

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2022

IN THE MATTER OF SECTION 39 OF IMMIGRATION (TRANSITION) ACT, 2021

R OF SECTION 23 AND 26 OF THE BILL OF RIGHTS

R OF ORDER 77A OF THE GRAND COURT RULES



VICTORIA KOHLER

1<sup>st</sup> Plaintiff

-and-

SEAN ALEXANDER KOHLER

2<sup>nd</sup> Plaintiff

-v-

DIRECTOR OF  
WORKFORCE, OPPORTUNITIES AND RESIDENCE CAYMAN

1<sup>st</sup> Defendant

-and-

ATTORNEY GENERAL OF THE CAYMAN ISLANDS

2<sup>nd</sup> Defendant

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WRIT OF SUMMONS

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This Summons was issued by HSM Chambers whose address for service is 68 Fort Street, George Town Grand Cayman Attorney for the Plaintiffs

**TO:** Director of Workforce, Opportunities and Residence Cayman  
Workforce Opportunities & Residency Cayman,  
87 Mary St, Apollo House West  
George Town, Grand Cayman, Cayman Islands

**AND TO:** Attorney General of the Cayman Islands  
4th Floor – Government Administration Building,  
133 Elgin Avenue, George Town, Grand Cayman  
P.O. Box 136, Grand Cayman KY1-9000, Cayman Islands

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings. If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this                      day of March 2022.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

#### **IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

#### **STATEMENT OF CLAIM**

1. The 1<sup>st</sup> Plaintiff is 23 year old Swiss National. The 1<sup>st</sup> Plaintiff is currently studying at the University of Halifax, Nova Scotia, Canada, although she is currently completing her studies online, from her family home in the Cayman Islands. In September 2022, the 1<sup>st</sup> Plaintiff will turn twenty four and her current right to remain in the Cayman Islands as a Dependant of her father will cease. In September 2021, she will have been a legally and ordinary resident in the Cayman Islands for less than 8 years.
2. The 2<sup>nd</sup> Plaintiff is a 19 year old Swiss National. He is currently studying at the Truman Bodden Law School in George Town. The 2<sup>nd</sup> Plaintiff is expected to graduate in 2024 at which time, unless he continues in full time tertiary education, his right to remain in the Cayman Islands will

cease.. When the 2<sup>nd</sup> Plaintiff's tertiary education finishes in 2024, he will have been legally and ordinarily resident in the Cayman Islands for approximately 9 years.

3. On 12 May 2014, Edouard Kohler, the father of the Plaintiffs, was granted a Work Permit in the Special Economic Zone of the Cayman Islands as a Director of The Roger Plantain (SEZC) Ltd.
4. As part of the grant of 12 May 2014, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs were listed as his Dependants as were Patricia Ann Kohler (the Plaintiffs' Mother) and Maureen Catherine Kohler (the Plaintiffs' sister whose date of birth is 23 April 2007). The 1<sup>st</sup> Plaintiff first arrived in the Cayman Islands as Legal and Ordinary residents on 3 April 2015. The 1<sup>st</sup> Plaintiff had however visited the Cayman Islands on a number of occasions before this.
5. On 24 May 2016, Edouard Kohler became a Permanent Resident of the Cayman Islands as a Person of Independent Means ("PIMS"). At the same time, his family became the Dependants of a PIMS.
6. The grant of 24 May 2016, permitted the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs and their younger sister to live and study in the Cayman Islands as dependants of their father until the age of eighteen.
7. Prior to the Plaintiffs reaching the age of eighteen, Edouard Kohler, was required to vary his PIMS Certificate to confirm that the Plaintiffs were engaged in full time education.
8. On 6 September 2016, Edouard Kohler applied to vary his PIMS to permit the 1<sup>st</sup> Plaintiff to remain in the Cayman Islands whilst she completed her studies.
9. The application of 6 September 2016 was granted on 10 October 2016 and Edouard Kohler was notified that his application to have the 1<sup>st</sup> Plaintiff remain as his dependant until the completion of her studies was approved.
10. On 7 September 2016, the 1<sup>st</sup> Plaintiff applied to obtain Permanent Residence ("PR") in the Cayman Islands pursuant to what was then Section 36 (3) Immigration Act (2015 Revision) ("the 2015 Act"). This application was subsequently rejected, on 19 September 2017, by the Chief

Immigration Officer of the Cayman Islands ("CIO") on the basis that the CIO did not have the power to consider the application.

11. On 16 October 2017, the 1<sup>st</sup> Plaintiff appealed against the decision of the CIO, dated 19 September 2017, to the Immigration Appeals Tribunal ("IAT"). On 16 December 2019, the CIO set out the rationale behind the decision to "No Power" the application of 7 September 2016. On 14 January 2020, Grounds of Appeal were submitted on behalf of the 1<sup>st</sup> Plaintiff as was an affidavit. In a decision dated 4 September 2020, the IAT rejected the Appeal.
12. On 9 February 2018, the 1<sup>st</sup> Plaintiff made a further application to be granted PR pursuant to Section 36 (1) of the 2015 Act on the basis that special circumstances existed which would permit her to be granted PR. The Special Circumstance set out in the letter was that it was not possible to for the children of PIMS to obtain Permanent Residence of the Cayman Islands pursuant to the points system. In an email dated 2 May 2018, the CIO rejected that application.
13. On 3 July 2020, Edouard Kohler applied to vary his PIMS to permit the 2<sup>nd</sup> Plaintiff to remain in the Cayman Islands past his eighteenth birthday on the basis of his continuing education. This application was granted on 4 February 2021 and Edouard Kohler was notified that his son had the right to remain in the Cayman Islands until the completion of his full time tertiary education.
14. On 11 September 2020, Patricia Ann Kohler (the Plaintiffs' mother) applied to be Naturalised as a British Overseas Territories Citizen of the Cayman Islands. This application was approved on 11 December 2020. Patricia Ann Kohler subsequently obtained and holds a Cayman Islands Passport.
15. On 11 September 2020, an application on behalf of Maureen Catherine Kohler (the Plaintiffs' minor sister) was submitted for her to be Registered as a British Overseas Citizens of the Cayman Islands. This application was granted on 11 February 2021. Maureen-Catherine subsequently obtained and holds a Cayman Islands Passport.
16. By 8 February 2021, all of the Kohler family, save for the Plaintiffs had either Permanent Residence in the Cayman Islands or a realistic path to becoming Caymanian.

17. In November 2021, HSM Chambers, on behalf of Plaintiffs sought to see whether the 1<sup>st</sup> Defendant would interpret Section 39 (1) of Immigration (Transition) Act, 2021 (“the Act”) in a manner which would be compatible with the Bill of Rights and would permit them to obtain Permanent Residence in their own right.
18. In respects to Section 39 of the Act, the 1<sup>st</sup> Defendant’s position is:
- i. It was not accepted that Section 39 constitutes a breach of Section 9 of the Bill of Rights.
  - ii. It was not accepted that Section 39 was discriminatory.
  - iii. It was not accepted that it was impossible to for the children of PIMS to obtain PR through the points system.
  - iv. There may be other ways in which the children of PIMS can remain in the Cayman Islands.
  - v. The decision to treat the children of PIMS differently from the children of individuals who obtained PR through the points system can be justified.
19. The Plaintiffs would aver the following:
- i. A PIMS holder is a Permanent Resident of the Cayman Islands.
  - ii. There has never been a policy document produced by the Cayman Islands Government, the Department of Immigration or the Department of WORC which states that the intention of the Act or any of the earlier pieces of legislation is to treat the children of PIMS less favorably than the children of PR holders.
  - iii. Any such policy deliberately disadvantaging the children of investors who are specifically invited to bring their families to the Cayman Islands and to invest, would be irrational.
  - iv. The point system as set out in Section 37 of the Act and in the Immigration Regulations (2019 Revision) (“the Regulations”) act as an effective barrier to the children of PIMS from obtaining PR. Only in the most rare and extreme cases could a 23 year old Dependant of a PR holder obtain PR under the points system. The children of PR holders do not have the same barrier and can obtain PR in their own right through Section 39. Prima facie the long term resident children of PIMS are treated less

favorably that the long term resident children of other PR holders, whether that PR has been obtained through the points system, through marriage to a Caymanian, or through marriage to a Permanent Resident.

- v. The interpretation of the Department and the inability of the children of PIMS, who satisfy the requirements as set out in Section 39 (1) save for the fact that their parents do not hold an RERC, to obtain PR, means that their right to a private life and/ or family life is effectively curtailed without reasonable justification.
- vi. The children of RERC holders and the children of PIMS are treated in the same manner save for their ability to obtain PR in the Cayman Islands, i.e. both the PIMS and PR holder has to apply for their Certificates to be varied to permit their adult children to stay in the Cayman Islands past eighteen and those children are required to be in full time education.
- vii. A PIMS holder and a PR holder under the points system are both treated as settled in the Cayman Islands as per the British Nationality Act 1981.
- viii. The dependant spouses of PIMS are treated in the same manner as the dependant spouses of RERC holders, i.e. they are granted PR as dependants.
- ix. The holder of PIMS can have his Permanent residence revoked pursuant to Section 51 of the Act in the same manner as a PR holder who obtained their permission under the point system or as the Spouse of a Caymanian or a Permanent Resident.
- x. The Plaintiffs have a term limit as set by Section 66 (9) of the Act and therefore have a limited ability to obtain alternative permission under the Act. The 2<sup>nd</sup> Plaintiff would have to either stop his studies early, if he wished to obtain a work permit before his term limit expired. He would also have to find an employer willing to employ him for a short period of time with no certainty that he would obtain PR in the future and he would be forced to compete with Caymanians for entry level positions.
- xi. If the Plaintiffs father had obtained PR under the points system or through some other way, they would now be able to apply for PR pursuant to Section 39 and they would be granted PR (there being no basis for refusal).
- xii. Not only are the Plaintiffs' right to a family life effected, i.e. their relationship with their mother and father and their younger sister (who is under the age of eighteen), but also their right to a private life in the Cayman Islands, a right they have obtained treating the Cayman Islands as their home and for them being resident here for more than 7 years.

- xiii. Section 39 of the Act requires that the Dependant child of a RERC holder to satisfy the authorities that the Cayman Islands has been their home for at least seven years.
- xiv. The Dependant children of PR holders are treated in the same manner as the Dependant children of RERC holders who have obtained their PR as a Spouse of a Caymanian.

20. It is therefore contended that:

- i. The 1<sup>st</sup> Defendant's current interpretation of Section 39(1) of the Act is wrong in Law; or
- ii. The 1<sup>st</sup> Defendant's interpretation of Section 39 (1) of the Act, when read with Sections 37 (3) and the Regulations prevents the child of a PIMS from obtaining PR. This, without reasonable justification, adversely effects the Plaintiffs' right to a private and family life in the Cayman Islands. It is therefore incompatible with Section 9 of the BOR.
- iii. Section 39 (1) of the Act, when read with Section 37 (3) and the Regulations affords different and unjustified treatment to the children of PIMS in comparison to the children of RERC holders and which affects their right to remain in the Cayman Islands. It is therefore contended that Section 39 (1) is incompatible with Section 9 and 16 of the BOR.

**AND THE PLAINTIFF claims:**

1. A Declaration that the Department of WORC shall consider and interpret Section 39 (1) of the Act in the following manner:
  - (1) *A dependant of a ~~Residency and Employment Rights Certificate~~ **Permanent Resident**, having attained the age of eighteen years, may apply to the Board or the Director of WORC for a Residency and Employment Rights Certificate and shall, be granted the right to permanently reside in the Islands if —*
    - (a) *the dependant was declared in the original application for the Certificate;*
    - (b) *the dependant is found to be of good character and conduct;*
    - (c) *the dependant has been legally and ordinarily resident in the Islands for at least seven years immediately prior to the application; and*
    - (d) *the holder of ~~the Residency and Employment Rights Certificate~~ **Permanent Residence** continues to possess it or has become a Caymanian.*

Or

2. A Declaration that Section 39 (1) of the Act is incompatible with Section 9 and Section 16 of the Bill of Rights.
3. Costs.

Dated this 11<sup>th</sup> day of March 2022.



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HSM CHAMBERS  
ATTORNEYS FOR THE PLAINTIFFS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

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BETWEEN:

VICTORIA KOHLER

1<sup>st</sup> Plaintiff

-and-

SEAN ALEXANDER KOHLER

2<sup>nd</sup> Plaintiff

-v-

DIRECTOR OF  
WORKFORCE, OPPORTUNITIES AND RESIDENCE CAYMAN

1<sup>st</sup> Defendant

-and-

ATTORNEY GENERAL OF THE CAYMAN ISLANDS

2<sup>nd</sup> Defendant

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ACKNOWLEDGMENT OF SERVICE OF WRITE OF  
SUMMONS

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If you attend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

IMPORATANT. Read the attached accompanying direction and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly. THIS FORM MAY HAVE TO BE RETURNED.

This Summons was issued by HSM Chambers whose address for service is 68 Fort Street, George Town Grand Cayman Attorney for the Plaintiffs

1. State 1<sup>st</sup> Defendant's name and address:-

The Director of WORC, Workforce Opportunities & Residency  
Cayman, 87 Mary St, Apollo House West  
George Town. Grand Cayman. Cayman Islands

2. State whether the 1<sup>st</sup> Defendant's intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Application is acknowledged accordingly.

\_\_\_\_\_  
1<sup>st</sup> Defendant's Signature

Dated this      day of      2022

**See overleaf**

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DIRECTOR OF  
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This Summons was issued by HSM Chambers whose address for service is 68 Fort Street, George Town Grand Cayman Attorney for the Plaintiffs

1. State 2<sup>nd</sup> Defendant's name and address:-

Attorney General of the Cayman Islands, 4th Floor – Government Administration Building, 133 Elgin Avenue, George Town, Grand Cayman

2. State whether the 2<sup>nd</sup> Defendant's intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Application is acknowledged accordingly.

\_\_\_\_\_  
2<sup>nd</sup> Defendant's Signature

Dated this      day of      2022

**See overleaf.**