



Cause No: G 2022-0044

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

BETWEEN:

TYLER ANGLIN

Petitioner

-and-

(1) ATTORNEY GENERAL OF THE CAYMAN ISLANDS
(2) MINISTRY OF HEALTH AND WELLBEING

Respondents

-and-

CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

Proposed Interested Party

Appearances: **Mr Rupert Wheeler of KSG for the Petitioner**
 Ms Marilyn Brandt and Mr Nigel Gayle of Attorney General’s Chambers for
 the Respondents
 Mr Michael Wingrave of Dentons for the Proposed Interested Party

Before: **The Honourable Justice Jalil Asif KC**

Heard: **18 October 2024**

Ex tempore judgment
delivered: **24 October 2024**

Finalised judgment
approved: **2 December 2024**

Civil procedure—person seeking to be added to proceedings as interested person—test to be applied—whether to exercise discretion in favour of addition

JUDGMENT

A. Introduction

1. This case was before me on 18 October 2024, following an adjourned hearing on 19 July 2024. There was a summons before me brought by the Petitioner for leave to re-amend the Petition and also a summons by the Cayman Islands Health Services Authority (“the CIHSA”) to be joined as an interested party to the current proceedings. I heard arguments on both summonses at the same time.
2. On 18 October 2024, I allowed the proposed re-amendment of the Petition, and I reserved judgment on the CIHSA’s summons. I now return to this matter this afternoon to give my judgment on that second application.
3. I do want to record at the beginning that the parties were very ably represented by Mr Wheeler for the Petitioner, Ms Brandt and Mr Gale for the Respondents, and Mr Wingrave for the CIHSA. The Respondents did not oppose the CIHSA’s application, but it was opposed by Mr Wheeler on behalf of the Petitioner. I am very grateful to all counsel for their helpful submissions on this matter.
4. This claim is an action brought by the Petitioner under section 26 of the Bill of Rights for breach of his rights and freedoms. His claim arises because he was quarantined under the COVID-19 policies applied in the Cayman Islands, which were decided and put in place by the Respondents during the pandemic in 2020, and the Petitioner was not released as quickly as he says he should have been. For the purposes of giving this judgment I do not consider that I need to go into any further detail about the overall nature of the claim that the Petitioner advances.
5. The CIHSA’s employees administered the policies regarding release from quarantine under the Respondents’ direction. The Petitioner’s criticisms include that the policies should not have relied upon a particular type of testing for COVID-19, known as PCR cycle threshold or CT values. The Petitioner says that that type of testing should not have been relied on at all as a means of determining whether or not an individual should be released from quarantine, as opposed to identifying whether or not someone was infected with COVID-19 in the first place.

B. Relevant procedural history

6. It is relevant, before I deal with the summons, to set out very shortly some of the procedural history to provide context for the CIHSA's application and for the decision I have reached in relation to it.
7. Firstly, the Petition in this case was issued on 17 February 2022 and originally included the CIHSA as a respondent to the proceedings.
8. By 7 December 2022, the CIHSA was suggesting that it should not be a party, on the basis that it was not responsible for the policy that was being challenged by the Petitioner within the proceedings.
9. I do not have details, but it is clear that that debate took some time to resolve. It concluded on 25 August 2023, when the parties signed a document entitled "*Admissions and Agreement as to Future Conduct of the Petition*".
10. Briefly, the terms of that document which are relevant to my decision on the summons are:

- "1. The Decisions to require the testing and isolation of Tyler Anglin ... were made by Dr Samuel Williams-Rodriguez, acting in the capacity of a Medical Officer of Health on behalf of the Cayman Islands Government, pursuant to section 23 of the Public Health Act (2021 Revision).*
- 2. The Decisions were not made by the Cayman Islands Health Services Authority ("HSA"), nor by Dr Williams-Rodriguez or any other person acting in the capacity of an HSA employee, servant, or agent.*
- 3. The Policy ... was created by the Ministry of Health and Wellness, a Cayman Islands Government ministry. It was not created by HSA. HSA merely published the Policy at the direction of Dr Williams-Rodriguez acting as a Medical Officer of Health, following a direction of the Minister for Health and Wellness and Home Affairs under section 33 of the Health Services Authority Act (2018 revision)."*

Paragraph 4 is not relevant as it deals with the Flu Hotline. Paragraph 5 continues:

- "5. The laboratory that carried out the testing referred to in the Petition performed all functions associated with that testing pursuant to the Policy. The laboratory was provided by the Cabinet and was under the direction and control of the Chief Medical Officer pursuant to section 17 of the Public Health Act. The laboratory was approved to carry out testing by the Chief Medical Officer. Dr Williams-Rodriguez, as Medical Officer of Health, requested the tests to be carried out and applied the Policy to the test results.*
- 6. The First Respondent will not later seek to assert that the Second Respondent [in other words, the CIHSA] was responsible for the Decisions or Policy."*

11. So, in my judgment it is clear from this document that there was a recognition by all of the parties and an agreement by all of the parties that, to the extent that this case will involve questions about the

policies that were operated within the Islands, those are squarely the responsibility of the current Respondents, in other words, the Attorney General and the Ministry of Health and Wellness and are not attributable to, or to be attributed to CIHSA.

12. Following on from that agreement, which was signed by all parties on 25 August 2023, on 30 August 2023 the parties agreed a consent order which had the effect that the CIHSA was removed from the action as Second Respondent and the Ministry for Health and Wellness was added in its place as Second Respondent. There were some consequential changes to the way in which certain allegations in the Petition were set out, but there were no substantive changes to the nature of the complaint that was being advanced within the proceedings.
13. However, by May 2024 the CIHSA had apparently changed its mind and decided it now wishes to be an interested party. I note in passing that this is not based on any change in the Petitioner's pleaded case but as a result of matters said by Mr Wingrave to have arisen outside the scope of the pleadings, as a result of the way in which, in particular, discovery was being pursued by the Petitioner.
14. The CIHSA's summons to be joined as an interested party was initially before me on 19 July 2024, when I ordered that it should be adjourned, and the hearing was completed on the 18 October 2024, just last week.
15. Finally, as far as the relevant chronology is concerned, on 28 August 2024 the Petitioner filed a summons for leave to re-amend the Petition, which I heard and dealt with on 18 October 2024. For the purpose of this judgment, those re-amendments are essentially of two types: first of all, updates to the underlying facts in one or two minor respects; and secondly, to provide further particulars of substantive allegations that had previously been included within the Petition and which, it appears, are based on the expert evidence which the Petitioner has obtained.

C. The applicable law

16. Mr Wingrave referred me first to *Hasselblad (GB) Ltd v Orbinson* [1984] 1 QB 475, which was a decision of the English Court of Appeal concerning amongst other things, an issue that arose in that case regarding the ability of the EEC to intervene within the proceedings. The action concerned questions of privilege related to materials submitted to the EEC as part of a competition investigation,

and whether those communications gave rise to a claim of libel or were privileged from liability as a result of the context in which the submissions were made.

17. In deciding that issue, the Court of Appeal allowed the EEC to intervene in order to make submissions because of the potential impact upon the operation of EEC administration and procedures that could result from whatever substantive decision the Court of Appeal made in that particular case.
18. Perhaps more relevantly, and more helpfully, Mr Wingrave also referred me to Re Ontario Securities Commission [1994-1995] CILR 131, which is a Cayman Islands decision of Smellie CJ when he was still a puisne judge. Mr Wingrave tells me that that is the only reported decision in the Cayman Islands that he has been able to identify which addresses the question of granting interested party status or intervening party status. He refers me in particular to a passage in the judgment at page 137, line 33 where Smellie J says:

“This court always retains, in the exercise of its inherent jurisdiction, the discretion to direct that a person, although not having a legal interest and therefore not being eligible to be joined as a party, should none the less be given notice of the proceedings and may address such arguments to the court as may be permitted. This discretion was recognized and exercised by the English Court of Appeal on the hearing of the appeal before it in Hasselblad (GB) Ltd v Orbinson In that case the Court of Appeal allowed the European Economic Commission to intervene as amicus curiae, on the basis that the views of the Commission as to the public policy implications of the action before the court would be important to the court’s deliberations

Nothing in s.3A [Smellie J was referring here to s.3A of the Confidential Relationships (Preservation) Law which was the statute that was before him] would operate to exclude the parallel inherent discretion which this court undoubtedly has. I note that although in these proceedings we have the views of the Attorney General as amicus on matters of public policy, he has no brief to speak on behalf of persons having a beneficial interest in information to be disclosed, i.e. the Cayman companies. Typically, their interests would be represented on an application such as this by their agents called upon to disclose the information. That, for reasons already noted, is not to be the case here. There is, therefore, very good reason for exercising the discretion in favour of allowing counsel for the Cayman companies to attend and to address such arguments as may be permitted but in the context only of the s.3A application.”

19. I pause there just to explain that Re Ontario Securities Commission was a situation where there were proceedings in Canada and the Ontario Securities Commission had made a request to the Cayman Islands Court by way of letters rogatory for evidence to be provided to the Canadian court.
20. Those letters rogatory were not addressed to the Cayman Islands companies, which were applying to Smellie J to be heard, and the Canadian litigation also did not involve the Cayman companies. However, the Cayman companies were objecting to an application under s.3A of the Confidential Relationships (Preservation) Law then in force, for permission for that evidence to be disclosed to the

Canadian authorities. The Cayman companies asserted that they had a proprietary or commercial interest in that information. Justice Smellie's conclusion was that, in the unusual circumstances of that particular case, there was no one able to speak on behalf of the Cayman companies in order to put forward their arguments as to whether or not their proprietary and commercial interests in the information ought to be overridden, and the information and documents provided to the Canadian authorities. So, it is important to bear in mind that particular context as underlying the approach that Smellie J adopted in that particular case.

21. Based on Re Ontario Securities Commission, Mr Wingrave submits that I have a very wide discretion to exercise the inherent jurisdiction that Smellie J recognised, with a low bar for the CIHSA to overcome in order to persuade me that I should exercise that discretion in its favour. He says that the key point for determination that I should take from that decision is whether the CIHSA has a sufficient interest to justify its presence before the court.

22. Mr Wheeler submits that there is a more modern statement of the relevant test than that in Hasselblad and he directed my attention to the decision of the English House of Lords in Re Northern Ireland Human Rights Commission [2002] UKHL 25, and in particular, the speech of Lord Woolf, where he said at paragraph 32:

“32. The practice of allowing third persons to intervene in proceedings brought by and against other persons which do not directly involve the person seeking to intervene has become more common in recent years but it is still a relatively rare event. The intervention is always subject to the control of the court and whether the third person is allowed by the court to intervene is usually dependent on the court's judgment as to whether the interests of justice will be promoted by allowing the intervention. Frequently the answer will depend upon whether the intervention will assist the court itself to perform the role upon which it is engaged. The court has always to balance the benefits which are to be derived from the intervention as against the inconvenience, delay and expense which an intervention by a third person can cause to the existing parties.”

23. Based on that passage, Mr Wheeler urges me to accept that the relevant test is essentially what is in the interests of justice. I can say at this stage that it seems to me that there is probably not very much difference between the formulation of the test that Mr Wingrave puts before me and that which Mr Wheeler puts before me. It seems to me that, however I look at it, what I have to decide is what is in the interests of justice in light of the overriding objective, which is what I will now seek to do.

D. The parties' submissions

24. Mr Wingrave's argument is that the addition of the CIHSA as an interested party is justified on essentially five grounds.

25. The first is that the Petitioner has indicated, but has not pleaded, issues that include whether the testing system underlying the PCR CT values was valid. Based on that, in Mr Wingrave's skeleton argument at paragraphs 7, 8 and 11, which I note was prepared before the recent amendments to the Petition, Mr Wingrave says:

"7. There is no direct allegation in the Petition or in the Amended Petition that any scientific problem existed within the testing regime in place at the material time or going to the second question above. at all. There is no suggestion that PCR testing does not give rise to reliable CT values in general terms. [The Petitioner's] case, instead, is that CT values should not be used to determine question[s] connected with quarantine at all and, seemingly, under any circumstances. [The Petitioner's] implied case, appearing only in correspondence, seems to be that the particular PCR testing regime / CT values obtained in this case are in question. Those matters are not pleaded, however, even obliquely.

8. [The Petitioner] does not plead any form of case in the alternative; for instance, to suggest that even if PCR testing and CT values were in principle a valid method of determining questions concerning quarantine, the testing process in place was not adequate because of difficulties with validation or administration. ... Whether or not the PCR testing process in place on the ground was operated in a valid or invalid fashion, lies entirely outside the case [the Petitioner] has chosen to plead."

Mr Wingrave wraps up this point at paragraph 11 of the CIHSA's skeleton argument:

"11. HSA is left in the invidious position where it is clear evidence that will likely be aimed at its employees is coming, but where it is unclear, how that evidence can properly be part of [the Petitioner's] case or whether the HSA will be permitted to respond in any effective manner."

26. Mr Wingrave says that the CIHSA's application is therefore advanced on two bases. First, that its interests are engaged by the manner in which the Petitioner appears to put his case, and that the CIHSA is entitled to protect its interests within the proceedings. Secondly, that the CIHSA should be heard on the public policy implications of this matter connected with pandemic response at the operational level.

27. Thirdly, Mr Wingrave argues that the appropriate response to certain matters raised by the Petitioner may not be within the Respondents' knowledge and that the Respondents may therefore need input from the CIHSA to that extent.

28. Fourthly, he relies on the expert report of Dr Derek Stein, who is the expert engaged on behalf of the Petitioner and whose report was served by the Petitioner on 1 October 2024, as indicating that the CIHSA remains, in essence, a target.
29. Finally, Mr Wingrave adds that there is no prejudice that will arise against any other party if the CIHSA is allowed to participate because the CIHSA has indicated that it will not seek its costs of its involvement and the court can order the CIHSA to pay costs in favour of another party if it loses on issues that it raises.
30. Mr Wheeler, on behalf of the Petitioner, opposes the addition of the CIHSA as an interested party. He says that the Petitioner has no issue at all with the CIHSA giving evidence and giving evidence, in particular, on behalf of the Respondents. Mr Wheeler recognizes that there are some factual issues which arise in the course of the case where it could be helpful to have an explanation from the CIHSA, particularly on the scientific questions, which may not be entirely within the knowledge of the Respondents. But, he says, that is not enough to justify joining the CIHSA as an interested party. He says that no interest of the CIHSA is engaged by any aspect of the Re-Amended Petition. There is no criticism of the CIHSA that is alleged, and there is no lurking suggestion of negligence on the part of the CIHSA within the current proceedings.
31. During the course of argument, Mr Wheeler took me to certain passages in Dr Stein's expert report and argued that all of the matters that Dr Stein intends to raise are matters of policy or matters that are within the Respondents' responsibility, not that of the CIHSA, although Mr Wheeler appropriately accepted that there are certain passages in Dr Stein's report that indicate he is not completely au fait with the division of responsibility between the Ministry and the CIHSA.
32. But putting that on one side, it is clear from the context of what Dr Stein says that his criticisms are squarely aimed at the policy issues rather than the implementation of those policies.
33. Lastly, and it seems to me of some significance, Mr Wheeler submits that if Mr Wingrave were right that this is an appropriate case for the CIHSA to be allowed to participate, then essentially, any witness with a tangential interest in the case could ask to intervene in order to protect their interests and the court, on Mr Wingrave's approach, would look favourably on such a request.

34. The second main line of objection that Mr Wheeler advances is that in any event, the CIHSA is not responsible for the testing laboratory. That comes from the terms of the agreed admissions which I have already read. Secondly, it comes from the Public Health Act (2021 Revision) at s.17, which expressly provides that:

“17. The Cabinet may provide a public health laboratory service under the direction and control of the Chief Medical Officer. The functions of the laboratory shall include – (a) carrying out investigations on epidemiological problems related to infectious diseases ...”

This is essentially what this case concerns. And it follows from this provision that the laboratory in question is operated under the responsibility of the Chief Medical Officer. It is not, and I agree with Mr Wheeler on this, under the aegis of the CIHSA, or legally under the aegis of the CIHSA, whatever may happen in practice on the ground.

35. In addition to that, on the question of policy, Mr Wheeler submits that when the CIHSA was still a party, it had an opportunity to say anything it wanted to regarding the quarantine and testing policy that was adopted and applied within the Cayman Islands. Moreover, it did so in that Dr Williams-Rodriguez swore an affidavit, both on behalf of the Respondents but also on behalf of the CIHSA.

36. As a matter of discretion, Mr Wheeler says, given that the CIHSA has made the effort to have itself extricated from these proceedings, I should not exercise my discretion now to allow the CIHSA back in again.

37. Finally, on the policy aspects, Mr Wheeler says that Dr Williams-Rodriguez is going to be giving evidence on behalf of the Respondents when this matter comes on for a final hearing and to the extent, if at all, that any questions regarding the CIHSA arise in the course of the proceedings, Dr Williams-Rodriguez will be able to answer those in the course of his oral evidence.

38. As far as the question of principle is concerned, Mr Wheeler says the CIHSA can only actually assist the court on policy questions if it has some genuine input on policies that are adopted within the Cayman Islands, but the CIHSA does not have that role. That is clear from section 33(1) of the Health Services Authority Act (2018 Revision) which provides:

“33.(1) The Minister may, after consultation with the [CIHSA], give such general and lawful directions in written form as to the policy to be followed by the [CIHSA] in the performance of its duties and functions as appear to the Minister to be necessary in the public interest.”

So, in my judgment, it is very clear from s.33(1) where the divide between the role of the Minister and the role of the CIHSA falls.

39. The position is made even stronger by s.33(2), which provides that:

“33.(2) Neither the [CIHSA] nor its directors or employees shall be liable or responsible for any loss or damage resulting from any directions of the Minister.”

Thus, not only does the Health Services Authority Act provide that policy is a matter for the Ministry to dictate to the CIHSA to implement, in addition, there is immunity for the CIHSA in acting in accordance with any directions from the Minister.

40. Mr Wheeler therefore says, in essence, this is all very interesting from the CIHSA’s point of view, but really the CIHSA has nothing useful to add to the material that is already going to be before the court.

41. Finally, Mr Wheeler accepts that it can properly be said that the involvement of the CIHSA is unlikely to add very much to the length of the hearing and also to the overall cost of these proceedings. However, Mr Wheeler’s point is that that is the wrong end of the telescope to be looking at the application. Essentially, unless there is a justifiable purpose for the CIHSA to be involved in these proceedings, then the application should be refused. The question of prejudice only really arises if I am minded to allow the CIHSA back into the proceedings because it has demonstrated that there is a justifiable purpose to its involvement.

E. Decision

42. So, with that long introduction, I will now get to my decision on this case. I recognize that, as Smellie J indicated in *Re Ontario Securities Commission*, I have a wide discretion. However, as I have also said earlier in this judgment, that does not give me a completely free hand to do whatever I want at my own whim. The discretion is to be exercised in accordance with the overriding objective, namely to deal with this case in a just, expeditious, and economical manner including saving expense, and dealing with the cause or matter in ways which are proportionate to the amount of money involved and the importance of the case and the complexity of the issues.

43. I gave a brief explanation of the factual background to Re Ontario Securities Commission earlier in the course of this judgment. I add that the nature of that case and the particular importance that the Cayman Islands gave to preserving confidential information as part of its legal regime, until the Confidential Relationships (Preservation) Law was overtaken, underpins and makes it easy to understand why the court in that particular case was willing to exercise its discretion in the companies' favour.
44. As regards the Northern Ireland Human Rights Commission decision that Mr Wheeler relies on, I recognize that the passage in Lord Woolf's speech at paragraph 32 is strictly *obiter* and was not expressly adopted by the other Law Lords. Indeed, in that decision, Lord Hobhouse dissented, so it was not a unanimous decision of the House of Lords. Nevertheless, I find paragraph 32 of Lord Woolf's judgment to be a useful guide to the Court's approach whether or not to allow intervention. It seems to me that the "*interests of justice*" test is easy to understand and easy to apply by courts that have to face applications of this kind.
45. For the reasons that I am now going to set out, I have reached the conclusion that in this particular case the interests of justice test is not met, and that the interests of justice do not require that the CIHSA is granted intervener or interested party status.
46. The first reason is that it is important to focus on the pleaded case. The issues that will have to be grappled with and decided by the court are those set out in the pleadings. Unless and until leave to amend is obtained, a party has no right to go outside the bounds of his or her pleaded case. The passages that I read from Mr Wingrave's skeleton argument expressly acknowledge that the CIHSA's concerns have not been generated by the pleaded case that the Petitioner is seeking to advance, but as a result of matters extraneous to that pleaded case.
47. The Petitioners' pleaded case has not substantially changed during the course of this matter. I have already summarised the nature of the amendments and re-amendments. It is appropriate to describe them as being, essentially, refinements of the case that was originally formulated back in February 2022. Reading the Re-Amended Petition, in my judgment, the claim that is made is directed squarely at the policy that was decided upon by the Ministry of Health, not at the implementation of that policy by the CIHSA. In my judgment, that is a strong pointer against the CIHSA being permitted to

intervene, because the CIHSA's interests are not engaged as a result of the way in which the claim has been formulated.

48. Secondly, I do not see how the Petitioner's pleaded case will engage any public policy implications of pandemic response at the operational level, which Mr Wingrave relies on as a basis for the CIHSA's involvement. The Petitioner's claim in this case is for damages for breach of his rights under the Bill of Rights. It is not apparent to me that that will require, or the court is likely to make, pronouncements upon broader issues of the pandemic response. This case is not in the nature of a public inquiry as to the way in which the Government addressed the pandemic. It is entirely focused on the Petitioner's rights, and whether those were infringed as a result of his enforced quarantine for a period longer than, he says, was justified.
49. Thirdly, the CIHSA did not operate or have operational responsibility for the laboratory, which was the responsibility of the Chief Medical Officer: see s.17 of the Public Health Act. Even if I were wrong on that for any reason, the CIHSA is immune under s.33 of the Health Services Authority Act. So those are two reasons why in my judgment there is no potential threat or target painted on the CIHSA's back as a result of this claim.
50. The CIHSA can provide input to the Respondents and officers within the CIHSA can be called to give evidence as witnesses if necessary.
51. Mr Wingrave faintly suggested that there might be some conflict between the Respondents and the CIHSA that would make that difficult but there is no evidence before me of the existence of any such conflict, or that there is any likelihood that such conflict might arise. I would need material of that kind before I was willing and able to take that aspect into account.
52. Whilst the CIHSA does not intend to seek its costs from any other person, that does not mean that the CIHSA's involvement will be costs neutral as regards the other parties. It is inevitable that the involvement of an additional party will lead to a longer hearing and to more material being addressed, even if it is simply additional witness statements and additional skeleton arguments. Even allowing for Mr Wingrave's suggestion that there would be little overlap between the Respondents and the CIHSA, experience demonstrates to all of us that the more parties there are the longer proceedings take to determine. Secondly on this topic, whilst the court might make an adverse costs order against

the CIHSA, that is not a foregone conclusion. If an adverse costs order were not made against the CIHSA then there is certainly a risk that the Petitioner would be prejudiced as a result of costs that he has to incur as a result of dealing with arguments raised by the CIHSA.

53. Thirdly, as far as prejudice is concerned, even if a costs order were to be made against the CIHSA, that would require some behaviour on the part of the CIHSA that was a long way outside the norm if it were not to be on the standard basis. And on the standard basis of taxation, the Petitioner is likely to recover only about 60-70% of his costs incurred. Thus, even if a costs order were made against the CIHSA, it would still result in real prejudice for the Petitioner as regards the irrecoverable costs of dealing with and responding to the position of the CIHSA.
54. Finally, I recognise that in this particular case the CIHSA was originally a party and made successful efforts to remove itself from the proceedings. Whilst that is not necessarily fatal to its application now to come back in again, it is a further factor than in my judgment, I should take into account when deciding whether or not to exercise my discretion in the CIHSA's favour.
55. For all those reasons, my conclusion is that I should not do so.
56. Finally, I make an order for the CIHSA to pay the Petitioner's costs to be taxed on the standard basis if not agreed, and no order as regards the Respondents' costs, who did not oppose the application.

Dated 2 December 2024



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT