



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 No 71

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE POLICE MISCONDUCT PROCEEDINGS (PSD NO IC 1-24 OFFICER CONCERNED PS 2381) MARINA J'N PIERRE)

BETWEEN:

MARINA J'N PIERRE

APPLICANT

AND

(1) THE COMMISONER OF POLICE

(2) RYAN ROBINSON-PERINCHIEF

(IN HIS CAPACITY AS THE CHAIR
OF THE MISCONDUCT PANEL)

(3) AQUELLAH SIMMONS

(IN HER CAPACITY AS
THE PROSECUTOR FOR
THE MISCONDUCT PANEL)

RESPONDENTS

RULING

(In Chambers)

Application for leave to amend the grounds upon which judicial review of the decision of the chair of the police disciplinary panel to refuse an adjournment of the disciplinary hearing

Date of hearing: 11 July 2025

Date of reasons: 24 July 2025

**Appearances: *Victoria Greening* of Resolution Chambers Ltd for the Applicant
Eugene Johnston of the Attorney General's Chambers for the Respondents**

RULING OF MARTIN J

Reasons for refusal of leave to amend

1. The Court heard an application for leave to amend the grounds upon which leave to issue judicial review proceedings in this case has been granted on 11 July 2025. The Court refused leave at the conclusion of the hearing and indicated that short reasons for the decision would follow. These are those reasons.

Introduction

2. The applicant is a serving police officer in respect of whom a referral to a disciplinary proceeding was made arising out of an incident in which it was alleged that she assaulted another police officer with whom she was having a relationship. The incident was investigated and resulted in a referral to a disciplinary proceeding for misconduct under the Police (Conduct) Orders 2016 (the "Conduct Orders").
3. The applicant was granted leave to issue judicial review proceedings on 18 March 2025 in respect of a decision of the chairperson of a police disciplinary panel to refuse the applicant an adjournment of the hearing of a complaint against the applicant for misconduct under the Conduct Orders on medical grounds.
4. The order granting leave stayed the police disciplinary panel proceedings pending the outcome of the judicial review proceedings. In fact, the decision about which complaint was made was the refusal to adjourn the initial preliminary directions hearing convened under rule 23 of the Conduct Orders to give directions for the conduct of the disciplinary proceedings, not the hearing of the complaint itself.
5. Following the grant of leave, and the stay of the disciplinary proceedings, on 6 May 2025 the applicant sought leave to amend the grounds upon which the judicial review proceedings were based. The application for leave to amend came on for hearing on 11 July 2025.

Proposed amendments to the grant of leave

6. The proposed amendments were to the effect that the procedure for the conduct of disciplinary proceedings under the Conduct Orders are unconstitutional in that the

procedure provided for the conduct of those proceedings breach the requirements for a fair trial guaranteed by the protections afforded by section 6 (8) of the Second Schedule to the Bermuda Constitution Order 1968 (the “Constitution”).

7. A number of provisions were cited, of which the following are examples:
 - (i) Section 32 (1) of the Conduct Orders provides that the chairperson of the disciplinary panel determines the procedure for the conduct of the proceedings;
 - (ii) Section 27 (1) of the Conduct Orders provides that the respondent to the proceedings may be tried in their absence¹;
 - (iii) Section 22 of the Conduct Order provides that the respondent can be tried “on the papers”²;
 - (iv) Section 32 (8) allows the panel to order which witnesses can testify and what questions can be asked³;
 - (v) Section 32 (10) allows the disciplinary panel to draw inferences from the failure of a police officer to mention a fact when he or she was questioned about the alleged misconduct, or in his or her statement under section 15, which he or she later relies on.
8. It was argued that the applicant should be allowed to amend her challenge to the chairperson’s decision to refuse an adjournment of the directions hearing on the basis that the Conduct Orders themselves fail to provide a procedure which satisfies the constitutional requirements for a fair trial under section 6 (8) of the Constitution. It was said that at the hearing the applicant should be entitled to ask the court to strike down the Conduct Orders as a whole on the basis that the deficiencies relied upon, taken together, rendered the whole disciplinary procedure invalid.
9. Even though the threshold for the grant of leave to issue judicial review proceedings is a low one, the applicant must articulate a ground of challenge that is capable of resulting in a successful outcome. At the grant of leave stage, it is not appropriate for the court to engage in an assessment of the ultimate merits of the grounds, provided that they are arguable.
10. In this case, the Court is satisfied that the proposed grounds set out in the draft amended application are not arguable. This is because the Constitution expressly provides that the provisions of section 6 (8) of the Constitution do not apply to disciplinary proceedings relating to members of a disciplined force, which includes the Bermuda Police Service.

¹ The provisions of section 27 do not in fact provide that this may be done: this was apparently an error on the part of the applicant’s attorney.

² The provisions of section 22 do not make such provision.

³ The provisions of section 32(8) allows the chairperson of the disciplinary panel to determine whether a question may be put to a witness.

11. The Constitution provides in section 16 (2) that:

“In relation to any person who is a member of a disciplined force raised under the law of Bermuda, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of the provisions of this Chapter other than sections 2,3 and 4.”

And in section 16 (1) it is provided that

“disciplined force” means—

(a) a naval, military or air force

(b) any police force of Bermuda

(c) the prison service of Bermuda

“member” in relation to a disciplined force includes any person who, under the law regulating the discipline of that force, is subject to that discipline.”

12. This has the result that a member of a disciplined force, including the Bermuda Police Service, can rely upon the protections given in sections 2, 3 and 4 of the Constitution, but is not entitled to rely upon section 6 (8) when facing disciplinary proceedings for alleged misconduct. Accordingly, any arguments directed to challenging the constitutional validity or propriety of the procedure set out in the Conduct Orders is bound to fail.

13. It is relevant however to note that this does not mean that a member of the Bermuda Police Service is not afforded any protection against an arbitrary or unjust trial in disciplinary proceedings under the Conduct Orders. In **R v Boden** Hargun CJ undertook a detailed review of the disciplinary procedure contained in the Conduct Orders and concluded that the process set out in the Conduct Orders fully complies with the ordinary rules of natural justice⁴.

Reason for the refusal of leave to amend

14. It is a basic principle that the Court will not grant leave to amend a pleading to allege a claim which does not disclose a reasonable cause of action, or in this case, an amendment to the grounds that is so fundamentally flawed that it can never result in the setting aside of the decision or result in a successful challenge to the constitutional validity of the procedure set out in the Conduct Orders. To allow an amendment that is bound to fail would increase the costs of the proceedings and would involve the Court in considering pointless arguments, and would therefore constitute an abuse of the court’s process.

⁴ [2019] SC Bda 50 Civ at paragraphs 33 to 35, 42 and 52-4.

15. Therefore, the Court was bound to refuse leave to amend and awarded the costs of the application to the Attorney General.

Dated this 24 July 2025



THE HON. MR. ANDREW MARTIN

PUISNE JUDGE