



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

No. 219 of 2025

IN THE MATTER OF SECTION 51(3) OF THE SUPREME COURT ACT 1905 AND  
THE POLICE (CONDUCT) ORDERS 2016

AND IN THE MATTER OF LYNDESEY DEMESTRE KC AND JOHN BEGGS KC

## REASONS FOR REFUSAL

**Date of Hearings:**

Tuesday 2 September 2025

**Date of Decision:**

Tuesday 2 September 2025

**Date of Reasons:**

Monday 29 December 2025

**Applicant:**

Mr. Brian Myrie (Attorney General's Chambers)

**Objector:**

Mr. Ryan Hawthorne (Trott & Duncan Limited)

*Special Admission to the Bar – Availability of suitable local Counsel - Section 51(3) of the Supreme Court Act 1905 –Special Practising Certificates under section 12 of the Bermuda Bar Act 1974- Opposed application to admit Counsel resident in the United Kingdom to practice as a Barrister in a Misconduct Proceeding convened in accordance with the Police (Conduct) Orders 2016*

## **Introduction**

1. By way of Notice of Motion an application (the “application”/ the “applications”) for an Order for (i) Lyndsey Claire de Mestre KC and (ii) John Peter Beggs KC to be admitted to practice as a barrister was brought before this Court under section 51(3) of the Supreme Court Act 1905 (the “Supreme Court Act”). The matter in question refers to tribunal disciplinary proceedings brought against a police officer pursuant to the Police (Conduct) Orders 2016 (the “Police Conduct Orders”) (the “Misconduct Hearing” / the “Misconduct Proceedings”). Prior to the filing of the Notice of Motion, Ms. de Mestre KC was appointed by the Police Commissioner as Chairperson of the “Misconduct Proceedings”. Mr. Beggs KC was retained as the Police Commissioner’s legal consultant for the purposes of the Misconduct Proceedings.
2. The Notice of Motion was supported by the written evidence of Crown Counsel, Mr. Eugene Johnston. Under a cover letter addressed to the Acting Registrar, that evidence was filed together with the Notice of Motion on Thursday 28 August 2025. That was one clear business day (Monday 1 September being a public holiday) prior to the commencement date of the Misconduct Hearing which was fixed to proceed on Tuesday 2 September with a view to completion by Friday 5 September 2025. On account of the tardiness of the application, Mr. Johnston requested for the application to be decided on the papers without the need for an in-person Court appearance. I declined to accede to that request.
3. Also, by letter dated 28 August 2025, Mr. Johnston wrote to the Bermuda Bar Council (the “Bar Council”) on behalf of the Police Commissioner seeking the grant of special practicing certificates under section 12 of the Bermuda Bar Act 1974 (the “Bar Act”).
4. As explained by Mr. Johnston in the same 28 August 2025 letter to the Bar Council, the subject of the Misconduct Hearing was a police sergeant (the “PS”) against whom allegations of sexual assault were made. Jerome Lynch KC of Bermuda law firm Trott & Duncan Limited (“T&D”) was retained to defend the PS.
5. By letter of 29 August 2025 to the Bar Council, Mr. Ryan Hawthorne of T&D objected to the Police Commissioner’s application to the Bar Council for the issuance of special practicing certificates for Ms. De Mestre KC and Mr. Beggs KC. Responsive correspondence was sent to the Bar Council by letter dated 29 August 2025 from Superintendent James A. Howard which was followed by a further letter of objection from Mr. Hawthorne dated 31 August 2025.
6. Pursuant to the filing of a Form 31U (Urgent Request for a Listing) on Tuesday 2 September 2025, the applications were listed for hearing before me on the same day, coinciding with the start date of the Misconduct Hearing. Also on that same day, the Attorney General’s Chambers

filed further affidavit evidence in support of the Notice of Motion. That evidence was sworn by the Deputy Solicitor General, Mr. Brian Myrie.

7. At the 2 September 2025 hearing Mr. Myrie argued the applications and Mr. Hawthorne appeared so to be heard in opposition. At the close of the hearing, I refused the applications and informed the parties that I would later provide written reasons for having done so.
8. These are my reasons for having refused the applications for admission to practice pursuant to section 51(3) of the Supreme Court Act.

## **The Relevant Statutory Framework**

### **The Court's Power to Admit Qualified Persons to Practise as a Barrister and Attorney**

9. Section 51(3) of the Supreme Court Act 1905 (the “Supreme Court Act”) confers a power on the Court to ultimately decide whether a person is suitably qualified and whether that person will be admitted and enroled to practice as a barrister and attorney.
10. Section 51(3) provides:

#### ***Admission of barristers and attorneys***

51           (1) *In this section, “qualified person” means a person who—*

*(a) has passed the final examinations required for a person to qualify to*

*(i) practise as a barrister or solicitor in England; and*

*(ii) has completed a period of practical training of not less than 12 months; and for that purpose “practical training” means training in England or in Bermuda, or partly in England and partly in Bermuda, but so that—*

*(aa) as respects training in England, the training shall be training approved by the Chief Justice as being satisfactory training under the supervision of a barrister or solicitor of not less than 5 years standing; and*

*(bb) as respects training in Bermuda, the training shall be training consisting of training in the course of lawful pupillage; or*

*(b) satisfies the court that he is entitled to practise in any court in any of Her Majesty's dominions and is in possession of a qualification comparable as to standard, law, practice and procedure with those specified in paragraph (a) and has had practical experience comparable to that specified in that paragraph.*

*(2) Subject to the provisions of this section, the court shall have power to admit and enrol to practise as a barrister and attorney in the courts of Bermuda any qualified person who has resided in Bermuda for a total period of not less than one year during the period of fifteen years immediately preceding his application for admission:*

*Provided that the residential qualification imposed by this subsection shall not apply to a person who possesses Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956 [title 5 item 16].*

*(3) The Court shall have power to admit and enrol any qualified person to practise as a barrister and attorney in the courts of Bermuda in any particular case or series of cases which, in the opinion of the court, involve questions of law or practice of considerable difficulty or public importance.*

*(4) Notwithstanding the provisions of this section, the court may, for good cause, refuse to admit any person as a barrister and attorney.*

*(5) For the avoidance of doubt, nothing in this section shall be construed so as to abridge or derogate from the provisions of the Bermuda Immigration and Protection Act 1956...*

11. Section 51(2) applies to admissions which allow for the issuance of a general practising certificate under section 10 of the Bar Act. This is distinct from section 51(3) which refers to admissions to the Bar to which a special practising certificate relates. Special practising certificates apply to overseas Counsel who are admitted to practice law in the Court for a particular case or for a series of cases which, in the Court's opinion, involve questions of law or practice of considerable difficulty or public importance. (Further below, I address the role of the Bar Council and its power to issue special practising certificates in circumstances where the Court has sanctioned admission and enrolment under section 51(3).)

12. Also of note, section 51(4) broadens the Court’s discretionary powers by inserting a catch-all ‘good cause’ test. This allows the Court to refuse to admit any person where it is reasonably determined that there is ‘good cause’ for the refusal.

### **The Role of the Bar Council**

13. The general responsibilities of the Bar Council are outlined under section 4 of the Bar Act. Under section 4(d) the Bar Council is responsible for supporting the right of representation by members of the Bar before the Courts and Tribunals.
14. Section 4(h) makes the Bar Council responsible for, *inter alia*, the issuance of practising certificates. It warrants emphasis that the proper issuance of a practising certificate is not possible until after the Court has exercised its discretionary powers under section 51(3) or section 53 (*Entitlement of Law Officers, ex officio, to admission as barristers and attorneys*) of the Supreme Court Act.
15. Part III of the Bar Act governs the Bar Council’s issuance of practising certificates. Section 10(3) contains various checklist conditions which would entitle a barrister to issuance of a practising certificate. The first stated condition at section 10(3)(a) provides:

*“A barrister shall be entitled to a practising certificate if— he is admitted in accordance with section 51 of the Supreme Court Act 1905 and has not been suspended under section 57 of that Act or section 22 of this Act or his name has not been removed from or struck off the Roll”*

16. The Bar Act, however, creates two distinct categories of practising certificates, namely a “practising certificate” and a “special practising certificate”. These terms are defined under the Interpretation section of the Bar Act as follows:

*“practising certificate” means a certificate issued by the Council under section 10 or 10A, and “valid practising certificate” means a practising certificate which is in force;*

*“special practising certificate” means a certificate issued by the Council under section 12, and “valid special practising certificate” means a special practising certificate which is in force;*

17. Section 12 of the Bar Act provides:

#### ***Special practising certificates***

12           (1) Notwithstanding section 10, the Council on application in writing by a barrister specially admitted in such form as the Council may determine and on payment of such fee as

*may be prescribed by rules, shall issue to the applicant a special practising certificate for the particular case or series of cases in respect of which the applicant is specially admitted if the Council is satisfied—*

- (a) upon a certificate accompanying the application, issued within the preceding ninety days of the application by the relevant authority in the jurisdiction of legal practice of the barrister, attesting in all material respects to the matters referred to in section 10E; and*
- (b) that the barrister possesses a current and valid permit issued under the Bermuda Immigration and Protection Act 1956 entitling him to engage in gainful occupation in Bermuda as a barrister. The Council may issue a special practising certificate subject to the limitations referred to in section 10CA. A special practising certificate issued under subsection (1) shall be in such form as the Council may from time to time determine*

18. Section 10E is the provision by which the Bar Council is to be guided in issuing Fit and Proper Person Certificates (“FPP Certificates”). Effective as at 31 January 2019, section 10E provides:

***“Fit and proper persons***

*10E (1) Every Barrister and registered associate, and every shareholder, controller, director and senior executive who exercises control of a professional company, must be a fit and proper person to engage in the practice of law.*

*(2) On an application to the Council for a fit and proper person certificate by a person who wishes to engage in the practice of law, the Council shall determine whether that person is a fit and proper person, and in making that determination, the Council shall act fairly and in good faith in respect of each person.*

*(3) In determining whether a person is a fit and proper person, the Council shall, with a view to protecting the interests of clients, potential clients and the public, and in the interest of protecting the integrity of the profession as a whole, shall have regard to the matters set out in subsections (4), (5) and (6).*

*(4) The Council shall consider the previous conduct and activities in business or financial matters of the person, and shall have regard in particular to—*

*(a) evidence that the person has been convicted by a court of a criminal offence—*

*(i) for which the person received a custodial or suspended sentence;*

*(ii) involving dishonesty, fraud, perjury or bribery;*

- (iii) *associated with obstructing the course of justice; associated with money-laundering or terrorism;*
- (b) *evidence that the person has been convicted by a court of more than one criminal offence;*
- (c) *material evidence that the person has been responsible for behaviour which—*
  - (i) *is dishonest or violent;*
  - (ii) *involves a misuse of any position to obtain a pecuniary advantage;*
  - (iii) *involves a misuse of any position of trust;*
  - (iv) *demonstrates that the person cannot be relied upon to discharge his financial duties as a barrister;*
- (d) *the regulatory history of the person, in particular whether the person—*
  - (i) *has been made the subject of a serious disciplinary finding, sanction or action by any regulatory body, court or other body hearing appeals in relation to disciplinary or regulatory findings;*
  - (ii) *has failed to disclose information to a regulatory body when required to do so, or has provided false or misleading information;*
  - (iii) *has significantly breached the requirements of a regulatory body;*
  - (iv) *has been refused registration by a regulatory body;*
  - (v) *has failed to comply with reasonable requests of a regulatory body;*

*(vi) has, within the preceding five years, been rebuked, reprimanded or received a warning about his conduct by a regulatory body; and*

*(e) matters relating to the operation of companies, trusts, and legal arrangements, in particular whether the person—*

*(i) has been removed or disqualified as a company director or trustee;*

*(ii) is or was a shareholder, controller, director or senior executive of a body corporate which has been the subject of a winding up order or receivership order, or has otherwise been wound up or put into receivership or administration in circumstances of default on any debt or insolvency.*

*(5) A person shall disclose if he has received a police caution for any of the matters referred to in subsection (4) and, to the extent such caution amounts to an admission of guilt, the Council shall consider the caution in like manner as a conviction for the purposes of that subsection.*

*(6) Notwithstanding that the Council shall have regard to the evidence and matters set out in subsections (4) and (5), it shall also have regard to any relevant exceptional circumstances when making a determination under this section.*

*(7) For the purposes of making its determinations, the Council shall be empowered to commission the production of research and reports from any third party appearing to the Council to be properly qualified to do so, and to rely upon such research and reports for the purpose of issuing a fit and proper person certificate.*

*(8) The Council may make a determination upon an application for enrolment being made under section 52 of the Supreme Court Act 1905, or upon the application of any person who proposes the candidacy of any such applicant for enrolment at the Supreme Court.*

*(9) The Council shall make its determination within a period of not more than thirty days from the date of an application made by the person under this section.*

*(10) Where it has determined that a person is a fit and proper person to engage in the practice of law, the Council shall not more than five days thereafter issue to the person a fit and proper person certificate in such form as it shall determine.*



*(11) For the avoidance of doubt, in making a determination under this section the Council shall not have regard to any criminal conviction that has been spent in accordance with the Rehabilitation of Offenders Act 1977.”*

19. In the Schedule of the Bermuda Bar (Practising Certificate) Rules 1984, Form 1 sets out the format for an application for a practising certificate. Item 9 on Form 1 requires the applicant to declare, *inter alia*, as follows:

*“9. I was issued with a fit and proper person certificate by the Bar Council within the period of 90 days immediately preceding the date of this application.”*

**The Bermuda Immigration and Protection Act 1956 (the “Immigration and Protection Act”)**

20. Section 60(1) provides:

*“General principle regarding regulation of engagement in gainful occupation*

*60 (1) Without prejudice to anything in sections 61 to 68, no person—*

- (a) other than a person who for the time being possesses Bermudian status; or*
- (b) other than a person who for the time being is a special category person; or*
- (c) other than a person who for the time being has spouse’s employment rights; or*
- (cc) other than a permanent resident; or*
- (d) other than a person in respect of whom the requirements of subsection (6) are satisfied,*

*shall, while in Bermuda, engage in any gainful occupation without the specific permission (with or without the imposition of conditions or limitations) by or on behalf of the Minister.”*

21. Section 61 applies applications to the Minister for the grant of permission under section 60. In the context of an application for an overseas Counsel to be issued a work permit, section 61(4) requires the Minister to take particular account of, *inter alia*, the availability of the services provided by local Counsel and the protection of local interests. (See below underlined text).
22. Section 61(4) also requires the Minister to consult with the Bar Council. (See below underlined text).

23. Section 61(4)-(6) provides:

*(4) The Minister, in considering any application for the grant, extension or variation of permission to engage in gainful occupation, shall, subject to any general directions which the Cabinet may from time to time give in respect of the consideration of such applications, take particularly into account—*

*(a) the character of the applicant and, where relevant, of his or her spouse;*

*(b) the existing and likely economic situation of Bermuda;*

*(c) the availability of the services of persons already resident in Bermuda and local companies;*

*(d) the desirability of giving preference to the spouses of persons possessing Bermudian status;*

*(e) the protection of local interests; and*

*(f) generally, the requirements of the community as a whole,*

*and the Minister shall, in respect of any such application, consult with such public authorities as may, in the circumstances, be appropriate, and shall in particular, in the case of an application for permission to practise any profession in respect of which there is established any statutory body for regulating the matters dealt with by that profession, consult with that body.*

*(5) Any permission granted to a person by the Minister under section 60—*

*(a) may be limited in duration to a time specified in the permission; and*

*(b) may be granted subject to such conditions or limitations as the Minister thinks fit to impose and as are specified in the permission,*

*and any person who has been granted permission under section 60 shall not engage in any gainful occupation in such manner that there is a failure to comply with any such condition or limitation.*

*(6) The Minister may either withhold permission or grant permission subject to any duration, condition or limitation, without assigning any reason for that decision.*

## **The Police Conduct Orders**

24. In my previous Ruling on a judicial review application in *Commissioner of Police v Public Service Commission; Pereira (Interested Party)* [2021] Bda LR 11 I outlined the general structure of the Police Conduct Orders, much of which I now restate.
25. In exercise of the powers conferred on the Governor under section 32(1) of the Police Act 1974, on 29 November 2016 the Acting Governor provided the 2016 Orders. The general application of these Orders is stated under Order 5:

### ***“Application***

*5(1) These Orders apply where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct.*

*(2) Where an appropriate authority is considering more than one allegation in relation to the same police officer, the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Orders which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.”*

26. The Governor, the Police Commissioner and the Deputy Police Commissioner are each included in the statutory definition of “appropriate authority” under the Interpretation and Delegation section of the 2016 Orders. In this case the ‘appropriate authority’ is the Police Commissioner.
27. Order 7 of the Police Conduct Orders provides:

### ***Legal and other representation***

*7 (1) The police officer concerned has the right to be legally represented, by a barrister of the police officer’s choice, at a misconduct hearing or a special case hearing.*

*(2) If the police officer concerned chooses not to be legally represented at such a hearing, the police officer may be dismissed or receive any other outcome under order 34 or 54 without the police officer being so represented.*

*(3) Except in a case where the police officer concerned has the right to be legally represented and chooses to be so represented, the police officer may be represented at misconduct proceedings or a special case hearing or appeal proceedings only by a police friend.*

*(4) The appropriate authority may be represented at misconduct proceedings or a special case hearing or appeal proceedings—*

- (a) by a police officer or police staff member of the Service concerned; or*
- (b) at a misconduct hearing or a special case hearing only, by a barrister (whether or not the police officer concerned chooses to be legally represented).*

*(5) Subject to paragraph (6), the appropriate authority may appoint a person to advise the person or persons conducting the misconduct proceedings or special case hearing or appeal proceedings.*

*(6) At a misconduct meeting or at appeal proceedings arising from a misconduct meeting, the person appointed under paragraph (5) must not be a barrister.*

28. Order 11 requires the Police Commissioner to assess whether the conduct alleged against any police officer amounts to misconduct or gross misconduct, if proven. Where the Police Commissioner determines that such conduct would amount to gross misconduct, Order 11(4) requires the matter to be investigated. In cases where an investigation is required, the Police Commissioner is required under Order 12 to appoint a person to investigate the matter<sup>1</sup>. Order 10 permits the Police Commissioner to suspend a police officer from his office and from membership of the BPS with pay subject to the satisfaction of various conditions outlined under Order 10(4).
29. Under Order 17, an investigator must, upon completion of the investigation, provide a report of the investigation to the Police Commissioner. That report must indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer. It will then be for the Police Commissioner to determine whether or not the impugned police officer has a case to answer in respect of misconduct or gross misconduct. Under Order 18(4) the Police Commissioner must refer the case to a misconduct hearing (as opposed to a misconduct meeting) where he determines that there is a case to answer in respect of gross misconduct.
30. The Police Commissioner's power and duty to name the chairperson of the Misconduct Proceedings is conferred by Order 20(1)(a)(iii). Paragraphs (3) to (6) of Order 20 provides:

*(3) The police officer concerned may object to any person whom he is notified under the preceding provisions of this order is to—*

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<sup>1</sup> From the limited number of documents before the Court relating to the Disciplinary Proceedings, it appears that Superintendent Howard (The title 'Superintendent' referring to the substantive post, notwithstanding the "A/ACOP" signature which appears in the email correspondence placed before the Court) was appointed as the investigator and that the Police Commissioner has maintained his statutory role as the appropriate authority.

- (a) conduct (including chairperson) his misconduct proceedings; or*
- (b) advise the person or persons conducting those proceedings.*

*(4) Any such objection must be made in writing to the appropriate authority before the end of 3 business days beginning with the first business day after the police officer concerned is given notice of the person's name and must set out the grounds of objection of the police officer concerned.*

*(5) The appropriate authority must notify the police officer concerned in writing whether it upholds or rejects an objection to any panel member or to any person appointed under order 7(5) to advise the person or persons conducting the misconduct proceedings.*

*(6) If the appropriate authority upholds the objection, the person to whom the police officer concerned objects must be replaced (in accordance with orders 7(5) and (6) or 24 and 25 as appropriate).*

31. Order 22 requires the Police Commissioner, as the appropriate authority, to supply a list of proposed witnesses to the person conducting or chairing the misconduct proceedings. Paragraph (3) requires the chairperson to reasonably believe that the interest of justice makes it necessary for the witness to give evidence before that witness can properly be permitted to give evidence. Similarly, under Order 26 the Police Commissioner must supply the persons conducting the proceedings with the various documents previously given to the police officer concerned and, in the case where the allegation of misconduct or gross misconduct is disputed, any other documents which in the opinion of the Police Commissioner should be considered.

32. Orders 24 and 25 govern the appointment of persons by the appropriate authority to the panel of persons conducting the misconduct proceedings. Orders 24 and 25 provide:

***Persons conducting misconduct proceedings: police officers other than senior officers***

24           (1) *This order applies where the police officer concerned is a police officer other than a senior officer.*

              (2) *The misconduct meeting must be conducted by a person appointed by the appropriate authority who is not an interested party or the Commissioner and who satisfies paragraph (3).*

              (3) *The person must not be the same person as the appropriate authority and must be another member of the Service, of at least one rank higher than the officer concerned.*

*(4) Where the case is referred to a misconduct hearing, the misconduct proceedings must be conducted by a panel of persons specified in paragraph (5), appointed by the appropriate authority.*

*(5) Those persons are—*

- (a) a chairperson who has qualified as a barrister;*
- (b) a lay person; and*
- (c) a police officer of a higher rank than the police officer concerned selected by the appropriate authority who is not an interested party.*

***Persons conducting misconduct proceedings: senior officers or the Commissioner***

25 *(1) Where the police officer concerned is a senior officer or the Commissioner, the misconduct proceedings must be conducted by a panel of persons specified in paragraph (2), appointed by the appropriate authority.*

*(2) Those persons are—*

- (a) a chairperson who has qualified as a barrister;*
- (b) a lay person; and*
- (c) a person selected by the Governor who is not an interested party.*

33. Both Orders 24 and 25 require a panel to be chaired by a barrister. The term “barrister” is defined under the Interpretation Section of the Bar Act. Section 1 provides as follows:

*““barrister” means a barrister and attorney admitted as such”*

34. The term “admitted” is also defined under section 1, which states:

*““admitted” in relation to a barrister means admitted and enrolled as a barrister and attorney under section 51 or 53 of the Supreme Court Act 1905”*

*“specially admitted” means admitted and enrolled under section 51(3) of the Supreme Court Act 1905;*

35. These statutory provisions leave no room for doubt that the act of chairing a misconduct proceeding falls within the practice of law for which a barrister must be admitted and enrolled by the Court to do so pursuant to either section 51 or 53 of the Supreme Court Act.

36. Part 4 of the 2016 Orders applies to the process of misconduct proceedings (i.e. misconduct meetings and misconduct hearings collectively). A misconduct hearing will proceed before a panel and chairperson (“the panel”) before whom witnesses may be called with leave of the chairperson..

37. The general procedure to be applied for misconduct proceedings is at the discretion of the person chairing the proceedings, subject to the specifications of the Orders. Order 32(5)-(13) prescribes the applicable rules of evidence which are not distinguishable from any ordinary civil litigation procedure. Those paragraphs of Order 32 provide:

*(5) The person representing the police officer concerned may—*

*(a) address the proceedings in order to do any or all of the following—*

*(i) put the case of the police officer concerned;*

*(ii) sum up that case;*

*(iii) respond on behalf of the police officer concerned to any view expressed at the proceedings;*

*(iv) make representations concerning any aspect of proceedings under these Orders; and*

*(v) subject to paragraph (8), ask questions of any witnesses; and*

*(b) confer with the police officer concerned.*

*(6) Where (at a misconduct hearing) the person representing the police officer concerned is a barrister, the police friend of the police officer concerned may also confer with the police officer concerned.*

*(7) The barrister or police friend of the police officer concerned may not answer any questions asked of the police officer concerned during the misconduct proceedings.*

*(8) Whether any question should or should not be put to a witness must be determined by the person conducting or chairing the misconduct proceedings.*

*(9) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings, notwithstanding that a copy of it has not been supplied—*

*(a) by the police officer concerned to the appropriate authority in accordance with order 21(3); or*

*(b) to the police officer concerned in accordance with order 20(1).*

*(10) Where evidence is given or considered at the misconduct proceedings that the police officer concerned—*

*(a) on being questioned by an investigator at any time after he was given written notice under order 14(1) of these Orders; or*

*(b) in submitting any information or by not submitting any information at all under order 15(1) or 21(2) or (3) (or, where paragraph (11) applies, order 44),*

*failed to mention any fact relied on in his case at the misconduct proceedings, being a fact which in the circumstances existing at the time the police officer concerned could reasonably have been expected to mention when so questioned or when providing such information, paragraph (12) applies.*

*(11) This paragraph applies where the appropriate authority has directed, in accordance with order 41(1), that the case be dealt with under this Part.*

*(12) Where this paragraph applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.*

*(13) The person or persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the police officer concerned amounts—*

*(a) in the case of a misconduct meeting, to misconduct or not; or*

*(b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.*

38. Order 36 requires the record of the proceedings to be recorded verbatim.

39. Pursuant to Order 32(14)(a) the panel must not make a finding of gross misconduct unless it is satisfied to do so on the balance of probabilities. Such a finding may be based on a unanimous or majority decision (without an indication as to which basis the decision was formed). The panel is then required under Order 32(16) to report to the Police Commissioner setting out its findings and reasons and its recommendation as to disciplinary action in the case of a finding of gross misconduct.

40. In considering the question of disciplinary action, the panel must have regard to the factors listed under Order 34(10). This includes the officer's previous record of service, evidence from



any witness where such evidence would assist with the question of disciplinary action and any oral or written representations by or on behalf of the officer to be disciplined.

41. Under Order 34(1)(a) as read with 34(3)(b)(iii) the panel may at the outcome of the hearing impose on the impugned officer a dismissal without notice. Sub-paragraph (4) provides:

*“The disciplinary action referred to in paragraph (3) must have effect from the date on which it is notified to the police officer concerned.”*

42. Order 38(2) as read with Order 38(4)(b) permits a police officer whose case was decided at a misconduct hearing to appeal to the Public Service Commission only on the following grounds:

*2 The only grounds of appeal under this order are that –*

*(a) the finding or disciplinary action imposed was unreasonable;*

*(b) there is evidence that could not reasonably have been considered at the misconduct proceeding which could have materially affected the finding or the decision on disciplinary action; or*

*(c) there was a serious breach of the procedures set out in these Orders or other unfairness which could have materially affected the finding or decision on disciplinary action.*

### **Reasons for Refusal to Admit Overseal Counsel under section 51(3)**

43. The tardiness of the present admission and enrolment application was highlighted by the advanced stage of the Misconduct Proceedings, which had evidently gotten underway months prior to the filing of the Notice of Motion and supporting documents. For example:

- (i) The Police Commissioner had already named Ms. de Mestre KC as Chairperson of the Misconduct Proceedings and Mr. Beggs KC as his advisor pursuant to Order 7(4)(b).
- (ii) Notwithstanding the lack of consultation and or support from the Bar Council, work permits had already been issued by the Minister to both Ms. de Mestre KC and Mr. Beggs KC
- (iii) A 20 March 2025 case management hearing had already been held and
- (iv) The Notice of Motion and supporting documents were filed on Thursday 28 August 2025. As Monday 1 September was the public Labour Day holiday, and the 4-day

Misconduct Hearing was fixed to start on Tuesday 2 September, the reality was that the Notice of Motion was filed only one clear business day in advance of the hearing. This was worsened by the fact that application was argued on the fixed start-date of the Misconduct Hearing.

44. It is thus fair to say that the “urgency” of the application was occasioned only by the sluggish timing of the filing of the Notice of Motion and Mr. Johnston’s Affirmation. Despite that extraordinary delay, the courtesy of an apology or explanation was not provided by Mr. Johnston in the 28 August cover letter to the Acting Registrar. Instead, the Court was placed under undue pressure by Mr. Johnston’s request for the application to be decided on the papers.
45. The Court refused to determine the application administratively upon learning (i) that the application was not expressly supported by the Bar Council and (ii) that Mr. Johnston’s application was opposed by T&D, as evidenced by the Court’s receipt of Mr. Hawthorne’s 29 August letter of objection to the Bar Council.
46. In Mr. Hawthorne’s 29 August letter, he stated that T&D had previously written to Superintendent Howard to inquire as to whether or not practicing certificates had been obtained for Ms. de Mestre KC and Mr. Beggs KC. Notwithstanding, no formal objection was ever made by T&D to the Police Commissioner to oppose the naming of Ms. De Mestre KC as the Chairperson of the Panel or Mr. Beggs KC as the legal advisor to the Police Commissioner in accordance with paragraphs (3) to (6) of Order 20. Be that as it may, T&D was no less entitled to advance its objections to special admission to the Bermuda Bar for consideration by this Court.
47. In Mr. Hawthorne’s letter of objection, he cited the decision of Kawaley J (as he then was) in *Re Lowe* [2010] Bda LR 24 and submitted that the Counsel of the Attorney General’s Chambers had not engaged with the requisite criteria in any meaningful way and were unable to do so, in any event.
48. In *Re Lowe* an *ex parte* application under section 51(3) of the Supreme Court Act was made to the Court for Mr. Thomas Lowe QC to appear as Leading Counsel for the Defendant in the Commercial Division of the Court for the trial between *BNY AIS Nominees Limited (as nominees for each of the 2nd to 6th Plaintiffs) et al v New Stream Capital Fund Limited* (Civil Jurisdiction (Commercial List) 2009: No. 178 and 374).
49. Kawaley J granted the application for an order specially admitting Mr. Lowe QC under section 51(3), subject to the proviso that the Minister issues him a work permit, expressly departing from the standard approach recognized by a 12 January 2007 Practice Direction issued by the then Chief Justice, Mr. Richard Ground. The Circular was styled under the title “Applications

for Special Admission to the Bar' (Circular No. 2 of 2007)” and was quoted by Kawaley J in *Re Lowe* as follows:

*"Applications for Special Admission to the Bar*

1. *This Practice Direction is made after consultation with the Bar Council, and amends Circular No. 9 of 2006 ("Applications for Admission to the Bar"), by limiting the application of that Practice Direction to applications for full Admission under section 51(2) of the Supreme Court Act 1905.*
2. *Applications for Special Admission under section 51(3) of the Supreme Court Act 1905 ('Special Admission') are no longer required to be served upon the Bar Council. Paragraph 3(c) below has been added in place of this requirement.*
3. *Applications for Special Admission must be supported by an affidavit or affidavits:*
  - (a) setting out the questions of law or practice of considerable difficulty or public importance which are relied upon as justifying the admission;*
  - (b) exhibiting a copy of the work permit issued by or on behalf of the Minister responsible for immigration; and*
  - (c) exhibiting a copy of the letter from the Bermuda Bar Association to the Minister containing the Bar Council's representations on the issue of that work permit.*
4. *Special Admission will normally be limited to one overseas Queen's Counsel per party, and will not normally be appropriate for second overseas counsel or solicitors."*

50. At paragraph 6 of Kawaley J's decision in *Re Lowe* he stated:

*"6. Although the Practice Direction clearly envisages that applications to the Court will be made in cases where the applicant has already obtained a work permit, there can be no serious suggestion that this policy statement is intended to oust the statutory jurisdiction of this Court to entertain applications under section 51(3) wherever a work permit has been refused or not yet granted. Rather, the Practice Direction sets out the usual procedure which interested persons can reasonably expect will be followed in most cases and only departed from in exceptional circumstances."*

51. Applying that analysis, the application was made on the basis that if it was granted, local Counsel, Mr. Mark Chudleigh, would then invite the Bar Council and the Minister to reconsider their initial decisions to oppose and refuse the granting of a work permit.

52. Referring to what is now section 61(4) of the Immigration and Protection Act, Kawaley J extracted the primary considerations to be given by the Minister as follows:

*“The primary considerations will ordinarily be whether local lawyers are available to provide the relevant legal services and whether the interests of the local Bar generally would be prejudiced by granting the application. In addition, perhaps, wider community needs may have to be taken into account, for example (a) the need for a person charged with a particularly heinous offence to be seen to be afforded the best possible representation, or (b) the need for an international business litigant in commercially significant proceedings to have what the litigant considers to be the best possible representation. In most cases, however, the main focus of the Minister and the Bar Council should logically be on the section 60(4) of the Immigration Act criteria, albeit analysed with reference to the criteria to be focused on by the court under section 51 of the Supreme Court Act 1905.”*

53. In *Re Lowe* Kawaley J granted the application under section 51(3) of the Supreme Court Act because the request for admission was made in respect of commercial litigation of a substantial nature which had the effect of spiraling conflicts of interest, rendering other local firms unavailable. That continues to be a common effect of substantial commercial litigation today. In *obiter*, Kawaley J also recognized that *“in the ordinary case where availability is not in question, it may well suffice to focus solely on the question of whether or not the complexity of the relevant proceedings warrants the importation of leading counsel.”*

54. In the present case, the application was advanced on the following grounds, which I surmised as follows:

- (i) The public importance of the proceedings
- (ii) The significant legal complexity of the proceedings
- (iii) Procedural complexity onset by parallel judicial review proceedings and criminal proceedings
- (iv) The absence of comparable local expertise
- (v) The need for equality of arms

55. On the point of public importance, Mr. Myrie deposed at para 16(viii) of his 2 September 2025 affidavit:

*“... the public need[s] to have confidence in senior police officers in the way they conduct themselves, e.g. the conduct of officers who engage in sexual intercourse, when one of the participants is meant to be on patrol in the central region of the island for obvious reasons of operational reach and response times, seriously undermines the effectiveness of the police. These are serious matters which could undermine the public trust and confidence in policing in Bermuda.”*

56. It is plainly so that the hearing of each and every complaint of gross misconduct against a police officer is a matter of real public importance. In this case, the application for admission under section 51(3) applies to a non-local legal practitioner sitting as Chairperson and another non-local legal practitioner advising the Police Commissioner as the appropriate authority. Thus, the question of public importance calls for separate analyses to suit the position in question.
57. The position of Chairperson is adjudicatory. It requires the seat-holder to be impartial so that there is no apparent or actual bias present to injure the fairness of the tribunal proceedings. So, for persons chairpersoning misconduct proceedings of police officers, the question of public importance is inextricably linked to the requirement for impartiality. That requirement for impartiality applies not only to the person chairpersoning the proceedings but also to the other two non-legally qualified panel members selected in accordance with Order 25 where the subject of the proceedings is either a senior officer of the Police Commissioner.
58. Public importance in respect of the person chairing the proceedings also raises the question of the adequacy of the skills of the barrister appointed. On Mr. Myrie’s submissions, only Mr. Jerome Lynch KC and Mr. Mark Pettingill specialize in police misconduct proceedings, and, by implication, they are the only locally based attorneys sufficiently skilled to be retained for such proceedings. Effectively, Mr. Myrie boldly submitted that the average experienced litigator residing in Bermuda is ill-equipped to handle police misconduct proceedings. I do not accept that proposition. I take judicial notice that within the members of the Bermuda Bar are more than a handful of lawyers who have been appointed as Assistant Justices in the Civil and Commercial Division of the Court. There is also considerable number of other senior and highly skilled litigation lawyers who regularly appear for High-Court level litigation matters, some of whom have undoubtedly chaired other tribunal proceedings. Further, I am reminded that local Counsel of local law firm Resolution Chambers appeared before this Court in respect of judicial review proceedings in appeal from the decision of the Public Service Commission in *Commissioner of Police v Public Service Commission; Pereira (Interested Party)* [2021] Bda LR 11. So, where the issue of public importance raises the question of available local professional competency to chairperson these proceedings, I rejected the submissions made on behalf of the applicant seeking to be admitted to carry out the role of the Chairperson.

59. I now move on to the question of public importance as it relates to the legal practitioner advising the Police Commissioner as the appropriate authority. In such cases, public importance is relevant to the question of professional competency and equality of arms. Mr. Myrie deposed at paras 17-21:

*“It is unsurprising that the UK Bar has more expertise on police misconduct matters: the UK has 130,000 officers and almost 50 constabularies.*

*The case law developed in the UK over the last 30 years is instructive to the BPS since the Police (Conduct) Orders 2016 emulate the English Police (Conduct) Regulations 2012.*

*Whereas nobody doubts that there are many very fine local lawyers in Bermuda, very few of them specialise in police misconduct: perhaps Mark Pettingill and Jerome Lynch K.C.. being two exceptions (and even they have fought many fewer police misconduct cases between them than Mr. Beggs K.C.).*

*Since Lynch KC was instructed by the defence [from the outset in 2019/2020 and in the court of appeal Criminal Appeal No9 of 2022), and since Mark Pettingill acted for Stephen Gill in the 2020 (No. 208) judicial review before Chief Justice Hargun, that left the AA with few realistic options as to who should prosecute the case which is why the AA instructed John Beggs, K.C.*

*The AA required an appropriately skilled Chairperson to conduct the hearing and again, the 2 most potentially appropriate persons were unavailable. I hope that the Bar Council would accept that I have relevant expertise and am a reasonable choice for the BPS to instruct: after all, they did accept this in the Supt Pedro case (where my opponent was also from the English Bar).”*

60. Further above, I rejected any notion that police misconduct proceedings in Bermuda call for a special skillset uncommon to senior local barristers. The procedural rules outlined under Order 32 of the Police Conduct Orders are consistent with standard practice and ordinary rules of evidence. In my judgment, any competent and experienced litigator practising at the Bermuda Bar would be able to conduct and or represent the appropriate authority in police misconduct proceedings in Bermuda.
61. From Mr. Myrie’s affidavit evidence, it seemed that the thrust of the applications for special admission was that as a matter of general practice, police misconduct hearings should be chaired by specialist overseas Counsel. The same position was understood in respect of the naming of a legal advisor for the appropriate authority. However, on Mr. Myrie’s oral submissions, the complexity of the Misconduct Proceedings was primarily borne out of the

fact of parallel or previous judicial review and criminal proceedings. Whether the latter position was an alternative argument or a second attempt to make good any available argument which might stick, I considered both positions.

62. Parallel Court proceedings, whether of a domestic or cross-border nature, are not unusual in civil and commercial litigation in which experienced local Counsel regularly appear. Ordinarily, multi-proceedings raise case-management questions as to whether any particular proceeding or aspect thereof should be stayed. Otherwise, or additionally, the considerations may engage questions of evidential admissibility which would, in my judgment, very much fall within the knowledge and skillset of any competent and seasoned litigator.
63. Criminal attorneys at the Bar often appear before the Court for re-trials and or trial proceedings preceded by constitutional or judicial review proceedings. Civil and commercial litigators are also accustomed to litigation involving parallel proceedings, which may entail a combination of one Court proceeding triggering separate ancillary Court matters or domestic tribunal proceedings interposed by a Court action. The fact that those other proceedings may increase the volume of documents to be referenced does not, in my judgment, render the complexity level of the proceedings beyond the professional scope of local attorneys. To suggest otherwise is to suggest that the complexity of police tribunal proceedings exceeds the complexity of Court proceedings where local practising barristers regularly appear. There is no sufficient evidential basis for that surprising supposition which I am bound to entirely reject.
64. It is apparent that the above-quoted final paragraph [21] of Mr. Myrie's affidavit evidence, errantly included text which was lifted from a statement originating from Mr. Beggs KC. No doubt, that drafting error is to be attributed to the rushed nature of the application brought before this Court. Regrettably, the documents underlying the admission of overseas Counsel for the misconduct proceedings against Superintendent Pedro were not put before this Court for comparative or contrasting value. Had the application been made more promptly, the production of that material would have enabled such an analysis.
65. I now turn to address Mr. Myrie's evidence on public interest at paras 22-29:

*"We are now in a very serious predicament due to neither of the KC's [sic] having a Special Practising Certificate ("SPC").*

*This is a serious matter which has been ongoing since 2019 and is due to commence on 2<sup>nd</sup> September 2025 for 3 or 4 days.*

*This matter cannot proceed until the K.C.'s [sic] have their SPC's [sic] which is the necessary temporary admission to the local Bar.*

*It is important for the court to be aware that there was a case management hearing [which] occurred on 20<sup>th</sup> March 2025 (“Case Management Hearing”) for this matter involving the Respondent to decide the way forward relating to the hearing of this matter. KC Jerome Lynch and Mr. Hawthorne of Trott and Duncan Limited represented their clients including the Respondent in this Case Management Hearing.*

*Additionally, I must emphasize that the hearing is a continuation of prior proceedings rather than a new matter. Both KC Jerome Lynch and Mr. Hawthorne were involved in earlier case management meetings where dates were set, including dates for an abuse hearing.*

*The continuity of the KC’s [sic] is entirely consistent with the agreed-upon process discussed during the Case Management Hearing and actually affords the Respondent with the opportunity for a fair hearing because the KC’s [sic] are fully aware of the complexities of the issues at hand.*

*Furthermore, the Respondent had the opportunity to raise these objections at least from the date of the Case Management Hearing. The Respondent was informed as far back as 17<sup>th</sup> December 2024 about the Panel composition and had the chance to object at that time in accordance with the PCO. The Respondent’s current objections seem to overlook the procedural history and the continuity that has been maintained for this matter throughout its progress.*

*It is not in the public interest for this case to be yet further delayed.”*

66. Mr. Myrie’s emphasis, on this portion of his evidence, is that the stage of proceedings had already advanced to such an extent that it would be unjust and wrong to bring them to a halt on the start-day of the trial. This, Mr. Myrie, contended, was particularly so because no previous objections were made by T&D, notwithstanding ample prior opportunity. Instead, they engaged the case management stage of the proceedings, without an utterance of complaint as to the appointments made by the Police Commissioner.
67. What was implicit on this argument was that the applications for admission under section 51(3) ought to have been granted on account of the lateness of the filings before this Court. In my judgment, that would set a bad precedent, wrongly opening the door to the granting of future applications for admission of overseas Counsel based on the advancement of the underlying proceedings rather than the merits of the application itself. Worse, it would provide a tactical opportunity for litigants to instruct overseas Counsel at will, without regard to the Court’s duty and power to ultimately decide who is to be admitted to practice at the Bermuda Bar. Instead, in this case, the application amounts to an attempt to pressure the Court to correct the



impropriety of the participation of overseas Counsel without special practising certificates in proceedings which ought to have been handled by local practitioners.

68. Necessarily, I had to consider any obvious or major implications of a substituting the chairperson for a local barrister in addition to the subsequent assignment of the role of legal advisor to another local attorney. The obvious repercussions are costs and delay. However, those consequences had to be balanced against the greater public interest factor requiring protection of local attorneys from unjust displacement occasioned by unwarranted special admissions to the Bar under section 51(3).
69. In any event, I saw no sound reason as to why the positions of chairperson and legal advisor could not be cleanly handed over to local Counsel. Having examined the email correspondence between the chairperson and the parties, it is evident that the chairperson was solely concerned with the issuing of standard case management directions which included the approval of the witness list. There is nothing about that which would make it impractical for a local barrister to take over as chairperson. That is no different from the usual occurrence in Court proceedings where one judge issues directions at the interlocutory stage of proceedings prior to another judge trying the substantive matter. Equally, it is not uncommon for a brief to travel from one barrister's hands to another.
70. The argument that an objection ought to have been made by the lawyers of T&D prior to the filing of the Notice of Motion was also without merit. The timing of the objections to the application for admission before the Court was necessarily fixed by the timing of the making of the application itself. It was the making of the application which was belated, not the objections made on the application. The opportunity to send written objections to the appropriate authority on the selection of the chairperson, panel members and the legal advisor under paragraphs (3) to (6) of Order 20 has no bearing on an application before the Supreme Court for admission to practice pursuant to section 51(3). Further, and in any event, the application before this Court was unsupported by the Bar Council, which (according to T&D) was not consulted before the Minister's issuance of the work permits, notwithstanding the statutory requirement to do so under section 61(4) of the Immigration Act.
71. The muted voice of the Bar Council highlighted the need for the Court carefully consider application. So, in the end, whether or not the lawyers of T&D had objected to the application, the Court was dutybound to decide the application on all of the relevant factors and circumstances outlined in this Ruling.
72. Of final note, I wish to emphasise that the refusal of this application is not intended to impugn either of the Applicants' professional standing or reputation. It is clear from the supporting

documents before the Court that they are both barristers of high standing and repute who may very well be admitted under section 51(3) to practice in other and more suitable cases.

**Conclusion:**

73. For all of these reasons, the applications were refused.

Dated Monday the 29<sup>th</sup> day of December 2025



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**THE HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS  
PUISNE JUDGE OF THE SUPREME COURT**