

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2009/0141

BETWEEN

DEAN JONAS

Petitioner

And

JACQUI QUINN-LEANDRO
MARILYN SIMON
LORNA SIMON
THE ELECTORAL COMMISSION

Respondents

AND

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2009/0142

BETWEEN

ST. CLAIR SIMON

Petitioner

And

WINSTON BALDWIN SPENCER
GEORGE BROWN
LORNA SIMON
THE ELECTORAL COMMISSION

Respondents

AND

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2009/0143

BETWEEN

ARTHUR MANOAH NIBBS

Petitioner

And

TREVOR WALKER
JOHN JARVIS
LORNA SIMON
THE ELECTORAL COMMISSION

Respondents

AND

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2009/0144

BETWEEN

CHARLES HENRY FERNANDEZ

Petitioner

And

JOHN MAGINLEY
LILIA MANWARREN
LORNA SIMON
THE ELECTORAL COMMISSION

Respondents

Appearances:

Mr. Douglas Mendes SC with Mr. Kendrickson Kentish and Mr. Leon Chaku Symister for the First Respondents

Mr. Russell Martineau SC with Ms. Emily Simon-Forde for the Second/Third Respondents

Mr. John Guthrie QC and Mr. Anthony Astaphan SC and Ms. Rika Bird for the Petitioners

Mr. Anthony Armstrong Director of Public Prosecutions and Ms. Joanne Walsh Crown Counsel II

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2009: May 5
June 30
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JUDGMENT

- [1] **Blenman J:** Antigua and Barbuda held its General Election on the 12th March, 2009. There were two main parties, among others, contesting the elections. These were the Antigua Labour Party (ALP) and the United Progressive Party (UPP). In Barbuda, the Barbuda People Movement (BPM) and the ALP were the main parties to contest the election. Elected members were declared and the United Progressive Party was declared the winner of the elections. It bears noting the BPM candidate was declared the winner in Barbuda.
- [2] It is evident that the elections were hotly contested and very competitive. This apparently persisted to very close to the actual date of polling.
- [3] The UPP having won the elections has formed the Government.
- [4] Six persons have filed petitions challenging the elections (six petitions were filed) seeking to have the election declared void. On the first date of hearing, the Court having heard submissions from learned Counsel for the petitioners and the respondents ruled that the first four petitions were to be consolidated heard together and that the other two were, similarly, consolidated heard together.
- [5] This decision relates to the applications that were filed in relation to the first four petitions. Each of the petitions in the first four petitions is supported by First Affidavits sworn to by each petitioner.
- [6] The petitioners have named the Supervisor of Elections, the Election Officers and the Returning Officers as parties to the petition. They have also joined the Electoral Commission. There is no appearance on behalf of the Commissions, for reasons that will become apparent shortly.
- [7] The petitioners in the case at bar were three candidates of the ALP and one voter who was entitled to vote.

[8] The first petitioner, Mr. Dean Jonas, is the ALP candidate for St. George. He seeks to have the election declared invalid. In that Constituency, Ms. Jacqui Quinn-Leandro, the UPP candidate was declared the winner. In the second petition, Mr. Arthur Manoah Nibbs, the ALP candidate for the Constituency of Barbuda has filed a petition in which he seeks to have the election in which Mr. Trevor Walker was declared the winner, deemed void. In relation to the St. John's Rural West Constituency, Mr. St Clair Simon, who was not a candidate but says that he had a vote and voted as an elector, has filed a petition seeking to have the election declared invalid. Mr. Baldwin Spencer, the Prime Minister, was declared the winner in that Constituency. Mr. Charles Henry Fernandez (the ALP candidate) has filed a petition and he seeks to have the election declared void in relation to Mr. John Maginley (the UPP candidate) who was declared the winner.

[9] The four petitions having been filed, the respondents who were declared to be elected filed applications to strike out various paragraphs. In addition, Ms. Lorna Simon the Supervisor of Elections, and the Returning Officers, have filed applications to have various paragraphs of the petition struck out. They have also asked that the Electoral Commission be struck. The petitioners have also filed applications in which they are seeking various sets of information from the respondents and the respondents have counter filed applications in which they seek various sets of information from the respondents. This matter would be addressed shortly.

[10] **Issues**

The issues that arise for the Court to resolve are as follows:

- (1) Whether the Court should strike out the various paragraphs of the petitions as requested by the respondents;
- (2) Whether the Court should strike the Electoral Commission from the petitions;
- (3) Whether the Court should order the respondents Mr. Baldwin Spencer and Mr. Trevor Walker to provide the information and details that the petitioners seek.

[11] I will now address the applications filed in the various petitions.

Mr. Dean Jonas Petition

Mrs. Quinn-Leandro's Application

- [12] Mrs. Jacqui Quinn-Leandro has filed an application to strike out paragraph 8.1, which deals with the ABS advertisement, from the petition. She has also applied for an order that the petition provides further and better particulars of several matters. During the hearing of the applications, learned Senior Counsel appearing on behalf of Mrs. Quinn-Leandro and learned Queen's Counsel Mr. Guthrie agreed to the provisions of the particulars that were requested.

Supervisor of Election and Returning Officer Application

- [13] Mrs. Marilyn Simon Returning Officer and Ms. Lorna Simon who is the Supervisor of Election have also applied to have section 8.1 of the petition struck out. This paragraph deals with an alleged ABS advertisement. Their main contention is that the allegation contained in paragraph 8.1 does not relate to the conduct of poll on polling day at all and how the election was conducted. It is worst, they argue since paragraph 8.1 does not in any way connect them or the Electoral Commission to the incident referred to on polling day it should be struck. The allegations are exclusively against the Government of Antigua and Barbuda. They also apply to have the Electoral Commission struck.

Mr. Dean Jonas' Application

- [14] Mr. Dean Jonas has also applied to the Court for orders compelling the Supervisor of Election Ms. Lorna Simon, Ms. Marilyn Simon the Returning Officer and the Electoral Commission to provide further information and details of matters that relate to the polling day. These included matters such as when the polling stations opened and closed. During the hearing however, Senior Counsel Mr. Martineau indicated that the Supervisor of Commission had provided some of the information and undertook to make available the rest of the information. This therefore obviated the need for the court to address the application for particulars in so far as it relates to the Supervisor of Elections and the Returning Officer. He also applied for an order that the parties file and exchange witness statements.

[15] **St. Clair Simon's Petition**

The next petition was Mr. St. Clair Simon's petition.

Mr. Baldwin Spencer's Application

- [16] Mr. Baldwin Spencer has filed an application in which he seeks to have paragraph 8.1, 8.2, 8.3 and 8.4 of the petition struck. Also he also seeks to have the words "undue influence" "bribery" "29" and "29B" appearing in the first sentence of paragraph 8.6 of the petition struck. In addition, he seeks an order striking out the second sentence of paragraph 8.6 of the petition. Further he seeks an order striking out paragraph 9.1, which deals with the ABS advertisements, from the Petition. Alternatively, he seeks to have the Court to compel the Petitioner to provide a number of particulars/information in relation to statements made in paragraphs 8.2, 8.3, 8.4, 8.5, 9.3, 9.4, 9.5, 9.10 and 9.11.

Returning Officer and Supervisor of Election Application

- [17] Mr. George Brown and Ms. Lorna Simon, who are the Returning Officer and the Supervisor of Elections respectively, have also filed application in which they seek to have paragraph 9.1 of the petition struck out. Paragraph 9.1 is similar to paragraph 8.1 in the Jonas petition, which deals with the advertisement. They also seek an order that the Electoral Commission be struck from the petition.

St. Clair Simon's Application

- [18] Mr. St. Clair Simon has also filed an application in which he seeks to compel Mr. Spencer to provide "the details and any documents relating to meetings that he attended and or any representation of the UPP, with any Buildings or Utilities companies or other organizations, and any employers or workers representatives which relate to works carried out on a basketball court and road works in Five Islands between March 4th and 12th 2009 as referred to by the Petitioner". He has also filed an application in which he seeks a number of particulars from the Returning Officer and the Supervisor of Election. He has also sought an order for the filing and exchange of witness statements. During the hearing learned Senior Counsel Mr. Martineau informed the Court that the particulars were

provided and that any additional information that was required would be provided to the Petitioner.

[19] **Mr. Arthur Nibbs' Petition**

The next petition was filed by Mr. Nibbs.

Mr. Trevor Walker's Application

[20] Mr. Trevor Walker has filed an application in which he seeks to have paragraph 8.1, 8.2, 8.3, 8.4 and 8.5 of the Petition struck out. He also seeks to have paragraph 9.1, which deals with the ABS advertisement, struck out. Further, Mr. Walker says that the conduct attributed to him in paragraphs 8.2, 8.4 and 8.5 do not constitute an offence under section 29 of the Representation of People Act, and those paragraphs should be struck. Mr. Walker also seeks to have the words "treating and undue influence" and "29A, 28B and 29C" which appear in paragraph 8.7 of the Petition struck out. He opposes Mr. Nibbs application for particulars in relation to statements that were allegedly made by the Prime Minister at meetings that were held in his presence.

Returning Officer and Supervisor of Election's Application

[21] Also Mr. John Jarvis the Returning Officer and Ms. Lorna Simon the Supervisor of Election have applied to have Paragraph 9.1 of the petition struck. They also seek to have the Electoral Commission struck out from the petition on similar bases as in the Fernandez petition.

Mr. Arthur Nibbs' Application

[22] Mr. Nibbs seeks an order from the Court compelling Mr. Walker to provide documents relating to meetings that he allegedly attended with the Prime Minister and any representatives of the UPP, any Buildings or Utilities companies or other organizations and any employers or workers' representatives which relate to the work carried out in Barbuda between March 4th and 12th 2009, as stated in the petition. He also seeks an order to compel Mr. Walker to provide the dates, details and any documents of meetings attended by Mr. Walker and the Prime Minister in Barbuda between the 9th February 2009 (when

Parliament was dissolved) and 12th March 2009 (the date of the election) He also requests the details and any documents of meetings attended by Mr. Walker and the Prime Minister and/or representatives of the UPP and the Ambassador from Antigua to Cuba. He also seeks various particulars from the Supervisor of Election and the Returning Officer which they have agreed to provide.

Mr. Charles Henry Fernandez's Petition

Mr. John Maginley's Application

- [23] Mr. John Maginley has filed an application in which he seeks to have paragraph 8.1 of the petition, which deals with the ABS advertisement, struck out.

Supervisor of Elections and Returning Officer's Applications

- [24] Ms. Lorna Simon and Mrs. Lilia Manwarren, Supervisor of Elections and Returning Officer respectively have both filed an application to have paragraph 8.1 of the petition struck out. They also seek an order from the Court that the Electoral Commission be struck out.

Mr. Fernandez Application

- [25] Mr. Fernandez has filed an application against Ms. Lilia Manwarren the Returning Officer, Ms. Lorna Simon the Supervisor of Election and the Electoral Commission in which he seeks to have an order to compel them to provide further information. During the course of arguments they agreed to provide him with the information.

Supervisor of Election and Returning Officer's Applications

- [26] Ms. Lorna Simon and Ms. Lilia Manwarren have applied to strike out paragraph 8.1 which deals with the ABS advertisement. Also, they have applied to have the Electoral Commission struck out from the petition.

[27] **Mr. James Guthrie QC Submissions**

Mr. Dean Jonas' Petition

Lead Counsel Mr. Guthrie QC reminded the Court that Mrs. Jacqui Quinn-Leandro seeks an order striking out paragraph 8.1 of the petition, which relates to a pre-election

advertisement. The paragraph is headed "Illegal acts and omissions by the Second, Third and Fourth Respondents". It reads:

"On the night before the general election, the Government owned ABS television network ran an advertisement repeatedly, which purported to show that the correct way to vote was by placing a cross next to the sun, the symbol of the UPP. No mention was made of the symbol of the ALP."

[28] Learned Queen's Counsel Mr. Guthrie submitted that it is not an allegation made against the first respondent, and the application is misconceived. Learned Queen's Counsel Mr. Guthrie urged the Court to dismiss Mrs. Quinn-Leandro's application and allow paragraph 8.1 to stand. He also conceded that the Supervisor of Elections and the Returning Officers should not have been mentioned. He asserted that similarly, the Supervisor of Elections' application to strike out paragraph 8.1 should be dismissed.

St. Clair Simon's Petition

[29] In relation the Mr. Simon's petition, Learned Queen's Counsel Mr. Guthrie referred the Court to the fact that Mr. Winston Baldwin Spencer seeks orders striking out certain paragraphs of the petition, namely:

"(i) An order striking out paragraphs 8, 1, 8, 2, 8, 3 and 8, 4 of the Petition." He quite helpfully spelt them out as follows:

8.1 St John's City West is a poor constituency dependent upon Government and Government projects.

8.2 For the five years preceding the election the UPP Government and the first respondent largely neglected the constituency. However after the dissolution of Parliament on 9th February 2009 and until the date of the election the UPP Government and the First Respondent commenced works on a basketball court and road works in Five Islands within the constituency. The works involved an increase in temporary employment and in all of the circumstances the Petitioner claims that the First Respondent deliberately sought undue influence and unfair advantage in the election.

8.3 On the day of the election the 1st Respondent personally distributed voters' identification cards to persons in the immediate vicinity of the polling stations in the constituency.

8.4 On the day of the election the 1st Respondent further escorted persons in the immediate vicinity of the polling station at Green Bay School to the front of the voting queues."

- (ii) An order striking out the words "undue influence, bribery; "29" and "29B" appearing in the first sentence of paragraph 8.6 of the Petition;
- (iii) An order striking out the second sentence of paragraph 8.6 of the Petition".

Paragraph 8.6 of the petition reads:

"8.6 The matters set out in paragraph 8.1 to 8.5 amounted to the corrupt practices of undue influence, bribery and treating for the purposes of sections 29, 29 A, and 29 B of the Act. The first respondent thereby also acted in breach of section 35 (4) of the Act, which prohibit any person from remaining at or seeking to influence any voter to vote or refrain from voting within 100 yards of any polling station."

[30] Mr. Guthrie QC indicated that the grounds on which the orders at (i) (ii) and (iii) above are sought are taken together and ought to be refused, as follows:

- (a) Mr. Spencer contends that the conduct alleged at paragraphs 8.2, 8.3 and 8.4 of the petition does not constitute bribery for the purposes of section 29 of the Act or any other offence under that section.
- (b) As to paragraph 8.2, it is established as a matter of law that the provision of temporary employment can constitute payment to an elector and so can constitute bribery: He referred the court to the judgments of **Benjamin J in Selwyn Walter v Lester Bird, 16th July 1999, at p 5; and Wigmore v Matapo & ors, C/A (Cook Islands) 14/2004; Jugnauth v Ringadoo PC [2008] UKPC 50, 5th November 2008 (Mauritius)**. In the present case, the use of Government patronage to provide jobs in a small area such as Five Islands which has limited resources, if done with political motives to influence an election, is an obvious example of such payment/bribery. He argued that this is a matter of evidence. The paragraph, he maintained, should stand.
- (c) As to paragraph 8.3, the handing out by a candidate Mr. Spencer, particularly when he is the Prime Minister, of voters' identification cards on the day of the

polls in the immediate vicinity of the polling stations, is capable of constituting or contributing to the allegation of corrupt practice, e.g. under section 29B (1) of the Representation of the People Act. He said that Mr. Spencer's application erroneously treats the allegations made as distinct from one another, when they may equally be taken together as illustrative of overall conduct.

(d) As to paragraph 8.4, Mr. Guthrie QC asserted that similar considerations apply. Personally escorting persons in the immediate vicinity of a polling station to the front of the voting queues is capable of constituting or contributing to a corrupt practice under section 29B of the Act. Whether it took place, and whether it had this effect in the present case, are matters of evidence.

[31] Accordingly, Mr. Guthrie QC posited the Court should not grant the orders which Mr. Spencer seeks. He said the reference in paragraph 8.6 of the petition to section 35(4) of the Act should have been to Rule 35(4) of the Election Rules contained in the First Schedule to the Act as provided by section 3 of the Representation of People (Amendment) Act 2002, which prohibits the conduct concerned. The reference was an inadvertent mistake. The conduct alleged is however clearly described and the Court ought to grant an amendment to the reference.

[32] Here again, Learned Queen's Counsel Mr. Guthrie said that the orders sought should also be refused.

[33] Mr. Guthrie QC said that Mr. Spencer seeks an order striking out paragraph 9.1 of the Petition." This paragraph again relates to the pre-election advertisement referred to above. This, however, is again clearly not an allegation made against the Mr. Spencer, and the application is misconceived. Also, Mr. Guthrie QC said that the Court should not accede to the request of the Supervisor of Election's application and strike out the paragraph. Learned Queen's Counsel maintained that there in no proper basis for the Court to strike out that paragraph.

Mr. Arthur Nibbs' Petition

[34] The next petition that was dealt with is the Nibbs petition. Mr. Guthrie QC submitted that Mr. Trevor Walker seeks an order striking out the following paragraphs of the petition, namely paragraphs 8.1, 8.2, 8.3, 8.4 and 8.5 of the petition. Here again Mr. Guthrie QC quite helpfully reproduced the relevant paragraphs which are as follows:

8.1 Barbuda is a small island community dependant on Government and Government projects.

8.2 On about 4th February 2009 the Government (through the United Progressive Party, hereafter "the UPP", with which the BPM is publicly affiliated) commenced, with the open participation of the First Respondent, substantial road works in Barbuda. Such works included the grading of roads, demolition and reconstruction, in particular in the area of the First Respondent's office in Codrington. The works involved, for the period from 4th February to 12th March 2009, an increase in temporary employment. In the circumstances, and given the events described below, the Petitioner claims that the First Respondent deliberately sought undue influence and an unfair advantage in the election.

8.3 Parliament was dissolved by the UPP on 9th February 2009.

8.4 At a public rally held for the BPM in Codrington in Barbuda on 4th March, 2009 the First Respondent said to those present or words to the following effect:

"if you don't vote for me the concrete roads and drains will stop."

"If you don't vote for me the ferry that PM Spencer has promised for Barbuda will not happen."

"If you don't vote for me workers of the Council will not be paid."

8.5 At a further political meeting held in Codrington at which the First Respondent was present the Honourable Prime Minister Baldwin Spencer (and the Honourable

Minister Wilmoth Daniel) said to those present words to the effect that if the people of Barbuda voted for the Petitioner:

" the UPP Government will not support the Petitioner, and that all the works will come to an end."

- (ii) An order striking out the words "treating and undue influence" and 29A'; "29 B" and "29C° appearing in paragraph 8.7 of the Petition". This paragraph reads:

"8.7 The matters set out in paragraph 8.1 to 8.6 amounted to the corrupt practices of bribery, treating and undue influence for the purposes of sections 29, 29A, 29B and 29C of the Act."

[35] The grounds on which the orders at (i) (ii) and (iii) are sought and taken together, Learned Queen's Counsel Mr. Guthrie submitted that they ought to be refused, as follows:

- (i) Mr. Walker's position that the conduct alleged at paragraphs 8.2, 8.4 and 8.5 of the petition does not constitute bribery for the purposes of section 29 of the Act or any other offence under that section. However Mr. Guthrie advocated as follows.
- (ii) As to paragraph 8.2, it is established as a matter of law that the provision of temporary employment can constitute payment to an elector and so can constitute bribery: He referred the court to the Judgment of Benjamin J in **Selwyn Walter v Lester Bird, 16th July 1999, at p 5**; and see *Wigmore v Matapo & ors, C/A (Cook Islands) 14/2004*; **Jugnauth v Ringadoo PC [2008] UKPC 50, 5th November 2008** (Mauritius). In case at bar, the use of Government patronage to provide jobs in a small island such as Barbuda which has limited resources, if done with political motives to influence an election, is an obvious example of such payment / bribery. This is a matter of evidence.
- (iii) Further, section 29B of the Act defines a corrupt practice as including the threat of otherwise of causing loss to a person, as a possible inducement to

vote. The statements made at political meetings set out at paragraphs 8.3 and 8.5 of the petition come into that category Mr. Guthrie asserted.

[36] In relation to the application, "(iv) An order striking out paragraph 9.1 of the Petition". Mr. Guthrie QC said that paragraph in the petition again relates to the pre-election advertisement referred to above. Again, this is clearly not an allegation made against Mr. Walker, and the application is misconceived and should be dismissed. He repeated similar arguments, as in the Jonas petition, in support of his contention why the Supervisor of Election's application should similarly be dismissed.

Mr. Charles Fernandez's Petition

[37] Next Mr. Guthrie QC indicated that Mr. John Maginley seeks an order striking out paragraph 8.1 of the petition, which relates to the pre-election advertisement referred to above. This, however, is clearly not an allegation made against him, and the application is misconceived. He repeated the arguments he made in opposition to the Supervisor of Election's application to strike out the same paragraph.

[38] Further, in addressing the advertisement paragraph, Mr. Guthrie QC said the paragraph which is the subject of complaint, which is either paragraph 8 (1) Jonas and Fernandez) or 9 (1) (Simon and Nibbs) reads:

"On the night before the general election, the Government owned ABS television network ran an advertisement repeatedly, which purported to show that the correct way to vote was by placing a cross next to the sun, the symbol of the UPP. No mention was made of the symbol of the ALP."

[39] Mr. Guthrie said that in so far as the 2nd respondents (the returning officers) are concerned this allegation is withdrawn. No admissions are made by the petitioners as to the grounds now relied upon by the 2nd respondents, but it is accepted and should have been made clear by the petitioners that this allegation concerned only the 3rd and 4th respondents.

[40] Next, Learned Queen's Counsel Mr. Guthrie submitted that the grounds relied upon by the Supervisor of Elections ought to be rejected, as follows; There is no reason why Part III of the Representation of the People Act should be confined so as to permit the Court to review only the conduct of the polls on polling day and immediately thereafter and in relation thereto (grounds (i) (iii) and (iv) of the applications). It plainly is not so confined: as an obvious example (not concerning the 3rd respondent in the present case) an allegation of bribery would lie whether it involved polling day, the day before, or any earlier date, with reference to an election. The advertisement complained of by the petitioners was broadcast in the evening before the election.

[41] In any case, the duties of the Supervisor of Elections under section 9 of the Representation of the People Act include e.g. responsibility for the registration of electors, which by definition predate polling day. Mr. Guthrie said that reliance by the 3rd respondent on section 32 (4) of the Act is premature at best. It remains to be seen, on the evidence called at the substantive hearing of the petitions, whether the Court accepts that any act or omission did or did not affect its result. A particular act or omission, for example the advertisement, permission for it and/or the failure by the respondent as Chief Executive Officer of the 4th respondent or as Chief Elections Officer' to correct it, played a part. Such matters of evidence are the subject of the petitioners' applications for further information, and/or any relevant written material must be disclosed, see below.

[42] Mr. Guthrie QC said that the Supervisor of Elections does not seek to strike out any other allegations made against her in the petitions. He submitted that it would not be just, and that it would not shorten matters or save costs, to treat this particular allegation as a separate matter.

[43] **The Supervisor of Elections' applications for an order that the Electoral Commission be struck out from each petition.**

Turning his attention to whether the Electoral Commission should be struck, Mr. Guthrie QC said that the ground relied upon in support of the application to strike out the Electoral

Commission is that "The respondent is not a body corporate and as such cannot be named as a Respondent in the Petition". Mr. Guthrie asked the Court to reject the application in view of the fact that section 9 of the Act provides as follows:

- (i) No application to this effect has been made by the 4th respondent, on this or any other ground. The Court should not entertain an application by another person or persons (including the 3rd respondent who as the Supervisor of Elections is the Chief Executive Officer of the 4th respondent but not a member of the Commission, which is an independent body).
- (ii) There is no reason why the respondent to an election petition must be a body corporate. There is nothing in the Representation of the People Act (which predates the establishment of the 4th respondent) which prevents the respondent from being named in an election petition.
- (iv) The Electoral Commission is given legal responsibilities in relation to elections under sections 3-6 of the Representation of the People Act as substituted by section 3 of the Representation of the People (Amendment) Act 2001.

[44] Mr. Guthrie QC buttressed in argument by saying that section 8 of the Act so amended further specifically recognises the potential liability of the Electoral Commission in legal proceedings. These can only concern elections, (the Electoral Commission and has no other relevant functions), and therefore under section 43 of the Representation of the People Act such legal proceedings can only be by an election petition. The section reads:

"No election and no return to the House of Representatives shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as an election petition) presented in accordance with this Part".

[45] He said that although the comparison is not exact, in England the Electoral Commission (established under Part III of the Political Parties, Elections and Referendums Act 2000) has itself brought and been made the respondent to legal

proceedings; **Electoral Commission v City of Westminster Magistrates' Court [2009] EWHC 78 (Admin); R (Khan) v Election Commissioner [2005] EWHC 2365 (Admin)**. Learned Senior Counsel Mr. Anthony Astaphan associated himself with the arguments advanced by Mr. Guthrie.

[46] **Applications for Particulars**

Next, the applications by the Petitioners Mr. St. Clair Simon and Mr. Arthur Nibbs, for further information and disclosure were addressed by Mr. Guthrie. He said that the information sought relates to the allegation made in paragraph 8.2 of the petition which concerns works carried out in Five Islands. The petitioner seeks the relevant documents which he anticipates will be in the possession or control of Mr. Spencer and are matters peculiarly within his knowledge.

[47] Learned Queen's Counsel Mr. Guthrie urged the Court to order Mr. Spencer to provide the information. He said that the documents are necessary for the just disposal of the petition. The petitioners bring to the Court's attention the interest of the general public in a free and fair election, which goes beyond the interests of the parties themselves, and supports the need for full investigation by the election court of all the relevant material which is available. The Court has power to order Disclosure under section 63 of the Representation of the People Act.

[48] Mr. Guthrie QC urged the Court to order Mr. Nibbs to provide the information. The information sought relates to the allegation made in paragraphs 8.2, 8.4, 8.5 and 8.6 of the petition which concern (i) the road works carried out in Barbuda (to which similar considerations apply as in the Simon petition), and the public meetings held in the run-up to the election; (ii) the documents are necessary for the just disposal of the petition; (iii) the Petitioner also repeats point (iii) as in Simon's case; (iv) the Court has power to order Disclosure under section 63 of the Representation of the People Act.

[49] **Mr. Russell Martineau SC's submission**

Learned Senior Counsel Mr. Martineau urged the Court to strike out all of the paragraphs from all of the petitions that refer to the ABS advertisement. He submitted that there is nothing in the allegation that concerns the conduct of election as the expression is properly understood.

[50] Mr. Martineau SC maintained that the paragraphs that deal with the advertisement should be struck. He said that Part III of the Representation of the People Act, pursuant to which the Petitioner's petition is presented permits the court to review only the conduct of the polls on polling day and immediately there after in relation thereto. It is not competent for an election petition to raise matters against electoral officers other than questions concerning the conduct of the poll on polling day. The allegations in relation to the advertisement do not relate to the conduct of the poll on polling day or at all how the election was conducted.

[51] In support of his proposition, Learned Senior Counsel Mr. Martineau referred the Court to **Drew v Hall (1978) 33 WIR 97 at 107d** in which the Court said that the representation Petitions are for the purpose only of enquiring into the conduct of the polls on Election Day. A representation petition is the equivalent of an election petition in Antigua and Barbuda. He also adverted the Court's attention to **Radix v Garry (1978) 25WIR 553** the Court said at page 556 g that the election of a candidate can be avoided only upon proof of an election offence committed by the candidate or upon proof of some irregularity during the conduct of the election, which affects the results or that the election was conducted so badly that it was not substantially in accordance with the law as to election.

[52] In any event, there is no basis on which the allegation in relation to the ABS Advertisement can refer to the second, third and fourth named Respondent. The Television Network is not stated to belong to them nor is it alleged that they placed or published the advertisement. Accordingly their conduct is in no way impugned (see also section 32(4) of the Act) he was adamant that the paragraph should be struck out.

[53] Buttrressing his argument, Mr. Martineau said that there is no allegation by the Petitioners in that paragraph which connects the second and third respondent. It does not raise any cause of action against them. In support of his position he referred the Court to paragraphs 45, 46 and 47 of the judgment of Rawlins J in **0097/ 2003/ 0098/ 2002 Ethlyn Smith et al v Delores Christopher et al**.

Electoral Commission

[54] Mr. Martineau SC submitted that the Court should strike out the Electoral Commission as a party. In support of his contention Mr. Martineau said that the Electoral Commission has no legal personality.

[55] Mr. Martineau SC maintained that the Electoral Commission is not a body corporate and cannot be sued. Accordingly it should be struck out from the Petition. In support of his proposition Learned Counsel Mr. Martineau referred the Court to **Manning v Administrator General 5 WIR 265**.

[56] In further support of his proposition, Mr. Martineau SC referred the Court to **0097/ 2003/ 0098/ 2002 Ethlyn Smith et al v Delores Christopher et al** the judgment Rawlins J at paragraph 45, 46 and 47.

[57] Mr. Martineau SC also referred the Court to the case of **Ferdinand Frampton et al v Ian Pinard et al 0149-54 of 2005 Commonwealth of Dominica** the very illuminating judgments of Rawlins J at paragraph 33, 34 and 35, in urging the Court to strike out the Electoral Commission as a party to all of the petitions.

Mr. Douglas Mendes' Submission

Applications to strike out paragraphs 9.1 of the Simon and Nibbs Petitions and paragraphs 8.1 of the Fernandez and John petitions.

[58] Learned Senior Counsel Mr. Mendes said that in relation to the allegation in relation to the advertisement, the conduct complained of is, on the face of the petitions, acts attributed to the Government of Antigua and Barbuda and not any of the Respondents, The

Government of Antigua and Barbuda has not been made a Respondent to any of the petitions and accordingly the Petitioners ought not to be permitted to pursue this complaint. Further, and in any event, the conduct complained of does not constitute a violation of any of the provisions of the Representation of the People Act or any other law and accordingly cannot form the basis of a challenge to an election. These paragraphs should accordingly be struck out.

Paragraph 8.2

[59] Mr. Mendes SC turning his attention to the applications to strike out the words “unfair advantage” appearing in paragraphs 8.2 of the Simon and Nibbs Petitions. Unfair advantage is not an offence known to the election laws and the words should be struck.

[60] In the last sentence of paragraph 8.6 of the Simon petition, Mr. Mendes SC said that the Petitioner contends that the conduct alleged against the Mr. Spencer in paragraphs 8.1 to 8.5 of that petition constitutes a breach of section 35 (4) of the Act, which, it is alleged prohibits any person from remaining at or seeking to influence any voter to vote or refrain from voting within 100 yards of any polling station. The fact is that section 35(4) of the Act provides that:

“On the exercise of any power given by this section the Commission shall publish in the constituency a notice showing the boundaries of any polling districts or polling places constituted as a result of the alteration.”

[61] Mr. Mendes SC maintained that the acts alleged in paragraphs 8.1 to 8.5 clearly do not breach section 35(4) of the Act. In the laying the foundation for his argument, Mr. Mendes said that no doubt, the Petitioner intended to plead that the conduct alleged constitutes a breach of section 35(4) of the Election Rules contained in the First Schedule to Act. That section provides that:

“During the hours that the poll is open upon polling day no person shall, in any polling station or upon any public place within one hundred yards of any polling station remain or seek to influence any elector to vote or refrain from voting for any candidate or political party or to ascertain for whom any elector intends to vote or has voted.”

Section 35(5) provides that any person who contravenes section 35(4) commits an offence and is liable to a fine and imprisonment. Mr. Mendes SC objected to any such amendment on two grounds. The first ground is that it is not permissible to amend a petition to allege that the conduct described in the petition constitutes a breach of another section not yet identified in the petition, even though the conduct alleged may prima facie amount to a breach of that section – *Halsbury's Laws of England 4th Ed. Reissue Vol. 15 para 760*.

[62] Elaborating further, Mr. Mendes SC stated that although the conduct prescribed in section 35(4) of the Election Rules is an offence, it is not declared by the Act to be a corrupt or illegal practice which, if established, would render an election invalid (see section 65(11)). The only consequence of a breach of section 35(4) is that the perpetrator is liable to a fine and imprisonment. Breach of section 35(4) does not void an election. It is trite law that even where conduct alleged against an elected candidate amounts to a breach of the Act, it cannot found the basis of a challenge to an election if that particular breach is not expressed to invalidate the election – See Rogers on Elections Volume II 20th ed. Pg 166. In the premises, the last sentence of paragraph 8.6 of the Simon petition should be struck out.

[63] Next, learned Senior Counsel Mr. Mendes addressed the applications to strike out the words “29C” appearing in paragraphs 8.7 of the Nibbs Petitions. Next, Learned Senior Counsel Mr. Mendes said that Mr. Nibbs contends in paragraph 8.7 of his petition that the acts complained of in paragraph 8.1 to 8.6 thereof amount to a breach of section 29C of the Act. That section provides that:

- a. “Any person who at lawful public meeting to which this section applies act, nor incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an illegal practice.
- b. This section applies to a political meeting held in any Constituency between the date of the issue of a writ for the return of a member of the House of

Representative for the constituency and the date at which a return to the writ is made.

- c. If any police officer reasonably suspects any person of committing an offence under subsection (1), he may if requested so to do by the chairman of the meeting require that the person to declare to him immediately his name and address of gives a false name and address he shall be guilty of a n offence and liable on summary conviction to a fine not exceeding two thousand dollars, and if he refuses or fails so to declare his name and address or if the police officer reasonably suspects him of giving a false name and address or if the person continues to behave in a disorderly manner, the police officer may without warrant arrest him."

[64] In view of the foregoing, Mr. Mendes SC argued there are no acts pleaded in paragraph 8.1 to 8.6 of the Nibbs petition which could properly amount to the incitement of anyone to engage in disorderly conduct at a meeting. The words "29C" ought to be struck out.

[65] **Application to Strike Out Allegations of Bribery, Treating and Undue Influence**

Mr. Mendes said that it is the trite law that the facts and matters set out in any pleading must constitute the cause of action relied on or the pleadings are liable to be struck. The Supreme Court of India made this point in *Charan Lal Sahu v. Giana Zail Singh and Another* (1985) LRC 31 at 42, in relation to election petitions:

"In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice... The importance of a specific pleading in these matters can be appreciated only if it is realized that the absence of a specific plea puts the respondent at a great disadvantage. He must know what case he has to meet. He cannot be kept guessing whether the petitioner means what he says...They (the petitioners) cannot be allowed to keep their options open until the trial and adduce such evidence as seems convenient and comes handy. That is the importance of precision in pleadings particularly in election petitions."

[66] Mr. Mendes SC proceeded to address Mr. Spencer's application to strike the other paragraphs in the Simon petition.

[67] **The Simon Petition**

Dealing with Paragraph 8.2, Mr. Mendes SC stated that in paragraph 8.2, Mr. Simon alleges “after the dissolution of Parliament on 9th February 2009 and until the date of the election the UPP Government and Mr. Spencer commenced work on a basketball court and road works in Five Islands within the constituency. The work involved an increase in temporary employment and in all of the circumstances the Petitioner claims that Ms. Spencer deliberately sought undue influence and unfair advantage in the election.” (The striking out of the words “unfair advantage” has already been dealt with). Mr. Mendes submitted that it is clear that the conduct complained of in this a paragraph could not amount to undue influence as defined. No allegation of any threat to inflict temporal or spiritual injury, damage, harm or loss upon or against any person, abduction, duress or any fraudulent device or contrivance of any sort is made in that paragraph. He maintained that paragraph 8.2 ought to be struck out.

[68] Mr. Mendes SC said that the Petitioner does allege in paragraph 8.6 that the conduct described in paragraphs 8.1 to 8.5 amounts to “undue influence and bribery and treating”. However, the Petitioner specifically pleaded in paragraph 8.2 that the conduct alleged therein amounted to undue influence only. Mr. Spencer is entitled to rely on the maxim that the specific takes precedence over the general. The Petitioner is not therefore to be taken as having pleaded that the conduct in paragraph 8.2 amounts as well to bribery and treating.

[69] Mr. Mendes SC was adamant that the facts pleaded in paragraph 8.2 do not constitute bribery or treating either.

[70] Mr. Mendes asserted that as to bribery, there is no allegation in paragraph 8.2 that anyone gave any money or procured any office to or for anyone. Repairs to roads and a basketball court are alleged. Learned Senior Counsel contended that in the course of such works temporary employment was provided. But this was provided by the Government of Antigua and Barbuda, not the First Respondent, and it is not pleaded that the Government carried

out those works on behalf of the First Respondent. In fact the Government cannot be considered to be the agent of the First Respondent even if he is a member of the party in power.

[71] Mr. Mendes SC argued that the pleadings are defective. It is not pleaded that the persons who were given such employment were voters, or that the employment was given to such persons on behalf of any voters or was given to them in order to induce any voter to vote or refrain from voting. The Petitioner must let the First Respondent know what case he must answer. He must state which of the various ways in which the offence may be committed he relies on. He has not stated any. The pleading is fatally flawed.

[72] Proceeding further, Mr. Mendes said that neither does the pleading support an allegation of treating. There are no facts pleaded to the effect that the First Respondent corruptly gave or provided or paid for meat, drink, entertainment or provision to a person for the purpose of corruptly influencing that person to vote or refrain from voting. Road works, works on a basketball court and employment do not constitute any of these things. For all of those reasons, Mr. Mendes stated that paragraph 8.2 ought to be struck out.

[73] Mr. Mendes SC stated that in paragraphs 8.3 and 8.4 complain of activities on the part of the First Respondent in the immediate vicinity of the polling stations, namely distributing voter identification cards and escorting persons to the front of the voting queues. These purported acts clearly do not amount to the giving of money or the procuring of offices and cannot constitute bribery. They do not contain any allegation of threats and therefore cannot constitute undue influence. And they do not involve the giving or providing of meat, drink, entertainment or provision and therefore cannot constitute treating. Since the allegation in paragraph 8.6 is that these acts constitute bribery, undue influence and treating, which they do not, and since as already shown any allegation of a breach of section 35(4) as alleged in paragraph 8.6 cannot be sustained, these paragraphs ought to be struck out.

[74] Mr. Mendes SC said that paragraph 8.5 alleges that on the day of the election, the First Respondent supplied food to persons in the immediate vicinity of the polling station. For the reasons given in the previous paragraph, this cannot constitute the offences of bribery or undue influence.

[75] Mr. Mendes SC contended that for all of the above reasons the words “undue influence”, “bribery”, “29” and “29B” appearing in the first sentence of paragraph 8.6 ought to be struck out since all that is left of paragraphs 8.1 to 8.5 is the allegation in paragraph 8.5 that the giving of food amounts to treating.

[76] **The Nibbs Petition**

Next, learned Senior Counsel Mr. Mendes examined paragraph 8.2. The Petitioner alleges that “On about 4th February 2009 the Government through the United Progressive Party, hereafter: the UPP”, with which the BPM is publicly affiliated) commenced, with the open participation of the First Respondent, substantial road works in Barbuda. Such works included the grading of roads, demolition and reconstruction, in particular in the area of First Respondent’s office in Codrington. The works involved, for period from 4th February to 12th March 2009, an increase in temporary employment. In the circumstances, and given the events described below, the Petitioner claims that the First Respondent deliberately sought undue influence and an unfair advantage in the election.” The striking out of the words “unfair advantage” has already been dealt with, stated Mr. Mendes SC.

[77] Learned Senior Counsel Mr. Mendes advocated that it is clear that the conduct complained of in paragraph 8.2 could not amount to undue influence as defined. No allegation of any threat to inflict temporal or spiritual injury, damage, harm or loss upon or against any person, abduction, duress or any fraudulent device or contrivance of any sort is made in that paragraph. Accordingly, paragraph 8.2 ought to be struck out.

[78] The Petitioner does allege in paragraph 8.7 that the conduct described in paragraphs 8.1 to 8.6 amounts to undue influence and bribery and treating. However, the Petitioner specifically pleaded in paragraph 8.2 that the conduct alleged therein amounted to undue

influence only. The First Respondent is entitled to rely on the maxim that the specific take precedence over the general. The Petitioner is not therefore to be taken as having pleaded that the conduct in paragraph 8.2 amounts as well to bribery and treating.

[79] Further, Mr. Mendes SC submitted that the facts pleaded in paragraph 8.2 do not constitute bribery or treating either. As to bribery, there is no allegation in paragraph 8.2 that anyone gave any money or procured any office to or for anyone. Repairs to roads only are alleged. It is contended that in the course of such works temporary employment was provided. But this was provided by the Government of Antigua and Barbuda, not the First Respondent, and it is not pleaded that the Government carried out those works on behalf of the First Respondent. In fact the Government cannot be considered to be the agent of the First Respondent even if he is a member of the party in power.

[80] Mr. Mendes SC said that it is not pleaded that the persons who were given such employment were voters, or that the employment was given to such persons on behalf of any voters or was given to them in order to induce any voter to vote or refrain from voting. The Petitioner must let the First Respondent know what case he must answer. He must state which of the various ways in which the offence may be committed he relies on. He has not stated any. The pleading is fatally flawed.

[81] Mr. Mendes SC said that for all of the above reasons, paragraph 8.2 ought to be struck out.

[82] Paragraph 8.4 of the petition complains about statements purportedly made by the Respondent Walker to the effect that "if you don't vote for me the concrete roads and drains will stop" and "if you don't vote for me the ferry that PM Spencer had promised for Barbuda will not happen" and "if you don't vote for me workers of the Council will not be paid". These statements are clearly insufficient to constitute bribery and treating. No money or office or meat or drink or entertainment or provision is alleged to have been given.

[83] Mr. Mendes SC posited that no allegation of any threat by the First Respondent is made. What is alleged is not that the First Respondent will inflict any temporal or spiritual injury, damage, harm or loss if he is not elected, since if he is not elected he could not cause any road works or ferry service or payments to stop. What is clearly alleged is that if he is not elected his opponent would see to it that these things are not done. This cannot constitute the offence of undue influence.

[84] Next, Mr. Mendes SC referred the Court to paragraph 8.5 of the petition, the Petitioner complains that Mr. Spencer said at a public meeting words to the effect that if the people of Barbuda voted for the Petitioner "the UPP Government will not support the Petitioner, and that all the works will come to an end". It is not alleged that Mr. Walker issued this threat. It is alleged only that he was present when the Honourable Prime Minister spoke. It is also pleaded that the words attributed to the Prime Minister was uttered on behalf of the First Respondent, or for that matter with his knowledge and consent. Accordingly the offence of undue influence is not made out. It is also obvious that paragraph contains no allegation of bribery or treating. Accordingly, this paragraph ought to be struck out.

[85] Mr. Mendes SC said that the First Respondent accepts that paragraph 8.6 pleads the offence of bribery. However, since no threat and no giving of meat, drink, entertainment or provision are alleged, the offences of treating and undue influence are not properly pleaded.

[86] Mr. Mendes advocated that in the above premises, only the offence of bribery in paragraph 8.6 has been properly pleaded. Accordingly, the words "treating and undue influence" and "29A, 29B and 29C" appearing 8.7 of the Petition ought to be struck out.

Applications for further information from Mr. Spencer and Mr. Walker

[87] Learned Senior Counsel Mr. Mendes argued in opposition to Mr. Simon's and Mr. Nibbs' application for information from Mr. Spencer and Mr. Walker respectively that the applications amount in effect to applications that the both of them provide information to support or to prove the allegations of corrupt and illegal practices made by the Petitioners

against Mr. Spencer and Mr. Walker respectively. Mr. Mendes submitted that the Court ought not to make any such order as to do so would impinge upon their rights to silence and not to incriminate themselves.

[88] In buttressing his arguments, Mr. Mendes SC stated that apart from an election being declared void (section 65(1), the consequence of a person being reported by an Election Court as being guilty of corrupt or illegal practice is that he or she is incapable of being elected to and sitting in the House of Representatives for the constituency in respect of which the election was held or any constituency which includes the whole or any part of the area of that constituency for a period of five years (section 65(2) (a). Furthermore, the report of the Election Court finding a candidate guilty of a corrupt or illegal practice must be forwarded to the Director of Public Prosecutions" with a view to him instructing or directing a prosecution against such persons as have not received certificates of indemnity, if evidence should in his opinion, be sufficient to support a prosecution."

[89] Accordingly, any order by the Court that a candidate provide information which would assist in the proof of an allegation of corrupt or illegal practices is tantamount to a requirement that he or she participates in his own prosecution. Outside of the election petition proceedings, the candidate would be entitled to exercise his or her right of silence and would entitle to have the prosecution prove the case beyond a reasonable doubt without his or her assistance. This is to be contrasted with witnesses who are summoned by the Election Court to give evidence. They are not excused from answering any questions posed on the ground of privilege but such a witness is eligible to be granted an indemnity by the Court (section 51(7)). By contrast, the Petitioners are seeking orders from the Court requiring the Respondents to provide evidence, but without the protection of eligibility for an indemnity. The Act provides a code for the hearing and determination of election petitions. It provides for one circumstance in which persons are to be compelled to give evidence. This necessarily excludes any other circumstance in which the Respondents may compel to give evidence.

[90] Accordingly Mr. Mendes SC submitted that the order which Petitioners seek in effect invites the Court to force the first respondents to relinquish their right to silence and not to incriminate themselves, contrary to the common law and Constitution. For these reasons, the Petitioners requests ought to be denied. If the Petitioners cannot prove their cases without the assistance of the First Respondents, they should withdraw their petitions.

[91] Mr. Mendes said that while the institution of criminal proceedings is in the discretion of the DPP, he would be hard pressed not to prosecute having regard to the fact that in deciding that a candidate is guilty of a corrupt or illegal practice, the Election Court will have determined guilt beyond a reasonable doubt which is in the standard of proof applicable in such proceedings. In support of his proposition, he referred the Court to *R v Rowe ex parte Mainwaring* [1992] 1WLR 1059. Thus, election petition proceedings in which a candidate is alleged to have committed a corrupt or illegal practice, potentially exposes that candidate to criminal proceedings, a risk which is made even more real by the fact that the DPP is required by law to attend the hearings.

[92] **Court's analysis**

It is pertinent to state that in each of the four petitions, no less than five separate applications and counter applications were filed seeking to strike out paragraphs of the petitions, obtain various information and orders; these included applications for the provision of witness statements and particulars. Indeed, all of the parties had filed applications save for the Electoral Commission. The Court requested all sides to seek to agree to the provision of some of the particulars that were requested in order to achieve efficiency in the hearing of the applications. After several invitations by the Court and immediately before the conclusion of the oral submissions during the hearing of the applications, learned Counsel on all sides, quite properly agreed to provide the particulars that were requested by the other side. Also, they consented to file and exchange witness statements. In addition, learned Counsel agreed to finalize a timetable for the provision of the witness statement and to submit it for the Court's approval.

[93] However, it remains a live issue whether the Court should order the provision the particulars requested of Mr. Spencer and Mr. Walker. The Court is therefore required to determine whether or not the applications to strike various portions of the petition should be granted and whether Mr. Spencer and Mr. Walker should be compelled to provide the particulars requested by Mr. Simon and Mr. Nibbs respectively.

[94] I propose to address the issues raised in each petition in the order of their filing. Where the same point is raised in relation to each petition, in the interest of efficiency, the Court indicates that the legal reasoning and conclusions will not differ. (This would serve to prevent the Court from having to repeat the same ruling in detail). The Court proposes to address the various applications in relation to their respective petition.

[95] **General Observations**

Jurisdiction to strike

The jurisdiction of the Election Court is special and exclusive in the determination of questions as to elections. See **Gladys Petrie et al v Attorney General et al 14 WIR 290, 293** per Bollers CJ. In fact, it is a parliamentary jurisdiction that is conveniently assigned to the judiciary by the Constitution and the Legislature. See **Civil Appeal of Randolph B Russell et al v The Attorney General for the State of Saint Vincent and the Grenadines 50 WIR 127 at 137.**

[96] It is the law that a petition or a pleading would be struck out if it discloses no reasonable cause of action. The Court in deciding whether to strike out a petition or parts thereof is mindful of the fact that it should be slow to drive persons from the seat of justice except in cases in which the pleaded claim has no prospect of success or is bound to fail. See **Drummond-Jackson v British Medical Association [1970] 1 All ER 1094**. In the case at bar, the Court in reviewing the application must determine whether the election petition have some chance of success. More importantly and since it is only specific paragraphs of the petition that are sought to be struck, it behoves the Court to ascertain whether or not those paragraphs do not disclose any corrupt or illegal practice which suffices for voiding an election. In so doing, the Court has to examine the pleading and ascertain whether the

threshold required by section 65(1) of the Representation of People Act has been met in order to justify the matter going forward.

[97] Indeed, the Court's jurisdiction to strike out a pleading or a petition is sparingly exercised. It is imperative for the Court to carefully examine each paragraph of the petitions in order to determine whether any of the paragraphs of the respective petitions should be struck. Should the Court conclude that any of the allegations or contentions that are made are inadequate to establish either the ground of corrupt practice or illegal practice which can result in an election being voided. The Court would have no alternative but to strike that paragraph out. The Court has no doubt that it is only if the pleaded matters can properly form the basis a cause of action that can void an election, and then they can proceed to trial. See **Civil Appeal No.12 of 2006 Saint Vincent and the Grenadines, Eastern Caribbean Flour Mills Limited v Ormiston Ken Boyea** at paragraphs 43 and 44 on the matters of pleadings and witness statements.

[98] At this juncture, it may be prudent to recite the relevant statutory provision. Section 65 of the Representation of the People's Act (as amended) stipulates the ground on which an election Court may void an election. It states:

"If a candidate who has been elected is reported by an election court personally to be guilty or guilty by his agent of any corrupt or illegal practice his election shall be void."

[99] **Mr. Dean Jonas' Petition**

The Court proposes to address first the application to strike out paragraph 8(1) of the petition which deals with the pre-election advertisement on ABS Television Station. The Court has perused the paragraph and has no doubt that the arguments advanced by learned Senior Counsel Mr. Mendes and Mr. Martineau are correct. The allegation that an advertisement on the television station which showed how to vote, without more, does not mean that any of the respondents had anything to do with it. Further, it has absolutely nothing to do with any of the respondents since it does not impute any conduct to any of them. To put it more succinctly, it is not a complaint against any of them. More importantly, it has no relevance to the elections petition. Accordingly, it fails to meet the litmus test

referred to above and is struck from the petition as disclosing no reasonable cause of action. In so doing, the Court rejects the arguments of learned Queen's Counsel Mr. Guthrie on this application. Taken at its highest, the allegation does not give rise to an offence for which the Election Court can void the election. Indeed, the act complained of does not violate any provisions of the Representation of People Act which can properly form the basis of voiding an election. It cannot fall into the category of either a corrupt practice or an illegal practice and is therefore struck. It is the law that the election of a candidate can be avoided only upon proof of an election offence committed by the candidate or his agent. See **Radix v Gary (1978) 25 WIR 553**.

[100] **Application to strike out the Electoral Commission**

The law is clear in order to be sued a person must have legal personality. The Court accepts the submission of learned Senior Counsel Mr. Martineau that the Electoral Commission cannot be sued in so far as it has no legal personality. The Court is therefore unable to accept the arguments urged by learned Queens Counsel Mr. Guthrie in so far as he advocated that the Petitioners are entitled to bring an action against the Commission because the Commission has been given responsibilities by the Legislature. Indeed, if there are alleged breaches by the Commissioners, they ought to be named individually. In this regard I find the judgment of Rawlins J in **Frampton v Pinard** *ibid* to be very enlightening and adopt the pronouncements made there in. The Electoral Commission is therefore struck since it has no capacity that is amenable to suit. This ruling is applicable to all of the petitions in which the Electoral Commission is named.

[101] Accordingly and with the greatest of respect, the Court has not found the arguments advanced by Mr. Guthrie persuasive. There is nothing in the Representation of People Act which permits the Electoral Commission to be joined as a party.

[102] I come now to address the application to strike out various paragraphs of the petitions. In order to do so, I must of necessity state the relevant law, in detail.

[103] **Corrupt practice**

It is noteworthy that the offence of a corrupt practice was provided in sections 40-42 of the Act (Cap 379). These sections have been repealed and replaced by The Representation of the People (Amendment) Act 2001, as follows:

- "29. (1) A person is guilty of corrupt practice if he is found guilty by a court of competent jurisdiction of bribery.
- (2) A person is guilty of bribery if he directly or indirectly, by himself or any other person on his behalf
- (a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter to or for any other person in order to induce any voter to vote or refrain from voting.
- (3) For the purposes of subsection (2) references to giving money shall, include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.
- (4) A person is guilty of bribery if he advances or pays or causes to be paid any money to or to the use of any other person with the intent that the money or any part thereof shall be expended in bribery at an election or knowingly pays or cause to be paid any money to any person in discharge or payment of any money wholly or in part expended in bribery at any election."

[104] Section 29 A "(1) A person shall be guilty of corrupt practice if he is guilty of treating.

- (2) A person shall be guilty of treating if he corruptly, by himself or by any other person either before, during or after an election, directly or indirectly gives or provides, or pays wholly or in part the expenses of giving or providing, any meat, drink, entertainment or provision to or for any person -
- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting."

[105] Section **29B** "(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.

(2) A person shall be guilty of undue influence -

(a) if he directly, or indirectly, by himself or any other person on his behalf, makes use of or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or

(b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of any elector or proxy for an elector, or thereby compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting."

[106] **Illegal Practice**

The offence of an illegal practice was defined in various sections of the Act (Cap 379) but these sections have been repealed and replaced by The Representation of the People (Amendment) Act 2001, sections 29 C; 29 D; 29 E; 29 G; and 29

[107] Section "**29C** (1) Any person who at a lawful public meeting to which this section applies act, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an illegal practice." In order for the paragraphs of the petitions to stand they must plead the ingredients of any of the offences mentioned above.

St. Clair Simon's Petition

[108] I come now to address the application to strike various paragraphs in the St. Clair Simon's petition. As stated by both learned Queen's Counsel Mr. Guthrie and Mendes, the Court has been asked to strike out paragraphs 8.1, 8.2, 8.3, and 8.4 of the petition. In examining the application to strike, the Court must decide whether the allegations stated give rise to a cause of action which could result in the voiding of the election. In other words, the

allegations must give rise to an offence of a corrupt or illegal practice which is sufficient to void an election. This would require the petitioner to plead the necessary ingredients of the offence.

[109] Paragraph 8.1 of the petition states, among other things, that St. John's City West is a poor constituency. These allegations taken at their highest do not give rise to any cause of action on which the Court can properly void an election and the paragraph is therefore struck out. It is wholly irrelevant to the election petition and makes no allegation which can form the basis of unseating the winning candidate. It does not meet the test provided in section 65(1) of the Act. I accept the submissions of learned Counsel Mr. Mendes. I order paragraph 8.1 struck.

[110] I come now to address paragraph 8.2 of the Petition. Two different considerations arise on these allegations. First, the Petitioner alleges that the conduct of the First Respondent constituted, among other things, "an unfair advantage in the election". The concept of an "unfair advantage" is not a recognized offence under the electoral laws of this country and cannot therefore be a ground to void an election. It does not give rise to a cause of action. As stated earlier, in order to ground a cause of action, the petitioner is obliged to plead the necessary ingredients of the offence. Second, Mr. Simon contends that the alleged conduct of Mr. Spencer between dissolution of Parliament and the holding of election, in commencing work on a basketball court and road works in Five Islands, involving an increase in temporary employment, constituted undue influence in the election. It is no part of the court's function to determine whether the alleged conduct amounts to the offence of undue influence and therefore is a corrupt practice. The court is only required to determine whether, based on the pleadings, the matters stated amount to the offence of undue influence.

[111] I have no doubt that the allegations do not satisfy the threshold required to establish the offence of undue influence. With the greatest of respect, it is clear the allegations stated therein have nothing to do with undue influence as defined by the Act. Indeed, the allegations do not meet the benchmark required in order to establish a cause of action of

undue influence. In order to establish undue influence there must have been some plea that Mr. Spencer issued some threat of loss, harm or damage as provided by section 29B of the Act. There is no such plea.

[112] However, the Court does not accept the arguments urged by learned Senior Counsel Mr. Mendes that in so far as it is specifically stated in paragraph 8.2 that the offence committed is undue influence that specific allegation cannot properly be overridden by a general allegation paragraph 8.6. There is no doubt that Mr. Spencer is entitled to know the case he has to meet. However, in paragraph 8.6 it is also pleaded bribery. Learned Queen's Counsel Mr. Guthrie urged the Court to accept the allegations amount to bribery and that paragraphs 8.5 refers back to the preceding paragraph.

[113] I have no doubt that in my determination of whether to strike out paragraphs 8.2 of the petition, the Court must examine the relation, if any, of paragraph 8.6 thereto. Paragraph 8.6 says that the matters set out in paragraphs 8.1 to 8.5 amount to the corrupt practice of undue influence, bribery and treating. The Court is therefore required to read section 8.2 together with section 8.6 as urged by lead Counsel Mr. Guthrie. There is no basis for the Court to treat each of the subparagraphs of paragraph 8 as unrelated to paragraph 8.6. I emphasise that it is true that Mr. Spencer is entitled to know the case he was to meet and the Court cannot allow him to be taken by surprise. However, the Court is not of the view that he did not know the case he has to meet. Paragraph 8.6 clearly indicates that the petitioner was speaking of several offences including bribery. The Court has no doubt that paragraph 8.6 of the petition must be read together with paragraph 8.2. Accordingly, the Court must consider the offences that are stated in paragraph 8.6.

[114] This brings the Court to now consider whether the pleaded allegations can give rise to a cause of action for bribery. With respect, the Court is of the view that, while the paragraph could have been drafted differently, it remains open to the Court to ascertain whether the allegations can amount to bribery. It bears repeating that the relevant section of the legislation provides that bribery includes the provision of temporary employment can amount to bribery. In addition, the Court finds the cases to which learned Queen's Counsel

Mr. Guthrie has referred very instructive. These are **Selwyn Walter v Lester Bird** *ibid*, **Wigmore v Matapo** *ibid* and **Jagnauth v Ringadoo** *ibid*. The cases are authority for the proposition that the provision of temporary employment can constitute bribery for the purpose of voiding an election. Accordingly, the Court is not of the view that paragraph 8.2 should be struck out in so far as the pleaded case has established the allegation of bribery.

[115] It would be unjust to hold otherwise since paragraph 8.2 clearly pleads the elements of the offence of bribery and can sustain a claim of bribery. The question of whether the petitioner is able to provide the evidence to substantiate the claim is not a matter for this Court to concern itself with.

[116] Let it be clear that I make no finding of any offence of bribery. That is not my function in the hearing of this application. The Court's only role at this stage is to determine whether on the pleaded case the petitioner has established a cause of action in order for the trial to be able to go forward. It is no part of my function to determine whether the allegations are true or whether the petitioner would be able to present the requisite evidence at the trial in order to establish the case. It is no part of my function to even address that. My ruling is simply on whether or not the specific paragraphs that were pleaded should be struck. The question of whether the petitioner would be able to prove the allegations as claimed, at the trial, is not a matter with which the Court is concerned with presently. Accordingly, I rule that the words "and in all of the circumstances... in the election" be struck from the sentence of paragraph 8.2.

[117] Paragraph 8.3 alleges that Mr. Spencer handed out voter cards by the petitioner. These allegations are not clearly linked to any offence that could constitute a ground for voiding the election and are struck. There is no cause of action that can void an election arising based on the allegations stated.

[118] Para 8.4: I come now to the allegation in relation to Mr. Spencer allegedly escorting persons in the vicinity of the polling station. This allegation cannot amount to a cause of action which can properly form the basis of voiding the election. Accordingly, it is struck. It

is pellucid that the allegations pleaded have no relevance to any of the offences which can void an election. They are unsustainable. I agree with Mr. Mendes SC that they cannot properly form part of an election petition.

[119] Paragraph 8.6: The Applicant has asked the court to strike the words "undue influence", "bribery", "29" and "29 B" appearing in the first sentence of paragraph 8.6. The court agrees that it would have been easier to follow the petition had each paragraph specifically referred to the offence allegedly committed. However in all the circumstances the Court finds that the Respondent cannot be said to have been misled or disadvantaged by the drafting style of the petitioner and therefore declines to accede to the request to strike out the word "bribery". However, as stated earlier, the contentions pleaded cannot amount to a breach of section "29" or "undue influence". Accordingly, "29" is struck out, so too are the words "undue influence".

[120] Paragraph 8.6 also refers to section 35 (4) of The Representation of the People (Amendment) Act 2002. This provision does not create either a corrupt practice or an illegal practice within the meaning of section 65 of the Act. Neither does it offend section 35(4) of the Election Rule. This is not to say that breach of the Rule may not expose persons to legal liability but happily this court is not asked to pass upon that matter. The Court is only concerned with offences which can have the effect of voiding the election. The Court accepts Mr. Mendes SC's argument that while section 35(4) of the Election Rule creates an offence, it cannot give rise to the offence of corrupt or illegal practice. The relevant sentence in paragraph 8.6 is struck since the allegations cannot sustain a claim on which an election could be voided.

[121] Paragraph 9.1: This is the allegation in relation to the advertisement by the Government owned ABS Television Network are not made against any of the Respondents and more importantly cannot form the basis to ground a claim to void an election. The paragraph is therefore struck on the similar basis as paragraph 8.1 of the Nibbs petition.

[122] **Mr. Simon's application to compel Mr. Spencer to provide information**

This leaves me now to address the Simon's application for particulars. In making its determination of this issue, the Court is not required to determine, at the interlocutory stage, whether indeed any meetings were held. For the present purpose, the Court is only concerned to determine whether the application to compel disclosure of the information accords with the law; if it does not the Court would not accede to the petitioner's request. It is a basic principle of law that a person has a right to silence and that the law protects that right by refusing to compel a person to provide evidence which may have the potential to incriminate.

[123] I have no doubt that the Representation of People Act contemplates the possibility of criminal proceedings arising based on evidence which can unfold during the hearing of an Election Petition; this is one of the reasons why by virtue of the Constitution and the Act, the Director of Public Prosecutions is mandated to be present during the hearing of election petitions.

[124] The Court is cognisant of its power to order disclosure by virtue of section 63 of the Representation of Peoples Act. The Court is however mindful of the fact that the Constitution of Antigua and Barbuda provides for the right to silence. Concomitant with that right is the right not to incriminate one's self. It is right that the Election Court has no jurisdiction to compel a person to provide information which may well have the effect to impact adversely on his/her right to silence. This is even more critical taking into consideration that section 65(1) of the Act states that apart from the election being declared void a person reported by the Election Court as being guilty of corrupt or illegal practice is incapable of being elected to the House of Representative.

[125] In addition should the Election Court, after the hearing of a petition, finds that a candidate is guilty of corrupt or illegal practice the Court is mandated to forward the report to the Director of Public Prosecution, who has the authority to prosecute in a proper case. In any event, as alluded to earlier the DPP is obliged by law to attend the hearings of the Election

Court. Further, unlike witnesses who are summoned by the Election Court and are eligible to be granted immunity, candidates have no such privileges. See section 51(7). The Court therefore finds the position advocated by learned Senior Counsel Mr. Mendes very attractive, namely that to compel Mr. Spencer to provide the information sought without his having the benefit of the immunity would unfairly expose them to possibly incriminate themselves contrary to both the common law and the Constitution. The Court therefore does not find the argument advocated by Mr. Guthrie SC persuasive.

[126] For all of the above reasons, I am fortified in my view that I should decline to compel Mr. Spencer to provide the information sought. In view of the totality of circumstances the Court is ineluctably driven to conclude that it would be wrong to compel Mr. Spencer to disclose details and documents relating to meetings he attended, if any, or any representative of the UPP attended, with any building or utilities companies or other organizations and any workers' representatives, which relate to works allegedly carried out on the basketball court and road works in Five Islands between March 4th and 12th. Accordingly, I decline to accede to the request for the orders.

[127] **Mr. Arthur Nibbs' Petition**

I come now to examine the Nibbs petition. Here, the application is to strike out paragraphs 8.1, 8.2, 8.3, 8.4 and 8.5.

[128] Paragraph 8.1 alleges that Barbuda is dependent on government projects. The allegations stated therein cannot form the basis on which an election can be voided either on the ground of a corrupt practice or an illegal practice. It is irrelevant and cannot establish any reasonable cause of action. The impugned paragraph does not disclose that Mr. Walker committed any illegal or corrupt act as prohibited by section 65(1) of the Act.

[129] Paragraph 8.2 alleges that the government commenced substantial roadwork in Barbuda during 4th February to 12th March 2009 with the alleged open participation of Mr. Walker. This is alleged to have resulted in the increase of temporary employment. This raises the issue of the corrupt practice of bribery (as similar to the Simon's petition). The Court

adopts the similar approach as it did in the Spencer petition to the allegation of undue influence. It must be reiterated that it is no part of the Court's function to determine whether the evidential basis has been satisfied to sustain the claim of bribery, which would be a matter to be addressed at the hearing of the substantive matter. The Court is only required to determine whether the alleged cause of action is bound to fail on consideration only of the allegations in the pleading. The allegations stated in paragraphs 8.2 do not support the plea of undue influence. The plea of undue influence is unsustainable on the pleadings. As stated before, unfair advantage is not an offence that is recognised by the Representation of People Act. For the similar reasons as in the Simon Petition, the Court holds that the allegations in paragraph could not amount to undue influence. For the same reasons as in the Simon petition the Court is of the considered view that those portion of paragraph 8.2 from the words "the Petitioner claims that the First Respondent deliberately sought undue influence and unfair advantage in the election".

[130] Similarly, the Court is of the respectful view that it must nevertheless go on to consider the conjoint effect of paragraph 8.2 of the petition and section 8.7 of the petition; whether the pleaded allegations can sustain a cause of action of bribery. Equally, the Court is of the view that the principles to which Mr. Guthrie referred is highly persuasive namely **Selwyn Walter v Lester Bird** *ibid*, **Wigmore v Matapo** *ibid* and **Jagnauth v Ringadoo** *ibid*. The latter are authorities for the proposition that as a matter of law the provision of temporary employment can constitute bribery. The Court at this stage is not called upon to determine whether or not an offence has been committed. As alluded to earlier, the Court is required to make a finding whether or not a cause of action is disclosed based on the allegations in the pleadings. In so doing, the Court is required to examine the allegations and determine whether they disclose the essential ingredients of the alleged offence; if it does the petition goes forward to trial. If it does not then there is a proper basis to prevent it from proceeding to trial.

[131] I reiterate that in so ruling that it is no part of my function to determine whether the allegations are true. My only role is to ascertain whether on the pleaded claim a cause of action is made out. The authorities to which Mr. Guthrie QC has referred the Court indicate

that the provision of temporary employment can amount to bribery. See **Wigmore v Matapo** *ibid* and **Jagnauth v Ringadoo** *ibid* and **Selwyn Walter v Bird** *ibid*. I find the pronouncements in those cases very illuminating and apply them to the case at bar. In addition, the relevant provision of the Representation of People Act states that the provision of temporary employment can constitute bribery. The Court therefore does not consider the allegations made in those paragraphs to be irrelevant to an election petition and sees no reason to strike out paragraph.

[132] On the face of the pleadings it is clear that the allegations have met the benchmark required in order for the petition to go to trial on the issue of bribery. The Court refuses therefore to strike out the entire paragraph. The Court is not persuaded that it is manifest that the allegations have no reasonable prospect of succeeding at trial. It seems to the Court that the success or otherwise of the matter would depend on the quality of the evidence the petitioner is able to adduce and ultimately what findings are made by the Election Court, in the substantive matter. The Court is satisfied that on the pleaded case the petitioner has met the criteria required by section 65 of the Act to have the matters tested in order to determine whether the election should be voided.

[133] As stated, it is clear to me therefore that the pleaded allegations disclose a cause of action of bribery and there is no proper basis for striking out the entire paragraph. I therefore refuse to strike out the entire paragraph 8.2.

[134] This brings me now to paragraph 8.3 of the petition which merely states that Parliament was dissolved by the UPP on the 9th February, 2009. These allegations cannot sustain a cause of action the purpose of which is to void the allegation. Paragraph 8.3 is ordered struck.

[135] I turn my attention now to paragraph 8.4 and 8.5 of the petition.

[136] I come now to deal with paragraphs 8.4 and 8.5. In paragraph 8.4 it is alleged that Mr. Walker made certain utterances at a political meeting; in paragraph 8.5, it is alleged that

Mr. Spencer at a meeting when Mr. Walker spoke certain words. It is alleged that they spoke words to the effect that if the people of Barbuda did not vote for Mr. Walker the UPP government will not provide them with certain things.

[137] It bears repeating, section 29B (2) of the Representation of People Act No.17 of 2001 states that a person shall be guilty of a corrupt practice if he is guilty of undue influence:

“(2) A person is guilty of undue influence (a) if he directly by himself or any other person on his behalf, makes use of or threatens to inflict, by himself or any other person any harm or loss upon or against any person to vote or refrain from voting; or on account of that person having voted or refrained from voting.”

[138] Here again the Court is only required to determine whether the pleadings disclose a reasonable cause of action. The Court is mindful of the fact that the jurisdiction to strike out is only to be utilised in clear and obvious cases. At this stage, the Court is not concerned to ascertain whether the petitioner would be able to adduce evidence to establish its case. Examining the pleaded case the Court is unable to agree with Mr. Mendes that the allegations do not disclose a claim of undue influence based on the pleadings. The Court is satisfied that the allegations have met the threshold required in order for the claim based on undue influence to be able to go forward. Accordingly, the Court declines to accede to the request to strike out the pleading since undue influence is made out on the pleadings both in relation to paragraphs 8.4 and 8.5. To put the matter beyond doubt, it is important to state that the Court is satisfied that the pleaded words indicate the essential ingredients of undue influence. They therefore raise a cause of action and the Court declines to strike them out. In so doing the Court accepts the submissions of learned Queen's Counsel Mr. Guthrie in preference to those urged by learned Senior Counsel Mendes.

[139] In paragraph 8.7, section 29C of the Act is mentioned. Section 29C of the Act addressed disorderly behaviour for the purpose of preventing the transaction for which the meeting was called amounting to an illegal practice. On the pleaded allegations the Court is unable to apprehend the relevance of section 29C and unhesitatingly strikes out “29C”. In view of the foregoing, the Court accepts that the word “treating” should be struck from the

paragraph since there is no allegation of “treating” arising from the pleadings. “29A”, “treating” and “29C” are also ordered to be struck.

[140] Paragraph 9.1 that deals with the advertisement is struck for reasons given earlier.

[141] **Application for particulars**

In relation to Mr. Nibbs’ application for particulars, I adopt the same principles that I have stated in the St. Clair Simon’s application for particulars. The Court refuses to compel Mr. Walker to provide the details of any document in relation to meetings allegedly attended by him with the Prime Minister or any representatives of the UPP or any building or Utilities Company between March 4th and 12th. The Court similarly declines to compel Mr. Walker to provide the dates, details and any documents relating to public meetings allegedly attended by him with the Prime Minister in Barbuda between 9th February and 12th March 2009. Further, the Court does not accede to the request to compel Mr. Walker to provide the details and any documents relating to meetings attended by him with the Prime Minister and/or any representative of the UPP or the ambassador to Cuba Mr. Bruce Goodwin. In a word, the Court’s refusal is based on the same reasoning as stated in relation to the refusal to compel Mr. Spencer to provide particulars.

[142] **Mr. Charles Fernandez’s Petition**

Here the application is to strike paragraph 8.1 which refers to the alleged advertisement that was on the ABS television network. Similarly, the Court adopts the reasoning held in the Nibbs, Simon and Jonas petition and for the same reasons, strikes out paragraph 8.1. Accordingly, paragraph 8.1 of the petition is ordered to be struck.

[143] **Conclusions**

In view of the foregoing, I make the following orders:

Mr. Dean Jonas’ Petition

- (a) That paragraph 8.1 be struck from the petition;
- (b) The Electoral Commission be struck out as a party from the proceedings.

Mr. St. Clair Simon's Petition

- (a) That paragraph 8.1 is struck out.
- (b) That paragraph 8.2, the last line the words and "in all of the circumstances the Petitioner claims that the Respondent deliberately sought undue influence and unfair advantage in the election"
- (c) That paragraph 8.3 is struck out.
- (d) That paragraph 8.4 is struck out.
- (e) That paragraph 8.6; the word "undue influence", and "29B" are ordered struck. In addition, the following words, "The first respondent thereby also acted in breach of section 35(4) of the Act which prohibits any person from remaining at or seeking to influence any voter or refrain from voting within 100 yards of any polling station" are struck from paragraph 8.6.
- (f) I refuse Mr. Simon's application to compel Mr. Spencer to provide the details and any documents relating to meetings attended by Mr. Spencer and or any representatives of the UPP, with any building or utilities companies or other organizations, and any employers or workers' representatives, which relate to the work carried out on a basketball court and road works in Five Islands between March 4th and 12th as referred to be the petition.
- (g) That the Electoral Commission is struck out as a party.

Mr. Arthur Nibbs' Petition

- (a) That paragraph 8.1 is struck.
- (b) That in paragraph 8.2, the last sentence is struck out namely, "In the circumstances, and given the events described below, the Petitioner claims that the First Respondent deliberately sought undue influence and an unfair advantage in the election".
- (c) That paragraph 8.3 is struck out.
- (d) That in paragraph 8.7 the words "treating" "29A" and "29C" are struck out.
- (e) That paragraph 9.1 is struck out.
- (f) The Court similarly refuses Mr. Nibbs application against Mr. Walker to provide details of any documents relation to meetings allegedly attended by

him with the Prime Minister or any representatives of the UPP, any building or utilities company between March 4th and 12th. The Court also refuses to compel Mr. Nibbs to provide dates, details and any documents by relating to public meeting allegedly attended by Mr. Nibbs, including any such meetings also attended by the Prime Minister in Barbuda between 9th February and 12th March 2009. Further, the Court refuses to compel Mr. Nibbs to provide details and any documents relating to meetings attended by him with the Prime Minister and any representative of the UPP and/or the ambassador to Cuba Mr. Bruce Goodwin, relating to the transport of students from Antigua and Barbuda. Application for those particulars refused.

(g) That the Electoral Commission is struck out as a party.

Mr. Charles Henry Fernandez's Petition

(a) That paragraph 8.1 is struck out.

(b) That the Electoral Commission is here again struck out as a party.

[144] For the sake of completeness, it is apposite to restate that on the last day of the hearing and just before the conclusion of the legal submissions, at the invitation of the Court, learned Queen's Counsel for all of the parties quite properly agreed not to pursue some their various applications for diverse particulars, which were opposed. They agreed to provide each other with the requested particulars save in Nibbs and Simon petitions. They have also agreed to file and exchange witness statements.

[145] Initially, all learned Counsel had suggested an agreed timetable for the provision of their particulars and witness statements. However, on further consideration of the matter learned Senior Counsel Mr. Astaphan quite helpfully informed the Court that the parties had agreed in principle to the provision of the particulars and witness statements. However, they were of the view that it would have been prudent to await the decision of the Court before finalising the timetable for the provision of the particulars and the witness statements.

[146] That being said and in view of the Court's decision just rendered, the Court invites all learned Counsel to provide an agreed timetable for the provision of the particulars and witness statements within 14 days of this order.

[147] **Costs**

The Supervisor of Elections has succeeded entirely on her applications. There has been no clear winner in relation to the other parties. Indeed, each of the other parties succeeded only in relation to some aspects of their respective applications.

[148] It is usual for the successful party in a matter to be awarded costs; this is in accordance with the well known principle that costs should follow the event. However, the Court is not of the view that this is an appropriate matter in which costs should be awarded. Indeed, I am of the respectful view that each party should bear its own costs. In consequence of the Court's departure from the general rule in relation to the Supervisor of Elections, it is necessary that I should explain the reasons for my departure. These are founded on the fact that in the applications involved matters of natural importance. Indeed, they were matters of significant public interest. In addition, the Court is of the view that the conduct of the Petitioners in presenting the petitions warrants the imposition of costs. In those circumstances, I am of the considered view that it is fair and reasonable that the above order is made. Further, I am not of the view that the petitioners have, in presenting these petitions, acted in a manner that should attract costs.

[149] Before concluding, it would be remiss of me if I did not place on record my sincere appreciation to all learned Counsel for their very helpful submissions.

Louise Esther Blenman
High Court Judge
Antigua and Barbuda

P.S On the Court's receipt of the agreed timetable for the parties to provide the particulars and the witness statements, the Court Administrator will fix a date for the hearing of the petitions. Trial Window will be in the month of October, 2009.