



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025: No. 61

IN THE MATTER OF an application under Section 51(3) of the Supreme Court Act 1905

AND IN THE MATTER OF an application for leave to admit to practice and enroll as a Barrister and Attorney of the Supreme Court of Bermuda, Edward Fitzgerald KC, a member of the Bar of England and Wales, pursuant to section 51(3) of the Supreme Court Act, 1905 (as amended)

AND IN THE MATTER OF the Supreme Court of Bermuda, Case No. 192 of 2024

Between

ERON S.L. HILL

Applicant

and

**THE DIRECTOR OF PUBLIC PROSECUTIONS
THE ATTORNEY GENERAL**

Respondents

RULING

Application for Special Admission of Foreign Counsel, Objection by the Bermuda Bar Council, the Attorney General and the Director of Public Prosecutions

Date of Hearing: **Application on the Papers**

Date of Ruling: **10 March 2025**

RULING of Mussenden CJ

Introduction

1. This is an application for special admission (the “**Application**”), submitted by Mr. Eron Hill for Mr. Edward Fitzgerald KC, a member of the Bar of England and Wales, to be admitted as a Barrister and Attorney in the Court so as to appear on behalf of Mr. Hill in Civil Jurisdiction case No. 192 of 2024 Eron Hill v The Director of Public Prosecutions and The Attorney General (the “**Civil Proceedings**”). The Civil Proceedings were commenced by Mr. Hill by way of an Originating Summons seeking declarations that criminal proceedings instituted against him contravened his fundamental rights under certain sections of the Bermuda Constitution and the European Convention of Human Rights.
2. Mr. Hill filed a Notice of Motion in the Civil Proceedings for the Application to admit Mr. Fitzgerald, however, I directed that such a Notice of Motion be commenced under a separate matter number. The Application is supported by an affidavit of Mr. Hill sworn 17 October 2024 along with exhibits.
3. Mr. Hill exhibited relevant documents for Mr. Fitzgerald in support, including: (i) a letter from Bruce Swan & Associates dated 10 October 2024 to the Bermuda Bar Association seeking support for the special admission – the “**Bruce Swan Letter**”); (ii) a Certificate of Good Standing dated 20 November 2023 in respect of the Bar of England and Wales, (iii) a current Practising Certificate issued by the Chief Executive of the Bar Council for England and Wales; and (iv) his *curriculum vitae*. Mr. Hill later filed a Bermuda Bar Association Fit and Proper Certificate dated 5 February 2025 in respect of Mr. Fitzgerald.
4. Mr. Hill invited the Court to consider the application on the submitted documents.

Background

5. Mr. Hill has been charged with six (6) counts under the Electronic Communications Act 2011 and three (3) counts under the Criminal Code for attempting to pervert the course of

public justice (the “**Criminal Proceedings**”). Mr. Hill was charged in the Magistrates Court but elected trial in the Supreme Court.

6. Mr. Hill presents himself as a Bermudian justice activist who has been engaged as a paralegal with local and overseas firms for over the past decade. He sets out that the Criminal Proceedings arise out of posts made to a social media site Instagram page of the Bermuda Innocence Project, also known as the Bermuda Equal Justice Initiative (“**BEJI**”) which contained pictures of some Bermuda Police Service (“**BPS**”) personnel along with some wording about them, allegedly negative references to them in relation to some criminal matters. He was subsequently arrested, his residence searched and he was charged with the offences.

The Application

7. Mr. Hill’s evidence is that during his work with BEJI he has developed a relationship with various counsel in Doughty Street Chambers, including Mr. Fitzgerald. They have provided him with advice on a range of matters, some gratuitously and some for fees which he has funded personally. He also states that from a medical perspective, he is on the neurodivergent spectrum¹. He stated that Mr. Fitzgerald has expertise in dealing with constitutional challenges involving the mental health of applicants which makes him an ideal advocate in this instance.
8. Mr. Hill stated that the criminal charges infringe on his right to freedom of expression and they contravene his fundamental rights guaranteed at common law such as equality of treatment. He stated that a conviction for the offences would have adverse consequences for his legal aspirations and a result of the infringement is that he continues to suffer serious emotional, psychological, reputational and financial damage.

¹ The UK National Health Service website states that Neurodiversity describes the population as a whole and recognises the diversity of different brains. Neurotypical describes most of the population the majority group that expresses themselves in ways that are seen as the societal “norm”. Neurodivergent describes the minority group that diverts neurologically from said “norm”.

9. Mr. Hill stated that the BPS confirmed that it does not have a specific policy in place regarding the investigation of alleged social media offences. Also, the Director of Public Prosecutions (the “**Director**”) does not have any equivalent guidance or policy document dealing with the prosecution for social media offences similar to one that exists in the United Kingdom. Mr. Hill referred to the Special Sitting in January 2024 for the Opening of the New Legal Year when I, as Acting Chief Justice, highlighted that the rise of social media is likely to result in an increased number of defamation cases in Bermuda and where I noted that Bermuda’s defamation laws were outdated and needed to be updated to address current realities. I confirm here that I did make those statements. Thus, Mr. Hill asserted that the legal framework surrounding social media is far from settled and the law in the area requires urgent development.
10. Mr. Hill stated that the Criminal Proceedings and the Civil Proceedings raise important public law issues such as freedom of expression and how constitutional rights apply to Bermudians in the context of social media use. He asserted that he has not been accused of defaming the BPS personnel but if he had, he would have had several defences available to him, including truth, public interest and other established defences in defamation law. However, the Director chose to prosecute him in the criminal courts, which was not the least intrusive option, which was a point highly relevant to the constitutionality of their actions.
11. Mr. Hill stated that in all the circumstances, the application to admit Mr. Fitzgerald has met the test in Section 51 and the expertise of Mr. Fitzgerald is necessary to address the complex constitutional and public law issues at stake. He noted that the Director and the Attorney General have objected to the application but that they have frequently secured special admissions for overseas counsel in case involving large commercial firms and financial disputes, with no objection from Bar Council. Thus, it appeared that the objections were a blatant attempt to prevent him from securing the counsel of his choice to advance the important constitutional arguments.
12. Mr. Hill also exhibited the Bruce Swan Letter which set out the basis for the application in respect of the matter involving complex and unprecedented points of constitutional law. It

set out that Mr. Fitzgerald would conduct the one-day hearing virtually by Zoom if the Special Admission was granted. The letter also referred to Mr. Fitzgerald's extensive experience in handling cases of constitutional importance, including landmark rulings such as *Julian Assange v Government of the United States* [2021] EWHC 3313 (Admin) and his expertise in human rights law. The Bruce Swan Letter also stated that no suitable local counsel were available to represent Mr. Hill, for myriad reasons, including conflicts of interest and refusals to take on the case, also pointing out that the Constitution guarantees the right to counsel of one's choice, this case being privately funded. The letter also stated that Mr. Hil had developed a relationship of trust and confidence with his legal team, led by Mr. Fitzgerald whose experience is unmatched by local counsel. The Bruce Swan letter also asserted that in the wider social context, the case touches on the risk of criminalizing social media use, which would disproportionately affect many people in Bermuda, and without clear prosecutorial guidelines such as the *UK's Guidelines on prosecuting cases involving communications sent via social media*, Bermuda risked overreach in its application of criminal law in Bermuda.

Objections by the Bermuda Bar Council and the Defendants in the Proceedings

13. On 26 November 2024 the Bermuda Bar Council objected to the Application for special admission of Mr. Fitzgerald. The objection stated as follows:

*"Bar Council **objects** to the special admission of the **Mr. Edward Fitzgerald KC** as the application did not meet the test of Section 51(3) of the Supreme Court Act 1905 and the Bar Council Special Admission policy guidelines as follows:*

The Criteria

3. In considering whether exceptional circumstances exist warranting the admission of foreign leading counsel in a particular case the Bar Council shall be guided by the following criteria in descending order of importance:-

(i) The legal complexity of the case before the Bermuda courts and/or the general public importance of the case in Bermuda, including the importance of the case to Bermuda's offshore services industry.

(ii) The availability of local counsel within Bermuda to adequately present the case. The Chief Justice is to now decide if he supports Bar Council's view, or allow the special admission of the Silk."

14. The Attorney General and Director also objected to the Application, having been consulted by Bar Council. The objection stated:

“We object to this application.

(1) The Applicant elected to be tried in the Supreme Court, which is his right. However, the legal complexity of the case is such that it can be tried before the Magistrates’ Court. Additionally, there is nothing which supports that this is a case of general public importance.

(2) Further, there are capable local counsel within Bermuda to adequately present the case, and there is nothing to suggest that they are all conflicted.”

The Law, Practice Direction and Bar Council Guidance

15. In the similar case of an application for a special admission of Michael Todd QC² I set out the law, practice direction and Bar Council Guidance in relation to special admissions. I repeat relevant sections here.

16. The Supreme Court Act 1905 section 51(3) provides as follows:

“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”

17. The Supreme Court Practice Direction Circular No. 2 of 2007 issued by Chief Justice Ground CJ, as he then was, provided as follows:

“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.

² In the Matter of Mr. Michael Alan Todd QC [2021] SC (Bda) 35 Civ 26 April 2021

3. *Applications for Special Admission must be supported by an affidavit or affidavits:*
 - (a) *setting out the question 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 Bermuda Bar Association to the Minister containing the Bar Council's representations 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."*

18. In a Bermuda Bar Council Guidance dated 20 October 2014 it stated as follows:

"2. Section 51(3) of the Supreme Court Act 1905 ("the Act") recognizes that foreign counsel may be admitted to appear in the courts of Bermuda in any particular case or series of cases which involve questions of law or practice of considerable difficulty or public importance. As an exception to the rule, and in rare cases, Bar Council will support an application to admit foreign leading counsel to appear in a particular case provided that the broad criteria set out in Section 51(3) of the Act is satisfied.

The Criteria

3. In considering whether exceptional circumstances exist warranting the admission of foreign leading counsel in a particular case the Bar Council shall be guided by the following criteria in descending order of importance:-

- (i) *The legal complexity of the case before the Bermuda courts and/or the general public importance of the case in Bermuda, including the importance of the case to Bermuda's offshore services industry.*
 - (ii) *The availability of local counsel within Bermuda to adequately present the case.*
 - (iii) *The impact of the case upon the individual client, for example in criminal, defamation and professional negligence cases.*
- 4. As a general rule the Bar Council will only support an application for the admission of foreign leading counsel to appear at the trial of the action and not in relation to interlocutory applications. It is recognized that exceptions may be made where the*

criteria set out in Section 51(3) of the Act is satisfied in relation to a particular interlocutory application.

5. Where Bar Council supports an application to admit foreign leading counsel, it will only do so in relation a particular hearing pending before the Bermuda courts and will not support an application for foreign leading counsel to appear in the case generally.”

19. In respect of which entity makes the ultimate decision on whether a qualified person may be specially admitted, in the judgment of Kawaley J in *The Matter of Mr. Thomas Lowe QC* [2010] SC (Bda) 18 Civ, he stated as follows:

“4. Section 51(3) must be read with subsection (6) of the same section, which provides: “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.” The combined effect of these provisions appears to be that the ultimate decision on whether a qualified person may be specially admitted is vested with this Court, provided that any admission of a person subject to Immigration control requires the applicant to be issued with a work permit in accordance with the 1956 Act.”

20. In respect of whether a case “involved questions of law or practice of considerable difficulty or public importance”, in *Thomas Lowe QC*, Kawaley K stated as follows:

“11. Based on all the material before me, it was not easy to comprehend how it could fairly be concluded that the requirements of section 51(3) were met in the Tensor Proceedings but were not met in the Gottex Proceedings. The latter proceedings in my judgment clearly raises questions of no less (and probably greater) legal difficulty and public importance. However the section 51(3) criteria are not to be looked at in isolation from an independent assessment from an immigration perspective of whether or not appropriate local expertise is available for the case in question. The legal difficulty and public importance standard is to my mind a fluid one, with the bar being raised and lowered depending on the size of the pool of available and suitable local counsel. Accordingly, it was important to consider how this Court’s powers under section 51(3) of the Supreme Court Act 1905 interact with the Minister’s powers under

the Bermuda Immigration and Protection Act 1956, which powers are expressly preserved by section 53(5) of the 1905 Act.”

21. In respect of the role of the Minister and the Bermuda Bar Council, in *Thomas Lowe QC*, Kawaley J stated as follows:

“12. Section 60(4) of the Bermuda Immigration and Protection Act 1956 provides as follows:

“(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.”** [emphasis added by Kawaley J]*

13. In relation to an application to admit a foreign Queens Counsel to appear at a trial or an appeal before Bermuda’s courts, the Minister is plainly required to consult with the Bermuda Bar Council. There will rarely be any issue around the matters set out in section 60 (4) (a), (b) or (d). 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.”

22. In respect of the right of Bar Council adopting a restrictive approach to special admissions and the Minister responsible for immigration to issue work permits for special admissions, in *Thomas Lowe QC*, Kawaley J stated as follows:

“19. Nothing in this Judgment is intended to undermine the right of Bar Council to adopt a restrictive approach to special admission applications when local counsel generally regarded as de facto leading counsel are available as often is the case. All that is being indicated here is that when the requirements of section 51(3) have been met is not amenable to a mechanistic assessment, and the standard to be met ought properly to take into account in objective terms the requirements of the 1956 Act as well. These requirements in turn would not appear to be cast in stone, but will be shaped by the exigencies of each case. In the vast majority of cases this Court will not entertain applications for special admission in circumstances where the applicant has not first obtained a work permit. It is a matter for the Minister and the Bermuda Bar Council to decide whether a special work permit ought to be issued. It is a matter for this Court to decide whether a particular applicant ought to be specially admitted to the Bar, assuming he or she is able to jump through whatever hoops the Immigration Authorities may require.”

Analysis

23. In my view, I should grant the Application for several reasons. First, in this case, Bar Council objected to the special admission of Mr. Fitzgerald as was their right to do so. In any event, the ground of objection is one for which Kawaley J stated in *Thomas Lowe QC*,

“... that the ultimate decision on whether a qualified person may be specially admitted is vested with this Court ...”.

24. Second, the Attorney General and the Director appear to misapprehend the nature of the Application as their objection is in respect of the Criminal Proceedings, as they state that the matter can be tried before the Magistrates' Court. As I understand it, the Application is in respect of the Civil Proceedings. In any event, on the basis that the Attorney General and the Director would likely maintain their objection in respect of the Civil proceedings, I deal with their objections generally below.
25. Third, in respect of meeting the first part of the test in the Supreme Court Act 1905 section 51(3), the Bar Council issued a Fit and Proper Person Certificate for Mr. Fitzgerald. On that basis, Mr. Fitzgerald is a qualified person.
26. Fourth, in respect of meeting the next part of the test, namely, whether the matter involves questions of law or practice of considerable difficulty or public importance, I acknowledge that there has been an overwhelming use of social media on a wide scope both in Bermuda and around the world. It is open to debate as to whether law has kept pace with such development. As a starting point, I accept Mr. Hill's reference to the remarks I made in relation to the need to update the defamation law in Bermuda as I envisioned an increase in such cases due to the rise in the use of social media. Although my remarks were in respect of defamation, the Criminal Proceedings demonstrate that the postings to social media will cross all boundaries and most likely become issues in various jurisdictions of the Court including family, divorce, criminal, civil and commercial matters.
27. Fifth, I accept that Mr. Hill has taken on a justice advocacy role. That does not create a separate category of persons or organisations who will enjoy more exclusive rights than an ordinary member of the public, but in my view, civic organisations and advocacy groups provide a public service rather than act for a personal aim or motive. It follows that a method of such groups is to give voice to issues, on behalf of the community, using their rights of freedom of expression. However, that circumstance raises the question of just how far an advocacy group can go before crossing some lines into the potentially hostile

territories of criminal and civil liability. When it results in criminal charges as in the circumstances of the Criminal Proceedings, in my view, the Civil Proceedings then involve questions of law or practice of considerable difficulty and public importance. To that point, I do accept Mr. Hill's submission that the Director herself, just a few weeks ago, made broad remarks at the Special Sitting to open the 2025 New Legal Year about the interplay between social media and the justice system. In my view, this is a factor that lends some weight to the issue of public importance.

28. Sixth, I note that the Bruce Swan Letter set out that there were no clear prosecutorial guidelines in Bermuda for social media offences. I also note that the objections of the Attorney General and the Director, having being consulted and most likely been provided with the Bruce Swan Letter, did not address this point. Thus, I accept, Mr. Hill's statement that there is not a Public Prosecutions guidance on prosecuting social media offences similar to one that exists in the United Kingdom. In my view, such a guidance would provide assistance to prosecutors and the public alike such that a framework and some guardrails would be evident in relation to social media and circumstances that could lead to a prosecution. In my view, these circumstances are a factor that lends some weight to the argument that the issue is of public importance.
29. Seventh, in respect of Mr. Hill's submission that there are no local counsel available to represent him in the Civil Proceedings due to conflict and refusal, I note that no further evidence has been filed on this point. For the other reasons that I have set out, I will grant the application for special admission. However, if it were not for those reasons, I would undertake a closer scrutiny of the submissions on conflict and refusal, albeit balanced with the submissions on the existing professional relationship with Mr. Fitzgerald in this case.
30. Eighth, I have considered the Bermuda Bar Council Guidelines in respect of the criterium of the impact of the case upon Mr. Hill. He has submitted that he seeks to develop a legal career in Bermuda and that a conviction for the offences charged would have an adverse effect on his career aspirations. I accept those submissions, and in my view, convictions for the offences would most likely present hurdles to Mr. Hill's career, albeit not absolutely insurmountable.

31. I have considered the case of *Thomas Lowe QC* where Kawaley stated “*the legal difficulty and public importance standard is to my mind a fluid one...*”. To my mind, the crossroads and intersection of, on the one hand, constitutional rights and freedoms in respect of postings to social media and, on the other hand, the authority of the state to bring criminal proceedings along with its sanctions meet the required standards in this Application of legal difficulties and public importance. Thus, in light of the reasons above, I am satisfied that Mr. Hill has met the test for the Court to grant the Application for special admission for the Civil Proceedings.

Conclusion

32. In light of the above reasons, I make the order that the Application for special admission for the Civil Proceedings is granted.

Dated 10 March 2025



HON. MR. LARRY MUSSENDEN
CHIEF JUSTICE