



# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

**2025 No 186 civ**

**BETWEEN:** **AMIR MIZRACHY** **APPLICANT**  
**AND**  
**PROFESSIONAL CONDUCT COMMITTEE** **RESPONDENT**

### **ORDER AND REASONS FOR REFUSING LEAVE TO ISSUE JUDICIAL REVIEW PROCEEDINGS ON THE PAPERS**

#### **UPON THE COURT REVIEWING**

- (1) The Form 86A filed by Amir Mizrachy setting out the grounds of his application for leave to issue judicial review proceedings dated 29 July 2025 and
- (2) The affidavit of Amir Mizrachy in support of the application dated 21 July 2025 and the materials exhibited thereto

#### **Disposition and Order**

In the exercise of the Court's powers under Order 53 Rule 3 (3) of the Rules of the Supreme Court 1985 ("the RSC") the Court has refused leave to issue judicial review proceedings on the papers<sup>1</sup> for the reasons set out in this Ruling.

#### **Introduction**

1. Mr Mizrachy's application is for leave to issue judicial review proceedings in relation to three separate issues. These are:

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<sup>1</sup> No hearing was requested in the Notice of Application.

- (i) The decision of the Professional Conduct Committee of the Bermuda Bar Council (“the PCC”) that was made in December 2023 to dismiss Mr Mizrachy’s complaint of professional misconduct against a member of the Bermuda Bar Association<sup>2</sup>. The complaint was made to the PCC on 30 March 2023 and was supplemented by two further complaints in April and June 2023. The complaints all relate to a barrister’s alleged breaches of the Bermuda Barristers’ Code of Professional Conduct 1981 (“the Professional Code”) in the course of his representation of the defendant to a civil claim which had been brought by Mr Mizrachy in the Supreme Court of Bermuda. These complaints are together referred to as “the 2023 Complaint”. In December 2023 the PCC dismissed the 2023 Complaint at a preliminary stage on the grounds that the 2023 Complaint failed to state facts which could amount to a *prima facie* breach of the provisions of the Professional Code. This will be referred to as the December 2023 decision.
- (ii) A letter that the PCC sent on 18 November 2024 confirming that the matters raised in correspondence sent by Mr Mizrachy to the PCC in July and November 2024 asking the PCC to reconsider its decision to dismiss the 2023 Complaint did not alter the PCC’s original view. This will be referred to as “the November 2024 letter”.
- (iii) The alleged “ongoing failure” of the PCC to reconsider Mr Mizrachy’s new complaints and to refer those complaints to a disciplinary tribunal where a *prima facie* case of misconduct exists, and to comply with the rules of natural justice. These criticisms will be referred to as the “new matters”.

### **The December 2023 decision**

- 2. In December 2023 the PCC summarily dismissed the 2023 Complaint as failing to state facts which could amount to a *prima facie* breach of the Professional Code. The PCC’s decision to dismiss the Complaint summarily was made more than 18 months before Mr Mizrachy issued his application for leave to issue judicial review proceedings on 29 July 2025. Therefore, any application for leave to issue judicial review proceedings in respect of the PCC’s decision of December 2023 is out of time, namely outside the 6-month time limit provided in RSC Order 53 Rule 4. No application for an extension of time has been made.
- 3. RSC Order 53 Rule 4 (1) requires the court to be satisfied that there is a good reason to extend the time. The statements made in Mr Mizrachy’s affidavit in support of his application do not explain the reason for the delay nor do they provide a good reason for extending the period in which the application must be made. Therefore, the court has dismissed the application for leave to issue judicial review proceedings in respect of the December 2023 decision.

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<sup>2</sup> The identity of the barrister is protected by the statutory requirements of confidentiality that apply to complaints made against barristers which do not result in a finding of misconduct.

### **The November 2024 letter**

4. Mr Mizrachy says that the PCC erred in law in refusing to “reconsider” Mr Mizrachy’s Complaint in July, October and November 2024. In particular he relies upon a letter dated 18 November 2024 as being a “fresh decision” of the PCC in respect of which he is entitled to seek judicial review.
5. However, the PCC’s letter is not a “decision” which Mr Mizrachy is entitled to challenge by way of judicial review because (i) the Complaint that Mr Mizrachy wishes the PCC to reopen or reconsider is the same one that was dismissed in December 2023 (ii) the PCC does not have power to “reconsider” a previous decision to dismiss a complaint because once a complaint is dismissed the PCC is *functus officio* in relation to that complaint and (iii) the PCC’s letter dated 18 November 2024 was to confirm that the 2023 Complaint was closed.
6. In any event, Mr. Mizrachy’s application for judicial review was not made until 29 July 2025. This was more than 6 months after the date on which the PCC is said to have made its “decision” to refuse to “reconsider” the 2023 Complaint (i.e. 18 November 2024).
7. Even if the court were to accept that the PCC’s letter dated 18 November 2024 could arguably amount to a reviewable “decision”, the date of that “decision” also falls outside the time limit for seeking leave to commence judicial review proceedings.
8. As explained in paragraphs 2 and 3 above, no application for an extension of time has been sought in respect of this “decision”, and Mr Mizrachy’s affidavit does not give an explanation for the delay or provide a good reason for the court to extend the time limit.
9. Therefore, the court has also dismissed the application for leave to issue judicial review proceedings in respect of the November 2024 letter.

### *The new matters*

10. Mr. Mizrachy referred to certain “new matters” in his affidavit of 21 July 2025 which he said reinforced the 2023 Complaint. These related to (a) an alleged conflict of interest on the part of the barrister (because he had allegedly not disclosed his prior representation of a relative of the judge who was hearing the case) (b) allegedly improper communications between the barrister and the independent medical expert in the relevant proceedings and (c) an unparticularised allegation of “potential perjury and obstruction of justice”.
11. These new matters were raised in correspondence sent by Mr Mizrachy to the President of the Bar Association between February and June 2025. Mr Mizrachy said that these new matters required the PCC to “re-open” the investigation of the 2023 Complaint<sup>3</sup>. He asked that the new matters be added to “supplement his ongoing complaint” against the barrister<sup>4</sup>. Mr Mizrachy did not make a new complaint of unprofessional conduct to the PCC against the barrister in relation to the new matters but said that the new matters were evidence of a pattern of unprofessional conduct on the part of the barrister concerned<sup>5</sup>.

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<sup>3</sup> Letter from Mr Mizrachy to the President of the Bar Association dated 12 May 2025 paragraph 8.

<sup>4</sup> Letter from Mr Mizrachy to the President of the Bar Association dated 12 May 2025 paragraph 2.

<sup>5</sup> Letter from Mr Mizrachy to the President of the Bar Association dated 19 June 2025 paragraph 24

12. As already noted, the 2023 Complaint had been dismissed, so it could not be “re-opened”. Even assuming the three supplemental letters sent by Mr Mizrachy to the President of the Bar Association amounted to new complaints of unprofessional conduct against the barrister, the content of the complaints raised in those letters is insufficient to raise an arguable claim for judicial review on the basis that the PCC had failed to refer these matters to a disciplinary panel in breach of their statutory duty. The reasons for this conclusion are set out below.
13. The first new allegation was raised in a letter dated 24 February 2025. After repeating his complaints about the dismissal of the 2023 Complaint, Mr Mizrachy complained that he had witnessed a member of the PCC engaging “in a friendly manner” with the barrister in court in different proceedings. No breach of a rule of the Professional Code against the barrister was alleged. The suggestion made by Mr Mizrachy was that this friendly conduct amounted to a breach of the rules of natural justice on the part of the PCC. No more need be said about this allegation other than to record that it does not raise an issue that could be the subject of a judicial review proceeding.
14. The second new allegation was raised in a letter dated 12 July 2025 letter is that the barrister had failed to disclose a “conflict of interest” because the barrister had previously represented a close relative of the judge who was then presiding in the civil case that Mr Mizrachy had initiated.
15. Mr Mizrachy said that this was in breach of Rule 24 of the Professional Code which provides that a barrister shall not act for an opponent of a client or a former client in circumstances where the barrister’s knowledge of the former client’s affairs would give the barrister an unfair advantage (by reason of knowledge of the former client’s affairs). The barrister had not acted previously for Mr Mizrachy, and therefore had no knowledge of Mr Mizrachy’s affairs, so it is impossible for this rule to apply.
16. If Mr Mizrachy had concerns about the appearance of bias on the part of the judge, the proper course would be to raise the issue with the judge. There is no possible breach of this rule *by the barrister* which could be established by the facts alleged by Mr Mizrachy. The related allegations of breaches of other rules relating to the barrister’s former representation are not engaged because the barrister was not under any duty to make disclosure. (It should also be noted for clarity that the judge was not the barrister’s former client.) Therefore, this allegation cannot support an arguable breach of the Professional Code on the part of the barrister which the PCC was ‘required’ to refer to a disciplinary tribunal.
17. The third new allegation was made in a letter dated 19 June 2025 letter is that the barrister had contacted the independent medical expert improperly. The correspondence shows that the contact between the barrister and the independent expert was in relation to the medical examination of a witness and getting an updated report in the pending civil proceedings. There is no property in a witness. The correspondence was in accordance with the ordinary duties of counsel, and there is no basis in fact that could support an allegation of a breach of any of the rules cited in Mr Mizrachy’s letter (i.e. a barrister’s duties of integrity, candour and fairness).
18. Mr Mizrachy also stated in his Form 86A application that the barrister had been guilty of “potential perjury and obstruction of justice”. No particulars were given of how Mr Mizrachy

related these allegations to his complaints of unprofessional conduct. It is impermissible to make allegations of serious criminal misconduct without providing full particulars and supporting those allegations with *prima facie* evidence. No particulars were given and no evidence was presented that could justify this allegation. The allegation amounts to no more than scurrilous abuse. The court therefore rejects the allegation as a baseless assertion without further ado.

19. The court has concluded that there is no arguable claim disclosed by the new matters that could possibly form the basis of an arguable claim to judicial review. It is therefore the court's duty to dismiss the application for leave to issue judicial review proceedings in relation to the new matters at a preliminary stage.

### **Conclusions**

20. The applications that relate directly or indirectly to the December 2023 decision and the November 2024 letter are out of time and no good reason has been shown that would justify the court exercising its discretion to grant an extension of time to bring applications for judicial review in respect of them.
21. None of the facts disclosed in the new matters (assuming the three letters are to be treated as new complaints of unprofessional conduct) could amount to breaches of the Professional Code. It follows that no claim can be made by Mr Mizrachy that the PCC has failed to refer those allegations to a disciplinary tribunal in breach of its statutory duty, and therefore no claim for judicial review arises.
22. The application for leave to issue judicial review proceedings is hereby refused and the court so orders.

Dated this 21<sup>st</sup> day of January 2026



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**THE HON. JUSTICE MR. ANDREW MARTIN**

**PUISNE JUDGE**