[2025] BIOT CA (Civ) 1a

IN THE BRITISH INDIAN OCEAN TERRITORY COURT OF APPEAL
ON APPEAL FROM THE SUPREME COURT
MARGARET OBI, SITTING AS AN ACTING JUDGE
BIOT SC/15/2023 AND BIOT SC/16/2023

London
United Kingdom

Date: 6 February 2026

Before:

SIR HOWARD MORRISON, K.C.M.G, C.B.E, K.C., PRESIDENT
THE HON. MR JUSTICE LANE, JA
THE HON. MRS JUSTICE NOTT, JA

THE COMMISSIONER FOR THE BRITISH INDIAN OCEAN TERRITORY v THE KING (ON THE APPLICATION OF VT & Ors) (APPLICATION FOR PERMISSION TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

JUDGMENT

This judgment was handed down remotely at 10:00am UK time on 6 February 2026 by circulation to the parties or their representatives by e-mail.

Mr. Justice Lane, JA

1. On 16 December 2025, the BIOT Court of Appeal ('the Court of Appeal') handed down judgment in the Commissioner's appeal against the judgment of the BIOT Supreme Court ('the Supreme Court') (Ms. Margaret Obi, sitting as an Acting

Judge). The Court of Appeal dismissed the Commissioner's appeal on all grounds, [2025] BIOT CA (Civ) 1. The Commissioner now seeks to leave to appeal to the Judicial Committee of the Privy Council ('the JCPC'). As in the judgment under appeal, I shall continue to refer to the respondents before us (VT and others) as 'the Claimants.'

Background

2. Between 3 October 2021 and 29 December 2022, a total of 349 Sri Lankans of Tamil ethnicity arrived in Diego Garcia (the largest and only inhabited island in the BIOT) by boat. The majority had left Diego Garcia by the time of the hearing before the Supreme Court (6-19 September 2024). At that time, 64 remained, including 16 children: 56 on Diego Garcia and eight in Rwanda, where they were receiving medical treatment. The Claimants in the judicial review application issued on 18 December 2023 in the Supreme Court comprised 12 of the Sri Lankans who had arrived in October 2021 and claimant RG, who had arrived in April 2022.

3. In their applications for judicial review and writs of *habeas corpus,* the Claimants sought declarations that they had been and continued to be unlawfully imprisoned on Diego Garcia. On 2 December 2024, all migrants on Diego Garcia travelled to the United Kingdom, including the Claimants, save for VT (who, on 12 March 2025, was transferred to Monserrat to serve the remainder of a sentence of imprisonment), AC, who left subsequently, and KP. The Claimants' applications for *habeas corpus* were not pursued.

4. Before the Supreme Court, the Commissioner argued that the Claimants had never been detained on Diego Garcia but had been excluded for their own safety from entering the UK/USA military base, which comprises a large part of the island. In the alternative, the Commissioner submitted that any detention had been lawful by reason of necessity. In 2023 and 2024, the Commissioner had promulgated Restricted Movement Orders ('RMO 2023' and 'RMO 2024'). The Commissioner submitted that, in the event that the Supreme Court found that the Claimants had been detained and that the defence of necessity was not available, such detention had been rendered lawful upon the promulgation of the RMOs.

The Judgment of the Supreme Court

5. The Supreme Court found (i) that the Claimants had been 'in a prison from the outset.' It found that all the 'indicia of detention' identified by the United Kingdom Supreme Court in *Jalloh* [2020] UKSC 4 including 'physical barriers, guards or threats of force or of legal process' were present on Diego Garcia; (ii)

that the Commissioner had 'not come close to establishing that it is necessary for the Claimants to be detained' [88]; (iii) that, applying the principles in *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] 1 WLR 704, the Claimants had been detained for an unreasonably long period long before the RMOs had been promulgated and that the RMOs were consequently *ultra vires*.

6. The Supreme Court made the following declarations.

1. VT was unlawfully detained from his arrival on Diego Garcia on 3 October 2021 until 21 March 2024, when he was detained in criminal custody. He was further unlawfully detained after he was released from criminal custody on 31 May 2024 until he was sentenced to immediate custody on 1 November 2024.

2. KP was unlawfully detained from his arrival on Diego Garcia on October 2021 until he was sentenced to immediate custody on 16 October 2024.

3. RG was unlawfully detained from his arrival on Diego Garcia on 10 April 2022 until he left for the United Kingdom on 2 December 2024.

4. AAA and ZZZ were unlawfully detained from their arrival on Diego Garcia on 3 October 2O2l until they were medically evacuated to Rwanda on 9 June 2024.

5. All of the other Claimants were unlawfully detained from their arrival on Diego Garcia on 3 October 202I until they left for the United Kingdom on 2 December 2024.

<u>The Commissioner's appeal to the Court of Appeal</u>

7. Before the Court of Appeal, the Commissioner argued that the Supreme Court had erred in: (i) finding that the Claimants had been detained as a matter of law; (ii) rejecting the Commissioner's claim that he had detained the Claimants lawfully by reason of necessity at common law; (iii) applying the *Hardial Singh* principles (see [5] above), in particular principle [2], in determining the lawfulness of RMO 2023 and RMO 2024; (iv) failing to have regard to the respective roles and responsibilities of the USA and UK authorities in the operation of the military base on Diego Garcia, as evidenced in particular documents adduced in evidence before the court. [1]

[1] The parties before the Court of Appeal agreed that RMO 2023 was a nullity by reason of procedural irregularity.

The British Indian Ocean Territory (Appeals to Privy Council) Order 1983

8. Appeals from the Court of Appeal to the JCPC are subject to the provisions of the British Indian Ocean Territory (Appeals to Privy Council) Order 1983 ('the 1983 Order'). Section 3 of the 1983 Order provides:

> 3. Subject to the provisions of this Order, an appeal shall lie –
>
> (a) as of right from any final judgment, where the matter in dispute on the appeal amounts to or is of the value of £5000 or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and
>
> (b) at the discretion of the court, from any other judgment, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which by reason of its great or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

Section 6 provides:

> 6. A single judge of the Court shall have power and jurisdiction:
>
> (a) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;
>
> (b) generally in respect of any appeal pending before Her Majesty in Council, to make such order and to give such other directions as he shall consider the interests of justice or circumstances of the case require:
>
> Provided that any order, directions or decision made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of three judges which may include the judge who made or gave the order, directions or decision.

9. I invited the parties to file and serve submissions regarding the proper construction of the 1983 Order. It appears that the instant appeal is the first ever to be made from the Court of Appeal to the JCPC under the provisions of the 1983 Order or otherwise. I have carefully considered the submissions in reaching my decision on this application.

The Commissioner's submissions on the 1983 Order

10. The Commissioner submits: (i) that he is entitled to a grant of leave to appeal as of right; conducting any form of merits test, whether derived from the Civil Procedure Rules (eg. CPR Part 52) or otherwise, would be an error of law; (ii) Section 6 of the 1983 Order is not rendered otiose by a grant of leave as of right. The Court of Appeal needs to determine whether the Commissioner meets the threshold provisions of section 3 and so can appeal as of right; (iv) the JCPC's Practice Direction (December 2025) at [1.5] recognises that, 'The circumstances in which leave can be granted will depend on the law of the country or territory concerned. Leave can usually be obtained as of right from final judgments in civil disputes where the value of the dispute is more than a specified amount and in cases which involve issues of constitutional interpretation. Most Courts of Appeal also have discretion to grant leave in other civil cases.' (v) whilst the appeal arises from a judicial review, it concerns a 'civil right' and falls within that category of cases identified by Lord Sumption in *Jacpot Ltd v Gambling Regulatory Authority (Mauritius)* [2018] UKPC 16 at [16] ('the Board would wish to emphasise that this does not mean that an appeal as of right is never available in proceedings by way of judicial review. Some such proceedings may, at least indirectly, involve property rights of the requisite value…'). Damages for unlawful imprisonment were claimed in the proceedings from the outset and remained to be assessed by the Supreme Court following the Court of Appeal's judgment.

The Claimants' Submissions on the 1983 Order

11. The Claimants submit that the Commissioner's appeal is 'devoid of merit' and should not be allowed to proceed. Section 6 of the 1983 Order (requiring the Court of Appeal to 'to **hear and determine** any application to the Court for leave to appeal in any case where under any provision of law **an appeal lies as of right from a decision of the Court**' [my emphasis] would be rendered otiose if the Court was required to grant leave in every case which met the section 3(a) conditions. The Court of Appeal is not obliged to send entirely meritless appeals to the JCPC. At [5] of their submissions, counsel for the Claimants write:

> 5. Indeed, it is well established in recent decisions of the Privy Council that "an appellant's appeal as of right does not mean that the Court of Appeal has no

control over the appeal" (*A v R (Guernsey*) [2018] UKPC 4, §8). The local court of appeal "has a right to police applications of this kind and to consider whether any proposed appeal raises a genuinely disputable issue" (*Meyer v Baynes (Antigua and Barbuda)* [2019] UKPC 3, §23). Asking whether there is a genuinely disputable issue is the same as asking "whether the appeal is devoid of merit and has no prospect of success" (*Hawkins v Abarbanel Ltd (Cayman Islands)* [2026] 1 WLR 115, §§63(v)-(vi), 64).

Discussion

12. I shall deal first with the application of section 3(a). In this appeal, there is 'no matter in dispute … of the value of £5000 or upwards' and the appeal does not 'involve directly or indirectly some claim or question to or respecting property.' The appeal does, however, concern a 'civil right' namely the fundamental right to freedom under the law. Further, unlike the judicial review under appeal in *Jacpot*, the claim has a monetary value; damages for unlawful imprisonment were claimed from the outset and all parties acknowledge that, in the event that the Commissioner's appeal fails, the Supreme Court (i) will assess those damages and; (ii) that any damages awarded will exceed the £5,000 threshold. Accordingly, it is clear that the Commissioner's appeal satisfies the requirements of section 3(a) the 1983 Order.

13. The Commissioner submits that, if he meets those requirements, the Court of Appeal should grant leave. The Claimants submit that recent case law in the JCPC clearly indicates that, even when an appellant may appeal 'as of right', the Court of Appeal is not obliged to grant leave in an appeal which raises 'no genuinely disputable issue.' The Court of Appeal is required to filter out such appeals at permission stage.

14. In *Jacpot*, Lord Sumption noted that provisions for an appeal 'as of right' 'commonly appear in constitutional provisions or Orders in Council governing appeals as of right to the Judicial Committee. Probably no other condition has given rise to as much difficulty.'

15. In other jurisdictions, the 'appeal as of right' provision may be expressed differently. For example, the Court of Appeal (Guernsey) Law 1961 provides that 'no appeal shall lie from a decision of the Court of Appeal … without the special leave of Her Majesty in Council or the leave of the Court of Appeal except where the value of the matter in dispute is equal to, or exceeds, the sum of five hundred pounds sterling.'

16. Addressing that particular provision in *A v R (Guernsey)* [2018] UKPC 4, the JCPC discussed recent decisions of the Guernsey Court of Appeal (*Emerald Bay Worldwide Ltd v Barclays Wealth Directors (Guernsey) Ltd* (judgment 2/2014) (unreported) and *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd* (judgment 55/2015) (unreported)) in which the Court of Appeal had 'understandably sought to reform the regime for permission to appeal by refusing to grant permission unless the appeal raised an arguable point of law of general public importance, thereby bringing appeals from Guernsey into line with the practice in the jurisdictions of the United Kingdom.' The JCPC concluded that both *Emerald Bay* and *Investec* had been wrongly decided; '1961 Law gives an appeal as of right; and it is beyond the power of the courts to contradict that legislation.'

17. However, notwithstanding that conclusion, the JCPC held that 'an appellant's appeal as of right does not mean that the Court of Appeal has no control over the appeal.' Some jurisdictions provide for an appellant to provide security for costs or to comply with 'other prescribed procedural conditions, such as the preparation of the record of proceedings.' None of those conditions are required under the 1983 Order.

18. However, the JCPC in *A v R* continued, '**more generally**, a court of appeal has power to make sure that there is **a genuinely disputable issue within the category of cases which are given an appeal as of right**.' Thus, in *Alleyne-Forte v Attorney General of Trinidad and Tobago* [1998] 1 WLR 68 Lord Nicholls of Birkenhead, delivering the judgment of the Board, stated [page 73]: 'An appeal as of right, by definition, means that the Court of Appeal has no discretion to exercise. **All that is required, <u>but this is required</u>, is that the proposed appeal raises a genuinely disputable issue in the prescribed category of case.'** [my emphasis]

19. In *Meyer v Baynes (Antigua and Barbuda)* [2019] UKPC 3, the JCPC considered whether the appellant had an appeal as of right under section 122(1)(a) of the Antigua and Barbuda Constitution Order 1981. As in the 1983 Order, the Constitution Order provided for an appeal as of right where a financial threshold was met (and there was no dispute between the parties that it was met). In those circumstances, the JCPC considered whether the Court of Appeal retained 'any control over a further appeal.'

20. Mr Meyer had lost in the Court of Appeal of the Eastern Caribbean Supreme Court (Antigua and Barbuda) and sought leave to appeal to the JCPC. He then 'applied to the Court of Appeal for leave to appeal to the [JCPC]. He contended … he was entitled to appeal as of right. The Court of Appeal disagreed and refused his application. So, on 30 May 2016, Mr Meyer made an application to the Board for permission to appeal. That application was successful and … Mr Meyer was granted the permission he sought.' One of the grounds of his appeal to the JCPC

was that the Court of Appeal had 'erred in refusing to grant Mr Meyer permission to appeal to the Board as of right.' [*Meyer* at [14])

21. Determining that ground of appeal, the JCPC adopted the reasoning in *A v R* (and, in turn, *Alleyne-Forte v A-G*). At [23] it held:

> The Board considers that this reasoning is also applicable to appeals from the Court of Appeal of the Eastern Caribbean Supreme Court (Antigua and Barbuda). **Mr Meyer made an entirely proper application to the Court of Appeal by notice of motion for leave to appeal. But the Court of Appeal has a right to police applications of this kind and to consider <u>whether any proposed appeal raises a genuinely disputable issue</u>. In this case the Court of Appeal exercised that right, refused leave to appeal and dismissed the application. In so doing, it did not exceed its jurisdiction, and it made no error in approaching the application in the way that it did.** [my emphasis]

<u>The Court of Appeal's determination of the Commissioner's application for leave to appeal to the JCPC</u>

22. Following the guidance provided in these cases, I shall now determine this application for leave, which is brought 'as of right' by the Commissioner, by first considering whether the appeal 'raises a genuinely disputable issue'. I stress that I have not sought to apply any other test than that. I have not determined the application for leave by reference to CPR Part 52 or any other legal test used in civil practice in England and Wales. I have characterised the requirement for the Court of Appeal to 'police applications of this kind' as a 'test' for convenience of expression; by doing so, I do not seek to go beyond the very clear guidance as to the nature of the Court of Appeal's task provided by the JCPC. This 'policing' of applications is what I understand section 6 of the 1983 Order to require. That section is not otiose in appeals 'as of right' as the Court of Appeal has to 'hear and determine' whether an appeal raises 'a genuinely disputable issue'.

23. I recognise that determining whether an appeal raises a 'genuinely disputable issue' sets a high threshold. Whilst the test is not that the appeal must be so egregious as to amount to an abuse of process (an entirely separate consideration, as the JCPC made clear in *A v R* at [12]), equally an appeal which may be marginal or 'just arguable' should be allowed to proceed. The test, as I understand it, exists to exclude appeals which are bound to fail.

The Commissioner's grounds of appeal

24. Before considering the grounds more closely, I make the following general observations. First, the Commissioner, both in his appeal to the Court of Appeal and in this application for leave to appeal, criticises both the Court of Appeal and the Supreme Court for failing to take into account the unique circumstances on Diego Garcia, in particular that fact that the island is the location of a very significant UK/USA military base, which is operated subject to diplomatic agreements between those two countries. It would be not be exaggerating to characterise this criticism as fundamental to the Commissioner's case before both courts. However, the criticism is simply not arguable. Both the Supreme Court and Court of Appeal made abundantly clear in their respective judgments that the unique circumstances pertaining on Diego Garcia had been considered at length and in detail and duly taken into account. The Supreme Court, most unusually, conducted a site visit. If it is the Commissioner's view that what he considers a proper assessment of those unique circumstances should inevitably have led both BIOT courts to find in his favour (and, at times, that did appear to be his position) thereby excluding the operation of fundamental principles of law which protect the liberty of the individual, together with years of associated jurisprudence at the highest level, then, frankly, that view is manifestly without merit.

25. Secondly, and following on from that observation, each of the Commissioner's grounds of appeal lack merit on account of two fatal flaws; first, each ground is essentially no more than an expression of disagreement with the outcome of the appeal and, secondly, the grounds fail to identify any properly arguable errors of law in the Court of Appeal's judgment.

26. Thirdly, the Commissioner advanced before us several completely new arguments (for example, that the Claimants could bring their own detention to an end by travelling to Reunion Island) which had never been put to the Supreme Court. As we found ourselves repeating several times in our judgment, it is not arguable that the Supreme Court erred in law by failing to consider submissions which had never been put before it. It is axiomatic that such submissions do not raise any genuinely disputable issue requiring determination by an appellate court.

27. Ground 1: The Commissioner's first ground is that the Court of Appeal erred by having insufficient regard to the failure of the Supreme Court to place weight on particular documents concerning the security situation on Diego Garcia. The complaint that the Court of Appeal failed 'to engage in any substantive analysis of the evidence in issue' is factually incorrect. The Court of Appeal in its judgment at [141 and 148] stated: 'We were taken at some length to the evidence which the Commissioner contends the Judge failed to take into account … the

Commissioner's criticisms, both individually and cumulatively, focus upon small parts of the evidence to the exclusion of the totality – particularly the evidence given in cross-examination. We do not accept that the Judge failed to have any or any proper regard to the evidence relied upon by the Commissioner. The evidence in total does not bear the weight given to it by the Commissioner and it does not come close to persuading us that the Judge's approach to this evidence was flawed in the way submitted.' Moreover the Court of Appeal correctly directed itself on the law; an appellate court is 'bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into [her] consideration" and can "set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable" (see *Volpi v Volpi* [2022] 4 WLR 48, [2](iii), [2](vi))'. Ground 1 is nothing more than a disagreement with the conclusions of the Court of Appeal.

28. Ground 2: The second ground is that 'the Court of Appeal erred in law by failing to engage properly or at all with the reality of the situation in BIOT; and purported to apply common law authorities developed in the fundamentally different context of England to the context of BIOT without necessary amendment and/or alteration to take account of the unique context of BIOT.' The Court of Appeal addressed this argument more than once and in depth in its judgment. The Commissioner chooses to ignore the fact that the Supreme Court judge repeatedly and in wholly unambiguous terms explained that she had conducted her analysis fully aware of the security and other unique features of Diego Garcia. I refer also to what I say at [24] above.

29. Before the Court of Appeal, the Commissioner abandoned his previous submission that detention on Diego Garcia was in some way different in kind from detention elsewhere. Instead, he submitted that the Commissioner did not intend to detain the Claimants and, secondly, that the Claimants were free to leave. The Court of Appeal unambiguously concluded that the Supreme Court had been correct to find that the Commissioner's detention of the Claimants was 'direct and intentional' [64]. It reached that conclusion having clearly in mind that the situation on Diego Garcia was 'difficult' and one which the Commissioner 'did not want.' As regards the submission that the Claimants were free to leave (in practice, that they could travel to a French territory, Reunion Island), this was raised for the first time in the Court of Appeal. Consequently, the Supreme Court could not be criticised for failing to address it. In any event, it was manifestly open to the Court of Appeal to conclude, for the detailed reasons it gives in the judgment, that the Supreme Court applied the law correctly and with proper regard for the particular circumstances pertaining on Diego Garcia. It is apparent that that the Commissioner disagrees with that conclusion, but his disagreement does not constitute an arguable ground of challenge. Ground 2 is entirely without merit.

30. Ground 3: The Commissioner asserts that the Court of Appeal wrongly dismissed his case regarding necessity. '[T]he principle that the defence of necessity is available in a claim for unlawful detention is well-established. The Court erred in considering whether the defence was applicable in the BIOT context because of the Court's failure properly to consider the relevance of the unique factual context of BIOT.'

31. The Commissioner's case before the Court of Appeal was characterised by legal arguments and case law which had never been put before the Supreme Court. Indeed, at [86] and following, the Court of Appeal, under the sub-heading 'Reliance in oral submissions on matters not before Judge and not pleaded on appeal' (which included *Austin v Commissioner of the Police of the Metropolis* [2007] EWCA Civ 989), dealt with the Commissioner's submissions and gave clear reasons for rejecting them. The Court of Appeal explained that the Commissioner's failure for many months to enact a valid RMO was fatal to any defence based on necessity. In short, the detention of the Claimants could not be 'necessary' given the ready availability of a legal remedy which would (subject to the outcome of any challenge by way of judicial review) render the detention lawful. The Commissioner makes clear his disagreement with the conclusions reached by the Court of Appeal but makes no attempt whatever to identify any arguable error of law in the Court's analysis. Ground 3 is entirely without merit.

32. Ground 4: The Commissioner's fourth ground is that the Court of Appeal was wrong to find that the Supreme Court did not err in law by applying the second *Hardial Singh* principle (HS2) 'essentially unamended to the unique context of BIOT' and finding in consequence that RMO 2024 was *ultra vires*. HS2 (which provides that, in the absence of clear statutory authority, a person may only be detained for a period that is reasonable in all the circumstances) is a principle of statutory construction, which the JCPC has held applies to administrative detention (see *Tan Te Lam v Superintendent of Tai A Chau Detention Centre* [1997] AC 97, 111B). The Court of Appeal [128] found that this 'immutable and fundamental principle of law' had been applied by the Supreme Court taking fully into account the factual matrix which that court had found to exist on Diego Garcia. The Court of Appeal explained at length that the principle of law itself should not be 'amended' but that the factual context in which it is applied was important. Again, the Commissioner's ground is nothing more than a repetition of the case it unsuccessfully advanced before Court of Appeal; no attempt has been made to explain how HS2 should have been 'amended' or to identify any arguable error of law in the Court of Appeal's reasoning.

33. Section 3(b) of the 1983 Order – The appeal is one which by reason of its great or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision: In the alternative to his appeal 'as of right', the Commissioner asserts that the Court of Appeal should exercise its discretion to grant leave under section

3(b) of the 1983 Order. He identifies three 'central questions' for the JCPC to consider: (i) The extent of any right to liberty enjoyed by illegal entrants in the unique context of the military island of Diego Garcia, with the security and international relations implications of the answer to that question; (ii) The extent of the Commissioner's powers to restrict movement on the BIOT in response to the demands of national and/or military security and the demands of safety; (iii) The applicability of English common law authorities to the BIOT context, bearing in mind the profound differences in factual context between England and BIOT.

34. The Claimants agree that the original application to the Supreme Court did raise 'issues of the utmost importance' for the Claimants whilst they were living on Diego Garcia. Over a period of many months, some Claimants became unwell and others self-harmed. However, the Claimants submit that there are no remaining issues 'of great or general importance' to be considered. None of the Claimants now assert that they are unlawfully detained. The conditions in which they found themselves were unique and will not be replicated

35. Moreover, in January 2025, the Commissioner promulgated the Immigration (Unlawful Entry) Ordinance 2025 (the '2025 Ordinance'). *Inter alia*, the 2025 Ordinance provides that claims for international protection cannot be made in BIOT; unlawful entrants will be removed to St Helena; an unlawful entrant who does not seek international protection must be removed to their country of nationality; detention pending removal may only be challenged on the basis that 'the location or conditions of his detention on the grounds that the location or conditions are causing a serious, rapid and irreversible decline in his health' [8(7)]. The Claimants submit: 'the Commissioner has therefore enacted a statutory basis for the detention of any future unexpected entrants and has expressly disapplied the implied limits on such detention. The sole ground on which such detention may be challenged (serious, rapid and irreversible decline in the person's health) is extremely limited and necessarily fact specific. The judgment in this case will have no bearing on the outcome of any such claim in the future.'[24.6].

36. I agree with that submission. The Commissioner has used his power to enact legislation (which does not require scrutiny by any legislature) to regulate the presence of unlawful entrants on BIOT territory. With the enactment of the 2025 Ordinance, any public interest argument falls away entirely. The circumstances of the Claimants during their time on Diego Garcia were unique; because those circumstances will never be replicated, there remains no matter of great or general importance to be considered by the JCPC. Section 3(b) the 1983 Order is prospective; nothing which a court may do or say now will impact anyone entering or living in the BIOT in the future. The circumstances of the Claimants in the period 2021-2024 are now of historic and academic interest only. In the circumstances, I would refuse to grant leave under section 3(b) of the 1983 Order.

Conclusion

37. If My Lords agree, for the reasons I have given, I would find that the Commissioner's appeal raises no genuinely disputable issues and that the Court of Appeal should not exercise its discretion under section 3(b) of the 1983 Order in favour of the Commissioner. Consequently, I would refuse the Commissioner's application for leave to appeal to the JCPC.

Decision certified as appropriate for reporting

38. Notwithstanding that this is a decision on an application for leave to appeal, and if My Lords agree, I would certify that it is suitable for reporting. It is the first such decision made in the BIOT Court of Appeal and, therefore, the first application of sections (3) and (6) of the 1983 Order. The decision provides guidance concerning the construction of the 1983 Order which may assist future litigants.

The President

39. I agree.

Mrs. Justice Nott, JA

40. I also agree.