

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO.: *6039b* OF 2013

**IN THE MATTER OF THE CAYMAN CONSTITUTION ORDER 2009
("THE CONSTITUTION")**

AND

**IN A MATTER OF AN ELECTION PETITION UNDER THE ELECTION
PETITIONS LAW (2009 REVISION)**

AND

**IN THE MATTER OF AN ELECTION FOR THE ELECTORAL DISTRICT
OF WEST BAY HELD ON THE 22ND DAY OF MAY 2013**

BETWEEN

JOHN GORDON HEWITT

APPLICANT

AND

**THE GRAND COURT SITTING AS
A COURT/TRIBUNAL ESTABLISHED
TO HEAR THE ELECTION PETITION
CAUSE NO. 198 OF 2013**

DEFENDANT

AND

TARA RIVERS

1ST INTERESTED PARTY

AND

MR. DELANO SOLOMON

2ND INTERESTED PARTY

AND

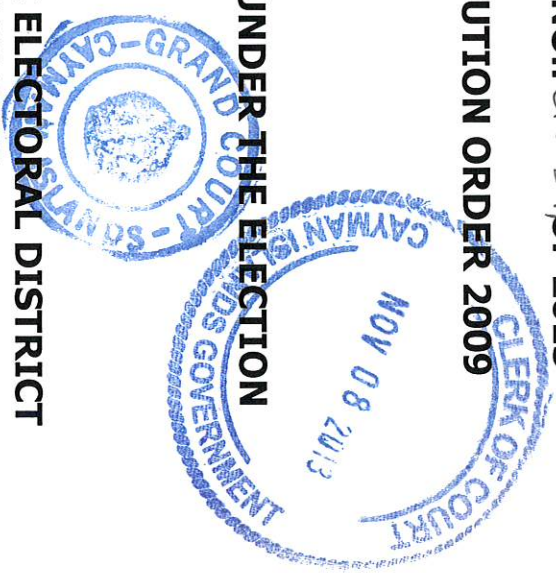
**THE ATTORNEY GENERAL
FOR THE CAYMAN ISLANDS**

3RD INTERESTED PARTY

AND

**THE GOVERNOR OF THE
CAYMAN ISLANDS**

4TH INTERESTED PARTY



**EX PARTE APPLICATION
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

Name, address and description of Applicant	John Gordon Hewitt, of P.O. Box 30910, West Bay, Grand Cayman, KY1-1204, Cayman Islands and an elector in Electoral District of West Bay, Grand Cayman, Cayman Islands
Judgment, Order, decision or other Proceeding in respect of which relief is sought	Decisions and Determination made in a written Judgment dated the 9 th day of August 2013 by of the Learned Chief Justice sitting as a Judge of the Grand Court established to hear an Election Petition pursuant to Section 66 of the Constitution of the Cayman Islands and to the Elections Petitions Law 2009.
The Relief Sought	
<p>1. That leave be granted to the Applicant herein to apply for Judicial Review of the decisions of interpretation of the Constitution of the Cayman Islands made by the Honourable Chief Justice Anthony Smellie Q.C., sitting in a Court/Tribunal of limited jurisdiction for the hearing of an Election Petition, in delivering his determination in a written Judgment dated August 9th 2013 of the Election Petition arising from an election held on the 22nd day of May 2013 to elect a member to the Legislative Assembly for the Electoral District of West Bay and more particularly to apply for the following:-</p> <p>(a) A Declaration that the true spirit, meaning and intent of the provisions of Section 66 (1) of the Constitution of the Cayman Islands is that the determination of whether a person has been validly elected is to be made by the Grand Court in accordance with law.</p> <p>(b) A Declaration that the true spirit, meaning and intent of the Provisions of Section 66 (1) and (5) and Section 85 of the Elections Law is to establish a Court of limited jurisdiction for the hearing of a petition by the Grand Court to determine, in accordance with law, whether any person has been validly elected.</p>	

- (c) A Declaration that the true spirit, meaning and intent of the provisions relating to the residential qualifications for election to the Legislative Assembly contained in Section 61 of the Constitution of the Cayman Islands ousts the common law as to dual residency to the extent that the Section requires continuous physical presence in the Cayman Islands for a period of not less than seven (7) years prior to the date of nomination save and except for absences not in excess of 400 days and absences which qualify for any of the exceptions contained in Section 61 (3) of the Constitution of the Cayman Islands 2009.
- (d) A Declaration that the unambiguous, natural and ordinary meaning of the words "educational institution" is "an institution dedicated to education" and, that the true spirit, meaning and intent of the words as used in Section 61 (3) (b) of the Constitution of the Cayman Islands does not permit of a broad and purposive interpretation of the words, the intent and meaning of which are clear and unambiguous.
- (e) A Declaration that the firm of solicitors (Allen & Overy) does not qualify as an educational institution on the basis that it provides in house training for its employees or that its employees are seeking to qualify as a solicitor.
- (f) A Declaration that the natural and ordinary meaning of the words set out in Section 61 2 (a) and (b) of the Constitution of the Cayman Islands 2009 are unambiguous and do not permit of a generous and/or purposive interpretation.
- (g) A Declaration that the true spirit, meaning and intent of the provisions set out in Section 61 (2) (a) and (b) of the Constitution of the Cayman Islands is not a "carve out" which allows a person born

outside the Cayman Islands who is a citizen of a foreign power or state, to be qualified for the purposes of Section 61 (1) (d) of the Constitution but is in fact a "carve out" which allows someone who is a Caymanian Citizen but who has a right to some other citizenship as a result of being born outside the Cayman Islands, as opposed to actual citizenship, and is pursuing no claim to any other citizenship for which he or she may be eligible, to be qualified as a candidate.

(h) A Declaration that the true spirit, meaning and intent of the provisions contained in Section 61 (2) (a) and (b) and 62 (1) (a) of the Constitution of the Cayman Islands is to ensure that no one who is a foreign citizen and no one who, by virtue of his/her own act acknowledges a foreign citizenship or allegiance to a foreign power or state is qualified to stand for election and that such a persons are disqualified from being members of the Legislative Assembly.

(i) A Declaration that the natural and ordinary meaning of the words "under any acknowledgment of allegiance, obedience or adherence to a foreign state or power" as set out in Section 62 (1) (a) of the Constitution of the Cayman Islands are clear and unambiguous and do not allow for a "generous" or "purposive" interpretation.

(j) A Declaration that the true, ordinary and natural meaning of the words "any acknowledgment of allegiance" as set out in the Constitution of the Cayman Islands includes the application for and the recognition of the rights, privileges, authority and status of citizenship which includes the recognition and acknowledgment of the allegiance owed the state by a citizen of that state.

(k) A Declaration that the voluntary act of applying for, renewing and/or obtaining of a Passport of a foreign power or state is a positive act of acknowledgment of allegiance within the meaning of "under any

acknowledgment of allegiance to a foreign power or state" and is a positive act of recognition of the rights, authority and status of citizenship of that state which includes recognition and acknowledgment of the allegiance owed that state by a citizen of that foreign state.

- (l) A Declaration that travelling on a passport and presenting same to an immigration or other official of a foreign country is a positive act of recognition of citizenship and allegiance within the intent and meaning of the words "under any acknowledgment of allegiance to a foreign power or state" and is a recognition of the rights, privileges, authority and status of citizenship amounting to the recognition and acknowledgment of the allegiance owed by a citizen of that state.

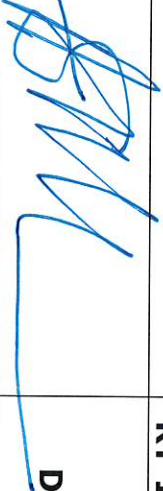
- (m) A Declaration that the true, ordinary and natural meaning of the words "attendance as a student at an educational establishment" means the attendance as a student at an institution dedicated to education and does not permit of a "generous" or "purposive" interpretation to include "attendance as an employee at a law firm" or "attendance as a student at a law firm".

- (n) A Declaration that "under any acknowledgment of allegiance to a foreign power or state" may be demonstrated by conduct and that such conduct includes the exercise of any right or privilege to which a citizen of that state may be entitled including applying for and travelling on a passport issued by that state.

- (o) A Declaration that the Learned Chief Justice erred as a matter of Law in seeking to give a "generous" and "purposive" interpretation to Sections 61 and 62 of the Constitution of the Cayman Islands and by so doing exceeded his jurisdiction by in effect changing the true, spirit meaning and intention of the Constitution of the Cayman Islands.

(p) An Order of Certiorari, in the matter of Election Petition Cause No. 198 of 2013, to quash the determination made by the Honourable Chief Justice, on the 9th day of August 2013, sitting as Judge in a special court/tribunal with limited jurisdiction pursuant to Section 66 (1) and (5) of the Constitution of The Cayman Islands and Section 85 of the Elections Law 2009 for the determination as to whether a person is validly elected to the Legislative Assembly.

(q) Such other relief as This Honourable Court may deem just.

Name and Address of Applicant's Attorneys, or, if no Attorney is acting, the address for service of the Applicant	A. Steve McField & Co. P.O. Box 680 George Town Suite D 2, Cayman Business Park 10 Huldah Avenue KY-1107 Grand Cayman
SIGNED: 	Dated the 7th day of November 2013

GROUNDNS ON WHICH RELIEF IS SOUGHT

1. That the election petition/tribunal court is a court of limited jurisdiction established by the Constitution of the Cayman Islands and by the Electoral Law 2009 for the determination of election petitions and as such is not a superior court of record but an inferior tribunal/court of limited jurisdiction subject to the Judicial Review of the Grand Court for errors of law on the face of the record including but not limited to errors of law in the interpretation of the Constitution of the Cayman Islands.
2. That Section 66 of the Constitution of the Cayman Islands 2009 and the Elections Law 2009 provides that any determination as to whether a person is **validly elected** a member of the Legislative Assembly or whether an elected member of the Assembly has vacated his or her seat in it, shall be determined by the Grand Court, whose decision shall be final and not subject to any appeal.

3. That in making a determination as to whether a person is validly elected the Judge is obliged and under a duty to make such determination in accordance with the provisions of the Constitution of the Cayman Islands and in accordance with the Elections Law.
4. That the Judgment of the Learned Chief Justice is resplendent with errors of law on the face of the record and that upon the face of his written determination it is clear that he erred in law as to the applicable true spirit, meaning and intent of the Constitutional provisions contained in Sections 61 and 62 of the Constitution of the Cayman Islands.
5. That the interpretation of the provisions of the Constitution is within the inherent jurisdiction of the Grand Court sitting as a Superior Court of Record and is not within the limited jurisdiction of the Grand Court sitting as a court/tribunal whose jurisdiction is limited to the hearing and determination of any question as to whether a person is validly elected to the Legislative Assembly in accordance with the Constitutional Provisions and with the provisions of the Elections Law.
6. That the Learned Chief Justice erred in law in failing to comprehend, understand, appreciate and/or recognize that his interpretation of Sections 61 and 62 of the Constitution of the Cayman Islands was a grievous error of law in that it resulted in his determination being in breach of Section 16 of the Constitution of the Cayman Islands (Non-Discrimination) by creating a right for a Caymanian citizen born in a foreign state and who holds foreign citizenship to be elected to the Legislative Assembly while a Caymanian born in the Cayman Islands who holds foreign citizenship is disqualified from being so elected to the said Legislative Assembly.
7. That the Learned Chief Justice in seeking to interpret Sections 61 and 62 of the Constitution of the Cayman Islands committed grave and serious errors of law thereby rendering the determination arrived at by him a nullity and not a

determination within the meaning and intent of Section 66 of the Constitution of the Cayman Islands.

8. That the Learned Chief Justice failed to give the Appellant a fair hearing within the spirit, meaning and intent of the Constitution of the Cayman Islands in that he failed to interpret the Constitutional provisions by applying the proper rules of construction established over the years by the Courts and acknowledged by case law and precedent as a result of which the Learned Chief Justice fell into error by giving a "generous" and "purposive" interpretation to words whose ordinary and natural meaning were clear and unambiguous thereby committing an error in law in making a determination that was wrong in law, unconstitutional and therefore a nullity.

9. That the Learned Chief Justice failed to give the Appellant a fair hearing within the spirit, meaning and intent of the Constitution of the Cayman Islands in that he ignored the clear and unequivocal evidence contained in the letters of Allen & Overy confirming that the 1st Respondent was employed as an associate but instead concluded, that the 1st Respondent was attached to the firm as a trainee-solicitor at an educational establishment, (meaning Allen & Overy, a firm of Solicitors) contrary to the evidence from Allen & Overy confirming that the 1st Respondent was employed to the law firm as an Associate.

10. That the Learned Chief Justice failed to give the Appellant a fair hearing and failed to properly analyse the evidence before him by ignoring the fact that the 1st Respondent's was granted a Work Permit and was not landed in the United Kingdom on a student visa or permit.

11. That the complaints in the Election Petition were complaints grounded in Sections 61 and 62 of the Constitution of the Cayman Islands the interpretation of which are of great public importance and public interest and the jurisdiction of the Grand Court to have judicial review or of the Court of Appeal and the Judicial Committee of the Privy Council to hear appeals touching and concerning the interpretation of constitutional provisions is not ousted.

12. That the Review touches and concerns the interpretation of Sections 61 and 62 of the Constitution of the Cayman Islands and their true and precise meaning and intent are of great public interest and a matter of great public importance touching and concerning the rights of the citizens of the Cayman Islands.
13. That Section 66 of the Constitution of the Cayman Islands provides that the decision of the Grand Court is final in so far as the determination of the question of whether a person has been validly elected a member of the Legislative Assembly but does not prohibit the questioning, by way of judicial review, of a determination arrived at by errors of law on the face of the record as a result of the wrong interpretation and misapplication of constitutional provisions, and any such determination which relies on misinterpreted and distorted interpretations of constitutional provisions, is a nullity.
14. That the Learned Chief Justice fell in grievous errors of law, by failing to interpret the Constitutional provisions set out in Sections 61 and 62 of the Constitution within the spirit, meaning and intent of the said provisions, and within the spirit, meaning and intent of the Constitution of the Cayman Islands, and by proceeding to give a "generous" and "purposive" interpretation to the meaning and effect of the said Constitutional provisions, the words of which are clear and unambiguous. That in so doing the Learned Chief Justice created an artificial construct and rationalization justifying a determination in favour of the 1st Respondent, not on the basis of law and established legal precedent, but by applying a "generous" and "purposive" interpretation to the unambiguous words in the Constitution which ought properly, in law, to have been given their ordinary and natural meaning.
15. That the Learned Chief Justice fell into error by failing to appreciate, comprehend and/or recognize that in interpreting Sections 61, 62 and 63 of the Constitution the words set out therein must be given their ordinary and natural meaning which must be strictly interpreted to give effect to the meaning, spirit and intent of the mischief the Constitution intended to address, namely, that no person who

owed allegiance to a foreign state or power may become or remain a member of the Legislative Assembly, and the Learned Chief Justice fell into further error in failing to appreciate that any "generous" or "purposive" interpretation of Constitutional Provisions which results in defeating the true spirit, meaning and intent of a Constitutional provision is wrong in law and must be avoided.

16. That the Learned Trial Judge erred by failing to appreciate, comprehend, understand and/or recognize that the complaints set out in the Election Petition are complaints grounded in the provisions of the Constitution of the Cayman Islands and must therefore be given their ordinary and natural meanings and further fell into error in failing to appreciate, comprehend, understand and recognize that the words in Section 62 (1) (a) and Section 61 (2) (b) are clear and unambiguous and not open to "generous" or "purposive" interpretations, the effect of which distorts the true meaning, spirit and intent of the Sections and of the Constitution resulting in the determination, which is based on such erroneous interpretations arrived at not in accordance with law and precedent, being a nullity.

17. That the Learned Chief Justice failed to appreciate, comprehend, recognize or understand that dual nationals owe allegiance to both countries of which they are citizens and are required to obey the laws of both countries.

18. That the Learned Chief Justice erred in failing to appreciate, comprehend, understand and/or recognize that a person cannot be a citizen of a foreign state without owing allegiance to that state and further fell into grievous error in interpreting Section 61 (2) (b) by failing to appreciate, comprehend, understand and/or recognize the clear and unambiguous words used in Section 61 (2) (b) of the Constitution of the Cayman Islands distinguishing between, on the one hand, citizens of the Cayman Islands who have a right to citizenship of a foreign state by virtue of having been born in that state, and who have exercised their right to citizenship of that foreign state by claiming or availing themselves of the rights, privileges, authority and/or status which they may have to some other citizenship by virtue of birth outside the Cayman Islands and, on the other hand, citizens of

the Cayman Islands who have a right to citizenship of a foreign state by virtue of having been born in that state, but who have not exercised the right they may have to some other citizenship by virtue of being born in that foreign state and have done nothing to claim or exercise the rights, privileges, authority and/or status which they may have to some other citizenship by virtue of birth outside the Cayman Islands.

19. That the Learned Chief Justice erred in law by failing to give the words "under any acknowledgment of allegiance" their natural and ordinary meaning and further erred in law by proceeding to give them a "generous" or "purposive" interpretation, thereby creating an artificial construct which would allow a person a citizen of a foreign power or state (owing allegiance by virtue of citizenship) to serve as a member of the Legislative Assembly in contravention of the clear and explicit spirit, meaning and intent of the Constitution in seeking to ensure that only persons who had undivided loyalty to the Cayman Islands sit as members of the Legislative Assembly.

20. That the Learned Chief Justice fell into error in failing to appreciate, comprehend, understand and/or recognize that "under any acknowledgment" encompasses more than formality or affirmation and includes not only conduct which recognizes the rights, privileges, authority and status of being a citizen of a foreign power or state but also conduct and concurrence by voluntarily exercising the rights, privileges, authority and status of citizenship.

21. That the Learned Chief Justice erred in failing to appreciate that the artificial construct applied by him in interpreting Section 61 (2) (b) created citizens of the Cayman Islands with different rights in that one born in a foreign power or state may serve in the Legislative Assembly, whereas one who is born in the Cayman Islands, but who acquires a foreign citizenship of a foreign power or state may not, thereby defeating the meaning, spirit and intent of the Constitution of the Cayman Islands which is designed to ensure that all citizens have the same and equal rights and suffer no discrimination as guaranteed by Section 16 of the Constitution of the Cayman Islands.

22. That the Learned Chief Justice fell into error by failing to appreciate, comprehend, understand and/or recognize that legislation has the effect of ousting the common law and further fell into error by failing to appreciate, comprehend, understand and/or recognize that the real effect of the constitutional residential requirement for qualification set out in Section 61 of the Constitution ousts and replaces the common law in so far as qualifications for election to the Legislative Assembly is concerned and the residence referred to in the Constitution is a requirement of being physically present in the Cayman Islands for the period set out in Section 61 subject to the exceptions set out therein.
23. That the Learned Chief Justice fell into error in failing to appreciate comprehend, understand and/or recognize that the words "attendance as a student at an educational establishment" are clear and unambiguous and must therefore be given their ordinary and natural meaning and further fell into error by ignoring the clear and unambiguous confirmation by Allen & Overy that the 1st Respondent was employed as an associate to Allen & Overy where she in fact led teams in negotiations conducted on behalf of the firm but instead proceeded to apply a "broad purposive meaning" resulting in a distortion of the true purpose, meaning and intent of the residential qualification set out in Section 61 of the Constitution of the Cayman Islands thereby rendering his determination a nullity.
24. That the Learned Chief Justice fell into further error by applying a "broad purposive meaning" to the words "educational establishment" in order to qualify Allen & Overy, a firm of Solicitors, as an educational establishment.
25. That the Learned Chief Justice fell into grave error by concluding that instead of the words "attendance as a student at an educational establishment" being given their ordinary and natural meaning which is "attendance at an institution dedicated to education" and further fell into error by giving the said words a broad purposive meaning, the effect of which is to distort the spirit, meaning and intent of the Constitutional provisions.

26. That the Learned Chief Justice fell into grave error by failing to appreciate, comprehend or understand that the natural and ordinary meaning of "an educational establishment" is "an institution dedicated to education" and further fell into error in concluding that a firm of solicitors (Allen & Overy) can qualify as an educational institution merely on the basis that it provides in house training for its employees which it's employees may attend as part of their employment.
27. That the Learned Chief Justice fell into error by ignoring and not appreciating, understanding and/or accepting the established evidence that a United States passport can only be issued to a person owing allegiance to the United States and also fell into error in not appreciating, understanding or accepting that an acknowledgment of allegiance may be demonstrated by conduct and that such conduct includes the exercise of any right or privilege as a citizen owing allegiance to the United States in applying for, renewing and/or travelling on a passport issued by that foreign state.
28. That the Learned Chief Justice fell into error by not appreciating, understanding or accepting that an acknowledgment of allegiance may be by conduct and that such conduct can be the use of the passport for travel by presenting the passport to an immigration officer for that in so doing that person holds himself/herself out to be a citizen of that foreign power or state with the rights, privileges, authority and status of a citizen owing allegiance to the foreign power or state whose passport he/she bears and travels on.
29. That the Learned Chief Justice erred in law by failing to comprehend, appreciate and recognise that Section 61 (2) (b) is not a "carve out" which allows a person born outside the Cayman Islands to be qualified for the purposes of Section 61 (1) (d) of the Constitution but is in fact a "carve out" which allows someone who is a Cayman Citizen and who has a right, as opposed to actual citizenship, to some other citizenship as a result of being born outside the Cayman Islands and is pursuing no claim to that citizenship for which he or she may be eligible by virtue of his or her birth outside the Cayman Islands.

30. That the Learned Chief Justice erred in law in failing to comprehend, appreciate and recognise that that his interpretation of Section 61 (2) (b) of the Constitution amounts to legislating Constitutional Provisions which are contrary to and in conflict with the non discriminatory provisions of Section 16 of the Constitution of the Cayman Islands.

31. That the Learned Chief Justice erred in Law by failing to comprehend, appreciate and/or recognize that Section 61 is subject to Section 62 so that although a person may be qualified because of the provisions contained in Section 61 (2) he may be disqualified under the provisions of Section 62 and in particular under Section 62 (1) (a) if by his voluntary act he does anything or so conducts himself that he acknowledges the citizenship of a foreign power or state and the allegiance he owes as a citizen of that foreign power or state.

THIS EXPARTE APPLICATION is FILED by A. STEVE MCFIELD & ASSOCIATES of P.O. Box 680 GT, Grand Cayman, KY1-1107, Cayman Islands, Suite D2, Cayman Business Park, 10 Huldah Avenue, Attorneys-at-Law, whose address for service is that of his said Attorney-at-Law.