

21J. 禁制任何人擔當其無權擔當的職位的強制令

- (1) 凡某人無權擔當本條適用的職位而擔當該職位，原訟法庭可——(由1998年第25號第2條修訂)
 - (a) 授予強制令，禁制該人擔當該職位；及
 - (b) 如情況有此需要，宣布該職位懸空。
- (2) 本條適用於任何成文法則所設立的任何公職或職位。
(由1987年第52號第18條增補)
[比照1981 c. 54 s. 30 U.K.]

21K. 申請司法覆核

- (1) 向原訟法庭要求批予以下一種或多於一種濟助的申請——
 - (a) 履行義務令、禁止令或移審令；
 - (b) 根據第21J條授予禁制一名無權擔當該條所適用的職位的人擔當該職位的強制令，
 須按照法院規則以一項稱為申請司法覆核的程序作出。
- (2) 要求作出宣布或授予強制令(並非第(1)款所述的強制令)的申請，可按照法院規則以申請司法覆核的方式提出，而原訟法庭在接獲該申請後，如在考慮到——
 - (a) 可藉履行義務令、禁止令或移審令批予濟助的事宜的性質；
 - (b) 可藉該等命令批予濟助所針對的人及團體的性質；及
 - (c) 有關案件的所有情況，
 認為作出宣布或授予強制令(視屬何情況而定)是公正及適宜的，可作出所要求的宣布或授予所要求的強制令。

21J. Injunction to restrain persons acting in offices in which they are not entitled to act

- (1) Where a person not entitled to do so acts in an office to which this section applies, the Court of First Instance may— (*Amended 25 of 1998 s. 2*)
 - (a) grant an injunction restraining him from so acting; and
 - (b) if the case so requires, declare the office to be vacant.
- (2) This section applies to any public office or office which has been created by any enactment.

(*Added 52 of 1987 s. 18*)
[*cf. 1981 c. 54 s. 30 U.K.*]

21K. Application for judicial review

- (1) An application to the Court of First Instance for one or more of the following forms of relief—
 - (a) an order of mandamus, prohibition or certiorari;
 - (b) an injunction under section 21J restraining a person not entitled to do so from acting in an office to which that section applies,
 shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.
- (2) An application for a declaration or an injunction (not being an injunction mentioned in subsection (1)) may be made in accordance with rules of court by way of an application for judicial review, and on such an application the Court of First Instance may grant the declaration or injunction claimed if it considers that, having regard to—

- (3) 除非已按照法院規則取得原訟法庭的許可，否則不得提出申請司法覆核，而除非法院認為申請人與申請所關乎的事宜有充分利害關係，否則不得批予提出該項申請的許可。
- (4) 在有人申請司法覆核時，如符合以下情況，原訟法庭可將損害賠償判給申請人——
- (a) 申請人已在其申請中加入就申請所關乎事宜引致的損害賠償而提出的申索；及
- (b) 法院信納，假若申請人是在其申請提出時開展訴訟而他又在該訴訟中提出該申索，則本可獲判給損害賠償。
- (5) 如在接獲尋求移審令的申請司法覆核後，原訟法庭撤銷該項申請所關乎的決定，則原訟法庭可將有關事宜發回有關的法院、審裁處或主管當局，並指示須按照原訟法庭的裁斷而重新考慮有關事宜和達成決定。
- (6) 凡原訟法庭認為在提出一項申請司法覆核時有不當的延遲，如法院認為批予所尋求的濟助相當可能會對任何人造成實質困難或在實質上對任何人的權利造成損害，或會有損良好的行政運作，可拒絕批予——
- (a) 提出該項申請的許可；或
- (b) 該項申請所尋求的任何濟助。
- (7) 第 (6) 款不損害任何具有限制提出司法覆核申請時限的效力的成文法則或法院規則。

(由 1987 年第 52 號第 18 條增補。由 1998 年第 25 號第 2 條修訂)
[比照 1981 c. 54 s. 31 U.K.]

- (a) the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari;
- (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
- (c) all the circumstances of the case,
- it would be just and convenient for the declaration to be made or the injunction to be granted, as the case may be.
- (3) No application for judicial review shall be made unless the leave of the Court of First Instance has been obtained in accordance with rules of court; and the court 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.
- (4) On an application for judicial review the Court of First Instance may award damages to the applicant if—
- (a) he has joined with his application a claim for damages arising from any matter to which the application relates; and
- (b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he would have been awarded damages.
- (5) If, on an application for judicial review seeking an order of certiorari, the Court of First Instance quashes the decision to which the application relates, the Court of First Instance may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the Court of First Instance.
- (6) Where the Court of First Instance considers that there has been undue delay in making an application for judicial review, the Court may refuse to grant—

21L. 強制令及接管人

- (1) 在原訟法庭覺得如此行事是公正或適宜的所有情況下，原訟法庭可藉命令（不論是非正審命令或最終命令）授予強制令或委任任何一名接管人。
- (2) 任何該等命令可無條件作出，或按法院認為公正的條款及條件作出。
- (3) 根據第 (1) 款或第 21M 條，原訟法庭授予非正審強制令以禁制任何法律程序的一方將位於原訟法庭的司法管轄權範圍內的資產由該司法管轄範圍內移走或以其他方式處理的權力，不論在該一方是否居於或身在該司法管轄權範圍內的個案中，抑或在該一方的居籍或本籍是否在該司法管轄權範圍內的個案中，原訟法庭均可行使。（由 2008 年第 3 號第 9 條修訂）
- (4) 如在聆訊任何訟案或事宜之前，之時或之後，有人申請強制令以防止任何有受威脅會發生或惟恐會發生的土地損壞或侵入行為，則如原訟法庭認為適合，可授予強制令，不論——
 - (a) 所尋求的強制令所針對的人是否根據任何聲稱的業權或其他權利而管有有關的產業，或（如非管有的話）

- (a) leave for the making of the application; or
 - (b) any relief sought on the application,
- if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
- (7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

(Added 52 of 1987 s. 18. Amended 25 of 1998 s. 2)

[cf. 1981 c. 54 s. 31 U.K.]

21L. Injunction and receiver

- (1) The Court of First Instance may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court of First Instance to be just or convenient to do so.
- (2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.
- (3) The power of the Court of First Instance under subsection (1) or section 21M to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the Court of First Instance, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled or resident or present within that jurisdiction. *(Amended 3 of 2008 s. 9)*
- (4) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction