



GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 312 OF 2024

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DETERMINATION OF THE DIRECTOR OF LEGAL AID
MADE ON 1 OCTOBER 2024

BETWEEN:

THE KING (on the application of KEITH MYERS)

Applicant

AND

DIRECTOR OF LEGAL AID

Respondent

NOTICE OF ORIGINATING NOTICE OF MOTION

TAKE NOTICE that pursuant to the leave granted by the Hon. Justice Kawaley on 13 January 2025, the Court will be moved as soon as Counsel may be heard on the Applicant's behalf for an order for relief in the terms and on the grounds set out in Form 53 dated 30 December 2024 of which a copy is annexed hereto, and such other further or alternative relief as the Court may see fit.

AND that the Applicant's costs of and occasioned by this Motion be paid by the Respondent on the indemnity basis or such other such basis as the Court may order.

AND TAKE NOTICE that on the hearing of this Motion the Applicant will rely on the affidavit of the Applicant and exhibits thereto, sworn on 31 December 2024, which accompanies this Notice of Motion.

DATED this 14th day of January 2025

Nelsons legal

Nelsons Legal

TO: The Clerk of the Court
The Director of Legal Aid

AND TO: The Honourable Attorney General



AND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2024

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW PURSUANT TO ORDER 53 OF THE GRAND COURT RULES (2023
REVISION)

AND IN THE MATTER OF A DETERMINATION OF THE DIRECTOR OF LEGAL AID
MADE ON 1 OCTOBER 2024

BETWEEN:

THE KING (on the application of KEITH MYERS)

Applicant

AND

THE DIRECTOR OF LEGAL AID

Respondent

NOTICE OF
APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
(Pursuant to GCR O.53, r.3)

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of the applicant	The Applicant is: Keith Myers # 4 Downtown Reach George Town Grand Cayman Cayman Islands
Judgment, order, decision or other	On or before 4 June 2024 the Respondent commenced an inquiry as to whether or not she ought to remove the

proceeding in respect of which relief is sought	Applicant from the list of legal aid attorneys she maintains pursuant to sections 7 and 11 of the Legal Aid Act (the “List”). On or about 28 June 2024 she stayed her inquiry (the “Stay”) pending the determination of the Hon. Chief Justice’s Disciplinary Inquiry (described further below). On 1 October 2024 the Respondent decided to lift the Stay to remove the Applicant from the List, with effect from 15 October 2024.
Relief Sought (i) An order of certiorari quashing the decision to lift the Stay. (ii) An order of mandamus requiring the Respondent to maintain the Stay (where “the concerns” relate to Applicant’s professional conduct) pending the conclusion of the disciplinary inquiry of the Hon Chief Justice and any related appeal. (iii) Damages for the lost income from legal aid work attributable to the decision to lift the Stay. (iv) Costs on the indemnity basis or any other such basis that the court deems appropriate. (v) Such further or other orders or declarations as the court deems just.	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	The Applicant is represented by Nelsons, The Grand Pavilion Commercial Centre, 802 West Bay Road , Bougainvillea Way, PO Box 30069, Grand Cayman KY1-1201 Ref: 7239-00001
Signed 	Dated 30th December 2024

Decision challenged –

On or before 4 June 2024 the Respondent commenced an inquiry as to whether or not she ought to remove the Applicant from the list of legal aid attorneys she maintains pursuant to sections 7 and 11 of the Legal Aid Act (the “**List**”). On or about 28 June 2024 she stayed her inquiry (the “**Stay**”) pending the determination of the Hon. Chief Justice’s Disciplinary Inquiry. On 1 October 2024 the Respondent decided to lift the Stay and immediately removed the Applicant from the List. The Applicant seeks leave to apply for judicial review of the Respondent’s decision to lift the Stay.

FACTS

1. Pursuant to section 7(1) of the Legal Aid Act, 2015 (the “**LAA**”) the Respondent has a statutory duty to maintain the list of attorneys in private practice who may accept instructions from assisted persons granted a legal aid certificate (the “**List**”¹).
2. The Applicant is as an attorney-at-law and since 2018 he has been in private practice as such in the Islands. Since 2018 to 15 October 2024, the Respondent included the Applicant on the List. Throughout that period the Applicant’s practice consisted almost exclusively of legally-aided criminal-defence work; that is, his practice was dependent upon his appearance on the List. During the 1,383 day period between 1 January 2021 to 14 October 2024 his receipts from legal aid work comprised not less than CI\$831,711.28, being an average of not less than CI\$601.38 per day.
3. On 8 September 2022 the Grand Court convicted Ms Aisha Jamilah English (“**Ms English**”) of malicious wounding. On 23 November 2022 Ms English was sentenced to

¹ The terms “*Roster*” and “*Legal Aid Roster*” are used synonymously with the term “*List*”.

imprisonment for 21 months. From her arrest and at her trial Ms English had been represented by the Applicant.

4. Ms English appealed to the Court of Appeal against her conviction (CICA No 17 of 2023). She instructed new attorneys to conduct her appeal. On 19 April 2023 Ms English provided an unsworn written statement to her new attorneys alleging serious misconduct by the Applicant in the conduct of her defence. On 4 July 2023 the Applicant filed an affidavit in CICA No 17 of 2023 responding to Ms English's unsworn statement ("**Mr Myers' Affidavit**").
5. On 19 April 2024, at the conclusion of the hearing of Ms English's appeal, the Court of Appeal allowed Ms English's appeal against conviction and ordered that there be no re-trial. On 25 April 2024 it released its judgment (the "**Judgment**"). At paragraph 14 the Court of Appeal stated:

"This is a very trouble troubling case. On the face of it, Mr. Myers' conduct was indefensible. The contents of his affidavit in the face of the WhatsApp messages raises very serious issues which require investigation by the police. We direct the Director of Public Prosecutions to ensure this matter is taken forward. Moreover, the contents of this judgment need to be drawn to the attention of the authorities with responsibility for the professional conduct of advocates both in the Cayman Islands and in England and Wales."
6. At some point shortly thereafter, the Judgment was drawn to the attention of the Chief Justice, being the person responsible for the professional conduct of Cayman Islands attorneys.
7. On 4 June 2024 the Respondent sent an email to the Applicant attaching a letter (the "**4 June Letter**") from her to notify him that she was considering removing his name from the List pursuant to section 11 of the LAA, alleging *"due to serious concerns that you have acted in a professionally questionable, and potentially unlawful manner in a matter in which you appeared on legal aid."*
8. In the 4 June Letter the Respondent informed the Applicant that she had reviewed:

- (1) the Judgment;
- (2) Mr Myers' Affidavit;
- (3) the *"inappropriate messages [sent by Mr Myers] to the Assisted Person [i.e. Ms English]"*;
- (4) the costs to the Public Fund;
- (5) the *"impact this behaviour has had on the public's perception"*;

and that she had considered:

- (6) that the *"decision of the Court of Appeal case [i.e. the Judgment] has garnered a great deal of negative public attention"*;
 - (7) that the Judgment had *"also impacted the conduct of another unrelated case (IND 26 and 32 of 2023) [i.e. R v Hamilton & Salmon] causing delays in the trial, the discharge of the jury, serious inconvenience to the defendant you represent [i.e. Mr Salmon], the co-defendant [i.e. Mr Hamilton] and the Court and increased costs to the Public Fund."*
9. The Respondent then stated that she was, *"minded to remove you from the [List] to protect (a) protect clients from further violations (b) protect the integrity of the legal aid assignments and (c) ensure the proper use of public funding."*
10. The only documents attached to the 4 June Letter were copies of: (a) section 11 of the LAA, (b) the Judgment, and (c) an ex tempore ruling of the Hon. Justice Richards in *R v Hamilton & Salmon* dated 30 May 2024 adjourning that the trial of that indictment (the **"Ex Tempore Ruling"**).
11. No later than 4 June 2024 the Respondent knew from her review of paragraph 14 of the Judgment that the terms of the Judgment had been, or would be, referred to the Chief

Justice for disciplinary inquiry (the “**Disciplinary Inquiry**”) pursuant to section 7 of the Legal Practitioners Act (2022 Revision) (the “**LPA**”).

12. In the 4 June Letter the Respondent then invited the Applicant to, “*review our concerns and provide us with your formal response within seven (7) business days². In addition, please confirm the stage of each current legal aid certificate you currently hold. Once we have your response, we will consider the same and provide you with our decision in writing within (7) business days.*” (emphasis in the original).
13. On 18 June 2024 Nelsons Legal, on behalf of the Applicant, wrote a letter (“**Nelsons Legal Letter**”) to the Respondent in response to the 4 June Letter. Having regard to the notification of the terms of the Judgment to the Chief Justice, they submitted that the Respondent’s inquiry pursuant to section 11 of the LAA was premature and that the Respondent ought properly to stay her inquiry with respect to the allegations set out in the 4 June Letter pending the conclusion of any disciplinary inquiry or proceedings against the Applicant pursuant to section 7 of the LPA.
14. The time stipulated by the Respondent for her own response to Nelsons Legal’s Letter expired on 27 June 2024. On 1 October 2024 the Respondent finally sent her response to Nelsons Legal’s Letter. With effect from 28 June 2024 the Applicant therefore proceeded, and was entitled to proceed, on the basis that the Respondent had stayed her inquiry pending the determination of the Hon. Chief Justice’s Disciplinary Inquiry (the “**Stay**”).
15. On 23 July 2024 the Hon. Chief Justice wrote to the Applicant regarding his professional conduct as referred to her by the Court of Appeal, and referred to the Judgment and the Ex Tempore Ruling. The Hon. Chief Justice’s Disciplinary Inquiry is ongoing. No proceedings have been commenced against the Applicant pursuant to section 7 of the LPA.

² Subsequently extended by agreement to 14 days.

16. On 2 August 2024 the Applicant wrote to the Respondent stating that he was, *"not applying for any new matters and I will not be applying for any new [legal aid] certificates as I need to resolve the issues as raised. I have been trying to complete the few matters I have for my clients and wind down so that I am compliant with the wishes of the Legal Aid."* On 2 August 2024 the Respondent sent an email to the Applicant seeking clarification of his email and stated, *"Should you have independently opted to decrease your workload, please inform us accordingly."* On 2 September 2024 the Respondent wrote to the Applicant seeking further clarification and stated, *"Following your email correspondence advising that you are winding down your practice and other pending issues, we would appreciate having a brief meeting with you to discuss your timeline for the same and other legal aid matters".* On 2 September 2024 Mr Myers wrote to the Director and stated, *"I am just not taking many matters on, I am not stopping work but taking life a little easier with a big hernia and the hsa [i.e. the Health Service Authority] found a little tumour, I will see the doctor soon, with biopsi [sic], I have and my bad bad leg hurts. I am still doing some legal aid work and it is not that I will wind down and stop, just not take so much on."*
17. On a date unknown to the Applicant, but before 1 October 2024, the Respondent had received a copy of the Chief Justice's letter to the Applicant dated 23 July 2024.
18. On 1 October 2024 (the **"1 October Letter"**) the Respondent informed the Applicant of her *"decision"* that, *"I am removing you from all legal aid rosters within 14 days,"* (original emphasis). She relied upon the prior allegations of misconduct of the Applicant (i.e. as set out in her 4 June Letter) but included new and unrelated allegations of misconduct. The Respondent had not given any prior notice to the Applicant of any of these new allegations.
19. The Respondent's decision to remove the Applicant from the List was unqualified, unconditional, and, in her own words, *"final"*. She advised the Applicant of his right of appeal, pursuant to section 11 of the LAA, against her decision to remove his name from the List.
20. The Respondent removed the Applicant's name from the List on 15 October 2024.

21. Accordingly, on 1 October 2024 the Respondent had decided (in addition to deciding to remove the Applicant from the List) to lift the Stay granted on or about 27 June 2024. She did not provide any reasons for lifting the Stay.
22. On 8 November 2024 the Applicant filed an appeal against the decision of the Respondent on 15 October 2024 to remove his name from the List (Cause No 285 of 2024) (the “**Appeal**”). Proceedings in the Appeal are ongoing.
23. On 18 November 2024 Nelsons Legal sent a letter before action to McGrath Tonner, the attorneys acting for the Respondent.
24. On 19 December 2024 McGrath Tonner responded. They stated that as at 1 October 2024 the Respondent “*was confronted with the following scenario*”, which appears to mean that she had determined:
 - “a. *The Court of Appeal had effectively found a prima facie case of professional misconduct against Mr Myers;*
 - “b. *The Chief Justice had found there to be a prima facie case of professional misconduct against Mr Myers;*
 - “c. *The Director had articulated her concerns to Mr Myers;*
 - “d. *Mr Myers he [sic] had failed to address the Director’s concerns, or deny the allegations;*
 - “e. *Mr Myers he [sic] had signalled his intention to continue to take on new legal aid clients.*”
25. In reference to the Respondent’s letter dated 1 October 2024, McGrath Tonner also stated:
 - “37. *In giving Mr Myers notice that she [the Respondent] would be removing him from all legal aid rosters in 14 days, the Director was effectively giving Mr Myers and his legal team a further 14 days to make representations. Mr Myers did not avail himself of that opportunity, and the Director duly removed him from the list on 15th October 2024.*”

STATUTORY FRAMEWORK

26. Section 7 of the LAA states:

"The Director shall continue to maintain a list of attorneys-at-law who are in active private practice in the Islands, and who have notified the Director that they are able and willing to represent applicants and assisted persons."

27. There is no dispute that, at all material times, the Appellant is an attorney in active private practice in the Islands and that he is willing to represent applicants and assisted persons.
28. The only other statutory criterion upon which the Respondent could purport to remove the Applicant from the List was that he was not able to represent applicants and assisted persons.
29. In her 4 June Letter and 1 October Letter the Respondent refers only to allegations concerning the conduct of the Applicant. The only way in which those allegations, if proven, would be relevant to the ability of the Applicant to represent applicants and assisted persons, would be if the Applicant were charged pursuant to section 7 of the LPA and GCR O. 67 Part 2 and if the Court were thereafter to convict the Applicant (applying the criminal burden and standard of proof) and to suspend the Applicant from practice or to strike him off the Roll of Attorneys.
30. Section 11 of the LAA provides appeal only against a decision of the Respondent to remove an attorney from the List, but not any other decision which the Respondent may make in an inquiry leading to a decision to remove an attorney from the List. It states:

"(1) The Director may, after supplying an attorney-at-law with concerns which could result in his name being removed from the list and giving him a reasonable opportunity and time to

respond to such concerns, remove an attorney-at-law from the list prepared pursuant to section 7.

“(2) Where the Director removes an attorney-at-law from the list under subsection (1), he shall provide him with written reasons for the removal.

“(3) When an attorney-at-law is removed from the list pursuant to subsection (1), he may appeal the removal to a Judge in Chambers, who may order the reinstatement of the attorney-at-law.”

31. Section 19(2) of the Constitution provides:

“Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.”

The common-law also require a public authority, such as the Respondent, to deliver proper, adequate, and intelligible reasons for her decisions: South Bucks DC v Porter (No 2) [2004] 1 WLR 1953, HL.

GROUND

32. As at 27 June 2024 the Respondent was correct to have granted the Stay because:

(1) The Applicant met the Statutory Criteria in section 7 of the LAA to remain on the List, namely that:

(a) he was an attorney in private practice in the Islands;

(b) he was willing to represent applicants and represented persons; and

(c) he was able to represent applicants and represented persons.

- (2) The matters referred to by the Respondent in her 4 June Letter were matters that solely related to the professional conduct of the Applicant which would only be relevant to the Statutory Criterion (1)(c) above if, and only if:
- (a) the Applicant were charged in that regard pursuant to section 7 of the LPA and GCR O. 67 Part 2; and
 - (b) if the Court were thereafter to convict the Applicant (applying the criminal burden and standard of proof) and to suspend the Applicant from practice or to strike him off the Roll of Attorneys.
- (3) the Respondent was aware that the Court of Appeal had referred the Applicant and his conduct with respect to R v English to the Hon. Chief Justice for her inquiry.
- (4) the Respondent was aware that the Hon. Chief Justice had commenced her Disciplinary Inquiry and that it was ongoing.
- (5) the Respondent was aware that no proceedings had been commenced against the Applicant pursuant to section 7 of the LPA and GCR O. 67 Part 2.
- (6) The *evidence* actually available to the Respondent with respect to the alleged facts and matters in her letter dated 4 June 2024 comprised merely that:
- (a) The Court of Appeal had determined that the conduct of the Applicant ought to be referred to the DPP and to the Hon. Chief Justice;
 - (b) the DPP/RCIPS were *investigating allegations* regarding the content of Mr Myers' Affidavit, but had not charged the Applicant with any criminal offence;

- (c) The mere existence of the DPP/RCIPS investigation had been the only basis for the adjournment of the trial in R v Hamilton & Salmon;
 - (d) the Chief Justice was *investigating allegations* that regarding his conduct during his retainer by Ms English and in respect of the contents of Mr Myers' Affidavit; and
 - (e) There had been adverse publicity regarding the Applicant concerning the content of the Judgment.
- (7) With respect to Ms English, the Respondent had not:
- (a) reviewed any of the underlying evidence, submissions, or other materials before the Grand Court or Court of Appeal, including either the unsworn statement of Ms English in the Court of Appeal or the submissions of her counsel and of the DPP before the Court of Appeal; or
 - (b) communicated with Ms English or her new counsel regarding her allegations concerning the conduct of the Applicant.
33. The Respondent acted unreasonably to have lifted the Stay on 1 October 2024 because:
- (1) She wrongly considered that sections 7 and 11 of the LAA authorised her to determine the ability of the Applicant to represent applicants and represented persons on the basis of allegations concerning the conduct of the Applicant as alleged in the 4 June Letter and/or the 1 October Letter;

- (2) There was no evidence of a change of circumstances, or there was insufficient evidence of a change of circumstances, with respect to the allegations referred to in the 4 June Letter (i.e. relating to Ms English);
- (3) Insofar as the Respondent relied on the Judgment as having, “*effectively found a prima facie case of professional misconduct against Mr Myers*” she acted unreasonably to do so because:
- (a) She should have determined that any such finding was inadmissible pursuant to the rule in Hollington v Hewthorn [1943] KB 587, CA;
 - (b) Alternatively, to the extent that any part of the Judgment was admissible, she should have determined that it was only admissible to establish that the Court of Appeal had determined to refer the Applicant and his conduct with respect to *R v English* to the Hon. Chief Justice for her inquiry; and
 - (c) Further or alternatively, being aware that Ms English’s allegations were contained in an unsworn statement, and had she reviewed (which she unreasonably did not) all the materials before the Court of Appeal, she unreasonably failed to consider, or failed to give sufficient weight, to the evidence that Ms English did not testify and the Applicant was not afforded the opportunity to testify nor afforded the opportunity to appear or to be represented.
- (4) Insofar as the Respondent relied on the Hon. Chief Justice’s letter dated 23 July 2024 as having, “*found there to be a prima facie case of professional misconduct against Mr Myers*” she acted unreasonably to do so because:

- (a) She should have determined that any such finding was inadmissible pursuant to the rule in Hollington v Hewthorn [1943] KB 587, CA;
 - (b) Further or alternatively, she failed to consider, or unreasonably failed to give weight to, the evidence the Applicant had not received any prior notice of the matters, or preliminary findings, set out in the Hon. Chief Justice's letter;
 - (c) Further or alternatively, being aware that Ms English's allegations were contained in an unsworn statement, and had she reviewed (which she unreasonably did not) all the materials before the Court of Appeal, she unreasonably failed to consider, or failed to give sufficient weight, to the evidence that Ms English did not testify and the Applicant was not afforded the opportunity to testify nor afforded the opportunity to appear or to be represented); and
 - (d) Further or alternatively, she unreasonably failed to consider, or unreasonably failed to give sufficient weight to, the evidence that the Disciplinary Inquiry was ongoing and that no proceedings had been commenced against the Applicant pursuant to section 7 of the LPA.
- (5) Further, in breach of the principles of natural justice, she unreasonably relied on new allegations of misconduct of the Applicant without first providing to the Applicant any, or sufficient, particulars of the allegations, or a reasonable opportunity to consider any of the allegations and underlying materials on which she relied, or affording the Applicant any opportunity to respond to those new allegations;
- (6) Further, the Respondent unreasonably determined that she had, "*articulated her concerns to Mr Myers*" at all, or properly, whether in 4 June Letter or the 1 October Letter, or at all;

- (7) Further, the Respondent, having provided in her 1 October Letter a decision that was unqualified, unconditional, and, final, she unreasonably determined that she: *"was effectively giving Mr Myers and his legal team a further 14 days to make representations."*; and
- (8) Contrary to section 19(2) of the Constitution and the common law, the Respondent unreasonably failed to provide any reasons for her decision to lift the Stay whether in her 1 October 2024 Letter, or, after the event, even in McGrath Tonner's letter dated 19 December 2024.

Relief Sought

- (i) An order of certiorari quashing the decision to lift the Stay.
- (ii) A declaration to continue the Stay pending the conclusion of the inquiry of the Hon. Chief Justice and any related proceedings and appeal therefrom.
- (iii) Damages from 15 October 2024 in the amount of CI\$601.38 per day or such other amount as the Court may think fit.
- (iv) Costs on the indemnity basis or any other such basis that the court deems appropriate.
- (v) Such further or other orders or declarations as the court deems just.

NELSONS

30 December 2024