during which the contravention continues.

In the application of this subsection to England or Wales, the expression “forges” has the same meaning as in the Forgery Act, 1913.

(3) If any person to whom a certificate of registration has been issued in pursuance of section five of this Act ceases to be a registered pharmaceutical chemist he shall, before the expiration of fourteen days from so ceasing, transmit the certificate to the registrar for cancellation, and, if he fails to do so, he shall be liable on summary conviction, in respect of each offence, to a fine not exceeding five pounds and to a further fine not exceeding one pound for every day subsequent to the day on which he is convicted of the offence during which the default continues.

registered pharmacy. Accordingly, the Act sets out detailed provisions allowing the registered pharmacy to appeal against such an adverse decision by the Minister.

29. By way of illustration, section 19(1) provides that where the Minister is of opinion that a registered pharmacy fails in a material respect to comply with the requirements of the regulations, the Minister shall serve on the operator of the pharmacy a notice stating his intention to issue a certificate of unfitness under that section and the Minister's reasons for taking that view. If within 14 days after the receipt of a notice the operator of the pharmacy makes representations in writing, or gives notice in writing to the Minister of his desire to be heard with respect to the Minister's proposal to issue such a notice, the Minister is obliged not to issue the notice before he has considered the operator's representations in writing or, where the operator gave notice of his desire to be heard, his oral representations made within a reasonable time.
30. Where the Minister, after considering any such representations, determines not to issue a certificate of unfitness in respect of the premises in question, he is obliged to notify the operator of the pharmacy and the CMO is obliged to continue to register the premises as a registered pharmacy.
31. Where the Minister, after considering any such representations determines that a certificate of unfitness ought to be issued in respect of the premises in question, he is obliged to issue the certificate by serving it on the operator of the registered pharmacy and is also obliged to serve a copy of the certificate on the Registrar. Under the statutory scheme a certificate of unfitness issued by the Minister shall state the reasons for its issue.
32. Any person aggrieved by the issue of a certificate of unfitness may, at any time within 28 days after the service of the certificate upon him, appeal under section 22 to the Supreme Court, and upon any such appeal the Supreme Court shall have the power to confirm or revoke issue of the certificate. Where an appeal is brought against the issue of the certificate of unfitness to the Supreme Court, such a certificate shall only

take effect upon the expiration of 30 days after the dismissal of the appeal and not otherwise.

33. As the first affidavit of Dr Benyak-Pitcher makes it clear that the entry of a registered pharmacy in the second column of the Second List can have devastating economic impact upon the registered pharmacy in question. In the present case the vendors and suppliers are questioning whether they can deal with the Applicant because it appears from the Second List, that there is no valid Certificate therefore making it non-compliant with Bermuda laws. However, as there is no express provision providing for an annual Certificate and its publication in the Second List, there is no statutory route by which an aggrieved registered pharmacy can appeal either against the decision not to issue the Certificate or its publication in the Second List. The absence of any avenue to make representations to the CMO against the decision not to issue the Certificate or its publication in the Second List; or any other avenue to appeal against these decisions to the Supreme Court are strong indicators that the words “*or otherwise*” in section 51(1) and (2) provide no authority to the CMO to institute an annual procedure of issuing Certificates to registered pharmacies and to publish the names of the non-compliant registered pharmacies in the Second List.

34. In her submissions on behalf of the Respondents, Ms Dill-Francois urged the Court to consider that without the inspections, it would be difficult to ascertain whether a pharmacy is complying with the Act and/or the Regulations and that such inspections satisfy the requirements of section 51(1) and (2) of the Act. Ms Dill-Francois further submitted that the publication of the Second List is a reasonable step being taken to enforce, and secure compliance by a pharmacy with the Act and/or the Regulations. Nothing said in this Judgment is intended to cast any doubt on the intrinsic value of either the annual inspections or the publication of results of such inspections. The Court is only concerned with the narrow legal issues (i) whether there is legal authority for the Registrar (the CMO) to conduct annual inspections and issue Certificate of Inspection; (ii) whether there is legal authority for the inspectors to enter the premises of a registered pharmacy for the purposes of conducting such

annual inspections; and (iii) whether there is legal authority to publish the results of such annual inspection in the form of the Second List. For the reasons set out above the Court has concluded that there is no legal authority to take these steps.

Conclusion

35. For the reasons set out in this Judgment above, the Court concludes that (i) the Registrar (the CMO) has no legal authority to issue an annual Certificate following inspection of the premises of registered pharmacies; (ii) the inspectors appointed under the Act have no greater authority to enter the premises of a registered pharmacy other than as set out in section 51(3) of the Act; and (iii) the Registrar (the CMO) has no legal authority to publish the names of the registered pharmacies who have not obtained the Certificate of Inspection in the form of the second column of the Second List.

36. Accordingly, the Court grants (i) a declaration that there is no requirement for any registered pharmacy to be issued a Certificate by the Registrar (the CMO) as there is no legal basis for such a Certificate under the Act; (ii) an order of mandamus requiring the Registrar (the CMO) to delete from the publication of the First List published on 11 May 2023 that does not include the Applicant, suggesting that the Applicant was not a registered pharmacy as at 1 May 2023 from all sources (online or otherwise); (iii) an order of certiorari quashing the decision of the Registrar (the CMO) to publish on 25 May 2023 in the Official Gazette a Register of Pharmacies, including the Applicant (the Second List) inferring that the Applicant does not have a valid Certificate; (iv) an order of mandamus requiring the Registrar (the CMO) to amend the Second List to remove the reference to a Certificate and any other suggestion that the Applicant is not in compliance with its regulatory obligations as required by sections 16 and 17 of the Act.

37. The Court will hear the parties in relation to the issue of costs, if required.

Dated this 22nd day of November 2023



NARINDER K HARGUN
CHIEF JUSTICE