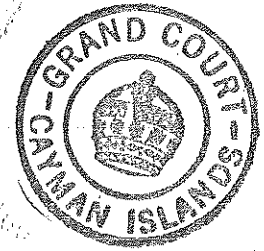
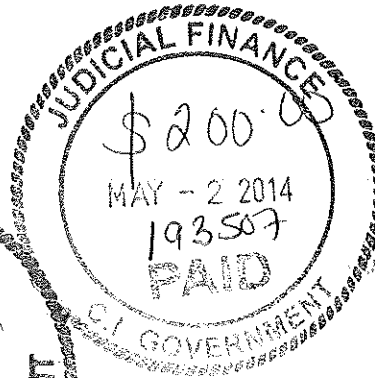


IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: G0067 OF 2014

IN THE MATTER OF THE DEVELOPMENT AND PLANNING LAW (2011 REVISION) AND THE DEVELOPMENT AND PLANNING (APPEAL) RULES (1999 REVISION)

AND IN THE MATTER OF AN APPEAL against the decision of the Chief Officer of the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure pursuant to Section 48(1) of the Development and Planning Law (2011 Revision) and in the matter of Rules 6(1) and 7 of the Development and Planning (Appeal) Rules (1999 Revision), and Sections 1, 7(1), 19(1), 24, 25, 27(1) and 28 of the Bill of Rights of the Cayman Islands Constitution and Section 5 of the Cayman Islands Constitution Order 2009, and Sections 4(b), 5(2)(f) and 56 of the Public Service Management Law (2013 Revision) and Sections 39(2) and 40(6) of the Public Management and Finance Law (2013 Revision);

AND IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW pursuant to Order 53 of the Grand Court Rules 1995.

BETWEEN:

Dr. CAMILLE STOLL-DAVEY

APPLICANT

AND:

THE CHIEF OFFICER OF THE MINISTRY OF PLANNING, LANDS, AGRICULTURE, HOUSING  
AND INFRASTRUCTURE

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

RESPONDENT(S)

**NOTICE OF EX PARTE APPLICATION**  
**FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**  
**Section 48(1) of the Development and Planning Law (2011 Revision)**  
**Rules 6(1) and 7 of the Development and Planning (Appeal) Rules**

**Sections 1, 7(1), 19(1), 24, 25, 27(1) and 28 of the Bill of Rights of the Cayman Islands  
Constitution**

**Section 5 of the Cayman Islands Constitution Order 2009**

**Sections 4(b), 5(2)(f) and 56 of the Public Service Management Law (2011 Revision)**

**Sections 39(2) and (40)(6) of the Public Management and Finance Law (2013 Revision)**

**Article 6(1) of the European Convention on Human Rights**

**To: The Clerk of the Court  
Law Courts Building  
George Town  
Grand Cayman**

**Name, address and description of the Applicant:**

Dr. Camille Stoll-Davey  
P.O. Box 1919GT  
Grand Cayman  
Cayman Islands  
KY1-1110

**Decisions in respect of which relief is sought:**

The Chief Officer of the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure, as the First Respondent, decision of 24<sup>th</sup> April 2014:

- 1) to not schedule the hearing of the applicant's appeal to the Planning Appeals Tribunal within six months of the lodging of said Appeal as required by section 48(1) of the Development and Planning Law (2011 Revision).

**Interim relief sought:**

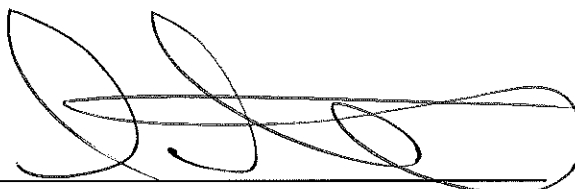
- 1) A declaration that section 48(1) of the Development and Planning Law (2011 Revision) is to be interpreted as requiring the First Respondent as Chief Officer in the Ministry of Planning, Lands, Agriculture, Housing and Infrastructure, to schedule the hearing of the Applicant's appeal before the Planning Appeals Tribunal within six months of the date on which the Applicant lodged her appeal; and
- 2) An order *Mandamus* directing the First Respondent to comply with section 48(1) of the Development and Planning Law (2011 Revision), pending the adjudication of this application.

**Permanent Relief sought:**

- 3) An order *Certiorari* to quash the 24<sup>th</sup> April 2014 decision of the first Respondent to not schedule the hearing of the Applicant's Appeal within six months of the lodging of the said appeal, as required by section 48(1) of the Development and Planning Law (2011 Revision); alternatively
- 4) A declaration that the 24<sup>th</sup> April 2014 decision of the first Respondent was unlawful and a nullity; and
- 5) An order *Mandamus* directing the first Respondent to comply with section 48(1) of the Development and Planning Law (2011 Revision), and to forthwith schedule the hearing of the Applicant's Appeal to the Planning Appeals Tribunal before an impartial panel of said Tribunal in which no member of the panel was consulted or involved in any way in the decision not to comply with s.48 of the Development and Planning Law (2011 Revision), such hearing to occur on or before 9<sup>th</sup> May 2014; and
- 6) Costs; and
- 7) Such further, consequential, or other relief, inter alia, such relief and remedy as is just and appropriate pursuant to section 27 of the Bill of Rights of the Cayman Islands Constitution, as this Honourable Court deems just.

**Name and address of Applicant's representative:**

Dr. Camille Stoll-Davey  
P.O. Box 1919GT  
Grand Cayman, KY1-1110  
Cayman Islands



Camille Stoll-Davey, Applicant in Person

Dated: 13<sup>th</sup> May 2014

### **Decision in respect of which relief is sought:**

The First Respondent's decision, made on 24<sup>th</sup> April 2014, that:

1. The adjudicative hearing of the Planning Appeals Tribunal would not be scheduled within the statutorily imposed time limit of six months from the lodging of the Applicant's appeal.

### **Grounds on which relief is sought:**

**Errors of law:** In the decision of 24<sup>th</sup> April 2014 to not schedule the hearing of the Applicant's appeal to the Planning Appeals Tribunal within six months of that appeal being lodged, the First Respondent erred: by failing to comply with section 48(1) of the Development and Planning Law (2011 Revision), by failing to comply with Rule 6(1) of the Development and Planning (Appeal) Rules (1999 Revision), by breaching the Applicant's rights pursuant to section 7(1) of the Bill of Rights, by failing to comply with sections 19(1) and 24 of the Bill of Rights of the Cayman Islands Constitution, by failing to give adequate or any consideration to Rule 7 of the Development and Planning (Appeal) Rules (1999 Revision), by failing to comply with the common law requirements of natural justice and procedural fairness, by failing to comply with fundamental common law principle of access to justice, by denying access to judicial supervision, and by failing to comply with sections 4(b), 5(2)(f) and 56 of the Public Service Management Law (2013 Revision), as more particularly pleaded hereinafter.

A) **Error of Law** – The First Respondent decided outside his *vires* and breached his statutory obligations pursuant to the Development and Planning Law (2011 Revision) and the Development and Planning (Appeal) Rules (1999 Revision) by failing to comply with Section 48(1) of the Development and Planning Law (2011 Revision) and Rules 6(1) of the Development and Planning (Appeal) Rules

2. When in the first paragraph of the 24<sup>th</sup> April 2014 decision, the First Respondent or the First Respondent's delegatee Ms. Vasquez-Ebanks on the authority of the First Respondent, failed to comply with section 48(1) of the Development and Planning Law (2011 Revision) and decided that, '*I must advise that it is just not possible for this Appeal to be heard within the 6 month time period*'.
3. By section 48(1) of the Development and Planning Law (2011 Revision), which section provides that, '*such appeal shall be heard by the Tribunal within six months of such appeal being lodged*', the First Respondent had a statutorily imposed mandatory obligation to schedule the adjudication of the Applicant's appeal within the said six month specified time period. There is no exception to the six month time period provided for in the Development and Planning Law (2011 Revision) and neither is there any mechanism in that said Development and Planning Law for the extension of such time period. The Applicant therefore had and has a legitimate expectation that her

appeal would be and will be heard before the expiration of the statutory six month period, which expiration will occur on 9<sup>th</sup> May 2014.

4. By section 39(2) of the Public Management and Finance Law (2013 Revision), at all material times it was the obligation of the First Respondent to ensure that all of the resources and other inputs necessary to operate the Planning Appeals Tribunal process, inclusive of the provision of representation to the Central Planning Authority, were in place.
5. By section 40(6) of the Public Management and Finance Law, the First Respondent was permitted to delegate the setting of the date for the hearing of the Applicant's appeal to a subordinate within his Ministry, *inter alia*, to delegate the setting of said date to Ms. Vasquez-Ebanks, however any such delegation was not permitted to alter the obligation of the said First Respondent to ensure that the decision taken by any delegatee with respect to the date of said hearing, complied with s.48(1) of the Development and Planning Law (2011 Revision).
6. By section 5 of the Cayman Islands Constitution Order 2009 and by section 25 of the Bill of Rights of the Cayman Islands Constitution at all material times it was the obligation of the First Respondent to interpret and apply the Development and Planning Law (2011 Revision) and the Development and Planning (Appeal) Rules (1999 Revision) and the Public Service Management Law (2013 Revision) and the Public Management and Finance Law (2013 Revision) in a manner consistent with giving effect to the Bill of Rights of the Cayman Islands Constitution.
7. By email of 9<sup>th</sup> November 2013 the Applicant lodged her Notice of Appeal within the meaning of s.48(1) of the Development and Planning Law (2011 Revision), with the Ministry of Planning in respect of a decision of the Central Planning Authority (CPA), and subsequently received a receipt #2522554 for the fee paid as well as a written acknowledgement of the receipt by the Ministry of Planning of her said Notice of Appeal.
8. By various telephone communications and by email of 28<sup>th</sup> January 2014, 2<sup>nd</sup> April 2014 and 3<sup>rd</sup> April 2014 the Applicant made submissions to the Ministry of Planning, *inter alia*, initially asking when the First Respondent would set the date for the hearing of her appeal, and then requesting that the date for the hearing of her appeal be set within the period of time provided for in the Development and Planning Law (2011 Revision).
9. By email of 24<sup>th</sup> April 2014, the applicant was informed by Ms. Tanya Vasquez-Ebanks, a civil servant employed in the Ministry of Planning with delegated authority from the said Chief Officer of the Ministry of Planning as First Respondent, that, in effect, a decision had been made on the authority of the said First Respondent to not schedule the adjudication of the applicant's appeal within the six months period expressly required by s.48(1) of the Development and Planning Law (2011 Revision) for the reason that no representative of the Government's Legal Department was available to

represent the Central Planning Authority at such adjudication prior to the expiration of the period of time permitted by the law.

B) **Error of Law - Further or in the Alternative, the First Respondent misinterpreted the word 'shall' in section 48(1) of the Development and Planning Law, determining that the word 'shall' did not impose any mandatory obligation to schedule the hearing within the six month time period specified in section 48(1) of the Development and Planning Law (2011 Revision)**

10. When in the first paragraph of the 24<sup>th</sup> April 2014 decision, the First Respondent's delegate, on the authority of the First Respondent, failed to comply with section 48(1) of the Development and Planning Law (2011 Revision) and decided that, '*I must advise that it is just not possible for this Appeal to be heard within the 6 month time period*'. '*Due to circumstances beyond my control we are not able to secure a Government Legal representative*,' the First Respondent misinterpreted the import of the word 'shall' in section 48(1) of the Development and Planning Law (2011 Revision), *inter alia*, determining that the word 'shall' did not impose a mandatory obligation to schedule the hearing of the Applicant's appeal.

11. By section 48(1) of the Development and Planning Law (2011 Revision), which section provides that, '*such appeal shall be heard by the Tribunal within six months of such appeal being lodged*', the First Respondent had a statutorily imposed mandatory obligation to schedule the Applicant's appeal with the said six month specified time period, which obligation persisted unabated from 9<sup>th</sup> November 2013, the date on which the Applicant lodged her Notice of Appeal, to the present.

C) **Error of Law - Further or in the Alternative, the First Respondent breached his statutory obligations pursuant to the Public Service Management Law and acted outside his vires by failing to comply with Section 48(1) of the Development and Planning Law (2011 Revision) and Rules 6(1) of the Development and Planning (Appeal) Rules**

12. When in the first paragraph of the 24<sup>th</sup> April 2014 decision, the First Respondent's delegatee on the authority of the First Respondent failed to comply with section 48(1) of the Development and Planning Law (2011 Revision) and decided that, '*I must advise that it is just not possible for this Appeal to be heard within the 6 month time period*'. In doing so, each of the First Respondent and the First Respondent' delegatee decided outside of the respective *vires* of each of them.

13. By section 5(2)(f) of the Public Service Management Law the *vires* of the First Respondent and the delegatee of the First Respondent was circumscribed in that each had an express statutory duty to obey the law, *inter alia* section 48(1) of the

Development and Planning Law (2011 Revision), the Bill of Rights and the common law. By failing to obey s.48(1) of the Development and Planning Law (2011 Revision) the First Respondent and the delegatee of the First Respondent acted outside of their respective *vires*.

14. By sections 4(b) and 56 of the Public Service Management Law (2013 Revision) the *vires* of the First Respondent was also circumscribed in that by that provision the First Respondent had a statutory duty to uphold the proper administration of justice and the principles of natural justice, *inter alia*, in the context of the Applicant's access to, and participation in the Planning Appeals Tribunal process for purposes of the adjudication of her appeal, By failing to comply with s.48(1) of the Development and Planning Law (2011 Revision) the First Respondent and the delegatee of the First Respondent acted outside of their respective *vires* in that each of them undermined the proper administration of justice and the principles of natural justice in relation to the hearing of the Applicant's appeal to the Planning Appeals Tribunal.

D) Error of Law - Further or in the Alternative, the First Respondent's Decision breached the Appellant's rights pursuant to s.7(1) of the Bill of Rights by obviating the Appellant's right to have a fair hearing of her appeal before the Planning Appeals within a reasonable period of time, inter alia, denying the Applicant access to justice in the form of the statutory appeal to the Planning Appeals Tribunal and access to such right to judicial supervision of the decisions of the Central Planning Authority as is available by operation of section 48(4) of the Development and Planning Law (2011 Revision)

15. When in the first paragraph of the 24<sup>th</sup> April 2014 decision, the First Respondent's delegate, on the authority of the First Respondent, decided that, '*I must advise that it is just not possible for this Appeal to be heard within the 6 month time period*', this was procedurally unfair within the meaning of section 19(1) of the Bill of Rights and the effect of that decision was to obviate the Applicant's section 7(1) Bill of Rights right to a fair hearing of her appeal within a reasonable period of time by the Planning Appeals Tribunal, and to obviate the Applicant's access to justice in the context of the statutory appeal to the Planning Appeals Tribunal, and further to consequentially to obviate the appeal mechanism which operates in relation to section 48(4) Development and Planning Law appeals from the Planning Appeals Tribunal to the Grand Court. This was contrary to the fundamental right of judicial supervision at common law and the Applicant's rights pursuant to sections 1 and 7(1) and 19(1) of the Bill of Rights. The said interference with the Applicant's rights pursuant to sections 7(1) and 19(1) of the Bill of Rights was contrary to section 24 of the Bill of Rights.
16. By section 28 of the Bill of Rights, the Planning Appeals Tribunal was at all material times a statutory tribunal and a 'court' within the meaning of section 7 of the Bill of Rights, constituted to fairly and impartially adjudicate appeals from decisions of the Central Planning Authority within a reasonable period of time.

17. By section 48(1) of the Development and Planning Law the maximum permissible time for the hearing of the Applicant's appeal was six months from the date of the lodging of the Notice of Appeal and therefore the reasonable period of time for the hearing of the Applicant's appeal by the Planning Appeals Tribunal within the meaning of section 7(1) of the Bill of Rights cannot be more than the said six months set out in section 48(1) of the Development and Planning Law. A failure to comply with the mandatory obligation imposed by section 48(1) of the Development and Planning Law to provide for the hearing of the Applicant's appeal to the Planning Appeals Tribunal therefore threatened and breached the Applicant's rights pursuant to each of sections 7(1) and 19(1) of the Bill of Rights and thereby violated section 24 of the Bill of Rights.
18. By sections 48(1) and 48(4) of the Development and Planning Law (2011 Revision) the Cayman Islands legislature put in place a statutory appeal mechanism and a mechanism for judicial supervision of the decisions of the Central Planning Authority. By denying the Applicant her appeal to the Planning Appeals Tribunal the First Respondent has obviated the Applicant's right common law right to access to justice and also obviated the Applicant's right pursuant to section 7(1) of the Bill of Rights to have a fair hearing of her appeal and further indirectly obviated the Applicant's right to judicial supervision pursuant to section 48(4) of the Development and Planning Law (2011 Revision).
- E) **Error of Law** - Further or in the Alternative, the First Respondent's Decision breached alternatively failed to give adequate or any consideration to the Appellant's rights pursuant to article 6(1) of the European Convention on Human Rights by obviating the Appellant's right to have a fair hearing of her appeal before the Planning Appeals within a reasonable period of time, inter alia, denying the Applicant access to justice in the form of the statutory appeal to the Planning Appeals Tribunal and access to such right to judicial supervision of the decisions of the Central Planning Authority as is available by operation of section 48(4) of the Development and Planning Law (2011 Revision)
19. When in the first paragraph of the 24<sup>th</sup> April 2014 decision, the First Respondent's delegate, on the authority of the First Respondent, decided that, '*I must advise that it is just not possible for this Appeal to be heard within the 6 month time period*', the effect of that decision was to obviate the Applicant's rights pursuant to article 6(1) of the European Convention on Human Rights, inter alia, her right to a fair hearing of her appeal within a reasonable period of time by the Planning Appeals Tribunal, further to consequentially to obviate the appeal mechanism which operates in relation to section 48(4) Development and Planning Law appeals from the Planning Appeals Tribunal to the Grand Court. This was contrary to the fundamental right of judicial supervision at common law and the Applicant's rights pursuant to article 6(1) of the European Convention on Human Rights.
20. By article 6(1) of the European Convention on Human Rights it is provided that;  
*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be*

*pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

21. By the common law, the First Respondent was required to give effect to the Applicant's rights under article 6(1) of the European Convention on Human Rights, inter alia, her right of appeal to the Planning Appeals Tribunal. The First Respondent did not give adequate or any consideration to the judicial dictum in *R v Secretary of State for the Home Department, ex p Saleem* [2001] 1 WLR 443, 458 F-G

*"if the state establishes [a right of appeal] it must ensure that people within its jurisdiction enjoy the fundamental guarantees in art.6 [ECHR]"*

- F) **Procedural impropriety** - Further or in the Alternative, the First Respondent failed to give adequate or any consideration to Rule 7 of the Development and Planning (Appeal) Rules (1999 Revision)

22. When in the second line of the first paragraph of the 24<sup>th</sup> April 2014 decision, the Respondent decided that, *'Due to circumstances beyond my control we are not able to secure a Government Legal representative. I must further advise that although the law does state that the CPA "may" be represented by a lawyer, this is the chosen way forward for this PAT and the CPA to be represented by one'*, the First Respondent failed to give adequate or any consideration to Rule 7 of the Development and Planning (Appeal) Rules which expressly provides multiple options for the representation of the Central Planning Authority at appeals to the Planning Appeals Tribunal.
23. By Rule 7 of the Development and Planning (Appeal) Rules (1999 Revision), there was no requirement for the Central Planning Authority to be represented by a member of the government's Legal Department, it being expressly provided that it was permitted for the Central Planning Authority to be represented at appeals before the Planning Appeals Tribunal by the Director of Planning or any member of his staff, or by a private sector attorney-at-law or by the Attorney-General or any person holding public office in his chambers, and therefore at any time during the six month period provided for in s.48(1) of the Development and Planning Law the First Respondent could have, and still could, appoint a legal representative for the Central Planning Authority. The failure of the First Respondent to give due consideration to Rule 7 of the Development and Planning (Appeal) Rules (1999 Revision) was procedurally unfair within the meaning of section 19(1) of the Bill of Rights and further constituted a procedural impropriety within the meaning of the common law.

G) **Procedural impropriety - Further or in the Alternative, the First Respondent breached the Applicant's rights pursuant to section 19(1) of the Bill of Rights by failing to make a proportionate decision in respect of the Applicant's right to a fair hearing within a reasonable period of time pursuant to section 7(1) of the Bill of Rights and the Applicant's section 48(1) Development and Planning Law (2011 Revision) statutory right to have a hearing of her appeal within six months of the lodging of her Notice of Appeal**

24. When in the second line of the first paragraph of the 24<sup>th</sup> April 2014 decision, the Respondent decided that, *'Due to circumstances beyond my control we are not able to secure a Government Legal representative. I must further advise that although the law does state that the CPA "may" be represented by a lawyer, this is the chosen way forward for this PAT and the CPA to be represented by one'*, the First Respondent failed to make a proportionate decision within the meaning of section 19(1) of the Bill of Rights.

25. By s.19(1) of the Bill of Rights, the First Respondent was obliged to decide the date of the hearing of the Applicant's appeal in a manner that was proportionate, *inter alia*, in a manner that was in accordance with providing to the Applicant a full measure of her Constitutional and other legal rights. It was disproportionate for the First Respondent to base his decision on the schedules of personnel from the Legal Department when by so doing he violated the Applicant's Constitutional and common law rights.

26. By section 24 of the Bill of Rights it was unlawful for the First Respondent to give priority to his preference for only assigning counsel from within the Legal Department over his statutory obligation to schedule the hearing of the Applicant's appeal such that such appeal was adjudicated by the Planning Appeal Tribunal within a reasonable period of time within the meaning of section 7 of the Bill of Rights, and within the statutorily imposed requirement of hearing the Applicant's appeal within six months of said appeal being lodged.

H) **Procedural impropriety - Further or in the Alternative, the First Respondent failed to give due consideration and due priority to the Applicant's fundamental rights and failed to give effect to the fundamental principle of access to justice by deciding the scheduling of the Applicant's appeal on the basis of such administrative convenience as the First Respondent attached to the schedule of the Legal Department.**

27. When in the second line of the first paragraph of the 24<sup>th</sup> April 2014 decision, the Respondent decided that, *'Due to circumstances beyond my control we are not able to secure a Government Legal representative. I must further advise that although the law does state that the CPA "may" be represented by a lawyer, this is the chosen way forward for this PAT and the CPA to be represented by one'*, the First Respondent failed to give due consideration and due priority to the Applicant's fundamental rights and failed to give effect to the fundamental principle of access to justice by determining the scheduling of the Applicant's appeal on the basis of such administrative

convenience as the First Respondent attached to the schedule of the Legal Department..

28. By the common law, *inter alia*, Magna Carta, it was unlawful for the First Respondent to deny or delay the Applicant's access to justice in the form of the hearing of her appeal by the Planning Appeal Tribunal and it was unlawful for the First Respondent to base his decision not to schedule the hearing of the Applicant's appeal within the relevant statutory time period on the basis of the Legal Department's schedule. The First Respondent did not follow the dictum of Lawton LJ in *R v. Secretary of State for the Home Department, Ex parte Phansopkar* [1976] QB 606: '*Administrative convenience, however well intentioned it may have been, cannot be made a justification for depriving people of their rights or for delaying consideration of their claims to rights.*'

- 1) **Irrationality and Unreasonableness** - Further or in the further alternative, by reason of each and all of the matters aforesaid the Respondent's decision was procedurally unfair, alternatively in breach of the rules of natural justice, alternatively irrational, alternatively unreasonable.