

BETWEEN:

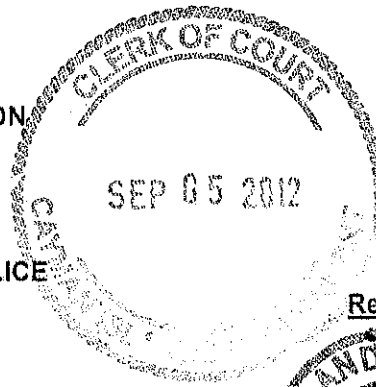
P.C. CARDIFF ROBINSON

Applicant

AND:

COMMISSIONER OF POLICE

Respondent



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of Applicant(s)	Police Constable Cardiff Robinson (Royal Cayman Islands Police)
Judgment, Order, Decision or other Proceeding in respect of which relief is sought	The Applicant is seeking access to a DPP file and Ruling dated on or around 30 July 2012 held by the RCIP, wherein the DPP chose not to pursue a criminal charge of assault by a senior police officer against the Applicant, and gave her reasons for doing so.
<p style="text-align: center;">Relief Sought</p> <p style="text-align: center;"><i>Order of Certiorari</i></p> <p style="text-align: center;">That the decision of the Police Commissioner not to release the Ruling of the DPP and the Applicants complaint file to the Applicant, be quashed</p> <p style="text-align: center;"><i>Order of Mandamus</i></p> <p style="text-align: center;">That the Police Commissioner does immediately disclose the DPP's Ruling and the contents of the complaints file to the Applicant.</p> <p style="text-align: center;">The Applicant is currently considering bringing civil proceedings against the Police Commissioner and requires access to the Ruling and the criminal file especially witness statements known to be contained in the said file.</p>	
Name and address of Applicant's Attorneys, or, if no Attorneys acting, the address for service of the Applicant	Irvin Banks (Attorney-at-law) 14 Rosemont Close, George Town, Box 1643, Grand Cayman, KY1-1109, Cayman Islands,

	Phone 945 9169, cell 325 6395, fax 945 9169, irvin.banks@candw.ky
Signed	Dated 5 September 2012

GROUNDS ON WHICH RELIEF IS SOUGHT

On 15 February 2012, PC Robinson (the "Applicant"), filed an incident report with the Royal Cayman Islands Police ("RCIP"), which complained of an alleged assault against him by a senior police officer, Chief Superintendent Frank Owens ("CS Owens") in charge of George Town district policing.

The complaint file was forwarded to the Director of Public Prosecutions ("DPP") by the RCIP on 26 March 2012 for legal advice on whether a charge of common assault could be made out against CS Owens.

On or about 30 July 2012, the DPP advised that a criminal charge of assault was made out against CS Owens but a decision had also been made not to proceed with a charge against him on the grounds of **public interest immunity**, and in fact recommended that the matter be handled internally by the police.

In a letter to the Applicant's attorneys dated 14 August 2012 (exhibit "CR 2", Applicants First Affidavit), the DPP states that the file and the ruling (the "Ruling"), in relation to the assault charge, had been returned to the RCIP and that the Applicant would be advised by the RCIP as to the progress and response to his complaint in due course.

The DPP further advised that the Ruling was prepared at the request of the RCIP and as such was protected (in this case) by public interest immunity.

The DPP also asserted that the file and the information contained therein including witness statements, was not the property of the complainant (Applicant) and not normally disclosed in any event without a court order or by consent of the witnesses themselves for the purposes of non-criminal investigative purposes.

By a letter dated 16 August 2012, the Applicants attorneys wrote to Acting Chief Superintendent Kurt Walton, ("ACS Walton"), the RCIP senior officer in charge of the file, requesting a copy of the file and the DPP's Ruling on behalf of the applicant.

An email from ACS Walton received on 31 August 2012 stated that the ruling and the file would not be released and that the applicant could seek their release by way of a Court Order.

The Applicant is considering a civil suit against the CS Owen and by extension the Commissioner of Police, and the Ruling and the file could be essential to the success of the suit.

Public Interest immunity

Withholding the DPP Ruling from the Applicant

The applicant believes that the information contained within the DPP's file is not of a class of high-level documents dealing with sensitive policy issues or sensitive police investigative procedures

and that there are no witnesses whose identities were in the public's interest to protect other than by way of normal professional privilege consideration, and feels that the DPP's decision not to prosecute on the basis of public interest immunity was wrong in law and irrational, and refusing to allow the Applicant access to the Ruling, failed to observe the rules of natural justice.

Consequently any withholding of other information contained in the file is equally unlawful, unreasonable and procedurally flawed.

The Applicant asks for an order of *certiorari* to quash the decision not to disclose the Ruling and the file, and an order of *Mandamus* that the file and the ruling be disclosed to the Applicant.

The Court of Appeal in **Whittaker v Watler [1996 CILR 378]** held that the Court had a genuine discretion in deciding whether to order production of documents from (in that case) the Public Service in respect of which public interest immunity had been claimed, and held that since the documents in that case were not of a class of high-level documents dealing with sensitive policy issues and the information they contained was not obtained from sources whose identities it was in the public interest to protect to ensure their continued co-operation, withholding the documents was unnecessary for the proper functioning of the Public Service. The balancing act was properly carried out and the discretion of the trial judge was properly exercised, the documents were to be produced and inspected as ordered by the trial judge.

Whittaker applied **Conway v Rimmer [1968] 1 ALL E.R. 874 H.L.** which considered a claim for public interest immunity from discovery in civil actions of documents and information in the hands of the police.

Lord Reid said "*The police are carrying out an unending war with criminals many of whom are today highly intelligent. So it is essential that there should be no disclosure of anything which might give any useful information to those who organise criminal activities, and it would generally be wrong to require disclosure in a civil case of anything which might be material in a pending prosecution. But after the verdict has been given or it has been decided to take no further proceedings, there is not the same need for secrecy* (underlined for emphasis).

However, I would therefore propose that the House ought to now decide that the courts have and are entitled to exercise a power and duty to hold a balance between the public interest, as expressed by a Minister, to withhold certain documents or other evidence, and the public interest in ensuring the proper administration of justice"

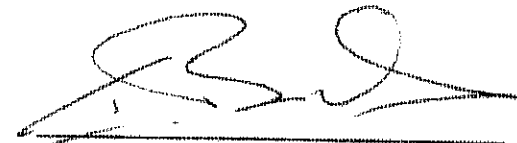
It is submitted that the Ruling of the DPP in this matter is in fact a matter of public interest in that the DPP made a decision not to prosecute a senior policeman for an assault on a junior officer for apparently all the wrong reasons, or at least without the support of at least the Deputy Governor or Chief Officer.

In a civil suit the Applicant will try to build his case not only on the assault itself, but on previous experiences with the senior officer involved. It is submitted that the Applicants complaint file and the Ruling of the DPP are extremely important in presenting a properly organised and structured civil proceeding.

In conclusion, it is submitted that the DPP in advising the RCIP not to disclose either her Ruling in the matter or the Applicant's complaint file, was acting outside the scope of her authority in not producing a certificate from perhaps the Deputy Governor or Chief Officer in charge of police administration before announcing her ruling,

Further her ruling and advice to the RCIP pertaining to non-disclosure of the Ruling and the file was wednesbury unreasonable in that it was not logical under the particular circumstances of the case to have come to the conclusion that public interest immunity was called for.

Finally it is submitted that it is a breach of natural Justice, not to allow the Applicant access to a DPP ruling and DPP file information in a complaint that has been justified by the DPP herself.

A handwritten signature in black ink, appearing to read 'Irvin Banks', written over a horizontal line.

Irvin Banks

Attorney-at-law

4 September 2012