



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 No: 114

IN THE MATTER OF THE BERMUDA CONSTITUTION ORDER 1968 AND IN THE MATTER OF THE COMMISSIONS OF INQUIRY ACT 1935 (AS AMENDED)

(1) RAYMOND GERALD DAVIS (also known as KHALID WASI)

(2) LYNDIA SHARON SWAN

Plaintiffs

v

THE ATTORNEY GENERAL OF BERMUDA

Defendant

RULING

Date of Hearing:	Thursday 27 April 2026
Date of Judgment:	Tuesday 14 July 2026
Appearances:	The Plaintiffs appeared in person Ms. Lauren Sadler-Best for the Defendant

Ruling of Robinson AJ

Introduction

1. By Originating Summons filed on 12 May 2025 and issued on 22 May 2025, the Plaintiffs seek relief from the Court in respect of a number of issues concerning The Commission of Inquiry into Historic Land Losses in Bermuda ("the Commission") which was established by the Premier pursuant to the Commissions of Inquiry Act 1935 on 31 October 2019.
2. The Plaintiffs (who I will refer to individually as Mr Davis and Ms Swan) are descendants of Emelius Montaille Darrell ("E.M. Darrell") of Southampton Parish who it is said died intestate in 1947. The Plaintiffs are descendants of a daughter of E.M. Darrell.
3. At the heart of the Plaintiffs' claim is the assertion that certain issues concerning land that formed part of the estate of E.M. Darrell were wrongly excluded from consideration by the Commission. The Plaintiffs say that the lack of any right of appeal in respect of the Commission's report has resulted in a breach of their rights to a fair hearing under Section 6(8) of the Bermuda Constitution (which is set out at Schedule 2 to the Bermuda Constitution Order 1968).
4. For reasons that I will explain, and notwithstanding Mr Davis' arguments to the contrary, in my Judgement the Plaintiffs' claim as set out in the Originating Summons is without foundation.
5. I am grateful to the Plaintiffs and the Respondent for their oral and written submissions including the further written submissions provided after the conclusion of the hearing.

The Pleaded Claims

6. The Originating Summons sets out in three paragraphs somewhat overlapping claims.
7. In paragraph 1, the claim is that because there was no right of appeal from the Commission, that this was contrary to the section 6(8) right to a fair hearing provision of the Bermuda Constitution.
8. Paragraph 2 of the Originating Summons overlaps with paragraph 1. Paragraph 2 complains that because no injunction was granted by the Supreme Court in proceedings that I will refer to below as the "Judicial Review Proceedings", halting the Commission from continuing, that certain claims, which the Plaintiffs refer to as "Wrongly Excluded Claims", were not heard by the Commission. The complaint is again that because there is no right of appeal from the Commission and because there is no other adjudicating authority, there is now no way for the "Wrongly Excluded Claims" to be heard.

9. The relief sought in respect of paragraph 2 of the Originating Summons is somewhat confused. In the "Statement of Claim" document which accompanies the Originating Summons, the relief sought in respect of what is referred to as "Ground 2" is as follows:

"A Declaration that the Commission redact and remove from the Report and remove from the Commission's Facebook page the false and defamatory statements portraying Raymond Davis as attempting to represent Case No. 39 brought by Mrs Teart.

Damages, or such other remedy as the Court thinks fit, against the Commission for the above false and defamatory publications."

10. Thus, while paragraph 2 of the Originating Summons overlaps with paragraph 1, it seems that the Plaintiffs make a distinct claim to have certain parts of the Report of the Commission expunged on the grounds that they are false and defamatory.
11. Paragraph 3 of the Originating Summons asserts that the Commission applied wrongly what is referred to as the 'rule of primogeniture' and that such a rule is contrary to the law of succession of Bermuda and/or section 6(8) of the Constitution. This claim also overlaps with the other claims because it is clear that the Plaintiffs assert that the Commission accepted as within its terms of reference a claim made a descendant of the son of E.M. Darrell ("Case 39") but did not include the claim made by Mr Davis being a descendant of a daughter of E.M. Darrell ("Case 51").
12. I should note that when issued, the Originating Summons included as an "Interested Party" Judy Makeese Teart, a descendant of the son of E.M. Darrell. By Consent Order dated 21 July 2025, the name of Ms Teart was removed from the proceedings.
13. The Originating Summons then states that it seeks declaratory relief in respect of the three claims outlined above including a declaration that the "Wrongly Excluded Claims" should be "heard and determined" by the Supreme Court. It is suggested that the "Wrongly Excluded Claims" ought to be determined by the Supreme Court *de novo*.
14. The Originating Summons then seeks a further declaration from the Supreme Court that "... the Bermuda parliament be requested not to debate the Report of the Commission until there has been a fair and proper determination of the constitutional and other issues contained in this Summons".
15. As I have mentioned above, the Originating Summons is supplemented by a document entitled "Statement of Claim". This document confirms that the crux of the Plaintiffs' claim is that certain claims made to the Commission were "wrongly excluded". The defined term "Wrongly Excluded Claims" is used in the Originating Summons and in the Statement of Claim without it being made clear precisely what claims come within this defined term.

16. It appears that when referring to "Wrong Excluded Claims" the Plaintiffs are referring not only to "Case 51" but also to those claims which Mr Davis made (together with a co-Plaintiff, Myron Piper) in the Judicial Review Proceedings.
17. With regard to "Case 51", details of the issue with this case are set out in some detail in an Appendix to the "Statement of Claim". Without going into unnecessary detail of the Darrell family history and the issues of property ownership and transfer, the central thesis of the Plaintiffs is that had the Commission not excluded "Case 51" from consideration they would have realized that their conclusions on "Case 39" were incorrect. It is alleged that had a correct analysis of "Case 51" been conducted then it would have been clear to the Commission that all of the Darrell family (including the 9 daughters of E.M. Darrell and their descendants) had suffered loss and not just his only son, George, and his descendants. Hence the focus by the Plaintiffs on what they refer to as the rule of primogeniture.
18. The Plaintiffs also filed an Affidavit from Mr Davis sworn on 12 February 2026 and filed on 16 February 2026 which exhibited a comments section from the Royal Gazette website which is averred to be dated 11 February 2026. The Affidavit avers that "... a Commissioner publicised a comment against me that shows his bias.". It is further averred that "This public action of that Commissioner compromises the integrity of the current Affidavit of the Commissioner and raises questions about the integrity of the COI [i.e. the Commission] and whether they may have held biases in making their decisions".
19. The exchange of comments from the Royal Gazette attached in the exhibit to this Affidavit appears to publish an exchange of comments between Mr Davis (recorded by the name Khalid Wasi) and "Jon Starling" who I assume to be Mr Jonathan Starling who was a member of the Commission. The suggestion that Mr Starling swore any Affidavit evidence in the matter before me is quite wrong. I note that Mr Starling provided evidence to the Supreme Court in the Judicial Review Proceedings. This exchange of views on the Royal Gazette website (if indeed Mr Starling was the author) is in my view irrelevant to these proceedings. They long post-date the conclusion of the work of the Commission and do not on their face touch on any of the issues before the Court.

Statutory Background

20. Section 1 and 1A of the Commission of Inquiry Act 1935 ("1935 Act") provide (in part) as follows:

"1 (1) The Governor may, whenever he considers it advisable, issue a commission appointing one or more commissioners and authorizing them, or any quorum of them therein mentioned, to inquire into the conduct of any civil servant, the conduct or management of any department of the public service or into any matter in which an inquiry would in the opinion of the Governor be for the public welfare...

1A (1) The Premier shall, in addition to the Governor, have authority to issue commissions of inquiry under this Act."

(2) When the Premier acts under subsection (1), sections 1 to 6 and 11... shall be read with "Premier" in place of "Governor", and the rest of those provisions shall be construed accordingly.

21. Section 6 of the 1935 Act sets out the duties of Commissioners including the duty to report. This provides as follows:

"The commissioners shall, after taking the oath, make a full and faithful and impartial inquiry into the matter specified in their commission, and shall conduct such inquiry in accordance with the direction (if any) in the commission and shall, in due course, report to the Governor, in writing, the result of such inquiry; and the commissioners shall also, when required, furnish to the Governor a full statement of the proceedings of the commission, and of the reasons leading to the conclusion arrived at or reported."

22. Article 6(8) of the schedule to the Bermuda Constitution Order provides as follows:

"... (8) Any court of other adjudicating authority prescribed by law for the determination of the existent or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time."

The Commission

23. As noted above, the Commission was established by the Premier on 31 October 2019 and reported to the Premier on 31 July 2021. The Report of the Commission was submitted to the House of Assembly on 10 December 2021.

24. The Commission's Terms of Reference were as follows:

1. Inquire into historic losses of citizen's property in Bermuda through theft of property, dispossession of property, adverse possession claims and/or such other unlawful or irregular means by which land was lost in Bermuda;
2. Collect and collate any and all evidence and information available relating to the nature and extent of such historic losses of citizens' property;
3. Prepare a list of all land to which such historic losses relate;
4. Identify any persons, whether individuals or bodies corporate, responsible for such historic losses of citizens' property; and
5. To refer, as appropriate, matters to the Director of Public Prosecutions for such further action as may be determined necessary by that Office.

25. The following statements made in the Report of the Commission were drawn to my attention during the hearing (page 14 of the Commission's Report):

"... It is important at this point to emphasize that the COI was not a replacement for court. The COI could not, and did not, suggest that one party in a matter might have a good case against another party, primarily because the COI did not have the power of enforceability.

The conclusions of the COI cannot be appealed, but a Claimant can seek Judicial Review. The COI's conclusions and recommendations can be accepted or rejected by the Government."

The Judicial Review Proceedings

26. It is important and relevant background to the current application before the Court to record that Mr Davis (together with Mr Myron Piper) availed himself of this right of judicial review in respect of the Commission which resulted in a Judgment of Assistant Justice Hugh Southey KC dated 5 August 2022 ([2022] Bda LR 73.

27. This Judgment was then appealed by Mr Davis and Mr Piper and by the Commission to the Court of Appeal for Bermuda. One of the result of this litigation was that the Court of Appeal granted declarations to Mr Davis and Mr Piper to the following effect (see para 102 of the Judgment of Sir Christopher Clarke [2024] Bda LR 64:

"The Commission of Inquiry into Historic Losses in Bermuda unlawfully excluded Mr Davis' Bermuda Housing Corporation and Bank of Bermuda claims from the Terms of Reference in the Official Gazette dated 1 November 2019 by (a) requiring the loss of land to be the result of some "systemic" issue and (b) by excluding them as being "commercial disputes".

The exclusion was wrongful in relation to (a) because the Inquiry was not limited to considerations of systemic issues and in relation to (b) because the Commission failed to take into account all relevant considerations and wrongly, and without good reason, decided that there was no evidence of any irregularity, as explained in the Judgement of the Court of [Appeal]."

28. Justice of Appeal Smellie agreed with the judgment of Sir Christopher Clarke and added that:

"... while the Commission may now be regarded as *functus officio*, there is no reason why the Premier should not have regard to the declarations made by this Court and determine whether any, and if so, what investigation of Mr Davis' complaints should be undertaken. Any such investigation would of course, for the reasons explained by Kawaley JA, from his unique perspective of the local context and conditions, afford to those who may have been affected (or their descendants), an adequate opportunity to respond" [para 107].

29. Justice of Appeal Kawaley also agreed with the disposition of the appeals proposed by Sir Christopher Clarke and concluded his own concurring judgment with the following observations at para 127:

"It remains to consider the concerns expressed by Sir Anthony Smellie about what the practical result of this Court's declaratory relief should be. In an ideal world, the COI would be re-opened to hear these complaints. I do not consider it is necessary for this Court to commend to the Premier what his response to this Judgment should be. In my judgment, the declaratory relief it is proposed to grant, irrespective of what further investigations may take place, do serve an important function. They ought to have the effect of formally signifying that Mr Davis's complaints, supported by Mr Piper [the co-Plaintiff/Appellant], are both (a) worthy of being heard and (b) have been heard (without being substantively determined) by the Supreme Court and by this Court."

30. It is important to emphasize that while the decisions of the Supreme Court and the Court of Appeal in the Judicial Review proceedings concerned claims relating to the Bermuda Housing Corporation and the Bank of Bermuda, as part of these judicial review proceedings Mr Davis sought to raise what in the proceedings before me he referred to as the "Case 51". Both Assistant Justice Southey KC and the Court of Appeal refused to allow him to do so.

31. Assistant Justice Southey dealt with this issue at paragraph 106 of his Judgment ([2022] Bda LR 73):

"Mr Davis has raised issues in his skeleton argument that are not covered by the grant of leave. For example, he has argued that the Commission of Inquiry discriminated in its approach to its terms of reference. That is not covered by the grant of leave and there has been no application to amend the grant of leave. Similarly, orally Mr Davis sought to emphasise the approach to the Darrell family case. However, it appears to me that any specific issues arising from the Darrell family case cannot [be] before me. The Darrell family case was not raised by the Applicants until after the grant of leave (and in response to the Respondent evidence)."

32. Sir Christopher Clarke then said this at paragraphs 57-58 and footnote 10 of his Judgment:

"57. Case No 51, as set out in the Notice, is a complicated claim relating to the alleged loss of property by Emelius Darrell, Mr Davis' grandfather, through what is said to be a fraudulent claim of adverse possession. The COI entertained another case – Case No 39, based on the same Darrell property but with different information and evidence - brought by a great-niece of Emelius, who was a descendant of George Wellington Darrell, Emelius' son. Mr Davis says that the opportunity to join Case No 39 and his case was never formally presented to him.

58. We indicated to Mr Davis in the course of the hearing that we did not regard it as open to us to deal with this claim and we remain of that view. It had never formed part of the Form 86A by which the judicial review was initiated; no leave had ever been granted to apply for judicial review in relation to it; and no application had ever been made to amend that Form or the grant of leave [Footnote 10]. Nor had the judge addressed it since he took the view [106], which he was entitled to take, that any specific issues arising from the Darrell family case could not be before him. I would also accept, as did the judge [6] of the October 2022 Remedies Ruling), that it is necessary to be cautious to ensure that any order reflects only the illegality in relation to the two cases of Mr Davis the subject of the judicial review application and does not extend to the effect of any misinterpretation of the Terms on other cases, the full facts of which are not before us and in respect of which we have not heard submissions by the parties concerned.

Footnote 10

Mr Davis relies on the fact that Case No 51 was only dismissed by a letter dated 2 March 2021, over a month after Form 86A was filed; so that Case No 51 could not have been included in the Form 86A files over a month earlier. But that does not alter the fact that no leave to amend or to bring judicial review on the basis of Case 51 was ever sought or granted. On 2 March 2022 an addition was made to Mr Davis' skeleton submissions on the application for leave to issue judicial proceedings [ROA/12/83] but that said nothing about Case 51. Nor were we asked in November 2023 to allow the Notice of Appeal from the judgment of the Supreme Court of 5 August 2022 (for which we granted an extension of time) to include the contentions now sought to be made to Case 51. And I made it clear in my judgment of 22 February 2024 that the Notice of Appeal "should address only those matters for which leave to apply for judicial review was granted by the judge" [58]."

33. While it is not always clear from the pleadings in the case before me or from Mr Davis' submissions, it appears to me that when there is a reference to "Wrongly Excluded Claims", this is most often a reference not only to "Case 51" but also to the claims in relation to Bermuda Housing Corporation and Bank of Bermuda which were dealt with in the Judicial Review Proceedings.

Argument of the Plaintiffs

34. The principal argument of the Plaintiffs is that the lack of a right of appeal from the Commission is a breach of section 6(8) of the Bermuda Constitution. While they accept that there is an ability to apply for judicial review in respect of decisions of the Commission (a right which Mr Davis has availed himself of) they submit that this does not provide full scrutiny of the workings of the Commission.
35. The crux of the complaint by the Plaintiffs is that the Commission failed to consider not only the claims concerning the Bermuda Housing Corporation and the Bank of Bermuda but also "Case 51". It is argued that the claims which formed the basis of "Claim 51" as well as those which were dealt with in the Judicial

Review Proceedings have therefore not been heard and the lack of an appeal from the Commission means that they will not be heard and determined by an unbiased and fair court.

36. The Plaintiffs' second argument relates to the assertion that a request for injunctive relief in respect of the work of the Commission was filed with the Supreme Court on 15 March 2021 in the Judicial Review Proceedings but this application was not heard and determined. It is alleged by the Plaintiffs that this amounted to "negligent handling" of the Plaintiffs' application for injunctive relief by the Supreme Court. This argument on behalf of the Plaintiffs is closely aligned with the arguments summarized at paragraphs 34 and 35 above because it is said that this alleged "administrative failure" by the Supreme Court resulted in a breach of section 6(8) of the Bermuda Constitution because it denied the Plaintiffs their constitutional right to a fair hearing.
37. With regard to the rejection of "Case 51", it is further alleged that the Commission applied the 'rule of primogeniture' as a basis for deciding the matter and this is said to be the third ground for seeking relief. It is again argued that the application of the 'rule of primogeniture' was a breach of section 6(8) of the Bermuda Constitution
38. A subsidiary complaint is that as part of the Commission proceedings, statements were made which Mr Davis considers were false and defamatory of him which he has been unable to challenge. The complaint is made by Mr Davis that it was suggested that he had sought to represent before the Commission other cases that of his own family (namely those of Monroe Darrell and Halle Teart) when this was not the case.
39. In support of their primary argument that the lack of an appeal from the findings of the Commission is a breach of section 6(8) of the Constitution, the Plaintiffs rely upon a number of authorities. These are: *Tsfayo v. United Kingdom* (2009) 48 EHRR 18; *County Properties Ltd v. Scottish Ministers* [2000] 5 LRC 709; *Preiss v. General Dental Council* [2001] 1 W.L.R. 1926; and *Fay and Payne v. The Governor and The Bermuda Dental Board* [2006] Bda LR 65.

Argument of the Respondent

40. The Respondent submits that the Plaintiffs' claims are without foundation and goes further to submit that these proceedings are an abuse of process.
41. On the key issue of whether the lack of a right of appeal from the Commission is a breach of section 6(8) of the Constitution, the Respondent submits that this argument is misconceived because the Commission was not an "adjudicating authority" in that it does not determine the civil rights or obligations.
42. Ms Sadler-Best submitted succinctly in her written submissions that while Commissions of Inquiry "... will often involve issues which may require consideration in other proceedings or which will overlap with civil or criminal liability, commissions of inquiry under the 1935 Act are not empowered to determine issues of civil or criminal liability".

43. The Respondent relies heavily on the Supreme Court of Canada decision in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System* [1997] 3 SCR 440.

44. At paragraph 34 of the judgment of the Supreme Court of Canada (delivered by Cory J.) commenting on Canadian inquiries established pursuant to the Canadian Inquiries Act 1985, Cory J. said this:

"A commission of inquiry is neither a criminal trial nor a civil action for the determination of liability. It cannot establish either criminal culpability or civil responsibility for damages. Rather, an inquiry is an investigation into an issue, even a series of events. The findings of a commissioner relating to that investigation are simply findings of fact and statements of opinion reached by the commissioner at the end of the inquiry. They are unconnected to normal legal criteria. They are based upon and flow from a procedure which is not bound by evidentiary or procedural rules of the courtroom. There are no legal consequences attached to the determinations of a commissioner. They are not enforceable and do not bind courts considering the same subject matter... although the findings of a commissioner may affect public opinion, they cannot have either penal or civil consequences. To put it another way, even if a commissioner's findings could possibly be seen as determinations of responsibility by members of the public, they are not and cannot be findings of civil or criminal responsibility."

45. Further, at paragraph 53 Cory J. said this:

"A public inquiry was never intended to be used as a means of finding criminal or civil liability. No matter how carefully the inquiry hearings are conducted they cannot provide the evidentiary or procedural safeguards which prevail at trial. Indeed, the very relaxation of the evidentiary rules, which is so common to inquiries makes it readily apparent that findings of criminal or civil liability not only should not be made, they cannot be made."

46. Ms Sadler-Best also referred me to similar dicta in the Supreme Court of Ireland in *Re Bovale Developments; DCE v. Bailey & Another* [2011] IESC 24 in which Mr Justice Hardiman said this of a Tribunal of Inquiry under Irish law at paras 78-79:

"... a tribunal operates *"in vacuo"* that it is "sterile in legal effect" and that its report is simply an opinion that is "devoid of legal consequences". If the report could be used, on a *prima facie* basis or otherwise, as a weapon or a shield in the hands of a litigant it would manifestly not be "devoid of legal consequences" or "sterile in effect".

Whether a body which is so "sterile" is worth having in the first place is a question for the judgment of those who establish tribunals, and not for the Court. But once established it is established with those qualities, and not otherwise."

47. Ms Sadler-Best submits that the case law to which she has referred me from other jurisdictions is entirely dispositive of the Plaintiffs' challenge in its entirety. She also submits that the unavailability of appeal is a key feature of an inquiry under the 1935 Act and points to Jason Beer KC's textbook on Public Inquiries at 11-03. Mr Beer noted that The Royal Commission on Tribunals of Inquiry (the "Salmon Commission") rejected proposal to introduce a right of appeal because:

- (1) Effective challenge would be impossible without a complete rehearing;
and
- (2) Finality was vital. The continued possibility of litigation would be paralysing.

48. With regard to the Plaintiffs' second ground of challenge, the Respondent submits that the Attorney General does not and cannot respond to what appears to be complaints about the conduct of the judiciary.

49. Ms Sadler-Best submits that the complaints about the judiciary appear to be unrelated to the relief sought by the Plaintiffs under this ground which related to allegedly defamatory statements made in respect of Mr Davis in the Report of Commission.

50. The Respondent submits that this is an abuse of process for a number of reasons. Firstly, it is argued that the Plaintiffs seek to conflate a civil claim with a constitutional one. Secondly, that they seek to litigate a defamation claim against the Commissioners who are not parties to these proceedings. Thirdly, it is argued that the Commissioners in any event have immunity from such liability pursuant to sections 208 – 210 of the Criminal Code 1907.

51. In respect of the third ground of complaint, the Respondent submits that this amounts to the Plaintiffs seeking in essence to appeal against a finding of the Commission where no appeal exists. The Respondent submits that the Plaintiffs have no standing to challenge the basis upon which the Commission chose to discharge its functions and that the Supreme Court has no jurisdiction to hear such a claim.

52. It is submitted that the route to challenge decisions of the Commission concerning its work is that of judicial review of which Mr Davis has availed himself. It is submitted that the Judicial Review Proceedings were a challenge by Mr Davis (and his co-Plaintiff) to how the Commission were handling his claims but that he did not amend his Form 86A to include the claims relating to the estate of E.M. Darrell (i.e. "Case 51"). It is submitted that this part of the Plaintiffs' claim is misguided at best and at worst, an abuse of process.

53. It is submitted by the Respondent that the Plaintiffs are not entitled to the claimed or any relief.

Discussion

54. The key issue in this case is whether the lack of a right of appeal from findings made by the Commission is a breach of section 6(8) of the Bermuda Constitution. This provides (as set out above):

"... (8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time."

55. I agree with the submissions of Ms Sadler-Best that the central thesis of the Plaintiffs that the lack of a right of appeal from a Commission of Inquiry breaches this provision of the Constitution falls at the first hurdle because a Commission of Inquiry set up pursuant to the 1935 Act is not and does not determine "... the existence of any civil right or obligation". It is not an "adjudicating authority" which determined the existence or extent of any civil right of either of the Plaintiffs.
56. It is clear from the wording of section 1(1) and section 6 of the 1935 Act that what a Commission of Inquiry is tasked as a matter of statute to do is to inquire into the subject matter assigned to the Commission and to report the result of that inquiry. It may well make findings of fact in conducting the inquiry within its terms of reference but those findings of fact are not binding either on any court or indeed the legislature.
57. I have derived some assistance from the decisions of the Supreme Court of Canada and the Supreme Court of Ireland referred to above. Of course, it is the case that in each jurisdiction specific statutory provisions differ but these decisions are helpful analysis from common law jurisdictions where commissions or tribunals which are broadly comparable to Commissions of Inquiry established pursuant to the 1935 Act exist as part of the legal landscape.
58. Most important, however, is the wording of the 1935 Act itself from which it is clear in my view that a Commission established pursuant to the 1935 Act is not making findings of fact that are binding in any legal sense let alone determinations of rights or obligations. As Cory J. said in the Supreme Court of Canada "they are unconnected to normal legal criteria". It is true that upon receipt by the legislature of a report from a commission established pursuant to the 1935 Act, the legislature may act upon the conclusions arrived at (i.e. the "result of such inquiry" to quote section 6 of the 1935 Act). It is also true that if this were to occur, such legislation could impact directly the civil rights and obligations of those subject to that legislation. However, that is an issue for the democratic political process and does not mean that section 6(8) of the Bermuda Constitution is engaged because this is a possible political outcome. It is not so engaged.
59. It is neither necessary nor appropriate for me to say anything about whether I accept or reject the Plaintiffs' criticisms of the Commission or any particular

aspect of its process. This is not a judicial review proceeding in which the Court is tasked with examining the process of decision making of the Commission. I therefore do not consider that it is necessary or appropriate for me to consider the detailed arguments of the Plaintiffs with regard to "Case 51" or the more widely articulated "Wrongly Excluded Claims". It would not be appropriate in my view to say anything about whether or not the Commission was right or wrong in any of its decision making.

60. The Court of Appeal in the Judicial Review Proceedings has in any event already made the findings that it has with regard to Mr Davis' claim with regard to the Bermuda Housing Corporation and the Bank of Bermuda. With regard to "Case 51" there is considerable force in the Respondent's position that the complaint about the Commission's exclusion of this issue could and should have been dealt with by way of judicial review in a timely fashion. I have outlined above the basis upon which the Supreme Court and Court of Appeal in the Judicial Review Proceedings refused to deal with "Case 51" and it is not in my view either appropriate or possible for me some four years later to, in effect, sit as a further court of appeal. There is no breach of section 6(8) of the Bermuda Constitution either in the terms of the 1935 Act not providing for an appeal from the Commission or in the scope and nature of judicial review proceedings that are possible with regard to the workings of a commission established pursuant to the 1935 Act.

61. I would also note that I did not find any of the authorities referred to by the Plaintiffs to be of assistance on the central point raised in these proceedings.

62. In *Tsfayo v. United Kingdom* [2004] 39 EHRR SE22 the applicant complained to the European Court of Human Rights about the lack of independence and impartiality of the Housing Benefit Review Board. The applicant complained that Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention"). The United Kingdom government accepted that the applicant's civil rights were in issue in the proceedings but argued that the combination of the procedure before the Housing Benefit Review Board and the availability of judicial review satisfied the requirements of Article 6(1). The European Court of Human Rights held that the application was not manifestly ill-founded within the meaning of Article 35(3) of the European Convention. The European Court of Human Rights in the substantive decision on the case later upheld the applicant's claim that there had been a breach of Article 6(1) because the Housing Benefit Review Board suffered from a fundamental lack of objective impartiality and the availability of judicial review was insufficient to cure this because the judicial review court could not re-hear evidence or substitute its own views as the applicant's credibility. There was thus never the possibility that this central issue would be determined by a tribunal that was independent of one of the parties to the dispute. (See (2009) 48 EHRR 18 at para 48).

63. I do not find this authority of assistance. It deals with the impact of the availability of judicial review proceedings in the context of a tribunal system (the Housing Benefit Review Board) which was (and was admitted by the United Kingdom government to be) determining civil rights. Thus Article 6(1) of the European

Convention on Human Rights was engaged. It is of no assistance in determining the fundamental question in these proceedings as to whether section 6(8) of the Bermuda Constitution is engaged by a commission set up pursuant to the 1935 Act.

64. The Plaintiffs also rely on *County Properties Ltd v. Scottish Ministers* [2005] 5 LRC 709 and referred me to the decision of the Court of Session (Outer House) given by Lord Macfadyen dated 25 July 2000. I note that this decision was referred to and quoted from by Kawaley J. (as he then was) in *Fay and Payne v. The Governor and the Bermuda Dental Board* [2006] Bda L.R. 65 at paragraphs 37-38. The Plaintiffs did not refer me to the successful appeal from that decision to the Court of Session (Outer House). That planning case concerned in part whether a right of appeal to the Scottish Court of Session satisfied the requirements of Article 6(1) of the European Convention. Lord Macfadyen answered that question in the negative. It is unnecessary to go into the detail of that interesting case because the decision of Lord Macfadyen was appealed and that appeal was allowed by the Court of Session (Inner House, Extra Division) reported at [2002] S.C. 79. The Court of Session (Inner House, Extra Division) held that there was no inevitable incompatibility with article 6(1) of the European Convention as the powers of the court to deal with genuinely justiciable issues arising in the administrative procedures of the planning system were sufficient to ensure compatibility.
65. I agree with Ms Sadler-Best's submissions that this was manifestly a case in which the relevant party's rights were being affected and for that reason I do not find it of assistance. It is also the case that the decision of the Court of Session (Inner House) rather undermines the reason for the Plaintiffs' reliance on the first instance decision of the Court of Session (Outer House). As I understand that argument, it was that judicial review as opposed to a right of appeal was insufficient to safeguard the section 6(8) right but for the reasons I have explained, I accept the Respondent's argument that section 6(8) is not engaged.
66. The Plaintiffs also rely on *Preiss v. General Dental Council* [2001] 1 WLR 1926 in which the Privy Council held that a right of appeal to the Privy Council pursuant to section 29 of the Dentists Act 1984, being by way of a complete rehearing, secured compliance with section 6(1) of the European Convention. Again, I do not find this authority of assistance and agree with the Respondent that this is a case in which rights were clearly being determined by the disciplinary proceedings that were under consideration by the Privy Council. I similarly do not find *Fay and Payne v. The Governor and The Bermuda Dental Board* [2006] Bda L.R. 65 of assistance again because in that case Kawaley J. (as he then was) was clearly dealing with, and accepted that he was dealing with, the determination of the civil rights of dental practitioners who were subject to a statutory disciplinary procedure.
67. As I have indicated above, there is considerable overlap in the Plaintiffs' second ground of complaint with the first. Apart from the argument that section 6(8) is engaged (which I have found it is not) the other issues under this ground are that the Supreme Court was wrong or "negligent" in not dealing with an injunction

application made in 2021 in the course of the Judicial Review Proceedings and that the Commission proceedings resulted in defamation of Mr Davis.

68. Dealing with the first issue, it does not appear to me that I can decide this issue in light of the way in which the Plaintiffs have pleaded the claim and the evidence filed in support of it. I have submissions from the Plaintiff that an application for an injunction was filed with the Supreme Court but not heard or determined. I do not have any Affidavit evidence from the Plaintiffs to back up these submissions and I agree with Ms. Sadler-Best that the Attorney General cannot be expected to defend the intimated claim. I am also of the view that any complaint in respect of the conduct of this application by the Supreme Court is properly a matter for appeal and not a matter that is properly before me. There is in my view in any event no relevant constitutional aspect to this part of the claim. There is a clear statutory mechanism to complain about the decision making (or lack thereof) of the Supreme Court - that is the Court of Appeal.
69. With regard to the claim for defamation against the Commission, in my view this again is not a claim that can be advanced against the Attorney General. There is considerable force in Ms Sadler-Best's argument that such a claim would be hopeless in any event.
70. On Ground 3, this has in a superficially attractive way been described by the Plaintiffs as the use of the "... outdated law of primogeniture". However, when properly analysed, this ground of complaint is in my view simply another way of attempting to mount a collateral attack on the report of the Commission.
71. The crux of this complaint appears to me to be that the Commission on one view accepted as within its terms of reference a claim by a male line descendant of E.M. Darrell while not accepting as within its terms of reference a claim by a female line descendant (Mr Davis). I make no comment on whether in my view the Commission did anything based upon primogeniture. There was no evidence before me that "primogeniture" had any bearing on the decision of the Commission. That is, in any event, not the point.
72. The essential point is that having found that there was nothing unconstitutional about the lack of a right of appeal against the report of the Commission, it is not then open to this court, in effect, to sit as a court of appeal. This is what the Plaintiffs would have me do and I declined to do so since it would be a serious trespass upon and incursion into the function of a Commission appointed pursuant to the 1935 Act. The Plaintiffs' claim on this ground is that the Commission determined succession rights. In my view the Commission did not do so because the Commission did not determine the rights of anyone.

Conclusion

73. For the reasons given above, the finding that I have made is that there is no breach of section 6(8) of the Bermuda Constitution by the 1935 Act not making provision for a right of appeal. The other aspects of the claim as outlined above are untenable for the reasons I have explained.
74. The claim for relief in the Originating Summons is dismissed in its entirety. I will hear the parties on the issue of costs.

Dated this 14th day of July 2026



MR KEITH ROBINSON
ASSISTANT JUSTICE OF THE SUPREME COURT