Neutral Citation Number: [2025] CA (Bda) 14 Civ

Civil Appeal No. 7 of 2025

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. JUSTICE ANDREW MARTIN
CASE NUMBER 2024: No. 346

Dame Lois Browne Evans Building
Hamilton, Bermuda HM 12

Date: 20/06/2025

Before:

JUSTICE OF APPEAL THE HON IAN KAWALEY
JUSTICE OF APPEAL THE HON NARINDER HARGUN
and
ACTING JUSTICE OF APPEAL THE HON LARRY MUSSENDEN

- - - - - - - - - - - - - - - - - - - -

Between:

(1) K AMANI LAWRENCE
(2) EUGENE JOHNSTON

Applicants

- and -

(1) THE PUBLIC SERVICE COMMISSION
(2) THE MINISTER OF THE CABINET OFFICE
(3) THE HEAD OF THE PUBLIC SERVICE
(4) THE ATTORNEY GENERAL OF BERMUDA
(5) THE GOVERNOR OF BERMUDA

Respondents

-and-

(1) NALINI SALICK
(2) SHAKIRA DILL-FRANCOIS

Directly Affected

Appearances:
Mr Eugene Johnston and Ms K Amani Lawrence appearing in person
Mr Ben Adamson of Conyers Dill and Pearman Limited for the 1st Respondent and Mr Paul Harshaw of Canterbury Law Limited for the 2nd through 4th Respondents

Hearing date(s): 6 June 2025
Draft Judgement Circulated: 11 June 2025
Date of Judgment: 20 June 2025

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Leave to seek judicial review-appeal against partial refusal of leave-function of the leave filter-need for clarity and concision in statement of grounds-Rules of the Supreme Court 1985 Order 64 rule 5

JUDGMENT

KAWALEY JA:

Background

1. By a Notice of Application dated 21 November 2024, Ms Lawrence ("JRA1") and Mr Johnston (the "Appellant"), applied in the Supreme Court for leave to seek judicial review, respectively of the following decisions:

    (a) the decision to appoint the 1st Directly Affected Party as Chief Parliamentary Counsel rather than JRA1; and

    (b) the decision to appoint the 2nd Directly Affected Party as Solicitor General ("SG") instead of the Appellant.

2. JRA1 and the Appellant were both granted leave on an *ex parte* basis in a Ruling delivered by Martin J (the "Judge") on 24 January 2025 (the "Ruling") to appeal the Chief Parliamentary Counsel appointment decision (the "CPC Decision") and the Solicitor General appointment decision (the "SG Decision"). He granted a stay of the impugned decisions and gave expedited directions. The Judge was rightly concerned to avoid undermining the interests of good administration by suspending the effect of the appointment decisions (leaving the appointees in a state of limbo) for more time than

was really necessary to fairly adjudicate the application. This undoubtedly also prompted him to seek to streamline the scope of the judicial review application which was allowed to pass through the *ex parte* leave filter.

3. Leave was granted on the grounds set out in paragraphs 4-5 and 9-10 of Statement of Relief in the Notice of Application but otherwise refused. The Judge summarised his findings in the Ruling in the following way:

> "*19. Most of these matters are not susceptible to challenge by way of judicial review. The only matters which are capable of being set aside are the actions taken in relation to the appointment of the persons to the posts of Solicitor General and Chief Parliamentary Counsel. This means permission to issue proceedings for the relief sought set out in paragraphs 1, 2, 3, 6, 7, 8, 11,12, 13, 14, 16, 17, 18, and 19 of the Notice of Application must be (and are hereby) refused.*
>
> *20. There are also two separate applications for relief that do not relate to the matters about which the applicants complain. These relate to applications for the Court to declare that (as a matter of interpretation of the Constitution) (i) the Attorney General may not be appointed as a cabinet Minister because it is said that these offices are mutually incompatible and (ii) that the head of the Attorney General's Chambers is and can only be the Attorney General.*
>
> *21. The Court takes the view that these matters do not arise on the application to set aside the recommendations to appoint and the appointments of Ms Dill-Francois and Ms Salick to their respective posts of Solicitor General and Chief Parliamentary Counsel. Put another way, those questions are immaterial to the decisions about which the applicants wish to complain. Therefore, the applications for permission to issue judicial review proceedings on these grounds (items of relief sought in paragraphs 15 and 20 of the Notice of Application) are also refused…*"

4. The Applicants applied for leave to appeal against the refusal portions of the Ruling which was heard by the Judge on 27 March 2025 and explained in Reasons dated 28 March 2025 ("the Appeal Ruling"). He adjourned JRA1's application to an *inter partes* hearing but dismissed the Appellant's application altogether.

5. The Judge described the matters which the Appeal Ruling addressed as follows (at paragraph 4):

> *"(i) An order striking down the CPC job description.*

(ii) An order striking down the CPC advertisement.

(iii) An order striking down the CPC recommendation.

(iv) An order striking down the SG job description.

(v) An order striking down the SG acceptance.

(vi) An order striking down the SG advertisement.

(vii) An order striking down the Deputy Head of the Public Service approval.

(viii) An order striking down the Civil Service Recruitment Code.

(ix) An order striking down the Guidance for Appointments document issued by the Department of Employee and Organisational Development.

(x) An order striking down the Organisational Chart for the Attorney General's Department.

(xi) An order granting a declaration that the Attorney General is the head of the Attorney General's Chambers.

(xii) An order granting a declaration that the CPC job description is unlawful.

(xiii) An order granting a declaration that the SG job description is unlawful.

(xiv) An order granting a declaration that the SG post advertisement was unlawful.

(xv) An order granting a declaration that regulation 18 of the Public Service Regulations 2000 is guidance only.

(xvi) An order granting a declaration that it is unlawful for the Attorney General to hold the post of Attorney General and be a Cabinet Minister at the same time."

6. On 4 April 2025, JRA1 and the Appellant filed a Notice of Motion for Leave to Appeal in this Court. When filed, only the Appellant was properly able to pursue his application for leave, having sought leave from and been refused leave by the Supreme Court. This created a conundrum for this Court as to whether it made sense to proceed to consider the Appellant's application while JRA1's application was still pending before the Supreme Court.

7. On 20 May 2025 it was reported by the Appellant to the Acting Registrar that the *inter partes* hearing of JRA1's leave to appeal application had not yet been listed for hearing but that the substantive application for judicial review seemed likely to be listed for July. The Appellant invited this Court to consider, in the interests of justice, modifying the usual leave process with a view to dealing with both applications.

8. This request chimed with my own concern that this Court's Rules, unlike the English CPR, did not provide a direct leave to appeal route to this Court in judicial review cases to avoid the delay which the usual two-pronged process can cause. The English variation is obviously designed to expedite interlocutory appeals in judicial review cases where there is a premium placed on expedition; delay is usually injurious to the interests of public administration. Here two successful candidates for senior posts in the Public Service have had confirmation of their posts placed into limbo by proceedings commenced by their colleagues. Expedition is clearly required.

9. JRA1's application for leave to appeal to this Court was clearly premature. Sitting as a Single Judge, on 21 May 2025 I decided to consider only the Appellant's application for leave because that was the only application properly before this Court. I adjourned this application to an *inter partes* hearing and directed that the parties should be prepared to deal with the merits of the appeal as well. The "rolled up" hearing took place on 6 June 2025. The full Court was not invited to deal with JRA1's application for leave to appeal.

The Appellant's application for leave to appeal

Preliminary

10. The Appeal Ruling explained why the Judge refused to grant the Appellant leave to appeal as follows:

> "*14. In Mr. Johnston's case, he says (broadly) that he did not apply for the position of SG in the belief that he did not meet the requirements of the job description which was advertised or posted. There was therefore no application process by which he was personally disadvantaged, and he was not affected by any alleged illegality or breach of procedure (other than the publication of the wrong job description). Mr. Johnston cannot complain about a process he did not participate in, and therefore he is not entitled to challenge the policies or procedures that led to the appointment of the SG. If he did not participate in the job application process, he cannot say that he was affected by any alleged illegality that resulted in the SG's appointment. In relation to those matters, he is a bystander.*
>
> *15. As a result, Mr. Johnston is not entitled to go beyond the factual basis asserted in support of his own application (namely that the wrong job*

> *description was used to advertise and appoint the SG) and is not entitled to seek to draw in matters that are extraneous to his own complaint (namely the matters in the categories listed in (i) to (xvi) in paragraph 4 above. The wider principle relied upon by Ms Lawrence is not engaged by the facts on which Mr. Johnston relies, and any appeal he brings against the scope of the leave granted to him based on that wider principle is accordingly bound to fail.*"

11. A central point made in the Appellant's Skeleton is that the Judge failed to appreciate in the Ruling and the Appeal Ruling that both Applicants were advancing a common core legal point:

> "*29. A cursory overview of the Grounds shows that the Applicants were making the same complaint. For instance, in paragraph 6 of the Grounds there is this: The primary problem with both Salick's and Dill-Francois's appointments were that the Commission did not have control over the entire recruitment process. Instead, the executive branch of government did…*
>
> *33. It is hard to understand how Martin J could overlook the fact that the Applicants' main argument is that the government's recruitment process is unconstitutional…*"

12. Both the Ruling and the Appeal Ruling appear to focus on the various heads of relief sought rather than on the grounds upon which the impugned decisions are challenged. So it is plainly arguable that the validity of the grounds was not properly evaluated. However the Judge's obvious anxiety about the need to distinguish between matters which were amenable to judicial review and matters which were not was in general terms justifiable. On superficial analysis, there was a disconnect between the constitutional points advanced in Mr Johnston's somewhat esoteric Grounds and the impugned decision itself. The Judge would, perhaps, have been assisted by a clearer and simpler summary of the grounds which would have made it easier to appreciate why it was contended that the process complained of invalidated the impugned administrative actions. In the line of judicial duty I have been obliged to familiarize myself with the Appellant's somewhat idiosyncratic (albeit engaging) approach to drafting judicial review grounds as counsel in the Supreme Court. The present iteration of grounds for seeking judicial review requires the unfamiliar reader to conquer an intellectual obstacle course which only the battle-hardened can comfortably navigate. In figurative terms, a gentle stroll along the Railway Trail is generally to be preferred. As our Order 64 is substantially based on the corresponding procedural code in England and Wales, the English Practice Direction 54A is a helpful guide. Paragraph 4.2 (1) provides that a claim form shall be accompanied by a statement of facts and:

> "*(b) a clear and concise statement of the grounds for bringing the claim – 'the Statement of Grounds'. The Statement of Grounds should: identify in separate, numbered paragraphs each ground of challenge; identify the relevant provision or principle of law said to have been breached; and provide sufficient detail of the alleged breach to enable the parties and the court to identify the essential issues alleged to arise. The Statement of Grounds should succinctly explain the claimant's case by reference to the Statement of Facts and state precisely what relief is sought.*" [Emphasis added]

13. The standard test for granting leave to appeal, whether the Appellant's appeal against the Judge's refusal to grant leave to seek judicial review has realistic as opposed to merely fanciful prospects of success, clearly applies to the leave to appeal application.

14. Mr Johnston in his submissions in support of his application for leave to appeal correctly defined this Court's appellate function (if leave was granted) by reference to *National Bank of Anguilla (Private Banking and Trust) Ltd (in Administration) v Chief Minister of Anguilla* [2025] UKPC 14 (per Lord Reed and Lady Rose):

> "*84. Deciding whether there is an arguable ground for judicial review is not an exercise of discretion. Accordingly, when the judge in the present proceedings refused leave to apply for judicial review on the ground that there was no arguable ground for judicial review with a realistic prospect of success (or, as he put it, possibly pitching the test somewhat higher, 'a good arguable case with a reasonable prospect of success'), he was not exercising a discretion. It follows that, on appeal against his decision, the Court of Appeal was not reviewing an exercise of discretion. It should not, therefore, have confined itself to the limited grounds on which the exercise of discretion might be reviewed on appeal, but should have considered whether the judge had erred in concluding that there was no arguable ground for judicial review. If it concluded that he had, it should then have re-considered the matter for itself.* "

15. The Appellant does not have to meet the higher bar required for challenging the exercise of a discretionary decision because whether or not leave to seek judicial review should be granted is a matter of law. Leave to appeal should be granted if the Appellant establishes an arguable error of law occurred.

Merits of the leave to appeal application

16. Against this background, the merits of the Appellant's complaint that leave ought to have been granted to enable him to challenge the SG Decision on all grounds he

advanced, rather than merely those grounds the Judge approved, can be dealt with shortly.

17. The Notice of Motion for Leave to Appeal challenges over 20 findings (listed as (a)-(m) under "Parts of the decision complained of"). Eight grounds of appeal are set out (a)-(h)). I only propose to address what appears to me to be the most significant and straightforward ground, namely the averment that the Judge:

> "*(b) was wrong to decide that the court had no power to review the process decisions which led to the appointment[s]…The provisions of Part VI of the Constitution, and the arguable violation of the Constitution in both appointment processes were ignored.*"

18. It is plainly arguable that the Judge ought to have concluded that the constitutional and/or process grounds relied upon by the Appellant were (1) relevant to the validity of the impugned recommendation and decision and (2) met the low threshold of the judicial review leave filter. Many of the Appellant's multiple heads of judicial review relief may well be unnecessary and perhaps reflect "overkill" on the part of the drafter, but the leave filter is designed to address the arguability of the grounds of review, not the arguability of the potential heads of relief which might be appropriate if one or more grounds succeed.

19. If the Appellant seeks to contend that the now admitted advertisement error was not merely what the Judge seemingly viewed as a discrete and accidental administrative error but is also impeachable because of more substantive constitutional process factors, it was difficult to see why he should be prevented from pursuing such arguments. Whether the decision is shown to have flowed from a technically flawed or substantively flawed process is potentially relevant to whether (if shown to be materially flawed at all) it should formally be set aside.

20. For these reasons I find that ground (b) has realistic prospects of success. No need to consider the other draft grounds of appeal arises. The Appellant should be granted leave to appeal against the (partial) refusal of the Judge to grant him leave to seek judicial review.

Appellant's appeal

The grounds of appeal

21. The main ground of appeal can only be understood in relation to the administrative actions complained of. These are articulated in the Notice of Appeal as "paragraphs 3 and 6 of the Order" and over 20 portions of the Ruling. They must also be viewed in light of the leave that was granted by the Order:

> "*2. The Second Applicant ('Johnston') is granted leave to apply for judicial review of the decision of the Commission to recommend the appointment of Shakira Dill-Francois ('Dill-Francois') as Solicitor General for the relief in paragraphs 9 and 10 of Form 86A.*"

22. That relief is "an order of certiorari quashing" (1) "the Dill-Francois Recommendation" and (2) "the Dill-Francois Appointment". The Order does not, by its terms, limit the grounds upon which such relief may be sought.

23. The impugned parts of the Order as they relate most directly the merits of the present appeal are as follows:

> "*(3) The Applicants are refused leave to challenge the measures set out in paragraphs 1, 2, 3, 6, 7, 8, 11, 12, 13, 14, 15,16, 17, 18, 19 of Form 86A* "

24. The sheer number of heads of relief helps to illustrate why the Judge must have felt he was being served up an unduly gluttonous forensic feast. Mr Adamson for the 1st Respondent and Mr Harshaw for the 2nd-4th Respondents contended that the Judge was rightly seeking to prevent the proceedings from turning into a "circus". In my judgment, the Judge's instincts that case management was required were not wrong; to the extent that he considered the scope of the proceedings required narrowing, such considerations ought properly to have been addressed at the *inter partes* directions hearing stage.

25. In the event his Ruling did not in terms refuse leave to pursue specified grounds for invalidating the decision; rather leave was refused to pursue relief in the form of quashing various documents or decisions ancillary to the SG Decision. The *ex parte* leave filter is not designed to evaluate what forms of relief may be appropriate if an applicant succeeds in invalidating an impugned decision. It is designed to filter out plainly unmeritorious attacks on administrative decisions. In *National Bank of Anguilla*, Lord Reed and Lady Rose opined as follows:

> "*The test to be applied, both at first instance and on appeal, has been explained many times. It will suffice to cite two authorities. In Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, Lord Bingham of Cornhill and Lord Walker of Gestingthorpe stated at para 14:*
>
> > *"(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is 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".*

More recently, in Attorney General of Trinidad and Tobago v Ayers-Caesar [2019] UKPC 44, Lord Sales, giving the judgment of the majority of the Board, said at para 2:

> *"The test to be applied is the usual test for the grant of leave for judicial review. The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether [the applicant for judicial review] has an arguable ground for judicial review which has a realistic prospect of success: see governing principle (4) identified in Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14. Wider questions of the public interest may have some bearing on whether leave should be granted, but the Board considers that if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage."*

As Lord Sales said, this is a low threshold. It operates as a filter to exclude cases which are unarguable." [Emphasis added]

26. In the Statement of Grounds, the following principal complaints are made:

    (a) the Public Service Commission ("PSC") did not have appropriate control over the appointment process, which was instead controlled by the Human Resources Department ("Department") through its Recruitment Code. This was legally flawed because the Department is subject to the direction and control of the Minister. This was inconsistent with the independence requirements under, *inter alia*, section 84 (7) of the Bermuda Constitution and the PSC Regulations. The Code and documents issued under it are unlawful; and

    (b) only the Attorney-General can validly hold the posts of Head of Chambers (and Head of Department), but a Cabinet Minister cannot lawfully hold these positions because of their lack of independence. The Permanent Secretary of Legal Affairs ("PS") invalidly acted as Head of Department.

27. These grounds are relied upon primarily to impugn the validity of the SG Recommendation and the SG Decision, and only incidentally to seek orders quashing various administrative actions which underpinned the primarily impugned decision. They are essentially legal grounds which fall to be evaluated on their legal merits and do not require evidential support. The Judge granted leave to the Appellant to pursue what was to my mind a subsidiary complaint, a now admitted advertising error. Having found that the Appellant had sufficient interest to challenge the SG Recommendation

and SG Decision on that technical ground, it is logically inconsistent to suggest (as the Respondents' counsel sought to do) that the Appellant lacks sufficient interest to pursue the more substantive constitutional grounds as well. These conclusions are not as "plain as a pikestaff", for the reasons alluded to in paragraph 12 above.

28. If the Appellant seeks to contend that the now admitted advertisement error is also impeachable because of more substantive constitutional process considerations, it is difficult to see why he should be prevented from pursuing such arguments. Whether the decision is shown to have flowed from a technically flawed or substantively flawed process is potentially relevant to whether (if shown to be materially flawed at all) it should formally be set aside.

29. Those principal grounds of judicial review are in my judgment arguable even though one may instinctively have a dubious initial response to points which challenge the established orthodoxy. It may well be that the range of issues to be determined at the final hearing should be narrowed. If so, that case management exercise is more appropriately to be carried by the Judge himself with hopefully cooperative input from all parties. For instance, some factual assertions which are made by the Appellant may turn out to be unsustainable in light of incontrovertible evidence filed on the Respondents' part. That is a matter to be considered at a directions hearing before the Judge, not by this Court in the context of determining whether leave should be granted to pursue arguable grounds for judicial.

30. As the Privy Council (Lady Simler) recently observed in *Ramdass-v-Minister of Finance* [2025]UKPC 4 :

> "*29. As is well-established, in deciding whether to grant leave to apply for judicial review, the court is concerned only to examine whether an applicant has an arguable ground for judicial review with a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: see governing principle (4) identified in Sharma v Brown-Antoine [2006] UKPC 57; [2007] 1 WLR 780, para 14.*
> *30. This is a low threshold. The leave stage is, after all, designed to protect public bodies against weak and vexatious claims. It is not designed for lengthy inter partes hearings but to enable a judge to decide whether a case is arguable on a relatively quick consideration of the material available: see R v Inland Revenue Comrs, Ex p National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617 at 644A, per Lord Diplock. Nor, in the Board's view, is it intended to afford an opportunity to a public body, such as the Minister, to resist full consideration of matters that are likely to be of importance both to the public and the executive itself*." [Emphasis added]

31. It is important to record that there is no suggestion that the person selected for the SG post is not a qualified and suitable candidate. Nor is there any suggestion that any person involved in the selection process or formulating the impugned policy documents have acted improperly. The central complaint is that what might be described as "legal design errors" have been made in the present structure for PSC appointments which invalidates the impugned decisions and other "instruments". In finding that the complaints have realistic prospects of success, I have not carried out any assessment of their strength. However, I am satisfied that leave should not be refused on the grounds that the main legal complaints are "weak" or "vexatious".

32. It might be appropriate to refuse leave even if the grounds are arguable because it can clearly be determined at the outside that judicial review is an inappropriate remedy. One reason why it might be inappropriate (apart from a lack of sufficient interest) would be the existence of an alternative more appropriate remedy (such an appeal) which has not yet been exhausted. The mere fact that other potential remedies might exist would not be a bar unless the alternative was more appropriate in the requisite legal sense.

33. Even if a *prima facie* case of invalidity is ultimately made out, it bears noting, it does not follow that the Appellant will be entitled to an order quashing the relevant administrative decisions, delegated legislation and/or policy documents. Public law relief will usually be informed by the interests of good administration and are discretionary in any event.

34. How does the public interest impact upon considering whether to grant or refuse leave in a case where it is entirely possible (the Respondents say likely) that the Appellant's attempt to set aside the SG decisions will fail? The Appellant himself relied on the following observations of Lady Simler in the *Ramdass* case:

> "*59. The Board has emphasised the low threshold for meeting the test of arguability and the need to demonstrate what is a clear knockout blow in resisting the grant of leave to apply for judicial review. The significance of this is that a public body seeking to resist the grant of leave for judicial review of its acts or decisions ought generally to be able to demonstrate a knockout blow in a summary way without the need for extensive investigation of and argument on the knockout point relied on. In a case such as this, where wider questions of the public interest may have some bearing on whether leave should be granted, it is unfortunate that the so-called knockout blow relied on by the Minister has not only led to extensive argument in the domestic courts, but also to this second appeal. It might have been thought preferable for this case to go forward to a full judicial review hearing so that the serious allegations of unlawful conduct made by the respondent could be fully investigated, considered and determined on their merits. To borrow from the words of Mendonça CJ (Ag) in the Law Association case, it might be thought that public confidence in the appellants would be strengthened if the allegations are found to be without merit; but if*

> *there is no investigation, the allegations do not simply disappear; on the contrary, they may simply grow louder in volume.*" [Emphasis added]

35. This guidance at first blush seems inapposite for the present case, where no allegations of serious misconduct are made. However, on more careful analysis, the position of a senior public officer said to have been invalidly appointed is not entirely different to a public officer accused of serious misconduct. It is far better for any party whose appointment has been questioned to be vindicated on all grounds which the judicial review applicant wishes to advance rather than leaving some of the grounds hanging in the air. They will not "*simply disappear*". This principle in my judgment applies to a material extent in the present case to the grounds for leave to seek judicial review was refused.

36. This assumes of course, that the Respondents are unable to land a "knockout blow" at a full *inter partes* hearing before the Judge.

Parties

37. The Order of 24 January 2025 did not formally record the following aspects of the Ruling:

> "*17…in this case, that relief can only lie against the Public Service Commission. Therefore, the addition of the Minister for the Cabinet Office, the Head of the Public Service and the Attorney General and the successful candidates as interested parties is not necessary or appropriate. Leave to add them as respondents is therefore refused at the outset.*"

38. However, the conclusion that the PSC should be the only Respondent flowed logically from the finding that leave to pursue the constitutionally invalid process arguments was refused. If (as I find) those arguments can indeed be pursued, this basis for excluding the 2nd to 4th Respondents (and indeed the Governor) at the leave stage falls away altogether.

39. As far as the Governor is concerned, the Judge found the Governor should not be joined on the grounds of Crown immunity. Again, this decision was not included in the Order drawn up to give effect to the Ruling, so its precise status is unclear. No local authority is cited for the proposition that the Governor under Bermuda law enjoys the same immunity as the Sovereign under UK law.

40. The Governor has been named as a respondent in public law proceedings in so many cases spanning at least 30 years that this interesting point is not suitable for determination at the leave stage without the benefit of full argument. The matter must accordingly be approached by reference to the procedural scheme in the Rules relating to joinder expressed by way of prescribing who should be served.

41. Order 53 rule 5 of the Rules of the Supreme Court governs the stage where leave has already been granted. It provides in salient part as follows:

> "*(3) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the Clerk or Registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Judge…*
>
> *(7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.*"

42. There is a positive procedural requirement to serve parties directly affected. This appears to be so that they have an opportunity to decide for themselves whether they wish to either (1) participate in the proceedings or (2) be bound by the result without active participation. The usual practice is to name as parties public authorities or officers who took administrative action which is challenged and identify other parties known to be directly affected. The Appellant followed the usual practice in this case.

43. The Governor's role in relation to the decision is such that he may well take the view that his participation is not required. (He did not instruct counsel to appear at the present hearing). In a practical sense the Judge was right to take the view that his participation was peripheral, however in my judgment (subject to any future immunity arguments) the Governor was properly joined as a Respondent.

44. For the avoidance of doubt I would set aside the Judge's decision that the Governor was wrongly joined.

Summary

45. The conclusions I have reached on the Appellant's applications before the Court may be summarised as follows:

(a) the application for leave to appeal the Supreme Court's 24 January 2025 partial refusal of leave to seek judicial review is granted;

(b) the Appellant's appeal against the said decision to partially refuse leave is allowed and the Appellant is granted leave to pursue the excluded grounds as against the 1st to 5th Respondents;

(c) the matter is remitted to the Supreme Court to be dealt with in accordance with law; and

(d) unless any party applies by letter to the Registrar within 14 days to be heard as to costs, I would order that the costs of the appeal should be the Appellant's costs in the cause in Supreme Court Civil Jurisdiction No. 346 of 2024.

HARGUN JA

46. I agree.

MUSSENDEN JA

47. I also, agree.