

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 3 OF 2018

LEGAL AID NO. 0090 OF 2015

BETWEEN: CAROL BENNETT

PLAINTIFF

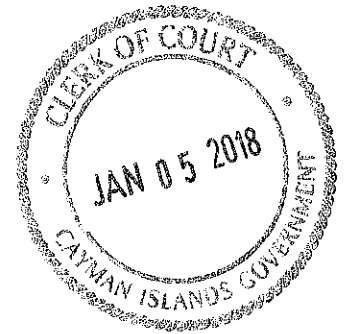
AND: THE HONOURABLE SPEAKER OF THE LEGISLATIVE ASSEMBLY

DEFENDANT



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 Plaintiff

CAROL BENNETT
c/o RWM Chambers
3rd Floor Amerigo House,
Elizabethan Square, George Town
Grand Cayman.

Judgment, order decision or
other proceeding in respect
of which relief is sought

Refusal of the Honourable Speaker of the
House of the Legislative Assembly of the
Cayman Islands to permit the Plaintiff to give
in evidence extracts of the official Hansard
Record or to refer to or use the same in Grand
Court proceedings *Cause 215 of 2015*. –
Carol Bennett v Henry Michael Diaz (the
“Grand Court Proceedings”)

Relief Sought

The Plaintiff seeks leave to apply for a Judicial Review of the decision of Honourable Speaker of the Legislative Assembly dated 16 October, 2017 (the “Decision”) and for the following orders and declarations:

1. Declarations that:-

- 1.1 By reason of the *Cayman Islands Constitution Order 2009 section 82 Part IV Schedule 2* (“Section 82 of the Constitution”):

- 1.1.1. *Section 26* of the *Legislative Assembly (Immunities, Powers and Privileges) Law (2015 Revision)* ("*Section 26*") is unconstitutional and of no effect; alternatively,
 - 1.1.2. *Section 26* is unconstitutional and of no effect insofar as the immunity therein set out purports to extend to *Section 11* of the *Legislative Assembly (Immunities, Powers and Privileges) Law (2015 Revision)* ("*Section 11*");
 - 1.1.3. *Section 11* is unconstitutional and of no effect; alternatively,
 - 1.1.4. *Section 11* is unconstitutional and of no effect insofar as the power therein set out purports to extend to the grant or withholding of permission to give in evidence the official Hansard Record.
2. Further or alternatively a Declaration that this Honourable Court has jurisdiction judicially to review a decision made purportedly pursuant to *Section 11*.

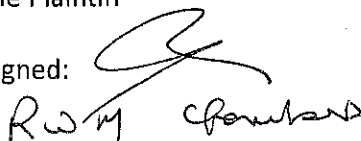
Further or alternatively:

3. An Order for Certiorari to quash the Decision of the Defendant refusing the Plaintiff permission to give in evidence the official Hansard Record;
4. An Order that the Defendant grant the said permission; alternatively,
5. An Order of Mandamus requiring the Defendant properly to consider the Plaintiff's application for the said permission; and
6. Such further and/or other relief as this Honourable Court shall think fit.

Name and address of Plaintiff's
Attorneys, or if no Attorneys
acting, the address for service of
the Plaintiff

Neil Timms Q.C. instructed by Rosie Whittaker-Myles
c/o 3rd Floor Amerigo House,
Elizabethan Square, George Town
Grand Cayman.

Signed:



RWM Chambers

Dated: 5 January, 2018

GROUNDS ON WHICH RELIEF IS SOUGHT

1. The Plaintiff reserves the right to add to and/or amend these grounds upon disclosure herein.
2. The official Hansard Record is published and available to the public.
3. The House of Commons of the United Kingdom and Mr. Speaker do not fetter or have the power to fetter use of the official Hansard Record in the Courts of the United Kingdom and the power purportedly asserted in *Section 11* exceeds that of the House of Commons.
4. The privilege and immunity from Court jurisdiction purportedly set out in *Section 26* exceeds those of the House of Commons or its members, which assert such immunity and privilege only in respect of "Proceedings in Parliament".
5. The Decision and the purported exercise of a discretion pursuant to *Section 11* is not a "Proceeding in Parliament".
6. *Section 82 of the Constitution* provides that no law determining or regulating the privileges, immunities or powers of the Legislative Assembly and its members may grant privileges, immunities or powers exceeding those of the House of Commons or its members. *Section 11* and *Section 26* are accordingly of no effect.
7. Alternatively, *Section 26* is of no effect insofar as it purports to prevent the Court from exercising jurisdiction in respect of *Section 11* and *Section 11* is of no effect insofar as it purports to assert a power in respect of the official Hansard Record.
8. Further or alternatively, the Defendant was not lawfully entitled to reach the Decision and, in so doing, erred in law and in fact and acted illegally and improperly. Further, the Decision was, in all the circumstances, unreasonable.
9. Errors of Law and Illegality
 - 9.1 The Defendant misunderstood his powers and wrongly construed *Section 11*.
 - 9.2 The Defendant wrongly applied a blanket policy to the Plaintiff's application without considering or taking into account, sufficiently or at all:

- 9.2.1. the relevant evidence affecting its rationale;
- 9.2.2. the overriding public and constitutional importance of the Court having access to the official Hansard Record for the purposes of giving effect to Legislative intent;
- 9.2.3. whether or not the said policy could be justifiably and appropriately applied in the circumstances;
- 9.2.4. the consequential denial of justice and the bringing of the Court process and the Legislative Assembly into disrepute.

9.3 The Defendant wrongly failed:

- 9.3.1. to understand and or to take into account that Court use of the official Hansard Record for the abovementioned purpose does not impeach or question Proceedings in Parliament;
- 9.3.2. to consider whether the power he purportedly exercised exceeded that of the House of Commons or its members;
- 9.3.3. to consider the practice and its rationale of the Courts and the House of Commons in the United Kingdom.

9.4 Further or alternatively, the said application of the policy was, in the circumstances, *ultra vires* the Defendant.

10. Errors of Fact

10.1. The Defendant wrongly:

- 10.1.1. found that the official Hansard Record had not historically been cited in Court and wrongly took that into account in the Decision;
- 10.1.2. failed to ascertain the factual position in the United Kingdom.

11. Unreasonability

- 11.1. The Decision and the assertion of a blanket policy were irrational and unreasonable.
- 11.2. The Defendant failed, adequately or at all, to take into account the balance of harm, the public interest, the impact of the decision on the Plaintiff's case and the consequential injustice to her and others that might flow from the Decision.
- 11.3. The Defendant's purported rationale for the Decision was mistaken in fact and in law and is unjustified. There is no rational or reasonable basis to apply the policy asserted in the Decision.