IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS

ACTION NO. CL 183/2019

IN THE MATTER OF SECTIONS 4, 5, & 6, OF THE LEGAL PROFESSION ORDINANCE; AND

IN THE MATTER OF AN APPLICATION OF ANDREW ROBERT MITCHELL QC TO BE ADMITTED TO PRACTICE AS AN ATTORNEY OF THIS HONOURABLE COURT

BETWEEN:

ANDREW ROBERT MITCHELL QC

APPLICANT

AND

THE BAR COUNCIL OF THE
TURKS AND CAICOS ISLANDS

INTERESTED PARTY

CORAM: AGYEMANG CJ

MR. S. WILSON QC FOR MR. ANDREW MITCHELL
MR. R. RIGBY FOR THE BAR COUNCIL OF TCI

HEARD ON: 9TH MARCH 2021
HANDED DOWN ON: 30TH MARCH 2021

JUDGMENT

1. This judgment discusses interesting issues regarding the intendment of certain provisions of the Legal Profession Ordinance Cap 2:10 (referred to alternately as the Ordinance, or the LPO) with respect to the admission of attorneys to practise in these islands. These include the vexed issue of whether an attorney with limited admission to practise in these islands, can, during the life of the limited admission qualify for general admission.

The Relevant Provisions

2. In this contested application, the relevant provisions for interpretation and application are: Sections 4(1), 5(1) and (2) and 8(1) of the Legal Profession Ordinance Cap 2.10.

3. I reproduce them as follows:

"4. (1) Subject to the provisions of this Part, the Chief Justice after consulting the Bar Council—

(a) shall admit as an Attorney any applicant who is a Belonger; and

(b) may admit as an Attorney any other applicant,

who has obtained the qualifications specified in section 5(1) and who has gained the experience specified in section 5(2), and who in the opinion of the Chief Justice is otherwise a fit and proper person to be so admitted."

"5 .(1) The qualifications referred to in section 4(1) are that such person—

(a) (i) has been called to the bar or admitted as a solicitor or an attorney in some part of the Commonwealth or the Republic of Ireland; or

(ii) has obtained a Certificate of Legal Education from the Council of Legal Education of the West Indies; or

(iii) has obtained a Diploma of Legal Practice from an institution approved by the Law Society of England and Wales; or

(iv) is qualified to practise as an attorney under regulations made under section 30; and
(b) has not been disbarred or struck off the roll of attorneys of any court in any part of the Commonwealth or the Republic of Ireland or has not done any act or thing which would render him liable to be disbarred or struck off the roll of attorneys of any such court.
(2) The experience referred to in section 4(1) is as follows—
(a) in the case of all applicants, not less than three months' training in the practice of law under the supervision of an Attorney admitted to practice in the Islands for not less than two years…
(b) in addition to the experience referred to in paragraph (a), in the case of an applicant who is not a Belonger, not less than five years' experience in practice outside the Islands since call or admission."

"8. (1) Subject to this section, any person who possesses the qualifications specified in section 5(1) or is exempted under section 4(3), and who has come or intends to come to the Islands for the purpose of appearing, acting, or advising in a suit or matter, may be admitted as an Attorney by the Chief Justice."

The Application

4. On 20th of December 2019, Mrs. Angela Brooks, Deputy Director of Public Prosecutions, filed a notice of application for admission as an attorney of this court, on behalf of the applicant Andrew Robert Mitchell QC. She brought the application as sponsor and supervisor of the applicant's training, under sections 4, 5 and 6 of the Ordinance.

5. The application was supported by her affidavit (the content is which will be set out and discussed in due course), as well as the affidavit of the applicant Andrew Robert Mitchell QC sworn on the 20th of December 2019 in which he set out his qualifications and experience in the practice of the law since his admission to practice about forty-four years ago.

6. More particularly, the applicant who described himself as a citizen of the United Kingdom of Great Britain and Ireland, and the holder of a Permanent Residency Certificate in the Turks and Caicos Islands with the Right to Work, deposed to the following:

7. That he was called to the Bar of England and Wales, by the Honourable Society of Gray's Inn in July 1976; he was appointed a part-time judge in England and Wales as an assistant recorder; and was admitted to the Bar in the Republic of Ireland shortly after which he was appointed Queen's Counsel in May 1998. In that same year, he was appointed a Recorder of the Crown Court (the criminal courts) in England and Wales, and a Recorder in the County Court (the civil courts) in 1999. From that time until 2016, he sat at least twenty days a year in either the civil or criminal courts. In 2007, he was called to the Bar in Northern Ireland and appeared there in a number of civil recovery cases.

8. He also asserted that he had been admitted to practise pro hac vice in the Caribbean region, a number of times. In this regard, he set out work he had done pursuant to such admission in the British Virgin Islands where he appeared for the defence in an international money laundering case, in Grenada, where in 2014 he appeared for a hotel in a lease dispute, as well as in the Republic of Trinidad and Tobago where he was admitted to practise pro hac vice a number of times, to act in criminal and civil matters.

9. He averred that following his various admissions, he had remained in good standing, and had not been disbarred or struck off the roll of attorneys or roll of barristers of any court in any part of the Commonwealth or the Republic of Ireland, nor had he placed himself in a position for such action to be taken against him.

10. Regarding his experience in the Turks and Caicos Islands, he deposed that he had been granted limited admission on a number of occasions and has been working in these Islands since 2010. In particular, he had been engaged in advising the Special Prosecutor, and then conducting the prosecution of the case of R v. Michael Misick and Others. He had also advised and represented the Honourable Attorney General in relation to extradition requests.

11. He deposed further, that since July 2019, he had, in compliance with section 5(2) of the Ordinance, completed the required three months' supervised training in the practice of the law in these Islands at the Office of Director of Public Prosecutions (ODPP) in Providenciales, under the

overall supervision of the Deputy Director of Public Prosecutions and the general supervision of the Director of Public Prosecutions (DPP), Eugene Otuonye, QC.

12. He attached his curriculum vitae to the application to evidence his qualifications, and deposed lastly, that he was a fit and proper person to be admitted to practise in this court.

13. In her affidavit sworn in support of her sponsorship of the applicant, Mrs. Angela Brooks, Deputy Director of Public Prosecutions who further described herself as an attorney admitted to practice in this court since 2003, echoed the matters set out by the applicant regarding his qualifications and confirmed that he had completed three months' training under her overall supervision and the general supervision of the DPP Mr Eugene Otuonye QC. She described the applicant as an experienced, able and dedicated attorney with over forty-three years' experience in the common law since his admission in England and Wales in July 1976, and who in 1998, was appointed Queen's Counsel. She set out the work he had done in these islands since 2010, and further set out what she said was the content of the three months' training required under section 5(2) of the Ordinance. The details of her affidavit will be reproduced in later in this judgment.

The Response of the Bar Council

14. The Bar Council, having been served with the instant application, filed a document in which it set out its objections to the admission sought by the applicant, under four heads. Although the Bar Council did not describe its intervention, it seems to me that it did so to provide input in accordance with the Chief Justice's duty to consult, provided in section 4(1) of the LPO. I consider its judicial intervention in the nature of an Interested Party, hence the present intituling of this contested application.

15. The objections are:

1. that the applicant could not, while he had limited admission, fulfil the broad training requirement in section 5(2) of the LPO. In this regard, the Bar Council stated, that the applicant had limited admission which by its nature was limited in the scope of legal practice; therefore he could only practice in respect of the matters for which he had received limited admission, being: CR 34-38/12, CR40/12, CR41/12, CR44/12 and CR

18/14, Cr-APM 10/18 AGTCI on behalf of the Government of the United States v David Smith, and matters relating to the extradition of Peter Karam.

2. That the applicant had not satisfied the specific requirements of training set out in section 5 of the LPO and section 3 of the Legal Profession Regulations (LPR). It was averred that the sponsor Mrs. Brooks who provided the evidence of the applicant's training, failed to indicate that the applicant had in accordance with the LPR, had training in four of the eight matters set out in section (l)(d) of the LPR, nor had she established that the applicant was an employee, or in full time employment in the Islands as a trainee Attorney with a firm or Attorneys, a sole practitioner or the Attorney General's Chambers, or that the training was in the course of such employment with the Office of the Director of Public Prosecutions or any firm at all.

3. That the applicant did not qualify for exemption under section 4(3) of the LPO, and the Chief Justice could not, without consulting the Bar Council, grant any such exemption.

4. That the application if granted, would open the flood gates, and be in any event, an abuse of the provisions of the LPO and the spirit thereof, as it would permit an applicant to enter the profession by a limited admission and during the tenure thereof, permit his petition for general admission.

16. In support of these objections, the Bar Council filed three affidavits, the second one is under challenge and will be addressed shortly. The third has no impact on this application as it was only corrective of the deponent's description of her employment on the date of the swearing of the affidavit.

17. Ms. Sarah Knight who swore to the first of the affidavits, did so in the capacity of the Vice President of the Bar Association who had been involved in the affairs of the Association variously as a member, Secretary, Vice-President and President. She deposed that draft regulations made under the LPO had been in use by the Bar Council in their consideration of admission applications

and must presumably be used in assessing the present application. She further deposed to historical events, setting out matters antecedent to the grant of limited admission of the attorneys involved in the SIPT trial, of whom the present applicant was one. It was her evidence that by reason of historical matters, not only was a restriction placed on all such admissions limiting their practice to legal work in that case alone, but that a decision was taken that they were not be to regarded as Crown lawyers.

18. She continued in her evidence, that what she referred to Donegan Rule must apply to the applicant who had worked in the Office of the DPP for so long, that he and his colleagues were 'virtually Crown Counsel'. This rule, she explained, has since 1987, prohibited the general admission of a non-Islander Crown Counsel until he or she has been out of office for at least two years.

19. On the 29th of December 2020, Mrs. Selver-Gardiner swore an affidavit in the capacity of the President of the Bar Council. In this affidavit which has been challenged for irregularity regarding its substance (for improperly containing expressions of personal opinion, and legal arguments), as well as for procedure (in that it was filed outside the directions of the court), she deposed to matters regarding the use by the Bar Council of draft Regulations made by Chief Justice Richard Ground in 1998 and confirmed by Chief Justice Gordon Ward in 2004, and in which the content of the training provided for in section 5(2) had been set out as being in the areas of: Land and Conveyancing, Companies, Insurance, Banking, Trusts and Trustees, Wills and Estates and Family matters and Criminal and Banking; she alleged that the applicant had not undergone the requisite training under section 5(2) of the Ordinance, in that the affidavit presented as evidence of his training allegedly raised questions regarding his supervision, the breadth of training, and the content of the training; she further alleged irregularity in the procedure for making the application as well as the alleged conflict of attorneys who should have been available to represent the Bar Council in these proceedings; lastly, she alleged that double admission where a person who had limited admission would also receive general admission was undesirable in these islands.

Issues for determination

20. A number of issues are raised by this application which I set out as follows: In considering them, I will refer to the arguments of counsel.

1. Whether or not the affidavit of the Bar President, sworn on the 29th of December 2020 must be struck out of this application for improper procedure and substance.
2. Whether or not the applicant has fulfilled the qualification requirements under section 5(1) of the Ordinance;
3. Whether or not the applicant has fulfilled the training requirements under section 5(2) of the Ordinance;
4. Whether the irregularity in the application procedure should be fatal to the application.
5. Whether the applicant can hold both a limited and general admission.

Matters for Consideration

1. The Affidavit of 29th December 2020

21. It has been argued, that the affidavit of the Bar President of 29th December 2020, must be disallowed in this application as it flouts the directions of this court coram Aziz Ag. CJ given for the conduct of this matter on 25th February 2020. The response of the Bar Council is that the filing of an affidavit without leave was not improper, as it contends that the filing of an affidavit in an application for admission is not governed by the Rules of the Supreme Court 2000 (RSC 2000), it not being a civil proceeding.

22. The first (and main) affidavit of Mrs. Selver-Gardiner was filed on the 29th of December 2020 and purported to address matters which were not mentioned in Ms. Knight's affidavit of 23rd March 2020 filed pursuant to the court's order. The second affidavit was corrective of the description of herself as an employee of Invest Turks & Caicos at the time of the swearing of the affidavit and does not address any of the matters of substance in this contested application.

23. It seems to me that the impropriety of the filing of the affidavit of 29th December 2020, does not lie only in the incorrect procedure of filing an additional affidavit on behalf of the Bar Council without the leave of the court, but also because it was filed very late in the day - seven months after the applicant, faced with the Bar Council's objections of the 23rd of March 2020 and

the affidavit of Sarah Knight of that same day, responded by filing his submissions on 15th of May 2020. In the former, it is clear that when Aziz Ag. CJ gave his directions order of the 25th of February 2020, he did not provide for an additional affidavit, and the disregard of the order of the court, because the Bar Council believed they had much to say, is to be deprecated. Even so, that hurdle could be surmounted by deeming the belated affidavit properly filed, in order to have all matters in controversy before the court; this option would certainly permit substantial justice to hold sway over technical justice. But the latter circumstance could not be so easily disregarded. The unfairness of confronting the applicant with an affidavit he could not respond to, and so late in the day, cannot be lightly viewed, especially as this was the act of a Council tasked to oversee the affairs of the Bar Association, and which must be held to a high standard of compliance with orders of the court. I am therefore constrained to strike out the said affidavit, and to use the affidavit of Mrs. Knight filed in response to the application and pursuant to the order of the court, in the consideration of the Bar Council's position in this application.

The nature of the present proceeding

24. At this point I must address the question of the nature of the present proceeding in the light of the Bar Council's assertion that an admission is not a civil proceeding and should not be governed by the rules of civil procedure as pertaining to the filing of affidavits. It is important, to address why the Bar Council's argument that this is not a civil proceeding, is untenable, only because they rely on that position to dismissively argue that there was nothing improper about the said affidavit of 29th December 2020, filed without leave. I have already held that the said affidavit was improper for two reasons and must be discountenanced for them.

25. In my judgment, this application for admission to practise as an Attorney before this Supreme Court which is contested, and demands resolution, is a civil proceeding.

26. Section 6(1), which deals with the manner of invoking the jurisdiction of the Chief Justice to grant admission under section 4(1) of the LPO provides:

> *"Subject to section 4(3) any person being desirous of being admitted as an Attorney may apply in writing to the Chief Justice and shall attach to such application the following…"*

27. While the wording does not seem to mandate access by way of a formal application to the court presided over by the Chief Justice, there is no doubt that the practice in this jurisdiction has been to interpret the expression "apply in writing" as a judicial, rather than an administrative process. It is this interpretation that has (in this matter, as in some previous cases), also transformed the right of the Bar Council to provide its input in the admission process (the Chief Justice's duty to consult), into a judicial intervention by an objecting Bar Council.

28. In bringing his application, there being no specified mode for doing so, the applicant used an originating process best suited for applications of this nature in the Rules of the Supreme Court 2000 (RSC 2000). As was recently considered by this court in: ***R (The Special Prosecutor) v. McAllister Hanchell (RO 2/2020) [2020] TCASC 9 (17 July 2020),*** the Rules of the Supreme Court 2000, would be the default position in such a situation. Thus, in apparent recognition of this position, the present application has been brought by way of an originating notice of motion prescribed in Order 8 of the RSC 2000. There is no doubt then that the present proceeding is a civil one, governed by the RSC 2000 in accordance with Ord. 1 r 2 of the RSC 2000. Had there been a defined procedure under Order 8 of the RSC 2000 which prescribed a limit on affidavits, I daresay that would hold sway. But in this case, an insistence on a limit on affidavits is not based on the RSC 2000, but on the order of the court of 25th February 2020 which directed the Bar Council to file its affidavit by Friday 20th March 2020, and the applicant, by the 17th of April 2020.

29. The Bar Council was late with its filing, and the Practice Direction No. 2 having extended the time of compliance with the court's orders, the applicant's submissions were filed on the 15th of May 2020.

30. Both processes, filed out of the original time, but in accordance with the extension contained in Practice Direction No. 2, are hereby deemed to be properly filed, as pursuant to the order of the 25th of February 2020.

2. Applicant's Qualifications

31. Section 4(1) of the Legal Profession Ordinance CAP 2.10 reads:

Subject to the provisions of this part the Chief Justice after consulting the Bar Council-

a. shall admit as an Attorney any applicant who is a Belonger; and

b. may admit as an Attorney any other person

who has attained the qualifications specified in Section 5(1) and who has gained the experience specified in Section 5 (2) and who in the opinion of the Chief Justice is otherwise a fit and proper person to be so admitted."

Sections 5(1) and 5(2) thereof provide:

"The qualifications referred to in Section 4(1) are that such person-

(a)(i) has been called to the bar or admitted as a solicitor or an attorney in some part of the Commonwealth or the Republic of Ireland or

(ii) has obtained a Certificate of Legal Education from the Council of Legal Education of the West Indies; or

(iii) has obtained a Diploma of Legal Practice from an institution approved by the Law Society of England and Wales; or

(iv) is qualified is qualified to practice as an attorney under regulations made under section 30; and

(b) has not been disbarred or struck of the roll of attorneys of any court in any part of the Commonwealth or the Republic of Ireland or has not done any act or thing which would render him liable to be disbarred or struck off the roll of attorneys of any such court.

2. The experience referred to in Section 4(1) is as follows: in the case of all applicants not less than three months training in the practice of law under the supervision of an attorney admitted to practice in the islands for not less than two years…"

32. I have already set out the qualifications of the applicant and I do not intend to rehearse them. It is not in controversy that having regard to the requirement of qualification set out in section 5(1) of the LPO, the applicant meets the qualification. With post-admission experience of forty-four years, the applicant, who has been described as 'an eminent silk', has held various positions including positions on the Bench in England and Wales, has been admitted to practise *pro hac vice* in both civil and criminal matters in a number of countries within the Caribbean region, and has in fact, been given limited admission to practise before this Supreme Court on a number of occasions

since 2010. It is manifest that he meets the standard of qualification under Section 5(1) under the LPO, and this is a matter not in controversy.

3. Applicant's Experience

33. What is in controversy is whether or not the applicant has acquired the experience prescribed by section 5(2) of the LPO. The applicant has in his affidavit stated that he has received the requisite three months' training prior to the filing of this application. This has been corroborated by his sponsor Mrs. Angela Brooks who, in her affidavit, has held herself out as one of his supervisors in the three months' training, and has also set out the content of the training. Regarding his work in the islands, and the content of his three months' training, she has deposed, that since being instructed in September 2010, he had been

> *"dealing with the matters touching and concerning the trial of Michael Misick & Others otherwise known as SIPT trial. During this training period, he has been assigned a number of matters, including the preparation of matters for the Privy Council. I am also aware that the Hon Attorney General Rhondalee Braithwaite-Knowles QC has instructed the Applicant to represent the AG's Chambers in two extradition matters including the case of David Smith.*
>
> *...In the course of his engagements with the matters aforesaid in the ODPP, Mr. Andrew Robert Mitchell QC has exhibited a clear understanding of the laws and practice in this jurisdiction. Apart from assisting with matters relating to potential appeals to the Privy Council aforesaid, the Applicant has also assisted with other prosecution matters with which this office is concerned including issues relating to restraint of assets, productions orders and civil recovery process. I am also aware that the SIPT trial in which the Applicant represents the ODPP, has covered many areas of law (other than the criminal law and practice) in Turks and Caicos Islands, including constitutional issues. Attorneys in the ODPP have in turn benefitted immensely from the Applicants' extensive experience in these areas as well as from his advocacy skills.*

I have pleasure in providing this Affidavit as evidence of the Applicant's completion of his supervised training in the practise of law in these Islands as required by the Legal Profession Ordinance…"

34. It is the Bar Council's position as stated in the objections filed in this court, that the matters stated as training are in fact all matters in respect of which the applicant has been given limited admission, which may not be used as training under section 5(2). Yet while they set out case numbers representing matters in which the applicant had been granted limited admission, being: CR 34-38/12, CR40/12, CR41/12, CR44/12 and CR 18/14, Cr-APM 10/18 AGTCI on behalf of the Government of the United States v David Smith, and all matters relating to the Extradition of Peter Karam, they do not provide details regarding the said cases, nor have they sought to establish that all the items set out in the affidavit of Mrs. Brooks are in fact the subject of the applicant's limited admissions.

35. Mrs. Brooks states in her affidavit, that *"…During this training period, he has been assigned a number of matters, including the preparation of matters for the Privy Council… Apart from* ***assisting*** *with matters relating to potential appeals to the Privy Council aforesaid, the Applicant has also* ***assisted with*** *other prosecution matters with which this office is concerned including issues relating to restraint of assets, productions orders and civil recovery process."* All these she said, after stating that the applicant had since 2010 worked on various matters on the instruction of her office or the Attorney General's Chambers. It seems to me that by the use of the word 'including' when she describes the content of the three-month training, Ms Brooks has indicated that the scope of the work described as assignments during the applicant's period of training, was wider than what she listed. She has also set out various training, was wider than what had been stated. It seems to me also that the use of the words "assisted" and "assisting" in the description of some of the work he was said to have been engaged in as part of his training, would seem to negate the idea that that he had been instructed in them for in such a circumstance, he would be in charge of the process and not be described in such terms.

36. The Bar Council on the other hand, has, apart from setting out David Smith and Peter Karam's cases as well as case numbers of other matters the applicant has received limited

admission to conduct, failed to demonstrate that the wide range of matters said to constitute the training in the three-month period preceding the bringing of the application are all in fact matters for which the applicant holds limited admission.

37. The applicant has since 2010, received limited admission to prosecute (and perhaps defend) several matters. This fact is acknowledged in the Brooks supporting affidavit.

38. He has not relied on experience of ten years and counting. What he has relied on is training in the three-month period preceding the bringing of the application which has been confirmed by Mrs. Brooks who described herself as responsible for his overall supervision. Mrs. Brooks has also referred to the applicant's long working relationship with her office, and set out cases he has dealt with, since 2010. But she also refers to training in the three-month period, and lists matters he has been assigned and others he has assisted with.

39. This is a difficult one, and for good reason. It seems to me when the drafters of the LPO provided for training described in terms of tutelage, they had in their contemplation, a Belonger who perhaps had just completed study in the law, or a non-Belonger who had had at least five years of practice elsewhere. Perhaps, what they did not have in their contemplation, was Queen's Counsel with a glittering career before whom an attorney of two years' admission and counting, who should be his supervisor, would cower. Perhaps in such circumstances, the training period may very well be spent in "assisting" with work at the firm or office. I am not persuaded that the door ought to be shut against such an applicant only because neither he/she nor his/her supervisor could prove tutelage, such as in receiving instruction, a point canvassed by the Bar Council. The present applicant who has had years of experience working in these islands by virtue of limited admission, has sworn to an affidavit that three months before seeking admission, he had submitted himself to training in accordance with the applicable law. His supervisor, the holder of public office, has confirmed this assertion and has set out an array of matters constituting the training he received, some of which may be recognised as matters in which the applicant was instructed (and for which he held limited admission), but not all.

40. In the absence of a sufficient challenge of the assertion that in the said three-month period, the applicant did receive the requisite training, the court could not lightly throw out the affidavit of Mrs. Brooks.

41. If, as was stated in the excluded affidavit of 29th December 2020, the Bar Council was not persuaded that enough information had been provided by Mrs. Brooks, there was no reason why no application was made under *Order 38 r 2(3) of the RSC 2000* for her to be cross-examined on her affidavit.

42. In the absence of this, the court is not in a position to assess whether the cases whose numbers were set out in the Bar Council's objections indeed correspond to all the matters set out in the affidavit of Mrs. Brooks as constituting the training received by the applicant in the three-month period preceding the bringing of the application.

43. Mr. Rigby has argued most forcefully, that it would be absurd for the relevant provisions of the LPO to be read to permit the use of the expertise for which a person is given limited admission, as the experience required under section 5(2) thereof. I could not agree more.

44. In considering this matter, I have regard to sections 4 and 8 of the LPO which provide for the general and limited admission of attorneys to practice in these islands, respectively.

45. Section 5(2) (one of the requirements for admission under section 4(1)), which sets out a requirement of three months' training for general admission, simply provides that all applicants must be trained in the practise of the law for that period, under the supervision of an attorney admitted for not less than two years.

46. The clear intent of section 8 is to provide a local attorney with access to the services of a non-Belonger in our courts, without giving the non-Belonger membership in the Bar Association. It enables a tapping into needed expertise without a broadening of the pool of local attorneys or the carving of a pathway to general admission.

47. The question is whether these two streams (sections 4 and 8) have been deliberately kept apart, with the intent that there should be no convergence, so that a person given limited admission under section 8, may not purport to hold himself out as a member of the legal profession in these islands, or use his work for which he is given admission, to meet the requirements under section 5.

48. That is the case of the Bar Council which complains that the applicant is seeking to use his limited admission as a backdoor to general admission. The applicant has simply stated that he has completed the requisite training.

49. I have, in my consideration of the arguments for and against this application, sought answers from the statute (LPO), and sought to give expression to the intention of the makers of that statute. It would have been helpful to adopt a purposive approach to interpretation for the purpose, if there were any background material to call in aid to arrive at the legislative intent. Unfortunately, historical matters set out in the excluded affidavit of 29th December 2020, which may have helped in unravelling the intent of the legislators when they provided for section 8, may not be resorted to. Even so, in seeking the intent of the lawmakers, I pose this question: what was the purpose of requiring the specified training under section 5(2) before admission? In my view, it could not be that the drafters believed that an applicant, especially one straight out of law school, would in three months, acquire proficiency in a great many areas of the law before admission. The short time prescribed by the statute would suggest that the time was to be used as a familiarization and adjustment period, to provide a new entrant with an idea of how legal practice was conducted in the islands, to ease them into practice. With that response follows the next question: what did the legislators intend when they set out provisions for limited admission under section 8, being careful to ensure by the requirement that an application be made by an instructing attorney in section 8(2), insisting that the applicant may be admitted to practise in respect of that case only "but not otherwise" in section 8(3) and lastly, that such admission should not lead to membership of the Bar Association in section 8(4)?

50. In my view, there is no question, from the silence on the Bar Council's involvement in the decision-making process under section 8 - unlike in section 4(1) where the duty of the Chief

Justice to consult the Bar Council is expressly stated, and the express prohibition in section 8(4) that a limited admission be used as a way to gain membership of the Bar Association, limited admission serves a specific purpose, which is to provide talent and skills not available to a local attorney without embracing the instructed attorney into the Bar Association's fold. It would therefore be surprising indeed, if the matters for which a non-Belonger attorney is granted limited admission to use his skills and talent, could be construed and accepted as the experience contemplated under section 5(2) for general admission.

51. While section 5(2) does not set out the content of the training (and I must insist that the Bar Council's position that the content of draft submissions must provide the necessary content is erroneous), it seems to me, that for a non-Belonger applicant who holds limited admission, it could not have been intended that the expertise for which he is instructed, be used as the three months' experience gained under the supervision of a person who has been admitted to practise in these islands for more than two years.

52. But as aforesaid, that is not the situation in the present matter in which the applicant's sponsor, Mrs Angela Brooks has sworn to an affidavit, deposing to the three-month training preceding the application which has not been discredited. In my judgment, the applicant has established that it is more probable than not that he received the training that he alleges, and which is corroborated by his supervisor, Mrs. Brooks.

53. A question raised by the Bar Council's objections is whether or not a person who holds a limited admission can during the tenure of that admission, undergo the training provided for under section 5(2). My short answer to that is: that I do not read in either section 4(1), 5(2) or 8(1), a bar to such an attorney undergoing training, but I should add that such training ought necessarily to be independent of the matters in respect of which he holds limited admission.

54. I find then that the arguments of Mr. Rigby, which are sound with regard to the prohibition of the use of the expertise for which one receives limited admission as the experience required for general admission, will not operate to bar the present applicant's admission, as they were grounded

on a premise not made out: that the training deposed to by Mrs. Brooks, was in fact work done by the applicant in the performance of his duties under his limited admission certificates.

Draft Regulations

55. The substance of the Bar Council's challenge to the training alleged by Mrs. Brooks, is regarding the scope and areas of training within the intendment of section 5(2). In their interpretation of the expression: "not less than three months in the practice of law", they rely on what has been described as draft Regulations to prescribe the requisite content of the training, set out in section 3 thereof. As aforesaid, these draft Regulations were said to have been produced by two Chief Justices, but were not promulgated by them as they were empowered to do, under section 30 of the LPO.

56. I have been intrigued by the pervasive, but hardly persuasive arguments of the Bar Council regarding the said draft regulations. The argument is that while the regulations were admittedly in draft, the Bar Council had relied on them before now, as policy to guide them in admission proceedings, and that the court must rely on them in assessing the content of the training alleged by the applicant. They have thus cited them to persuade, that the training of the applicant, apparently fell short of the certain specified areas in the practice of law, and must be held for that reason to be inadequate.

57. My response to this effort, is to state that while the Bar Council, empowered by section 16(1) of the LPO, to provide for inter alia, the policy of the Bar Association, may choose in its wisdom to use the said draft document as their policy document as they seek to perform their role of providing input in the Chief Justice's consultation process, they may however, not, as they have purported to do in the present matter, insist on the use of regulations that are acknowledged to be in draft, in making the case that the applicant has not met a statutory requirement.

58. There are no Legal Profession Regulations at present, and I cannot criticize in stronger terms, the promotion of the concept that a draft document must have the force of Regulations made under section 30 of the LPO. I have been invited to have regard to the requirements set out therein, presumably because it is alleged that other Chief Justices have not been averse to using them. Even

if I were persuaded that my esteemed predecessors had used the said draft as if it had the force of law (and I am not so persuaded), I would, and do decline the invitation to partake of it.

59. Having held that there is no bar to a person given limited admission, undergoing the requisite training in the time of the limited admission, I could not hold, in the absence of cogent evidence negating the matters deposed to by Mrs. Brooks as constituting the training provided to the applicant, that the applicant has not met the burden of establishing that he has gained the requisite experience provided under section 5(2) of the Ordinance. I will therefore hold that the training of the applicant supervised by Mrs. Brooks suffices for compliance with section 5(2) of the LPO.

Employment

60. Among the matters raised by the Bar Council, was the allegation that an attorney who was not employed in a firm, or by the Crown should not be admitted to general practise in these islands. This was stated in the Bar Council's objections as founded on the draft regulations which I have excluded from consideration. In the excluded affidavit of 29th December 2020, the Bar President posited that it was in the bid to ensure that Belongers had an assured place in the practice of law, and so to keep out everyone else, save an attorney whose skillset may be needed by a firm, that employment is requisite for admission.

61. First, I have very clearly stated, that there are no Regulations made under section 30 of the LPO, and no requirement contained in a draft document may be imposed on this court. Further, in the consideration of the arguments of Mr. Rigby regarding this alleged requirement of employment, I could not help but pose this further question: what did the makers of the LPO intend when they provided different requirements for admission for Belongers and non-Belongers? Was it, as Mr. Rigby canvasses so strongly, in furtherance of an agenda of discrimination that they provided that a non-Belonger must have five years' post-admission experience in another jurisdiction, before the three months' training, while a Belonger need not, or their use of the word 'shall' for the admission of Belongers and "may" for the admission of non-Belongers? Even without the advantage of the lesson in history contained in the affidavit of 29th December 2020, I have no hesitation in saying that perhaps the said provisions were not discriminatory in nature at

all, as suggested, for that would fly in the face of the provisions of section 16(1)-(3) of the 2011 Constitution, but simply, a way to ensure that Belongers who had spent long arduous years in acquiring a profession would have the full advantage of admission and employment, and not be pushed out of the profession by outsiders who may have a great wealth of experience and other benefits that would give them an advantage.

62. With this understanding, comes my response, that although such may be desirable, the language of sections 4 and 5 of the LPO does not mandate that unless a local firm has a need that cannot be satisfied within the islands, a person with the requisite qualification specified in section 5(1), who undergoes the training by a local attorney, and who makes his application for admission under section 6(1) of the Ordinance, must be denied admission for lack of employment with a firm.

"Irregularity" in admission Procedure

63. Another matter that has been put forward as a disqualifier of the applicant is, that in making his application for admission, there has been a departure from the norm. This departure is: that Mrs. Brooks who describes herself in her affidavit as supervisor and sponsor of the applicant withdrew from representing the applicant, so that present counsel for the applicant who had no hand in his training is the one who has brought this application. This situation has been painted as an irregularity.

64. Mr. Wilson QC appearing for the applicant in these proceedings may be a departure from the norm, but is it an irregularity, and if it is, should that circumstance be fatal to the present application?

65. The answer must lie in the clear difference in procedure between section 6 and section 8 of the Ordinance.

66. Section 8(2) provides the procedure for limited admission; and it is that an application must be made by an attorney enrolled in the islands who has instructed him/her. There is the added requirement that the instructing attorney must persuade the Chief Justice that he has so instructed that attorney,

67. It is interesting that in section 6 which deals with general admission applications, there is no requirement for an attorney who trained the applicant, or who needs the applicant in his firm, to apply on his behalf. All that is required is for the applicant to attach to his application evidence of qualifications, training, an affidavit making the case for admission, and the prescribed fee.

68. It is evident then, that the practice of having the training firm make the application on behalf of an applicant, is a practice that has developed over the years perhaps, to enrich the ceremony of admission, but is not a requirement for admission. In the circumstance, what was necessary in the present instance, was for Mrs. Brooks to provide evidence that the applicant had received supervised training. This she did by affidavit. She did not have to make the application for the applicant, or even be present when the application was made. Indeed, as things stand, the applicant could have made the application himself under section 6, and there would have been nothing irregular about it.

Exemptions and the Donegan Rule

69. An argument has also been made that the applicant is not entitled to any exemption under section 4(3), either for being a Crown Officer, or for holding a Permanent Residence Certificate with the Right to Work. In this application, the applicant has not made an application for exemption for any reason. The arguments in that regard therefore go to no issue in the matter.

70. Another argument that the Donegan Rule (explained by Ms. Knight in her affidavit at length as preventing general admission until two years after a public officer leaves his employment) applies to the applicant, seems to contradict the Bar Council's position that the applicant is not a Crown Officer. Mr. Rigby contended that the applicant ought to have filed an affidavit to disclose information he was privy to as public officer, as was done in the case of Mr. Phillips QC who in his application for admission, had done so, having worked in the Attorney General's Chambers. As aforesaid, this argument defeats itself as the Bar Council has taken the position that the applicant is not a Crown Officer, a matter the applicant agrees with. Happily, the court has not been called upon to resolve the intrinsic contradiction, for that line of argument was not pursued with any degree of seriousness, and the Donegan Rule (or policy) was not even

exhibited for consideration or application. Indeed, it turned out, upon the enquiry of the court, not to be a formal policy at all, but a "policy" allegedly accepted by many.

Double Admission: Limited and General Admission

71. Lastly, I will consider the matter of double admission. Can a limited admission be used to get general admission? I think not. The two are so separate in intendment, that section 8(4) of the LPO makes it clear that a limited admission cannot gain one entry into the Bar Association.

72. Can a holder of limited admission train to qualify for general admission? I have said that there is no reason why not, except that there must be training which is demonstrably apart from the matters for which he holds a limited admission.

73. Can a person hold both limited admission and general admission at the same time? I do not see any reason why not, except that he should not be in a position to use both at the same time. In a situation of that nature, in my judgment, while such an applicant may be granted admission, the limited admission must be made to run its course before he is issued with a practising certificate.

Verdict

74. The eligibility of an attorney to be granted general admission is determinable by a three-pronged test: that he/she meets the qualification under section 5(1) of the LPO, that he/she has gained the requisite experience under section 5(2) thereof, and that in the view of the Chief Justice, he/she is a fit and proper person to be so admitted. The arguments presented against the admission have been primarily with regard to the requisite training under section 5(2). I have held that he has received adequate training as sworn to by Mrs. Brooks who stated herself to have supervised him.

75. In this strongly contested application, a number of issues have been raised, but none touching the competence, character, or work ethic of the applicant. That is to say, there has been no suggestion of bad character, shady work, or unsavoury practice in respect of the applicant. I have no reason to hold the contrary. I therefore hold that the present applicant has met the three-pronged test to be granted admission.

76. However, because this court does not make orders in vain, the order giving the applicant limited admission under section 8 of the LPO must not be made to lapse, as Mr. Wilson QC suggests should happen should the applicant receive general admission. It must run its course, and the applicant must not be in the position in which he can use both limited and the general admission. Yet having met the test, I see no reason for withholding admission at this time.

Order

77. I will therefore grant the application for general admission applied for by Mr. Andrew Mitchell QC, and invite him to take his oath in the near future.

78. However, in accordance with section 4(2) of the LPO, I place this restriction on his certificate: that that he is not to be issued with a practising certificate until one day after the case(s) for which he has been granted limited admission is/are concluded.

Sgd.

M.M. AGYEMANG

CHIEF JUSTICE