

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

Claim No. BVIHCV 2021/0165

BETWEEN:

IN THE MATTER OF THE ADMISSION OF ANDREW IAN JAMES KING TO PRACTISE AS A SOLICITOR

BETWEEN:

(1) The Honourable Speaker of the House of Assembly, the Honourable Mr. Julian Willock

(2) The Honourable Deputy Speaker of the House of Assembly and At-Large Member, the Honourable Mr. Neville Smith

Applicants

AND

ANDREW IAN JAMES KING

Respondent

Claim No. BVIHCV 2021/0166

BETWEEN:

IN THE MATTER OF THE ADMISSION OF RHEA HARRIKISSOON TO PRACTISE AS A SOLICITOR

BETWEEN:

(1) The Honourable Speaker of the House of Assembly, the Honourable Mr. Julian Willock

(2) The Honourable Deputy Speaker of the House of Assembly and At-Large Member, the Honourable Mr. Neville Smith

Applicants

AND

RHEA HARRIKISSOON

Respondent

Claim No. BVIHCV 2021/0178

IN THE MATTER OF AN APPLICATION BY BILAL MAHMAD RAWAT TO BE ADMITTED TO PRACTISE AS A BARRISTER IN THE EASTERN CARIBBEAN SUPREME COURT, BRITISH VIRGIN ISLANDS

AND IN THE MATTER OF SECTION 68 OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT (VIRGIN ISLANDS) ACT, CAP 80

Appearances: Mr. Iain Tucker and Ms. Colleen Farrington, Counsel for the Applicants
Mr. Daniel Fligelstone Davies, Counsel for the Objectors

2021: July 12th
2021: July 19th

JUDGMENT

[1] **ELLIS J:** Before the Court are three Fixed Date Claim Forms in which the Applicants seek admission to practise law in the Virgin Islands. In two of the matters (BVIHCV Nos. 165 and 166) the Applicants seek admission to practise as solicitors while in the last matter (BVIHCV No. 178), the Applicant seeks admission to practise as a barrister.

[2] The Applications are made pursuant to section 68 of the West Indies Associated States Supreme Court (Virgin Islands) Act¹ ("The Supreme Court Act"). This provides that:

68. (1) A Judge of the High Court may, subject to the provisions of subsections (2) and (3), admit to practise as a barrister of the Court-

(i) any member of the English Bar;

(ii) any member of the Scottish Bar;

(iii) any member of the Northern Irish Bar; and

(iv) any person who has obtained a degree from a recognised University and has also obtained a Certificate of Legal Education from the Council of Legal Education of the West Indies,

¹ Cap 80 of the Laws of the Virgin Islands

and as a solicitor of the court, any person who shall have been admitted to practise as a solicitor or law agent by a Superior Court in England, Scotland or Northern Ireland:

Provided that upon cause being shown, an application to be admitted may be refused notwithstanding that the applicant has complied with the provisions of this subsection and subsection (2) and (3):

And provided further that no refusal by a Judge of any such application shall be final but, an application so refused by such Judge shall, if the applicant so require by notice in writing to the Registrar, be laid before and dealt with by the Court of Appeal.

(2) Every person applying to be admitted to practise as a solicitor or barrister under the provisions of this Act shall-

- (a) pay into the Treasury the sum of one hundred dollars as an enrolment fee;
- (b) file in the office of the Registrar an affidavit of his identity and that he has paid the fee aforesaid; and
- (c) deposit with the Registrar for inspection by the court-
 - (i) the receipt for the fee aforesaid; and
 - (ii) in relation to any person being admitted as a barrister of the court, his certificate of Call to the English, Scottish or Northern Irish Bar or his degree certificate from a recognized University and his certificate of Competence from the Council of Legal Education of the West Indies and, in relation to any person being admitted to practise as a solicitor of the court, his certificate of admission as a solicitor in England or in Northern Ireland or as solicitor or law agent admitted to practise in Scotland.

[3] The Applications were served on the Office of the Attorney General presumably in compliance with section 10 (2) of the Legal Profession Act 2015.² By correspondence dated 21st June 2021, the Honourable Attorney General has indicated that she does not object to the Applications.

[4] The Applications are supported by the Applicants' affidavits of identity and by the affidavit of Mr. Oliver Clifton who avers that the Applicants are all fit and proper candidates for admission.

² By virtue of section 67 of the Legal Profession Act 2015 section 10 has no legal effect. No. 3 of 2016 Legal Profession (Amendment) (No. 2) Act, 2016

- [5] However, by Notices filed on 21st June 2021, the Honourable Speaker and the Honourable Deputy Speaker of the House of Assembly, (“the Objectors”) have lodged objections to the Applications on the basis that the Applicants are not fit and proper persons because they;
- i. were practicing law despite not having being admitted to practise law in the Virgin Islands; and/or
 - ii. held themselves out to be solicitors and barristers despite not having being admitted to practise law in the Virgin Islands; and/or
 - iii. have practised law in the Virgin Islands without a practicing certificate.
- [6] The factual background to these Applications reveal that the Applicants are currently assisting in the conduct of a Commission of Inquiry (“the Inquiry”) which is currently ongoing in the Virgin Islands charged with inquiring into and reporting on amongst other things, whether there is information that corruption, abuse of office or other serious dishonesty may have taken place in recent years amongst public, elected and statutory officials.
- [7] The Commission of Inquiry Act³ contemplates that commissioners appointed thereunder will be provided with administrative support and that lawyers may be appointed to assist them in the performance of their public duties. The assistance of lawyers is contemplated by section 13 which bears the marginal note, “Examination of witnesses by counsel, etc.” it is not disputed that Mr. Rawat was appointed a counsel to the Inquiry by the Honourable Attorney General and that Mr. King and Ms. Harrikissoon were both appointed by the Commissioner.
- [8] It is not disputed that during the course of the Inquiry’s proceedings, Counsel for the proposed Objectors queried whether the Applicants had been admitted to practise law in the Virgin Islands. From all accounts the Commissioner has indicated publicly that he does not consider the work being undertaken by these Applicants in support of the Commission of Inquiry to be the practise of law, he has nevertheless directed that the Applications herein be filed.
- [9] By their Notices of Application, the Objectors invoke the Court’s inherent jurisdiction and its jurisdiction under CPR Part 19.3 (2) (b) to be joined as interested parties. The Objectors contend that they are entitled to this relief on the basis that:

³ Cap 237 of the laws of the Virgin Islands

- i. They are members of the House of the Assembly and thus have an interest in the matter.
- ii. The second objector is a justice of the peace by virtue of being an elected member of the House of Assembly and thus has an interest in the matter.
- iii. They have been deemed to be participants in the Commission of Inquiry.
- iv. They are witnesses before the Commission of Inquiry.
- v. During the course of the Commission of Inquiry, the Respondent have directly or indirectly held themselves out to the Objectors to be counsel within the Virgin Islands.
- vi. There is a public interest in allowing the Objectors to be joined and added to the matter.

[10] The joinder application is supported by affidavits filed by both Objectors in which they aver *inter alia* that they received correspondence from the Applicants in which they purported to act as Senior Solicitor and Solicitor to the Commission of Inquiry. They further aver that the Applicants were present during the proceedings seemingly in their capacity as solicitors.

[11] The Applicants have filed affidavit evidence in opposition to the joinder application in which they contend:

- i. The Attorney General was served with the Claim Forms and she has indicated that she had no objections to the order sought and did not intend to object to the claims for admission.
- ii. That the Objector have offered no proper explanation as to why their intervention in these proceedings is necessary or appropriate and have further failed to provide any evidence in which their objection to the claims might be based.
- iii. The Objectors have failed to provide any evidence as to why the position taken by the Attorney General is not determinative of the public interest in these Claims and that the Court should take the extraordinary steps of adding the Objectors to the Claims.
- iv. That they meet the eligibility requirements on the claims and remain in good standing and are fit and proper persons to be admitted to practise in the Virgin Islands.

[12] It follows that the Objectors do not challenge the fact that the Applicants satisfy the academic and professional qualifications criteria mandated by the Supreme Court Act. Their concerns relate to their suitability or fitness, in light of the allegations that the Applicants have been practising law in the Virgin Islands since March 2021, in breach of the Legal Profession Act. It is therefore an objection

to the moral character of these individuals. The Applicants and Objectors have filed written legal submissions which were considered in addition to the oral submissions made.

COURT'S ANALYSIS AND CONCLUSION

i. The Court's jurisdiction under CPR Part 19.3

- [13] The CPR provides that the Court may add a new party to proceedings on or without an application. There is however, no indication in the CPR of the factors which the Court may take into account on an application to join proceedings. CPR Part 19.3 (2) provides that:

“An application for permission to add, substitute or remove a party may be made by –

(a) an existing party, or

(b) a person who wishes to become a party.”

- [14] The Court is mindful that this is a matter of discretion and that Part 19.3 expressly confers a wide discretion on the Court. **Blackstone Civil Practice 2009** at paragraph 14.80 describes the scope of the Court's discretion in the following terms.

“The Court is given wide discretion under CPR to order that a person be added, removed or substituted as a party to a claim, provided that, (in the case of adding a party), the limitation period has not expired. The Court's attitude is permissive, provided the other party can be appropriately compensated in costs. This power may be exercised upon application by a party or by a person who wishes to intervene in proceedings to become a party, or by the Court acting on its own initiative.”

- [15] In the Eastern Caribbean the scope of this discretion was examined by Wilkinson J in **Treasure Bay (St. Lucia) Limited v Gaming Authority et al. Claim No. SLUHCV2011/0456** in which she noted the older authority of **Bryne v Browne (1889) 22 Q.B.D. 657** where at page 666 Lord Esher said:

“One of the chief objects of the Judicature Acts was to secure that, wherever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have the power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main evidence and the main inquiry, will be the same, and the Court then has power to bring in the new parties and to adjudicate in one proceeding upon the rights of all the parties before it.” Another great object was to diminish the cost of litigation. That being so, the Court ought

to give the largest construction to those Acts in orders to carry out as far as possible the two objects I have mentioned.”

[16] The Court is therefore of the view that this discretion must be exercised judicially and must be informed by the overriding objective, bearing in mind the factors mentioned in CPR Part 19.2 (3) (a) and (b).⁴ These rules provide that a person who is not a party to the claim as originally constituted (the intervener) may be ordered to be added as a party if either:-

- (a) it is desirable to add the new party so that the court may resolve all the matters in dispute in the proceedings; or
- (b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

[17] This Court is satisfied that in order to establish that his presence is desirable, a proposed intervener should show an arguable claim against an existing party to the suit, although a court retains a complete discretion whether or not to permit the proposed joinder. However, in exercising its discretion the Court must have regard to the nature of the proceedings in which the Objectors seek to intervene.

[18] In that regard, the Court is guided by the judgment of the Jamaican Court of Appeal in **Mutual Security Merchant Bank & Trust Co. Ltd v Rita Marley (1991) 28 JLR 670**. In that case, the appellants sought the approval of the court for the sale of certain assets of the estate of the late Bob Marley. Members of Marley’s band “the Wailer” sought to be joined as defendants in the matter. Their affidavit in support deposed that there had filed an action against the appellants for inter alia a declaration that they were entitled to 50% of the royalties and other income earned by them and in injunction restraining the appellants from disposing of those assets. The judge at first instance allowed the applicants to be joined on the ground that they had “an interest in the outcome of what will be determined in that action as regards record royalties.”

⁴ Fok Hei Yu v Basab Inc BVIHCPMAP 2014/001 at paragraph [11]

- [19] On appeal to the Court of Appeal, Carey JA determined that the first instance judge had acted on a wrong principle. Carey JA ultimately found that the judge at first instance had “*failed to appreciate the nature of the proceedings in which joinder was sought and focused entirely on the applicants alleged interest...*” He considered the nature of the proceedings in the light of the following observations of Lord Oliver in the Privy Council in **Marley and others v Mutual Security Merchant Bank & Trust Co. Ltd [1991] 3 ALL ER 198:**

“Secondly, it should be borne in mind that in exercising its jurisdiction to give directions on a trustee’s application the court is essentially engaged solely in determining what ought to be done in the best interests of the trust estate and not in determining the rights of adversarial parties. That is not always easy, particularly where, as in this case, the application has been conducted as if it were hostile litigation; but it is essential that the primary purpose of the application-indeed, its only legitimate purpose-be not lost sight of in academic discussion regarding the discharge of burdens of proof. Where beneficiaries oppose a proposal of a trustee with a host of objections of more or less weight, the court is, of course, inevitably concerned to see whether these objections are or are not well founded, but that must not be permitted to obscure the real questions at issue which are what directions ought to be given in the interests of the beneficiaries and whether the court has before it all the material appropriate to enable it to give those directions.”

- [20] That case concerned the same summons in respect of which joinder was sought. Carey JA went to observe:

“I understand their Lordships to be making in abundantly clear that the proceedings are not in their nature adversarial; it is not the rights of parties that are being adjudicated. The interest of the beneficiaries under the trust is the paramount consideration. Plainly therefore there are no issues to be determined. The Court is concerned to discover whether there is sufficient evidence before the Court to enable it properly to exercise its discretion. The applicants’ interest is to protect their 50% share in the assets which they alleged is theirs by virtue of a partnership agreement. Their presence guarantee, I venture to think, adversarial proceedings. In my opinion that is proof positive that their presence is altogether quite unnecessary to enable the Court effectually and completely to settle all the questions involved in the cause.”

ii. The Nature of the Proceedings before the Court

- [21] Although solicitors and barristers are routinely admitted to practise in this region, there is a general dearth of jurisprudence in this area. What is clear is that in the Virgin Islands, the discretion to assess and examine applicants as to their learning and qualification and to admit to practise has always

been exercised by the judiciary. The lawmakers have since 1969 legislated upon the subject,⁵ but such legislation is of a character to exclude persons unfit to practise, who threatened the public welfare through the lack of appropriate skills, training and knowledge or untrustworthiness. This position is unchanged in the Legal Profession Act 2015. It is therefore well settled by the rules and practise in the Virgin Islands courts that it rests exclusively with the court to determine who is qualified to become one of its officers as a solicitor or barrister. The relevant legislation continues to recognize that their admission is a matter essentially belonging to the courts and a matter of judicial judgment sought to protect the public against improper persons.

- [22] Where a court is required to assess the suitability or fitness of an applicant's character, the Judicial Committee of the Privy Council in **Layne v Attorney General of Grenada**⁶, has provided the following guidance on the proper approach to be adopted:

"In this case, some confusion may have crept into the judgments below as to whether the determination of good character involves judicial discretion or judicial evaluation. There is no provision in section 17 (1) of the 2011 Act that a finding of eligibility for admission leads to a discretion as to admission. In those circumstances, the Board considers that, as regards good character, the function of the Supreme Court is limited to an assessment as to whether good character exists or not. In other words, the Supreme Court is not called upon to exercise any other power of choice once it has made that assessment."⁷

- [23] Although not binding on this Court, the Court is further guided by the following dicta of the Supreme Court of Illinois in the United States in the celebrated case of **Ex parte Garland**:⁸

"They [attorneys] are officers of the court admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character. It has always been the general practice in this country to obtain this evidence by an examination of the parties. In this court the fact of the admission of such offices in the highest court of the States to which they respectively belong, for three years preceding their application, is regarded as sufficient evidence of the possession of the requisite legal learning, and the statement of counsel moving their admission sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. (**Exparte Heyfron**, 7 How. (Miss.) 127; **Fletcher**

⁵ West Indies Associated States Supreme Court (Virgin Islands) Act

⁶ [2019] UKPC 11

⁷ Paragraph 39 per Lady Arden

⁸ 71 U.S. 333 (1866)

v. Daingerfield, 20 Cal. 430.) Their admission or their exclusion is not the exercise of a more ministerial power. It is the exercise of judicial power, and has been so held in numerous cases. It was so held by the Court of Appeals of New York in the matter of the application of Cooper for admission. (Matter of Cooper, 22 N. Y. 8i.) Attorneys and counsellors, said that court, are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature. And hence their appointment may, with propriety, be entrusted to the courts, and the latter in performing this duty may very justly be considered as engaged in the exercise of their appropriate judicial functions.”

- [24] It follows that the admission of solicitors and barristers is a judicial proceeding which requires the exercise of appropriate judicial function. The function of determining whether one who seeks to become an officer of the courts and to conduct causes therein, is sufficiently acquainted with the rules established by the legislature and the courts, governing the rights of parties and under which justice is administered, pertains to the courts themselves. They must decide whether he has sufficient legal learning to enable him to apply those rules to varying conditions of fact, and to bring the facts and law before the court, so that a correct conclusion may be reached. The order of admission is the judgment of the court that he possesses the requisite qualifications under such restrictions and limitations as may be properly imposed by the Legislature for the protection and welfare of the public.
- [25] In **Layne**, the trial judge noted that “*ultimately lawyers are the guardians of our fundamental freedoms*”. In **re the Admission of Edward Petersen Alleyne**⁹ Benjamin J, observed that advocates had to “*command the personal confidence of not only lay and professional clients but other members of the Bar and of judges*”. Both pronouncements, which were applied by the Board in the **Layne v Attorney General of Grenada** demonstrates that the admission of a solicitor or barrister is an act of quasi-public character. It is principally a matter between the applicant seeking admission and the court. Although the proceedings are commenced by an originating process, an application for admission is not a typical civil action because the proceedings are not adversarial in nature. Such applications would therefore not require adversary pleadings as no defendants would be named. It is in essence a motion, which is made in writing and sustained or opposed by evidence.

⁹ (1997) ECSCR 340) (para 16),

[26] However, because they are essentially officers of the court, the office of solicitor or barrister is essentially quasi-public in nature. They are obliged to scrupulously preserve his or her independence in the discharge of his or her professional duties. Their peculiar relationship to the court is evident in the duties set out in the Code of Ethics in relation to the Crown and the public, in relation to the profession and in relation to the Court and in the fact that they are routinely called upon to serve poor persons gratuitously.

[27] It is precisely because of this remit that the legislation has provided that an application for admission to practise may be refused for cause shown notwithstanding that the statutory provisions are satisfied.¹⁰

iii. **Who may object to an application for admission?**

[28] It is not disputed that in her capacity as guardian of the public interest, the Attorney General would be entitled as of right to be heard in an application for admission to practise as a barrister or solicitor. It is also clear that clause 4 of Part A of the Code of Ethics imposes a duty on a legal practitioner to protect the profession against the admission of any candidate whose moral character or education renders him or her unfit for such admission. Although the Code does not prescribe a procedure by which this duty is to be exercised, this Court is satisfied that sworn evidence filed in the claim would be the proper procedure by which this could be done.

[29] Counsel for the Applicants however, has submitted that apart from these persons, no one else would have the necessary standing to object to an application for admission to practise. This is especially so where the Attorney General has made clear that he/she does not object or does not intend to object to the application. Persons who may therefore be satisfied that there is sufficient cause to justify refusal of an application, are therefore obliged to yield to the position taken by the Attorney General.

¹⁰ Section 68 (1) West Indies Associated States Supreme Court (Virgin Islands) Act Cap 80 of the Laws of the Virgin Islands

- [30] Neither the West Indies Associated States the Supreme Court (Virgin Islands) Act nor the Legal Profession Act prescribe who may object to an application for admission to practise law in the Virgin Islands. In the Court's judgment this is for good reason. Given the nature of the profession – barrister and solicitors are in fact officers of the court whose conduct has been described as quasi –public and semi-official, there is in the Court's judgment no basis to restrict the persons entitled to show cause why the admission should be refused.
- [31] Counsel before this Court has not advanced any judicial or legal authority which would support that contention and because there is a dearth of English authority generally in this area, the Court has had to look further afield. In the United States, the Supreme Court of Indiana had to contend with this precise issue, in **Ex parte Walls**.¹¹ In that case the court held:
- ‘The office of an attorney is quasi-public, and his conduct semi-official. All persons are interested in his rectitude, and any person may oppose his admission to practice law, or, if he has, already been admitted, may move to suspend or disbar him, and, if suspended or disbarred, may oppose his readmission. The proceedings for admission or readmission to practice are at first necessarily ex parte, and, if no one had the right to oppose either, the proceedings would remain ex parte, and be liable to great abuse.’
- [32] There is much to commend in this dictum. In the normal course such objections should properly be advanced by practitioners who have a duty to do so and by the Attorney General who has a constitutional remit. But in the absence of clear authority to the contrary, the Court is not satisfied that they are the only persons who can properly do so.
- [33] The Court notes that in the case at bar, it is clear that in the case of Mr. Rawat, he was appointed to his current role by the Honourable Attorney General. It would, in the circumstances, be surprising if she were to oppose his (or Mr. King's or Ms. Harrikissoon's) admission. The General Legal Council appears to have reserved its position.¹² The Bar Association has thus far not indicated a position in the matter but Mr. Michael Fay QC has made written representations which he contends he is able to advance even without being joined as a litigant.

¹¹ (1880) 73 Ind. 95 at page 106, In re Burchard (1882) 27 Hun, 429 and page 437

¹² Letter dated 11th July 2021

- [34] In cases where there is no one willing or able to come forward, there is authority which supports the view that the Court could properly appoint an *amicus curiae* to assist the Court in arriving at a determination. see: **In the Matter of an Application by Joseph Ewart Layne to be admitted to practise as an Attorney-at-Law of the Supreme Court of Grenada GDAHCVAP2013/0036** where the Eastern Caribbean Court of Appeal found that there was nothing wrong or improper in the learned judge seeking the opinion of the *amicus curiae*. The Court found that “*it was even more critical for the judge to do so given the seeming reluctance of eminent and prominent members of the Grenadian Bar who (for very good reason) had declined the court’s invitation.*”
- [35] In the Court’s judgment, it would in light of this authority be incongruous if a court were to decline to hear from a willing objector who, through Counsel, represents that there is good cause for the court to refuse an application seeking admission to practise.

iv. **Is joinder required?**

- [36] During the course of proceedings before the Court of Appeal in **Layne** counsel for the applicant took issue with the fact that in managing the matter the trial judge, Price-Findlay J, did not give directions for the matter to be tried. On appeal, Blenman JA made the following observation.

“It would be very surprising if the judge had treated this application as a contentious fixed date claim and given elaborate directions. It was well within the discretion of the court to determine the procedure to be adopted. What is essential is for the judge to determine the procedure to be adopted bearing in mind the overriding objectives and the need to manage cases.”

- [37] The Board in **Layne v Attorney General of Grenada** put the position in the following terms;

“The content of a good character condition may vary according to the profession. The person or body which has to be satisfied about conditions of entry may be given powers to investigate or obtain evidence. Or limits may be placed on the type of conduct to be examined and so on. In the context of admission to the Bar of Grenada, satisfaction of the entry conditions is a matter not for the Bar Council but for the Supreme Court. It is for the Supreme Court to determine the procedure. There are no limits placed on the way the Supreme Court fulfils its role and no specific powers are given to it for this purpose. By implication it is authorised to determine whether the entry conditions are met in accordance with its practice and the limits of the judicial function.”¹³

¹³ At paragraph [37]

- [38] Counsel for the Applicants has submitted that the fact that the Objectors hold public office is wholly irrelevant to the determination of the Applications for admission. This Court agrees. While the Objectors may have an interest in the legitimacy of the proceedings before the Commission of Inquiry, in the case at bar their legal rights or pockets are not directly affected nor is there any personal interest in the outcome.
- [39] Although commenced by fixed date claim form, it bears repeating that the proceedings herein are not adversarial or contentious in nature. They are in the words of the Australian High Court “*sui generis*”.¹⁴ Admission proceedings are not “*directed to the resolution of some contest as to the private rights of disputing parties, as is usually the case with civil proceedings*”. In fact, currently, the Supreme Court Act does not require an applicant for admission to serve his application upon, or otherwise notify any other party. In the normal course such applications are routinely dealt with on an ex parte basis.
- [40] In the Court’s judgment, the protection of the public and the administration of justice is the paramount consideration. As such an individual does not need to prove that he/she is a person aggrieved. What is required is that they produce evidence of matters which could impact the judgment of the court or in other words that they show good cause why the application for admission should be refused.
- [41] For the reasons already set out, the Court is not satisfied that the relief of joinder is warranted. This is not a civil action within the usual meaning of the term at common law and it is not lost on this Court that while the Supreme Court Act gives the Applicant a right of reference to the Court of Appeal, in the event that the application is unsuccessful, there is no equivalent statutory right vested in a person who would have objected to the application.
- [42] Ultimately, the Court is able to resolve such issues as may arise on the Applications for admission without the addition of the Objectors as parties. On an application for admission which is opposed, the Court is satisfied that it has a wide discretion as to the procedure to be adopted. In arriving at this conclusion, the Court has had regard not only to decision in **Layne v Attorney General of**

¹⁴ See: *Wentworth v New South Wales Bar Association* (1992) 176 CLR 239 at paragraphs [11] – [14]

Grenada but also the dicta in the case of **Wentworth v New South Wales Bar Association**.¹⁵ In the latter case the applicant took issue with the participation of the Bar Association and the Bar Council in the proceedings.

[43] In respect of the Bar Association, Ms. Wentworth argued that the Bar Association should be dismissed from the proceedings because of the provisions of the Legal Profession Act 1987 which confer specific powers and functions on the Bar Council with respect to barristers and candidates for admission to the Bar. She argued that the Act conferred no powers or functions on the Bar Association with respect to the regulation or discipline of barristers, moreover, it confers no right of appearance like that conferred on the Bar Council by s. 51 (b) of the Act. In respect of the Bar Council, Ms. Wentworth argued that it should not be permitted to lead evidence on matters going to the question whether she should be admitted. The first part of her argument was directed to the powers and functions of the Bar Council which was not a named party to the proceedings. She also argued that in their ordinary and natural meaning, the words "appear ... and be heard" in s.51 (b) do not extend to the calling of evidence.

[44] At paragraph 21 of the judgment, the court found that s.51 (b) of the Legal Profession Act does not affect the power of the Supreme Court to allow the Bar Council to call evidence even if the right to appear and be heard conferred on it by s.51 (b) does not extend so far. This notwithstanding that it was not a named party in the proceedings. At paragraphs 27 – 28 the Court found:

“As with the right to procedural fairness, the precise content of a right to participate fully in proceedings may vary according to the procedures laid down or adopted. And as already indicated, the procedures in admission and disciplinary cases are, to a large extent, in the hands of the Supreme Court itself. But even so, that does not affect the right of the Bar Council to put its case, including by presenting evidence relevant to the question whether Ms Wentworth is "suitable ... for admission". And, so long as ordinary court procedures are adopted, that involves the right to present sworn evidence.

28. It follows from what has been said with respect to the first issue in this appeal, that the Supreme Court may permit the Bar Association to present sworn evidence on the question of whether Ms Wentworth is "suitable ... for admission".”

¹⁵ (1992) 176 CLR 239

[45] In respect of the Bar Council, the court determined that apart from conferring an absolute right on the Bar Council, s 51 (b) did not affect the Court's power to determine how the proceedings are to be conducted, including who may participate and with respect to what issues. At paragraph 19 of the judgment, the court found:

“And by its terms, the sub-section does no more than confer an absolute right on the Bar Council which it would otherwise not have, in the sense that it would otherwise be necessary for it to obtain leave to appear. The express conferral of that right indicates that, prima facie, it is the Bar Council, rather than the Bar Association, that should be involved in proceedings falling within s.51 (b). Hence, prima facie, the Bar Association should be given leave to appear only in exceptional circumstances, whether or not the Bar Council is also participating. Thus, s.51 (b) may well affect the discretion of the Supreme Court with respect to the conduct of proceedings falling within that sub-section. **But apart from conferring an absolute right on the Bar Council, it does not affect the Court's power to determine how the proceedings are to be conducted, including who may participate and with respect to what issues.**” Emphasis mine

[46] Brennan J of the High Court of Australia concluded that:

“...in admission and disciplinary proceedings, the procedure is entirely in the hands of the court subject only to statutory directions and the requirements of procedural fairness. That being so, the court is entitled to seek and to receive assistance from such persons as, in the opinion of the court, are capable of providing it.”

[47] The Court's duty and its wide remit permit the Court to hear from anyone who can speak to or assist the Court in assessing the applications for admission. Where persons profess that they have information relevant to such determination, it cannot be consistent with the administration of justice that they be bound to stand idly by while persons who would otherwise be refused admission are permitted to advance their applications.

[48] This Court is authorised to determine whether the entry conditions are met in accordance with its practise and the limits of the judicial function. In the Court's judgment, this means that the Court is entitled to not only receive evidence but to hear submissions from and on behalf of any one who claims to be able to show cause why the admission should not be permitted. Ultimately, what is required is that the Court ensures that the proceedings are fair. Acting justly demands that the applicants have advanced notice of the objections but that they be afforded an opportunity to respond to the evidence and submissions filed in support.

[49] The Court will therefore make the following directions:

- i. The Objectors will file written evidence setting out the details of their objections on or before the 15th September 2021. To the extent that they wish to rely on the affidavits filed in support of these Applications, there is no need to re-file the same.**
- ii. The Applicants may file any evidence in response thereto by 15th October 2021.**
- iii. The Parties are to lodge and exchange written submissions on or before no less than 7 days before the hearing date.**
- iv. The matters are adjourned for hearing on 26th October for half a day.**
- v. Costs of the joinder applications are reserved.**

**Vicki Ann Ellis
High Court Judge**

By the Court

Registrar