

**THE EASTERN CARIBBEAN SUPREME COURT  
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. 202 of 2015**

**BETWEEN**

**LAURON BAPTISTE**

**PETITIONER**

**and**

**VIL DAVIS**

**Returning Officer**

**and**

**VERONICA JOHN**

**Presiding Officer**

**and**

**MONTGOMERY DANIEL**

**and**

**SYLVIA FINDLAY-SCRUBB**

**Supervisor of Elections**

**RESPONDENTS**

**CONSOLIDATED WITH**

**CLAIM NO. 203 of 2015**

**BETWEEN**

**BENJAMIN EXETER**

**PETITIONER**

**and**

**WINSTON GAYMES**

**Returning Officer**

**and**

**KATHLEEN JEFFERS**

**Presiding Officer**

**and**

**SIR LOUIS STRAKER**

**and**

**SYLVIA FINDLAY-SCRUBB**

**Supervisor of Elections**

**and**

**THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES**

**RESPONDENTS**

**Appearances – Claim No. 202 of 2015:**

Mr. Bertram Commissiong Q.C. with Mrs. Kay Bacchus Baptiste, instructed by Ms. Maia Eustace for the petitioner.

Mr. Douglas Mendes S.C. with him Mr. Michael Quamina instructed by Mr. Joseph Delves for 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents.

Mr. Grahame Bollers and Mr. Carlos James for the 4<sup>th</sup> respondent.

**Appearances – Claim No. 203 of 2015:**

Mr. Stanley John Q.C., with him Mrs. Kay Bacchus Baptiste, Mr. Keith Scotland (absent), Mrs. Zhingha Horne-Edwards (absent) instructed by Ms. Maia Eustace for the petitioner.

Mr. Douglas Mendes S.C. with him Mr. Michael Quamina instructed by Mr. Joseph Delves for 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents.

Mr. Grahame Bollers and Mr. Carlos James for the 3<sup>rd</sup> respondent.

Mr. Anthony Astaphan S.C. with him Mr. Kendrickson Kentish instructed by Mr. Richard Williams and Ms. Danielle France of the law firm Williams and Williams, for the 5<sup>th</sup> respondent.

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2017: Dec. 12 & 13

2018: Feb. 27  
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## **DECISION**

### **INTRODUCTION**

- [1] **Henry, J.:** This decision arises from an election petition initiated by Mr. Benjamin Exeter, a candidate in the general elections held on 9<sup>th</sup> December, 2015 in St. Vincent and the Grenadines. Mr. Exeter ran on the ticket of the main opposition party, the National Democratic Party ('NDP') in the constituency of Central Leeward. The candidate fielded by the incumbent Unity Labour Party ('ULP') - Sir Louis Straker, was declared the winner.
- [2] On 31<sup>st</sup> December 2015, Mr. Benjamin Exeter filed an election petition challenging the results. He has contended that the outcome was tainted by major irregularities in the polls, which rendered it invalid. He is seeking a declaration that the election is void and that Sir Louis Straker was not duly elected or returned.
- [3] The other respondents are the returning officer Mr. Winston Gaymes, the presiding officer Ms. Kathleen Jeffers, Mrs. Sylvia Findlay-Scrubb the Supervisor of Elections ('Supervisor'), and the Honourable Attorney General. They have refuted the allegations of irregularities and strenuously resist the petition.
- [4] By Notice of Motion filed on 29<sup>th</sup> June 2017, Mr. Exeter applied for an order:-
- '1. directing the Supervisor of Elections to deliver forthwith to the Registrar of the High Court documents relating to the election held in the Constituency of Central Leeward on the 9th day of December 2015;
  2. that the said ballot boxes be opened by the Registrar ... and that permission be ... granted for the Registrar and [Mr. Exeter] ... to inspect all ballot papers contained in the ballot boxes with a view to determining the accuracy of the allegations ...' that:
    - i. the ballots were pre-printed with the official stamp or stamped by the Presiding Officers;

- ii. some 222 ballots at Polling Station CLF and 99 at Polling Station CLF1 appeared defective and/or willfully cut in such a manner that a portion of the ballot paper was absent and that they bore neither the stamp nor initials of the Presiding Officers; and/or
- iii. 238 ballots at Polling Station CLB and 210 at Polling Station CLB1 bore the Presiding Officer's initials below the line which should have separated the names of the candidates from the remainder of the top portion of the ballot paper and were deliberately cut in an irregular manner, whereby the top portion of the ballot which should have contained the space for the endorsement of the Presiding Officer's initials and the official mark was severed or absent; and/or
- iv. the official mark and the Presiding Officer's initials were endorsed on the counterfoils of those defective ballots.'

[5] Mr. Exeter filed an amended Notice of Motion 5 months later<sup>1</sup>, in which he supplemented those allegations. He deleted the assertion that the official mark and the Presiding Officer's initials were endorsed on the counterfoils. He alleged further that:

1. the referenced ballots appeared to have been willfully mutilated in such a manner that they were contrary to the rules;
2. there were similar looking ballots in ballot boxes from various polling stations which were ruled invalid by the returning officer even after he accepted similar looking ballots in 'CLF' and 'CLF1';
3. a majority of over 90% of the ballots counted at the 'purported final count' bore the official mark and the Presiding Officer's initials in a manner which is contrary to the rules; and
4. If the presiding officer folded the ballot paper to the line marked '*Do Not Fold Beyond this Line*' she could have examined her initial and the official mark to verify that it was the same ballot, only by opening the ballot thereby invading the secrecy of the poll contrary to the law<sup>2</sup>; and
5. That contrary to the Rules<sup>3</sup>, no Form 16 Statement of the Poll was presented at the Final Count for Polling Station CL11 and in the case of others, the Form manifested various errors and

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<sup>1</sup> On 9<sup>th</sup> November 2017.

<sup>2</sup> Specifically section 54 (3) of the Representation of the People Act ('RPA') and rule 31(2) of the House of Assembly Elections Rules.

inconsistencies such as the total number of ballots cast and the number of names on the voter's list<sup>4</sup>.

- [6] Mr. Exeter outlined 15 grounds on which the application is founded. Among them, he asserted that the orders are required for the purpose of determining issues in the election petition. He indicated that he relied in support of his Motion, on the relevant respects of all of the several affidavits filed in support of his petition.
- [7] Learned Senior Counsel Mr. Mendes filed written submissions and made oral arguments on behalf of Mr. Gaymes, Ms. Jeffers and Sir Louis. He argued that the alleged purpose of the requested inspection sought by Mr. Exeter is not borne out in the pleadings and that there are alternative ways of establishing what he has pleaded in the petition. He contended further that there is no evidence to support the pleadings and that the motion is perhaps a fishing expedition. He submitted to that it was an abuse of the court's process. He did not transmit an electronic copy of his submissions to the court as ordered and he provided no reasons for such default.
- [8] Learned counsel Mr. Grahame Bollers filed no written submissions on behalf of the Supervisor of Elections and he made no oral submissions. By Notice of Intention filed on 20<sup>th</sup> July 2017, he signaled Sir Louis Straker's intention to adopt the arguments of the first, second, fourth and fifth respondents.
- [9] Learned Senior Counsel Mr. Astaphan filed written submissions on behalf of the Honorable Attorney General. He submitted that the motion is an abuse of the process of the court, because an earlier decision had been made by the court in December 2015, in respect of a similar application for inspection filed in identical circumstances.

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<sup>3</sup> Rule 41(7) of the rules.

<sup>4</sup> Where there appeared to have been a 100% voter turnout in polling stations CLA1, CLE, CLF1 and CL; and in polling station CLD1 where 485 ballots are stated to have been used by the 180 names stated to be on the official list of electors used at the poll, if there had been a 101% voter turnout.

[10] By Notice filed on 4<sup>th</sup> December 2017, the Honourable Attorney General signified that he intended to object to the validity and hearing of the Amended Notice of Motion on a number of grounds including that it is in substance and effect a new application and raises allegations not pleaded by Mr. Exeter. He canvassed each of those grounds in his submissions.

[11] Before proceeding to hear the parties, the court asked each respondent through their respective legal representatives whether they had objections to the court hearing the Amended Motion. They each responded in the negative.

[12] It should be noted that the 2015 proceeding was initiated by Notice of Application while that which was brought in 2017 was started by Motion. For ease of reference and convenience, the terms 'motion' and 'application' might be used interchangeably in this decision to describe both processes, unless the context indicates otherwise.

## **ISSUES**

[13] The issues which arise are whether:

1. This motion is an abuse of the process of the court?
2. The court should make an order:
  - (a) directing the Supervisor of Elections to deliver to the Registrar of the High Court ('the Registrar') documents relating to the election held in the constituency of Central Leeward on 9<sup>th</sup> December, 2015?
  - (b) that the referenced ballot boxes be opened by the Registrar in Mr. Exeter's presence and permission be granted for the Registrar and Mr. Exeter to inspect all ballot papers in the ballot boxes to determine the accuracy of the stated allegations?

## **LAW AND ANALYSIS**

### **Issue 1 – Is the Motion an abuse of the process of the court?**

[14] On behalf of Mr. Gaymes, Ms. Jeffers and Mrs. Findlay-Scrubb, learned Senior Counsel Mr. Mendes submitted that the present motion is an abuse of the process of the court. He contended that Mr. Exeter filed an application on December 17<sup>th</sup> 2015 for orders permitting inspection of all ballot papers and counterfoils for the Constituency of Central Leeward, which was dismissed by

Justice Cottle. He remarked that the application would have addressed ballot boxes and papers from the polling stations mentioned in the current Motion.

[15] He noted that on that previous occasion, Mr. Exeter's grounds included an assertion that he was denied inspection of the counterfoils at the final count and that more than 300 ballots were found to be defective in that there was no sufficient mark or initial of the presiding officer on them. He pointed out that these are the identical grounds on which Mr. Exeter relies in support of his more recent motion for inspection of ballots from polling stations CLF and CLF1.

[16] He contended that Mr. Exeter has presented no new evidence nor pointed to any new matter which would justify a fresh look at the question of inspection. He submitted that as with the previous application, there is still no evidence before the court as to who was the chosen candidate in any of the impugned ballots; as to how the result might be affected; and no suggestions as to what the outcome of the election would be.

[17] In this context and in support of those contentions, he quoted and emphasized part of the judgment where Cottle J. opined:

'At the hearing of the application, Mr. John QC explained to the court that the Respondent and his three legal representatives were objecting to certain disputed ballots at the final count, those described as mutilated, and did not count them as the final count (sic) of the ballots. **They therefore have no evidence as to for whom these ballots had been counted. They were not able to suggest that the inclusion and exclusion of these ballots would have affected the outcome of the election.** This to my mind describes the present application succinctly. The applicant had the opportunity to inspect all the ballots and satisfy himself of the accuracy of the count. He says he failed to do so because he was objecting to certain ballots. He does not identify these ballots. Instead he seeks an order for the production and inspection of all the ballots. **No suggestions have been made as to what the outcome of such an exercise will be. To my mind, the application on the grounds presented and on the evidence adduced epitomizes a fishing expedition.** The court is also concerned about the application to inspect the counterfoils as well as the ballots. If this is allowed, it will be possible for the applicant to identify individual voters and see how they voted.' (bold added)

- [18] Learned Senior Counsel Mr. Mendes observed that the results in the four selected polling stations are now known. In this regard, he referred to exhibit 'BE 14' which was attached to Mr. Exeter's affidavit filed on 2<sup>nd</sup> March 2016. He noted that it shows that the votes were split between Mr. Exeter and Sir Louis and further that even if the impugned ballots were invalid, the result would not have been different.
- [19] He reasoned that consequently, there has been no change in the circumstances which presented themselves to Cottle J. in the days just before the petition was filed. He submitted that Mr. Exeter's motion to inspect the four boxes is an attempt to re-litigate an issue which has already been determined and amounts to an appeal against a final decision of the High Court to a judge of concurrent jurisdiction.
- [20] He contended that there has been no appeal and accordingly Cottle J.'s decision is final and binding. Learned counsel Mr. Mendes argued that as a result, the part of the motion which seeks an inspection of the ballots and counterfoils in polling stations CLB, CLB1, CLF and CLF1 ought to be dismissed.
- [21] Learned Senior Counsel Mr. Astaphan echoed those submissions and remarked that in its decision delivered on June 30, 2017, this court ruled that the respondents were precluded from pursuing their motions to strike out the petition as it amounted to an abuse of the court. He submitted that based on the underlying principles including *res judicata*, the present motion must be struck out as being an abuse of the court's process.
- [22] He submitted further that the 2017 application is seeking substantially the same or similar orders to those claimed in the 2015 application. He contended that they are both grounded in the same counts which occurred immediately after the election, prior to the 2015 application. He argued that the Motion and supporting affidavits contain no new evidence or fact that has come to light since the hearing by Cottle J. of the earlier motion for inspection. He submitted that Mr. Exeter is seeking essentially to raise the same, or re-litigate the central issues which were considered by Cottle J.. He argued further that in doing so, Mr. Exeter has not addressed the findings made by Cottle J..
- [23] He noted for example, that there are no particulars or evidence relating to objections to specific votes at each count; any counting error by the presiding or returning officer; or any assertion as to



whether the result of the election was or will be affected. He contended that the only new allegation by Mr. Exeter relates to violation of the oath of secrecy.

[24] Learned Senior Counsel Mr. Astaphan contended that nothing has arisen which suggests that the factual basis for the motion was not available to Mr. Exeter and his legal practitioners in December 2015 when the application was made. He added that the *ratio decidendi* and findings by Cottle J. remain unchallenged and therefore the Motion should be dismissed as an abuse of the court's process.

[25] He cited the decision of the Caribbean Court of Justice ('CCJ') in the Belizean case of **Belize Bank v Attorney General of Belize**<sup>5</sup> as authority for his submissions. In that case, the court observed that the Honourable Attorney General had the opportunity to raise a particular issue before the Court of Appeal and chose not to, but instead attempted to do so before the CCJ panel. Their Lordships ruled:-

'To now allow the Respondent Attorney General to raise that issue would expose the judicial process to the intolerable evil of litigation in increments and undermine a decision of the highest appellate court of Belize.'

Learned Senior Counsel Mr. Astaphan also relied on the case of **Henderson v Henderson**<sup>6</sup>, without articulating further submissions on the point.

[26] Learned Queens Counsel Mr. Stanley John countered that this 'abuse' challenge should be rejected because it is not supported by the circumstances and the applicable principles. He submitted that the respondents are essentially asking the court to invoke its discretion under the court's inherent jurisdiction to dismiss the motion. He argued that they would have the court conclude that it is unfair to them and would bring the administration of justice into disrepute, if Mr. Exeter's request for delivery and inspection of the ballots is heard on its merits.

[27] He submitted that the rule *in Henderson v Henderson*<sup>6</sup> applies where a case does not fall within the rules relating to *res judicata*. He did not direct the court's attention to the part of the judgment from which he so concluded.

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<sup>5</sup> [2017] CCJ 18 at para. 24.

<sup>6</sup> 3 Hare 100 (This citation appears on the copy of the judgment supplied by the Honourable Attorney General).

[28] However, he quoted and adopted a description of the 'rule in Henderson' from Halsbury's Laws of England where the learned authors explained:

'The rule provides that a claimant is barred from litigating a claim that has already been adjudicated upon or which could and should have been brought before the court in earlier proceedings arising out of the same facts'. Parties are expected to bring their whole case to the court and will in general not be permitted to re-open the same litigation in respect of a matter which they might have brought forward but did not, whether from negligence, inadvertence or even accident. The abuse in question need not involve the re-opening of a matter already decided in proceedings between the same parties, but may cover issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow new proceedings to be started in respect of them.'<sup>7</sup>

[29] Mr. John Q.C. emphasized the latter part of the passage which states:

'It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive; the question is whether in all the circumstances a party's conduct is an abuse.'<sup>7</sup>

[30] He argued that notwithstanding its inapplicability for present purposes, the court may exercise its discretion under its general inherent jurisdiction, to prevent a party from abusing its process by raising an issue which was or could have been determined in earlier proceedings.

[31] He submitted that the rule (against abuse of the court's process) seeks to advance the underlying public interest that there should be finality in litigation and that a party should not be twice vexed in the same matter, much as in the case of cause of action estoppel and issue estoppel which both have commonalities with the '**Henderson**' rule.

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<sup>7</sup> Vol. 32, 5<sup>th</sup> Ed. Para. 1166-1167.

[32] It is instructive at this stage to examine the rule in **Henderson v Henderson**<sup>6</sup> to extract the principles enunciated in it. In delivering the decision, the Vice Chancellor Sir James Ingram expressed them as follows:

‘... I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation, and of adjudication by, a Court of Competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and **will not (except under special circumstances)** permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject of contest, but which was not brought forward, only because they from negligence, inadvertence, or even accident, omitted part of their case. **The plea of *res judicata* applies**, except in special cases, **not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to** every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. ... I conceive it to be the duty of this Court to apply the same reasoning, ... in the absence of charges ... showing that a different principle ought to be applied.’<sup>8</sup> (bold added)

[33] Sir James Ingram noted that this general principle was applied in a number of cases including **The Marquis of Breadalbane v The Marquis of Chandos 2 Myl & Cr. 732; Farquharson v Seton 5 Russ. 45; Patridge v Osborne Id. 195; and Chamley v Lord Funsany 2 Sch. & Lef. 718**. He observed that litigation would be ‘interminable if such a rule did not prevail’. I accept that his formulation of the rule accords with long established practice and the law as re-stated by the legal practitioners for the petitioner and respondents. I accordingly adopt that formulation for present purposes.

[34] Significantly, Sir James Ingram referred to the rule as ‘the plea of *res judicata*’. It is important to note that this contradicts the position taken by learned Queen’s Counsel Mr. John. In summary, His Lordship’s distillation of the applicable principles arising in the case of **Henderson v Henderson**<sup>6</sup> may be enumerated as follows:-

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<sup>8</sup> At page 115 of the report.

1. parties involved in matters before the Court must ensure that they lay out their whole case at the first available opportunity;
2. If a party fails to do so due to negligence, inadvertence, or even accident, he will not except in special circumstances, be permitted to re-litigate with the identical party(ies), the same issues or any part of the case which he could have made in the earlier proceeding;
3. This rule is not restricted to issues or points on which the parties previously sought a ruling or opinion from the court, but extends to every conceivable aspect of the case which the parties with reasonable diligence could have discovered and advanced.

[35] Mr. John Q.C. submitted further that the burden of establishing abuse of process rests on the party asserting it. He cited the ruling of Master Actie in **Ferguson v Ferguson**<sup>9</sup> where the learned Master pointed this out and stressed that in each case the question in light of all the circumstances, is whether applying a broad merits based approach, the conduct complained about constitutes an abuse of process.

[36] The learned Master noted that: -

‘... The principles that are engaged in an application to strike out a claim made on the basis of abuse of process are summarized by Lord Bingham of Cornhill in **Johnson v Gore Wood** in the following pronouncement

"The[re] is [an] underlying public interest ... that there should be finality in litigation ... This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim ... in later proceedings may, without more, amount to abuse if the court is satisfied ... that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court

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<sup>9</sup> SLUHCV2012/0387 (unreported).

regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which **takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.** ... [I]t is in my view **preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances.** Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice."<sup>8</sup> (bold added)

[37] Learned Queens Counsel Mr. John submitted that in light of those principles, the onus rests on the respondents to satisfy the Court that in all the circumstances, Mr. Exeter's conduct in making this application is an abuse of the process in that it involves what the court regards as unjust harassment of the respondents. He argued that the principles necessitate that the prior ruling was made by a competent court. He contended that the ruling by Cottle J. in 2015 was not made in exercise of the court's jurisdiction to hear the merits of the Petition which challenged the returns or the validity of the election, but rather for the purpose of bringing a Petition.

[38] He submitted that this is borne out in Cottle J.'s pronouncement that:

'This is not an election petition. This is an application for an order to produce election documents which are at present in the custody of the Supervisor of Election. No suggestion has been made that there exists any danger that those documents are in any way at risk of being tampered with. The learned authors of Halsbury's Laws of England (4th Edition Re issue) Vol. 15 at paragraph 851 had this to say.

'Strong grounds for making an order must be shown, and the court must be satisfied that the application for it is made in good faith, and will rarely, if ever,

grant it unless a petition or prosecution has been instituted or is about to be instituted and it is shown to be really required.'

One example of the approach a court takes in consideration (sic) this question can be found in *Lancashire, Darwen Division Case (1885) 2 TLR 220* where the court refused to allow an inspection before an election petition was lodged. Denman J. considered the application to have been in the nature of a fishing expedition. That case can be contrasted with *Gough v London Sunday Newspaper (2003) 1 WLR 1836* where there was an admitted error in the court (sic) of the votes. An entire packet of postal votes had been overlooked. There the court felt that grounds existed for permitting an inspection to see whether or not the presentation of an election petition was merited.

In the case before this court there is no issue of overlooked votes. There has been no complaint about the preliminary vote. There has been no complaint about the accuracy of the court (sic). The applicant was represented at the final count. He now wishes another opportunity to inspect the ballots "to conclusively assess the validity of the final count."<sup>10</sup>

[39] Mr. John Q.C. contended that regardless of the accuracy of the learned Judge's analysis of the strength of the applicant's case in the pre-petition application, he made a clear distinction in his ruling 'between those proceedings where according to him, the application was made to conclusively assess the validity of the final count before a petition was lodged and an election petition proceedings brought pursuant to and for a purpose as prescribed by statute'.

[40] Mr. John argued that the distinction is of significance because the Petition is specifically intended among other things, to determine conclusively the validity of the final count and whether or not the election was void. He added that on a proper interpretation of Rule 53 of the House of Assembly Election Rules ('HAER')<sup>11</sup>, the court does not have the jurisdiction in a pre-petition application to adjudicate conclusively the issues related to these latter controversies, which underlie the application for delivery and inspection in the election petition proceedings.

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<sup>10</sup> Cottle J.'s Judgment in the instant case, dated 28<sup>th</sup> December, 2015 at page 8.

<sup>11</sup> Cap. 9 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

Presumably the expression 'latter controversies' refers to the dispute surrounding validity of the final count and election.

[41] Learned Queens Counsel Mr. John contended further that based on principle and practice, even after an unsuccessful application for inspection, it is not an abuse of process, if after oral evidence is given in the course of hearing of the petition, necessary orders allowing inspection are made where the evidence brings facts to the court's attention from which it appears that inspection should be allowed in the interest of justice.

[42] He argued that in the final analysis, the application should be heard on its merits. He labeled as 'not maintainable' the suggestions by the respondents that the application is merely an attempt to re-litigate an issue which has already been determined that amounts to unjust harassment. He concluded that in any event, there is no strict rule or principle which compels the court to accede to the request to dismiss the application for abuse of the process.

## **ANALYSIS**

### **Competent Court**

[43] Learned Queens Counsel Mr. Stanley John has raised the issue of the court's competency in respect of the present Motion. In this regard, he suggests that having regard to the timing of the 2015 application that the court could not at that time, conceivably entertain the 2017 motion. Learned Queens Counsel points to the fact that the application was made before a petition was filed, while the instant motion was filed after.

[44] He contended that Cottle J. was therefore not asked to and could not have been approached to make the orders sought in the motion. I have outlined the statements from Cottle J.'s judgment on which Mr. John Q.C. anchored this argument. He has cited no other legal authority in support. This contention is diametrically opposed to those made by learned Senior Counsels for the Honourable Attorney General and the election officials. They have submitted that both applications are substantively the same.

[45] I do not understand or interpret Mr. John's submissions to be impugning Cottle J.'s authority to preside over the 2015 or 2017 application. Rather, I understand him to be arguing that in a pre-petition application the court is not concerned with and cannot make rulings or final determinations

on substantive issues which arise in an election petition. If his reference to 'conclusive determination' refers to a decision as to whether an election is valid, clearly this is so.

[46] Nonetheless, Cottle J.'s statement does not appear to me to be an authoritative statement regarding the competence or lack thereof, in the Court to make an order for production of election documents prior to the presentation of an election petition. His statement appears merely to be by way of observation. I do not understand it to mean that a court cannot make an order for production and inspection of election documents which may be required for the purposes of a yet-to-be-filed election petition. On the contrary, by quoting from Halsbury's Laws of England Cottle J. appeared to be endorsing the learned authors' pronouncement that, like the courts in England, those in this jurisdiction when considering applications for inspection of ballots:

'... must be satisfied that the application ... is made in good faith, and grant it [if] a petition ... has been instituted or is about to be instituted ...'

[47] The Rules in this jurisdiction empower the Court to make orders for inspection and production of ballot papers before or after a petition is lodged. Subrule (1) of Rule 53 provides:

'53 (1) An order-

(a) for the inspection or production of any rejected ballot papers, including ballot papers rejected in part, in the custody of the Supervisor of Elections;  
or

(b) for the opening of a sealed packet of the counterfoils or **for inspection of any counted ballot papers in his custody,**

may be made by **the Court** if it is satisfied, by evidence on oath, that the order is required for the purpose ... of an election petition **lodged, or to be lodged,** in accordance with the law thereunto applicable.' (bold added)

[48] It is worth noting that section 2(1) of the RPA defines 'Court' as the 'High Court'. Learned Queens Counsel Mr. John argued that the present application arises in proceedings which are 'intended to determine conclusively the validity of the final count and hence whether or not the election was void.' He noted that Cottle J. made a distinction between such proceedings and a pre-petition application which is concerned with 'conclusively assessing the validity of the final count,' and is made prior to the launch of the related petition.



[49] The very language of Rule 53 makes it abundantly clear that both scenarios is accommodated by the provision. A petitioner may elect to bring an application before or after he files an election petition. Irrespective of his election, the High Court is vested with the requisite power to make an order for:

1. production or inspection of rejected ballot papers [Rule 53(1)(a)]; or
2. inspection of counted ballot papers [Rule 53(1)(b)];

if satisfied that such an order is required for the purpose of (a) an already filed election petition; or (b) one which is yet to be filed. Therefore, even before a petition is filed, the Court may order inspection of counted ballot papers if the applicant demonstrates that they are required for the purposes of a yet unfiled elections petition.

[50] The Rule is silent about the specific purposes which are contemplated. I imagine that they are many, varied and comprise a non-exhaustive list. I harbor no doubt that Cottle J. had the requisite authority and the Court so constituted was competent to make an order for production and inspection of the sought ballot papers and counterfoils, if the evidence before it established the pertinent facts and circumstances. It could do so at that stage even if the application was made on the basis that the inspection was required for the purposes of a future elections petition. I therefore reject the contention that the Court was not competent in the respects described by Learned Queens Counsel Mr. John.

### **Abuse of Court's Process**

[51] The parties have individually outlined certain principles which guide the court in determining whether proceedings or any part thereof constitute an abuse of the court's processes. Collectively, those submissions accurately rehearse the legal principles which the Court considers when deciding whether a course of conduct constitutes an abuse of the court's process. They include the principles extracted from **Johnson v Gore Wood** as adopted by Master Actie in **Ferguson v Ferguson**. I therefore adopt and apply them for the purposes of this decision.

[52] In deciding if the present motion is an abuse of the court's process, this court must ask itself whether the motion before it is identical or similar to the application over which Cottle J. presided and rendered the referenced decision. This court must consider whether the present motion is

substantively the same as the previous proceeding; whether any ‘new allegations’ in the 2017 Motion could properly have been included and dealt with at that time; or whether the two applications are distinct from each other and bear little or no resemblance and could not have been subsumed under and disposed of as part of the earlier proceeding. Fundamentally, the court must have regard to all the circumstances and decide whether the petitioner by filing this motion, has conducted himself in manner which amounts to an abuse of the court’s process.

[53] In the first scenario, the court would be entitled to find that the motion is an abuse of the court’s process. In the second, the court’s determination may go either way depending on whether there are special or exceptional circumstances which render the doctrine inapplicable; and in the third case it would be entitled to find that no abuse of process arises.

[54] A useful starting place in assessing the parties’ respective contentions is a comparison of the orders sought and the grounds on which they are based, in both the 2015 application and 2017 motion. In conducting this exercise, it is imperative to have regard to the relevant contents of the petition, particularly as they relate to the allegations and the grounds.

[55] It is perhaps easier to appreciate similarities and differences in the pleadings if they are set out alongside each other in a table. I propose to take that approach. The data from the 2015 application will be set out in the left column while those from the 2017 motion are captured in the right column.

[56] The table is utilized to compare the orders sought in each case. It is important to note that the Supervisor of Elections Sylvia Findlay-Scrubb was the only named respondent in the 2015 application. In the 2017 Motion, four other respondents are joined. Three orders were sought in the 2015 application and 2 were outlined in the 2017 motion. The second relief claimed in the motion contained 8 distinct parts, in which certain allegations were pleaded. They will be addressed seriatim.

**TABLE 1**

2015 Application	2017 Motion
<p><b><u>ORDERS SOUGHT:</u></b></p> <p>(1) ‘an order that the Respondent [Sylvia Findlay</p>	<p><b><u>ORDERS SOUGHT:</u></b></p> <p>I. ‘An order that the 4<sup>th</sup> respondent [Sylvia</p>

<p>Scrubb, Supervisor of Elections] <b>produce forthwith</b> all <u>ballot boxes</u> ... for <b>all 15 polling stations in the Constituency of Central Leeward</b> and deliver said ballot boxes to the Registrar - [para. (1)] (bold and underlining added)</p>	<p>Findlay Scrubb, Supervisor of Elections] <b>deliver forthwith</b> to the Registrar ... <u>documents</u> relating to the election held in <b>Constituency of Central Leeward'</b> to the Registrar - [para. II] (bold and underlining added)</p>
<p>(2) 'an order that the <b>said</b> ballot boxes be opened by the Registrar' in Mr. Exeter's or his representatives' presence,  And permission be granted <b>to Mr. Exeter</b> to inspect <b>all ballot papers in the ballot boxes</b> - [para. (2)] (bold added)</p>	<p>II. 'an order that the <b>said</b> ballot boxes be opened by the Registrar' in Mr. Exeter's or his representatives' presence,  And permission be granted <b>for the Registrar and Mr. Exeter</b> 'to inspect <b>all ballot papers</b> contained in the ballot boxes with a <b>view to determining the accuracy of the allegations</b><sup>12</sup> <b>following:</b> - [para. II ] (bold added)</p>
<p>(3) 'the sealed packets containing <b>counterfoils</b> and contained in the aforesaid ballot boxes be opened by the Registrar' in Mr. Exeter's or his representatives' presence, (bold added)  And permission be granted <b>for Mr. Exeter</b> and/or his representatives to inspect and open such packets of the <b>counterfoils</b>. [para. (3)] (bold added)</p>	

**First relief – paragraph I of the Motion**

[57] The first order claimed in the 2015 application is for the production and delivery of all ballot boxes for all 15 polling stations (in the Central Leeward Polling Station) to the Registrar. The

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<sup>12</sup> They are omitted from the table, and outlined elsewhere in this decision.

corresponding prayer in the 2017 motion seeks the delivery to the Registrar, of 'documents relating to the election held in Constituency of Central Leeward'.

[58] In assessing substantive commonalities or differences in those two the court must have regard to the HAER, for an appreciation of the contents of the ballot boxes and as to what constitutes 'documents relating to the elections'. The RPA defines 'election documents' to mean:

'the documents which a returning officer is required to transmit to the Supervisor of Elections;'<sup>13</sup>

[59] Rules 41, 50 and 51 address that subject. Respectively, they impose statutory obligations on the presiding and returning officers relative to the security of ballots and ballot boxes. At the conclusion of counting of the votes following an election, the presiding officer must place certain documents (including counterfoils) into a large envelop provided for that purpose. After sealing the envelop, the presiding officer is required to put the envelop into the ballot box (for the relevant polling station); lock it and deliver it to the returning officer, pursuant to Rule 41(8).

[60] The large sealed envelop contains the:

1. register of votes;
2. several envelopes containing the ballot papers, whether unused, spoilt, rejected or counted for each candidate;
3. packets of counterfoils which should remain intact – each lot in its proper envelop; and
4. envelop containing the register of voters and other documents used at the poll.

[61] On receipt of the sealed and locked ballot boxes, the returning officer must deliver them to the Supervisor (within 7 days after the final count) along with an envelop containing the key, the preliminary statement of the poll and the polling station account.<sup>14</sup>

[62] The returning officer is expressly mandated by Rule 51 of the HAER to also deliver to the Supervisor, the ballot papers in his possession; the ballot paper accounts; statements of rejected ballot papers and the verification of the ballot paper accounts; the list of blind and incapacitated

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<sup>13</sup> Section 2 (1).

<sup>14</sup> Rule 50 of the HAER.

voters assisted by companions; the list of votes marked by the presiding officer, the statements relating to them and the declaration made by those companions; the packets of counterfoils; the packets containing marked copies of the registers; the packets containing transfer certificates of presiding officers and poll clerks; and all other documents used for the election.<sup>15</sup> The Supervisor is charged with keeping all such documents in safe custody unless ordered by a judge of the High Court to deliver them to the Registrar in the course of election petition proceedings questioning the validity of any election or return.<sup>16</sup> Barring any such court order, the Supervisor of Elections may after the expiration of 12 months from the related elections, destroy the election documents by burning.<sup>16</sup>

[63] Rule 51 seems to contain an exhaustive list of the election documents which the returning officer must turn over to the Supervisor within 7 days of the elections. The catch-all phrase 'all other documents used for the election' employed in paragraph (g) of Rule 53(1) is wide enough to cover all of the documents listed in rule 41(8) that the presiding officer must place in the ballot boxes (in envelopes) and deliver to the returning officer.

[64] Having regard to the language used in the two applications, it appears that at a superficial level, the order sought in the first paragraph of the 2015 application to 'produce and deliver all ballot boxes for all 15 polling stations' was concerned only with the contents of the ballot boxes. Since the referenced rule<sup>17</sup> stipulates what the sealed ballot boxes should contain, it strikes me that the application was concerned with those documents, namely the register of votes; all of the several envelopes containing the unused, spoilt, rejected or counted ballot papers; the packets of counterfoils; and the register of voters **and** other documents used at the poll.

[65] Similarly, by specifying 'documents relating to the election held in Constituency of Central Leeward', the 2017 motion employed the descriptive terminology used in the RPA's definition of 'election documents', thereby directing the court's attention to the documents identified in rule 51 of the

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<sup>15</sup> Rule 51 of the HAER.

<sup>16</sup> Rule 52 of the HAER.

<sup>17</sup> Rule 41(8) of the HAER.

HAER; namely the packets of ballot papers in his possession, the ballot paper accounts, statements of rejected ballot papers and the verification of the ballot paper accounts; the list of blind and incapacitated voters assisted by companions, the list of votes marked by the presiding officer, the statements relating to them and the declaration made by the companions of the blind; the packets of counterfoils; the packets containing marked copies of the registers; the packets containing transfer certificates of presiding officers and poll clerks; **and** all other documents used for the election. It follows that in this respect, the 2017 motion casts a wider net than the 2015 application. The first paragraph of the reliefs sought seeks respectively, production and/or delivery to the Registrar of the 'ballot boxes' on the one hand; and the 'documents relating to the election' on the other.

[66] The parties accept that the court may make such an order pursuant to Rule 53 of the HAER. The rule authorizes the court to make an order for:

1. inspection or production of any rejected ballot papers, included ballot papers rejected in part, in the Supervisor's custody; or
2. the opening of a sealed packet of the counterfoils or for the inspection of any counted ballot papers in the Supervisor's custody;

if it is satisfied by sworn testimony, that such an order is required for the purpose of an election petition lodged, or to be lodged in accordance with the law applicable thereto.

[67] Having regard to the applicable legislative provisions, I conclude that paragraph I of the 2017 Motion covers documents additional to those mentioned in the corresponding paragraph of the 2015 Application. This notion will be explored further. Suffice it to say that both paragraphs seek delivery of the specified items to the Registrar.

### **Second Relief – Paragraph II of the Motion**

[68] The second order sought in both applications is almost identical. In essence, Mr. Exeter seeks an order for inspection of all ballot papers in the ballot boxes. In this relief, he restricts his 'claim' to the 'ballot papers in the ballot boxes' and has made no prayer for inspection of the other election documents mentioned in the first relief claimed.

[69] The 2015 and 2017 prayers as framed in the second paragraph differ in three material respects:

1. Mr. Exeter is referred to as 'Applicant/Intended Petitioner' in the 2015 Application and as 'Petitioner' in the 2017 Motion;
2. The 2017 Motion includes the Registrar as one of the persons to whom the court should grant permission to inspect the ballot papers. In the 2015 Application, permission was sought only for Mr. Exeter and his representatives to do so; and
3. A deadline of 18<sup>th</sup> December 2015 is included in the 2015 Application and the prayer records no purpose or objective. However, the objectives were set out in the grounds and will be addressed later. The 2017 Motion contains no timeline and its stated objective is to determine the accuracy of certain allegations; including that the 'ballots' were pre-printed with the official mark, or stamped by the Presiding Officer and in some instances printed on the counterfoil; that some of the 'ballots' appeared defective or were willfully cut or were willfully mutilated contrary to law.

[70] The first divergence in framing the orders is not significant and nothing turns on it. It merely describes the capacity in which Mr. Exeter moved the court. The second difference is self-explanatory. It seemingly contemplates inspection of the ballot papers and other documents only by Mr. Exeter or his representative on the one hand; or a joint inspection by him and the Registrar on the other.

[71] With the third change, Mr. Exeter appears to be suggesting that an inspection of the 'ballots' is necessary to enable him, the Registrar, and by extension the court, to determine if his several allegations about the 'mutilated and defective' ballots, etc. are accurate. This will be examined fully in due course.

[72] The 2015 Application sought a third relief which appears not to be captured in the 2017 Motion. It requested that the court order the Registrar to open the 'sealed packets containing counterfoils and contained in the aforesaid ballot boxes' in Mr. Exeter's presence to enable him or his representative(s) to 'inspect and open such packets of the **counterfoils**'. The counterfoil is that part of the ballot paper which the presiding officer removes before depositing the related cast ballot

paper into the ballot box. For completeness, it is prudent to ascertain whether Mr. Exeter's choice of words in the instant Motion contains an application for inspection of the counterfoils.

- [73] The rules<sup>18</sup> make provision that after a voter has cast his ballot, the presiding officer is to remove the counterfoil from the ballot paper before depositing it into the ballot box. All such removed counterfoils must by law be placed into an envelop (which is then deposited into the large envelop prescribed by Rule 41) which is secured in the relevant ballot box at the end of the elections, and after all counting has taken place.
- [74] The Act and Rules contain no definition of 'ballot paper' or 'counterfoil'. Both are described in the Rules. Rule 15 of the HAER specifies how the ballot paper is to be formatted. It states that the ballot paper must be in Form 7; contain the names and symbols of the candidates; be capable of being folded; have a space for the presiding officer's initials on its face; have an attached counterfoil and stub; and have a line or perforations between the ballot and the counterfoil and between the counterfoil and stub as in Form 7.
- [75] Rules 31 and 41 stipulate that the presiding officer must remove the counterfoil either when the voter exits the voting compartment in the polling station, after casting his vote; or during counting, in the exceptional case where the presiding officer discovers that it was not detached at the earlier specified time.
- [76] In light of the descriptions of 'ballot paper' and 'counterfoil', it is apparent that they are separate and distinct 'documents' or 'items' which are supposed to be detached from each other at some point during an election. In his 2015 application, Mr. Exeter pointedly highlighted the distinction between the counterfoil and the ballot paper by asking for separate orders of inspection in respect of each. He thereby signaled his acknowledgment and recognition that they are different election documents.
- [77] Form 7 is set out in the Appendix to the Rules. It is useful to include a representation of it in this decision for ease of reference and completeness. A reasonable reproduction is as follows:

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<sup>18</sup> Rule 31 of the HAER.



'FORM 7  
[Rule 15.]  
*Ballot Paper*

GENERAL ELECTION.....

..... constituency

Voter's number on roll .....

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Polling day ..... space for initials of presiding officer .....

Do not fold beyond this line .....

\* 1. BABULAH, Conrad D

Chancery Lane,  
Engineer.

2. OCEAN, Francis

Hayes Street,  
Merchant.

3. RONSON, Emmanuel

Marli Street,  
Insurance Broker.



\* These are specimen entries.

[78] The relevant portions of rules 31 and 41 provide respectively:

'31. Voting procedure

(1) A ballot paper shall be delivered to a voter who applies therefor, and immediately before delivery-

(a) the **ballot paper shall be marked with the official mark**, either stamped or perforated, **and the initials of the presiding officer**;

(b) the number, name and description of the voter as stated in the copy of the register of voters shall be called out;

- (c) the number of the voter shall be marked on the counterfoil; and
  - (d) a mark shall be placed in the register of voters against the number of the voter to denote that a ballot paper has been received but without showing the particular ballot paper which has been received.
- (2) **The voter**, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station and there secretly mark his ballot paper by marking, with the black lead pencil provided, a cross within the space containing the name and symbol of the candidate for whom he intends to vote. **He shall then fold the ballot paper so that the initials of the presiding officer and the official mark can be seen without opening it**, and hand the paper to the presiding officer who shall, without unfolding it, ascertain by examination of the initials, the numbers and the official mark appearing thereon that it is the same paper as that delivered to the voter and, if it is the same, **he shall** subject to rule 31A **in full view of the voter and all others present remove the counterfoil and deposit the ballot paper in the ballot box.**
- (3) ...

'41. Procedure during count

- (1) If, in the course of counting the votes, any ballot paper is found with the counterfoil still attached thereto, the presiding officer shall (**carefully concealing the numbers thereon from all persons present and without examining them himself**), **remove such counterfoil**. He shall not reject the ballot paper merely by reason of his former failure to remove the counterfoil.
- (2) **If, in the course of counting the votes, the presiding officer discovers that he has omitted to affix his initials to any ballot paper**, as provided by rule 31(1) (a) and as indicated in Form 7 in the Appendix, he shall, in the presence of the poll clerk and the agents, if any present, of the candidates, **affix his initials to such ballot paper and shall count such ballot paper as if it had been initialed by him in the first place** provided that he is satisfied that the ballot paper is one that has been supplied by him and that such an omission has really

been made and also that every ballot paper supplied to him by the returning officer has been accounted for as provided by rule 39.

(3) ....

(4) The presiding officer shall keep a record, on the special form printed in the register of votes, of every objection made by any candidate, or of his agent or any voter present, to any ballot paper found in the ballot box, and shall decide every question arising from out of the objection. The decision of the presiding officer shall be final, subject to reversal on the final count by the returning officer or on petition questioning the election or the return; and every such objection shall be numbered and a corresponding number placed on the back of the ballot paper and initialed by the presiding officer.' (bold added)

[79] In the allegations appended to the second paragraph of his prayer, Mr. Exeter refers to 'ballots' and 'ballot papers'. For example, in the first of those allegations he asserted 'That all of the said ballots were pre-printed with the official stamp or stamped by the Presiding Officers or otherwise as the case may be and in some cases the official mark was printed on the counterfoil.' He appears to use the word 'ballot' interchangeably with 'ballot paper' in reference to the part of the document which contains the candidates' names, particulars and symbols, as distinct from the counterfoil and stub.

[80] This accords with similar use in the rules. For example rule 15(2)(d) provides:

'A ballot paper shall be in Form 7 in the Appendix and shall be printed in accordance with the directions therein and shall-

'(d) have attached a counterfoil and a stub, and a line or perforations between the ballot and the counterfoil and between the counterfoil and stub, the whole as in Form 7 in the Appendix.'

[81] The upshot of this observation is that:

1. to the extent that Mr. Exeter has attempted to incorporate in his Motion, allegations, particulars or evidence which effectively invoke the court's discretion to grant an order for inspection of the counterfoils, they are inconsistent with the relief sought in paragraph II of the Motion, because it restricts the 'claim' to ballot papers; and

2. The Order sought excludes them from consideration. The court's jurisdiction has not been invoked in relation to them. Accordingly, those parts of his allegations, particulars and evidence must and will be disregarded for the purposes of this Motion, as they do not arise from the prayer.

[82] In view of the foregoing, it appears more logical and reasonable to examine the second of the two orders before addressing the first. I propose to now recite them in their entirety and to concurrently evaluate the allegations, the accuracy of which Mr. Exeter contends can be determined by an inspection of the ballot papers. This part of the analysis will be aimed at ascertaining whether similar allegations were made in the 2015 application, if so to what effect and whether it can be described as an abuse of the court's process to seek the referenced order at this juncture.

**Paragraph II i.**

[83] The first allegation which Mr. Exeter indicates must be evaluated to determine its accuracy is:

‘... all of the ballots in the ballot boxes were pre-printed with the official stamp or stamped by the Presiding Officers or otherwise as the case may be and in some instances the official mark was printed on the counterfoil.’

As stated previously, the court will not concern itself with that part of any assertion which relates to the counterfoils, since the prayer did not seek inspection of counterfoils. Accordingly, the clause ‘... and in some instances the official mark was printed on the counterfoil’ will be disregarded.

[84] Mr. Exeter did not allege in the 2015 application proper, that the ballots in the ballot boxes were pre-printed with the official stamp or stamped by the Presiding Officers or otherwise. Neither he nor his witness testified to such effect. Neither Mr. Exeter nor Ms. Eustace provided affidavit testimony in 2015 or 2017 that they observed any ballots pre-printed with the official stamp or stamped by the Presiding Officers. This assertion was first made in the petition filed on 31<sup>st</sup> December 2015.

[85] In paragraph 3 (22) of the Petition, Mr. Exeter asserted that contrary to Rule 31(1) (a) of the rules, ‘all of the ballot papers issued to presiding officers by the 4<sup>th</sup> respondent had the official mark pre-printed on them and in some instances the official mark was printed on the counterfoil.’ He noted that this is in violation of the procedure which states that ‘The Presiding Officer puts the official

election mark on the ballot paper' as set out in 'Handbook for Election Workers' produced by the Electoral Office of St Vincent and the Grenadines, 2015 under the hand of the 4<sup>th</sup> Respondent, for 'the more effective conduct of the election process'.

[86] Mr. Exeter has not provided an explanation as to why he did not in his 2015 application include an allegation that the ballots were not pre-printed with the official mark and were later stamped by the presiding officer. It is noteworthy that in his affidavit filed on 9<sup>th</sup> November 2017, he referred to and exhibited photographs which he said are of copies of ballots and ballot papers which he photographed at the final count in December 2015. That account demonstrates that Mr. Exeter by his own admission had documentary proof of what one or more ballot papers looked like on election day 2015. Moreover, Mr. Exeter and/or his representatives were present at the final count as attested to by Ms. Maia Eustace and him.

[87] Ms. Eustace deposed<sup>19</sup> that on 10<sup>th</sup> December 2015, during the final count of the ballots (from polling station CL A) Mr. Gaymes emptied the ballots on the table and proceeded to count them. She recalled asking to be permitted to count them. On doing so, she obtained a different figure from Mr. Gaymes, whereupon they repeated the process and arrived at the same figure. Ms. Eustace deposed that thereafter a procedure was adopted whereby Mr. Gaymes counted the ballots in lots of 10, handed them to Mr. Robinson who followed suit; that the ballots were then handed to Ms. Cummings and to her (Ms. Eustace) in tens and they in turn counted and stacked them. Ms. Eustace recalled that Mr. Gaymes complained intermittently that they were moving too slowly when they inspected a ballot or made an objection.

[88] Ms. Eustace averred<sup>20</sup> that while counting the ballots from ballot box marked CL F1 Ms. Morris and Ms. Shirlan 'Zita' Barnwell (another of Mr. Exeter's representatives) discovered a further 99 mutilated ballots. She explained that the expression 'mutilated' refers to ballots which bore neither the official stamp nor initials of the presiding officer. These observations by Ms. Eustace reflect that

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<sup>19</sup> See paragraphs 31 through 35 of Affidavit in Support of Application for production & Inspection orders filed on 17<sup>th</sup> December 2015.

<sup>20</sup> At paragraph 57 of her affidavit filed on 17<sup>th</sup> December 2015.

Mr. Exeter's representatives or some of them had the opportunity to examine the ballots during the final count, sufficient to enable them to note any alleged 'irregularities' with the ballot papers.

[89] This is further confirmed by the allegations made by Mr. Exeter and his witness in 2015, that the ballots bore neither the stamp nor initials of the presiding officer and the later allegations outlined in Mr. Exeter's Amended Motion - the subject of this decision.

[90] It is useful to review the assertions made by Mr. Exeter in 2015 regarding the placement of the official mark and the presiding officer's initials on the ballot papers. The affidavit testimony provided at that time will also be considered to bring context to present proceedings in connection with the allegation under consideration. Similarly, the relevant portions of Cottle J.s judgment will be outlined.

[91] In 2015, Mr. Exeter alleged (in the grounds of his application) that the returning officer:

1. ignored the objections of his representatives (at the final count) and counted as valid, in excess of 300 'defective ballots' which appeared to have been willfully mutilated in that contrary to rule 31(1) of the HAER they contained neither an official mark nor initial of the presiding officer; and
2. ruled invalid similarly mutilated ballots for other polling stations.

[92] The record reflects that the affidavit testimony of Ms. Maia Eustace and Mr. Exeter was presented to the court on that occasion. They both testified to having seen mutilated ballots in ballot boxes which bore neither an official mark nor initial of the presiding officer. Ms. Eustace deposed that those ballots were from ballot boxes marked CLF and CLF1.

[93] Mr. Gaymes the returning officer also supplied sworn testimony by affidavit at that time. He deposed that when he opened box CLF he discovered that the ballots in that box did not have the initial of the presiding officer or any official mark on the ballots, as a result of which he was minded to reject all of the votes in that box. He added that Mr. Exeter and his agents indicated to him that they were not objecting to the ballots and consented to all of the votes in that box being counted, whereupon he (Mr. Gaymes) said 'what's good for the goose is good for the gander'. He explained that by this

he meant that Mr. Exeter's consent was the right thing to do as both candidates would and did in fact receive votes from that box.

[94] Mr. Gaymes stated further that he called the presiding officer to inquire about the ballots with no official mark in box CLF, and she informed him that 'the official marks were on the ballot paper but were actually printed on the counterfoils.' On this subject the Supervisor attested:

'There is also the allegation that some ballots did not have the official mark. This is inaccurate. All ballot papers issued to the Presiding Officers had the official mark as required by law. What however I noticed was that in a few instances the official mark was printed on the counterfoil. The counterfoil is part of the ballot paper.'<sup>21</sup>

[95] In a later affidavit, filed on 19<sup>th</sup> July 2017 the Supervisor stated:

'When the petition was filed, I noticed that the Petitioner was alleging that the ballot papers for the constituency of Central Leeward were pre-printed with the official mark, that is to say, the ballot papers which were presented to the Presiding Officers already had the official mark printed on them. On re-reading paragraph 11 of my said affidavit, I realized that I may have given the false impression that the ballot papers were in fact pre-printed with the official mark. But that is decidedly not the case. Accordingly, I immediately wrote a letter dated 6<sup>th</sup> January 2016 to my attorney at law informing him of the error. ... I confirm as well that the contents of my said affidavit, with the exception of paragraph 11, are true and correct.'<sup>22</sup>

[96] It is important to note that the motion contains 20 grounds, some of which have multiple sections. Among them are statements which repeat one or more of the allegations contained in the prayer under consideration. It seems more efficient to set out related allegations at the first available occasion than to address them in sequence as they arise. In this regard, I note that paragraphs 6, 8 and 9 of the grounds are connected with Mr. Exeter's 2015 complaint that the ballot papers in polling station CLF did not have the initials of the presiding officer or the official mark. For

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<sup>21</sup> At paragraph 11 of her affidavit filed on 21<sup>st</sup> December 2015.

<sup>22</sup> At paragraph 5.

completeness, I will set them out fully. It should be noted that the Amended Motion contains two paragraphs numbered '6'.

[97] The original paragraph 6 appears after the amended insertion (of a new paragraph 6). It states:

'6. In an application which was filed on the Petitioner's behalf on 17<sup>th</sup> December 2015 for orders pursuant to Rule 53 of the Elections Rules, for production and inspection of ballots and counterfoils, on the basis that the Petitioner intended to bring the substantive Petition herein, the 1" (sic) respondent swore an affidavit in opposition stating inter alia, as follows:

6.1 That when he opened box CLF, he discovered that the ballots in this specific box did not have the initials of the Presiding Officer nor any official mark;

6.2 That as a result, he stated that he was minded to reject all the ballots in this specific box;

6.3 That the Petitioner and his lawyers however indicated to him that they were not objecting L. (sic) to the ballots and consented to all the votes in box CLF being counted;

6.4 That this is the time and occasion he said "what is good for the goose is good for the gander". That he meant the Petitioner's consent was the right thing to do as both candidates would receive and in fact received votes from this box; and

6.5 That he called the Presiding Officer to inquire about the ballots with no official mark in the box CLF, and was informed by the Presiding Officer that the official marks were on the ballot paper but were actually printed on the counterfoils;'

[98] Paragraphs 8 and 9 of the grounds contain:

1. aspects of the Supervisor's testimony regarding whether the official mark was on the ballot papers when they were delivered to the presiding officers; and
2. purported to set out the contents of the letter that the Supervisor admitted writing to her solicitor.

[99] They state respectively:



- '8. The Supervisor of Elections, the 4<sup>th</sup> respondent herein, also filed an affidavit in the same proceedings, in which she stated that all ballot papers issued to Presiding Officers bore the official mark as required by law; and that what however she noticed was that in a few instances, the official mark was printed on the counterfoil and that the counterfoil is part of the ballot paper.
9. In a letter dated 11<sup>th</sup> January 2016 addressed to her solicitor Richard Williams Esq., which the latter forwarded to the Registrar, the Supervisor of Elections, the 4<sup>th</sup> Respondent herein informed that:
- 9.1 The ballots were not printed with the official mark prior to the conduct of the election as she had initially suggested.
- 9.2 There was no official mark printed on the ballots which she delivered to the Presiding Officers for the conduct of the General Election.
- 9.3 That in fact, the Presiding Officers were all issued rubber stamps and ink to stamp the official mark on the ballot paper prior to the ballot being handed to the voter to enable him or her to vote.
- 9.4 That the official mark was stamped by the Presiding Officers on the ballots during the course of the General Election.
- 9.3 That it is therefore obvious that she may not have appreciated the discussion which she had with Mr. Richard Williams and that she made an error.
- 9.4 The only ballots which she saw after the election were the ones at North Leeward where she was present and assisted with the Final Count.
- 9.5 That she had not seen any other ballots in or from the other constituencies since the election as the ballot boxes are and remain sealed and secured, and
- 9.6 That It was at this count in North Leeward that she observed a few instances in which the official mark was stamped partly on the ballot and partly on the counterfoil.'

[100] In his judgment, Cottle J. stated:

'According to Mr. John QC, the affidavit evidence discloses some basis, although the extent is in dispute, for believing that there were breaches of the elections laws amounting to material noncompliance. Mr. John also submitted that the evidence showed a breach of the elections rules at Rule 31(a). As I understand this submission, the legislation required the elections officer to receive ballots and put on them the official mark along with his initials. It appears that the ballot papers were supplied to the elections officers with the official marks already stamped on them and all the officers were then required to do was to initial the papers before giving them to the voters. If this position is correct it would of course apply to all the ballots cast in the election and not just those in Central Leeward Constituency.'<sup>23</sup>

[101] Cottle J. noted that the application was for an order to produce election documents. He observed that no complaint was made about the preliminary vote or the accuracy of the count. He commented that Mr. Exeter was present at the final count and now wishes to have another opportunity to inspect the ballots 'to conclusively assess the validity of the final count.' He remarked that Mr. Exeter was objecting to certain disputed ballots on the final count, described as mutilated, and further that they were not counted at the final count.

[102] He took into account that Mr. Exeter proffered no evidence regarding for whom those ballots were counted; or whether their inclusion or exclusion from the count would have affected the outcome of the election. He observed that Mr. Exeter did not identify those ballots or make any suggestions about what the final outcome of such an exercise would have been. He characterized the application as a fishing expedition in light of those observations.

[103] Cottle J. concluded that Mr. Exeter had not shown any grounds or any strong grounds as a basis for granting the application. He expressed the view that to make an order granting the application would in the words of Jamadar JA be akin to granting permission to embark on an unfettered roving commission of inquiry. He reasoned that the only 'legitimate parameters are those

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<sup>23</sup> SVGHCV2015/0195 Benjamin Exeter v Sylvia Findlay-Scrubb Supervisor of Elections, issued on December 28, 2015, (unreported).

circumscribed by the grounds and material facts contained in the (application) in light of the relief sought and the relevant law.’<sup>24</sup>

[104] While Mr. Exeter has not given evidence from which the court could glean a reason why he did not include the present allegation in his 2015 application, Learned Queens Counsel Mr. John contended that they (the petitioner and his representatives) were under the impression that no official mark was printed on the ballot papers which were issued to the presiding officers. He submitted that the situation has now been clarified by the Supervisor.

[105] In view of the surrounding circumstances attested to by Mr. Exeter and his witness, he no doubt would at the very least, have had constructive notice that some or all of the ballot papers were pre-printed with the official stamp or stamped by the presiding officer, if in fact they were. He might conceivably have omitted this assertion from the 2015 application through inadvertence, for tactical reasons or otherwise. That Mr. Exeter failed to take those further points in 2015 when he made his application remains unexplained. I am nonetheless satisfied that he was aware of them or had the opportunity to discover them by then, with reasonable diligence.

[106] Mr. John Q.C. reasoned that if a ballot is successfully impugned because it is void, it ought not to have been counted and the effect is that the voters affected would have been disenfranchised through no fault of their own, but rather, because of the misconduct of the election officials in preparing and treating with the ballot. He contended that in the face of such pervasive deformity of the electoral process, it is ludicrous and smacks of a parody that these very parties should now assert that ‘his application for inspection of the ballots, with a view to scrutiny of the impugned ballots and a recount, is abuse of the court’s process.’

[107] Mr. John Q.C. submitted further that the Supervisor gave sworn evidence which informed Cottle J.’s decision. He argued that notwithstanding, the Supervisor subsequently contradicted critical portions of her previous testimony 14 days later. He contended that she subsequently swore to a further affidavit in the instant application, in which she supplied contradictory testimony.

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<sup>24</sup> In the Trinidadian and Tobagoan case of Tunapuna et al v Wayne Munroe et al CA No. S 229-234/20015 and CA No. 235-240/2015 (unreported, dated 30<sup>th</sup> November 2015).

[108] He highlighted those alleged discrepancies and noted for example that in her December<sup>25</sup> affidavit the Supervisor deposed that all ballot papers issued **to** Presiding Officers had the official mark as required by law, but that she noticed in a few instances that the official mark was printed on the counterfoil which is part of the ballot paper. Those statements do appear in paragraph 11 of the Supervisor's affidavit mentioned earlier<sup>21</sup>.

[109] Mr. John Q.C. also referred to a letter in which the Supervisor allegedly provided other information. This was mentioned in the Supervisor's later affidavit, portions of which were quoted in a preceding paragraph of this decision. Learned Queens Counsel indicated that the Supervisor wrote that all ballot papers issued **by** Presiding Officers were stamped with the official mark as required by law; the ballots were not printed with the official mark prior to the conduct of the election as she initially suggested; there was **no official mark** printed on the ballots delivered to the Presiding Officers by her for the conduct of the General Elections. He added that she said that it is therefore obvious that she may not have appreciated the discussion she had with Mr. Richard Williams and made an error.

[110] Learned Queens Counsel asked rhetorically 'If it was simply a typographical error that instead of the word "by" the word "to" was typed, what is the misunderstanding referred to? He wondered: '... how reliable is her evidence that all ballot papers issued by Presiding Officers were stamped with the official mark as required by law?' I remain mindful that the burden rests on Mr. Exeter to establish that an inspection order is required for the purpose of the elections petition arising from the alleged irregularities.

[111] Mr. John Q.C. pointed to the contents of the Supervisor's affidavit filed in July 2016. In it, she asserted that:-

'... the ballot papers did not have the official mark pre-printed on them. I supervised the preparation of the templates of the ballot papers for all constituencies which were sent to the printer for printing. ... They did not have the official mark on them. I also had cause to visit the printers to examine the ballot papers which were being printed because of certain problems that had arisen. There was no official mark printed on any of the ballot papers I saw. When the ballot papers were returned to me from the printer, I examined

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<sup>25</sup> Filed on December 21<sup>st</sup> 2015, at paragraph 11.

some of them. There was no official mark printed on any of the ballot papers I examined.’<sup>26</sup>

Learned Queens Counsel argued that the effect of such repeated contradictions by the Supervisor must be to leave the court in a state of perplexity on those issues.

[112] The court notes the variations in the Supervisor’s affidavit testimony and her explanation for the same. It also has regard to the submissions by Learned Queens Counsel that it places the court in a quandary as to where the truth lies. It is important to note that in arriving at a determination on the issues, the court takes into account all of the testimony advanced by all parties and not simply the Supervisor’s account.

[113] The court notes that there has been no appeal from the 2015 decision of Cottle J. Both parties have therefore accepted that ruling on the matters which were before the court so constituted. I am not authorized to set aside that judgment, it being a determination by a court of co-ordinate jurisdiction. Unless and until that judgment is overturned by the Court of Appeal, it stands and is binding on the parties.

[114] It seems to me that in December 2015, it was open to Mr. Exeter to make the assertions he now makes about the official mark being pre-printed on the ballot papers. There appears to have been nothing which prevented him from doing so, except perhaps his conviction that the ballot papers had neither the official mark nor the presiding officer’s initial on them.

[115] However, by 31<sup>st</sup> December 2015, 3 days after Cottle J. had rendered his decision and 6 days before the Supervisor allegedly dispatched the referenced letter to her attorney and made her first attempt to correct her testimony, Mr. Exeter had filed his petition setting out allegations that all of the ballot papers were pre-printed with the official mark. It is therefore reasonable to infer that when he filed his application and affidavits in December 2015, he either knew or had the means of ascertaining the factual position; and was armed with the necessary material to include that allegation in his pre-petition application.

[116] I am reminded of the principles of *res judicata* rehearsed above. Likewise, sentiments expressed

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<sup>26</sup> Paragraph 6 of the Supervisor’s affidavit filed on 19<sup>th</sup> July 2017.

by Sir Hugh Rawlins in **Ezechiel Joseph v Alvina Reynolds** are quite apposite and bear repeating. He remarked:

‘It is my view that lawyers who wish to practice in our election courts have a solemn duty, obligation and responsibility to be well acquainted with electoral laws and procedures in order to facilitate the right to access, the democratic process and the vindication of electoral rights guaranteed ultimately by the Constitution.’<sup>27</sup>

[117] Equally instructive and relevant are the words uttered by His Lordship in **Frampton Pinard v Ian Pinard** regarding the dispatch with which elections petitions case are to be handled. Commenting on the tight timelines prescribed in elections laws, Rawlins J. (as he was then) enunciated some general principles of law (regarding the time limits in elections laws) which are applicable in interpreting elections statutes. He noted:

‘The statutory time limits provide a rigid timetable to ensure that everything necessary is done, in a timely manner, to bring these petitions to trial because the public interest requires it. The persons who are returned as legislators should know quickly whether they have been lawfully elected. The country needs to know who the elected representatives are with certainty. Election challenges should be mounted before a new legislature sits and begins to work, or as soon as possible thereafter, in order that the legislature might be definitively lawfully constituted. It goes to the issue of legitimacy. Electoral laws and their interpretation by the courts are intended to facilitate this.’<sup>28</sup>

[118] Although the issue which is at hand does not involve the interpretation of a provision which stipulates a timeline for complying with a statutory requirement, the court cannot disregard the general principles which govern the expedition with which it is expected to dispose of elections petitions. Accordingly, the subsequent *volte face* by the Supervisor, while it reverses her earlier position, does not by itself give Mr. Exeter a legal basis to make an application which he could have made earlier, had he marshaled all of the relevant background details.

[119] The testimony regarding this aspect of the motion demonstrates that Mr. Exeter had actual or

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<sup>27</sup> HCVAP2012/0014 (unreported).

<sup>28</sup> DOMHCV2005/0149, (unreported).

constructive knowledge of the state or condition of the ballot papers or a significant portion of them when he filed the 2015 application. In this regard, I note that the 2015 application was filed on 17<sup>th</sup> December 2015, argued before the court 5 days later (December 22) and a decision was rendered on December 28, 2015.

[120] Mr. Exeter filed a 12 page petition on 31<sup>st</sup> December 2015 which included the allegations that '*all of the ballot papers issued to presiding officers had the official mark pre-printed on them*'<sup>29</sup>. This seems similar to one aspect of the assertion under consideration, where he alleged that '*all of the said ballot papers were pre-printed with the official stamp or stamped by the presiding officers or otherwise ...*'.

[121] Mr. Exeter did not allege in the petition that the presiding officers stamped the ballot papers. To the extent that such assertion forms the basis of the prayer for inspection, it does not satisfy the criterion of being 'required for the purpose of this election petition', because the petition is silent on that point. In the premises, that part of the allegation is irrelevant to the matters which the court must now evaluate. It is therefore ignored.

[122] In any event, Rule 31(1) of the HAER mandates that the presiding officer places the official mark on the ballot paper immediately before delivering to a voter for the purpose of casting his vote. Accordingly, such conduct by the presiding officer if it took place, would be commensurate with the statutory edict and would not amount to an irregularity, without more.

[123] I interpret Mr. Exeter's choice of words '*the official mark pre-printed on them*' and '*pre-printed with the official stamp*' to convey the same idea. It appears that Mr. Exeter had concluded by December 31, 2015 that the ballot papers were all pre-printed with the official mark or official stamp. The Supervisor had not yet corrected her earlier testimony. It seems then that Mr. Exeter had information which was independent of the Supervisor, which enabled him to include those assertions in his petition, a short time after the referenced determination by Cottle J.

[124] Ms. Eustace's, Ms. Barnwell's and Mr. Exeter's testimony as to the procedure adopted during the counting of the ballots suggests that Mr. Exeter's agents had ample opportunity to examine, count and note the condition of the ballots cast at the polling stations where they were stationed. It is

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<sup>29</sup> Paragraph (22) of the Petition filed on 31<sup>st</sup> December 2015.

worth noting that the court will not lightly entertain an application for inspection of ballot papers and will definitely not grant such an order based on spurious aspersions. A petitioner is therefore required to take care in formulating his or her case.

[125] In light of the foregoing and in the absence of any substantive reason urged on the court why Mr. Exeter is now raising the matter of the official mark being pre-printed on the ballot papers and the presiding officer's initials being stamped on the ballots as a basis for an order to inspect the ballot papers, I am satisfied on a balance of probabilities that there was nothing preventing Mr. Exeter from including those assertions in his 2015 application. They are matters which could have been discovered and of which he would be expected to have had constructive notice through his representatives.

[126] Ms. Eustace deposed that several ballot papers were handed to her and Ms. Barnwell which they examined. Mr. Exeter took pictures. Surely, it would have come to their attention at the very latest, during the final count that the ballot papers or some of them had the official mark pre-printed and the presiding officer's initials stamped on them. Presumably, the agent(s) assigned by Mr. Exeter to monitor the proceedings during the course of election day would have noted that the presiding officer was not affixing a stamp and initials pursuant to the statutory provisions, and would have brought this to his attention before he filed the application in 2015.

[127] This may or may not have taken place. To permit Mr. Exeter to 'amend' his case in this manner after having had an opportunity to lodge those complaints as a basis for inspection, does not in my opinion, accord with what is contemplated by the elections rules and procedures and practice in the court.

[128] I am reasonably satisfied that Mr. Exeter had the opportunity to discover with diligence, all necessary information to satisfy himself about the sustainability of this allegation when he filed the 2015 application. He has provided no explanation as to when he obtained that information and why he did not include it in the earlier application.

[129] The public has a real and ongoing interest in discovering whether the election held in the Central Leeward Constituency was valid or plagued by the alleged irregularities. For obvious reasons, Mr. Exeter and Sir Louis Straker each has similar and more personal interests. Sir Louis Straker and the other respondents were and have remained entitled to know the case against them in a timely



manner so that they can give appropriate instructions to their counsel. Each party has a right to have all relevant information at the earliest possible time to ensure that each is operating on a level playing field.

[130] The court and the overall administration of justice system has a similar interest to enable it to discharge its adjudicating function in an efficient and effective manner without unnecessary delays amidst re-emerging and repetitive contentions. This is the heart of justice.

[131] I am satisfied that when Mr. Exeter filed the 2015 application, he had access to the material on which he now relies to launch the allegation that all of the ballot papers were pre-printed or stamped with the official mark. He did not allege that he only suspected or discovered this when the Supervisor transmitted her letter in January 2016, and could only have done so then. There was nothing preventing the court from determining that point at the same time it entertained the previous application for inspection. This and all of the other circumstances lead me to conclude that there is no factual or other basis which justifies a consideration of that assertion at this juncture.

[132] I remain mindful of dicta in **Buckland v Palmer**<sup>30</sup> and **Turner v. Grovit**<sup>31</sup> which address the vexed concept of abuse of the court's process. In the former case, Sir John Donaldson M. R. remarked that the rationale behind the rule rests largely on the 'public interest in avoiding the possibility of two courts reaching inconsistent decisions on the same issue'. In the same case, Griffiths L. J. explained that the rule against multiplicity of proceedings in a single cause of action is soundly based on public policy considerations designed to prevent the harassment of litigants by exposing them to the anxiety and expense of unnecessary legal proceedings.

[133] Similar sentiments were express in **Turner and Grovit**. Applying those principles as well as those previously explained, I find that in all the circumstances, it would be an abuse of the court's process to permit Mr. Exeter to ventilate at this time, his allegations that the ballot papers were pre-printed with the official mark. In my considered opinion, for the foregoing reasons, it would amount to an abuse of the court's process to entertain that aspect of Mr. Exeter's motion.

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<sup>30</sup> [1984] 1 W. L.R. 1109; at pages 1110 E & 1113 B et seq.

<sup>31</sup> [1999] 3 WLR 794, at page 804.

**Paragraph II ii.**

[134] Mr. Exeter founded his prayer for an inspection order on several other allegations. He alleged:

‘... that ... 222 ballots at Polling Station CLF and ... 99 ballots at Polling Station CLF1 appeared defective and willfully cut in such a manner that a portion of the ballot paper was absent and that they bore neither the stamp nor initials of the Presiding Officer;’ and/or

[135] In sub-paragraph ii. Mr. Exeter (in referring to 222 ballots from Polling station CLF and 99 ballots from polling Station CLF1) employs the descriptive phrase ‘that they appeared defective and/or willfully cut in such a manner that they ... bore neither the stamp nor initials of the Presiding Officer’. By doing so, he captures an aspect of his complaint from the 2015 Application.

[136] On that occasion, he pleaded:

‘(d) Contrary to the House of Assembly Elections Rules the Returning Officer ignored objections by the Petitioner’s representatives at the final count and counted as valid more than ... (300) ballots which **were defective in material respects in that they appeared to have been willfully mutilated in such a manner**, that contrary to Rule 31 (1) of the House of Assembly Elections Rules, **neither an official mark nor initial of the Presiding Officer appeared on them; ...**’ (bold added)

[137] On the surface, the 2015 complaint appears to have been only about the returning officer’s alleged disregard of the objections by Mr. Exeter’s representatives relating to the counting of ‘defective ballots’ which bore ‘neither an official mark nor initial of the Presiding Officer’. However, an examination of the submissions made then, by Mr. John Q.C., dispels that notion.

[138] He argued at the time that there was ample evidential basis in the filed affidavits which disclosed the Supervisor’s admissions that ‘all ballot papers bore the official mark when they were issued to the presiding officer.’ Learned Queens Counsel contended further that such action is contrary to Rule 31(1) (a) which required the ballot paper ‘to be so marked with the official mark of the Presiding Officer before it is delivered to the voter who applies for same;’<sup>32</sup>

[139] In the premises, I am satisfied that the referenced clause ‘that they appeared defective and/or

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<sup>32</sup> Paragraph 3.7 (d) of Submissions filed on 24<sup>th</sup> December 2015, by Cato & Cato, Barristers and Solicitors, in Support of the Application for Production & Inspection Orders.

willfully cut in such a manner that they ... bore neither the stamp nor initials of the Presiding Officer' reproduced an identical complaint which was made in 2015. Mr. Exeter has advanced no special circumstances which would exclude this aspect of his case from the *res judicata* application. I perceive none. Applying the principles distilled from **Henderson v Henderson, Ferguson v Ferguson, Johnson v Gore Wood, Buckland v Palmer and Turner v. Grovit**<sup>[22]</sup> and reproduced earlier; and taking into account the respective interests of the parties and the public described above, I find that to permit Mr. Exeter to pursue this aspect of his application would be an abuse of the court's process. I refrain from doing so.

[140] The remainder of subparagraph ii of paragraph II of the Motion deals with an assertion that the referenced ballot papers '... appeared defective and/or willfully cut in such a manner that **a portion of the ballot paper was absent**'. Mr. Exeter did not include in his petition, any allegation that a portion of the ballot paper was absent. It therefore does not arise on the pleadings and may not be entertained at this juncture. It is not necessary to decide if that clause amounts to an abuse of the court's process.

### Paragraph II iii.

[141] Paragraph II iii of the Motion alleged:

'That ... 238 ballots at Polling Station CLB and ... 210 at Polling Station CLB I respectively bore the Presiding Officer's initials **below the line which should have separated the names (sic) of the candidates from the remainder of the top portion of the ballot paper** and were **deliberately cut in an irregular manner, whereby the top portion of the ballot which should have contained the space for the endorsement of the Presiding Officer's initials and the official mark was severed and absent;**' (bold added)

[142] That paragraph mirrors in part, one section of the prayer in the petition. In this regard, paragraph (3) (b) of the prayer stated:

'Wherefore the Petitioner prays that:

- (3) An order for scrutiny and recount in respect of the defective ballots to which objections were made by the Petitioner or his representatives/agents including but not restricted to the following namely:

- (b) Ballots which **bore the official mark and the presiding officer's initials below the perforation line** including two hundred and thirty-eight ... at Polling Station CL B and two hundred and ten ... at Polling Station CLB1 respectively'. (bold added)

It is also repeated at paragraph 2.3.2 of the motion in the grounds.

[143] This is a new allegation, not having been made during the 2015 application. Rule 15 (2) (d) of the HAER and the prescribed Form 7 respectively describe and illustrate the design of the ballot paper. It is useful to consider both provisions to comprehend the gravamen of this allegation. Form 7 has already been reproduced. Rule 15 (2) (d) states:

'(2) A ballot paper shall be in Form 7 in the Appendix and shall be printed in accordance with the directions therein and shall-

(a) ...

(b) ...

(c) ...

(d) Have attached a counterfoil and a stub, and a line or perforations between the ballot and the counterfoil and between the counterfoil and stub, the whole as in Form 7 in the Appendix.'

[144] An examination of the language used in this subparagraph demonstrates that the ballot paper is printed on the same page as the counterfoil and stub but is separated from the counterfoil and stub by a line or perforation. This is borne out by the design of the ballot paper, counterfoil and stub depicted in Form 7.

[145] Mr. Exeter deposed;

'44. ... these are "described as mutilated" which in this affidavit and in the Petition are stated to be ballots that bore neither the stamp nor initials of the Presiding Officer and **others in which the Presiding Officers' initials and official mark were below the line which should have separated the names of the candidates from the remainder of the top portion of the ballot paper** ... whereby the top portion of the ballot which should have contained the space for the endorsement of the Presiding Officer's initials and the official mark was severed and absent. Indeed, this latter space was missing from

the design of the ballots and in relation to some counterfoils of which my representatives and I were able to have sight, the official mark and the Presiding Officer's initials were endorsed on the counterfoils.

53. It was evident from an examination of the ballot papers which were used in the elections that they were not designed in a manner which is consistent with that prescribed under Rule 15 and Form 7 of the House of Assembly Election Rules.

54. I have procured from the University of North Carolina at Chapel Hill website ... a copy of a cancelled ballot paper No 5054 (hereinafter "the 1994 ballot") which was used in the elections for the constituency of West St George held on 21<sup>st</sup> February 1994 and which I believe, based on the rules, is a ballot paper designed in accordance with the provisions of Rule 15 and Form 7. A copy of the 1994 ballot is exhibited herewith marked BE 12.

55. This shows distinctly how the counterfoil should be printed separate from the ballot paper and how provision should be made for the initials of the Presiding Officer and the official mark to be endorsed on the ballot paper, such that it can be folded in a manner that would preserve the secrecy of the ballot cast by electors.

56. Upon an examination of a complete ballot paper from the central Leeward election I contested, it is evidence that they were not designed appropriately so as to achieve this critical objective, which is fundamental to the conduct of elections under the election laws of St Vincent and the Grenadines.

57. At the final count, I photographed a ballot with my smartphone. When compared with the 1994 ballot, I find that the compete ballot paper from the subject election is defective in design in that it locates the space reserved for the initials and official mark of the Presiding Officer in the counterfoil instead of in the ballot proper.<sup>33</sup>

[146] Mr. Exeter attested also:

'I photographed a ballot with my smartphone and that when compared with the ballot paper which was prepared in conformity with Rule 15 and Form 7 of the House of Assembly elections Rules and used in the 1994 elections exhibited thereto as "BE 12", I find that the

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<sup>33</sup> Paras. 44, 53 -57 of the Petitioner's affidavit filed on 2<sup>nd</sup> March 2017.

complete ballot paper used in the December 2015 Central Leeward election exhibited thereto as “BE 13” is defective in design, in that **it locates the space reserved for the initials and official mark of the Presiding Officer in the counterfoil, instead of in the ballot proper.** And that as a consequence, after the elector had voted, it could not be folded in a manner that would preserve the secrecy of the ballot cast by electors. In this regard, **in addition to the ballots showing the absence of the official mark** exhibited as “BE 10”, at the final count **I also observed the improper manner in which the apparent initials of Presiding Officers and the official mark was positioned on some ballots used by voters to cast their votes in the Central Leeward election.** A copy each of the photograph which I took at the time and which depicts this non-compliance with the election laws, is attached hereto and marked “BE23a” and “BE23b”.<sup>34</sup> (bold added)

[147] Mr. Exeter alleged further:

‘... I ... reiterate that on the basis of my own perusal of the Rules and the confirmation of my counsel in this matter, that hundreds of ballots were invalidated in each respect and have the effect of disenfranchising voters at the polls in Central Leeward **by reason of the erroneous design of the ballots, the absence of the official mark on hundreds of ballots counted by the 1<sup>st</sup> respondent at the final count, and the placing by the Presiding Officers of the Official Mark on the ballot papers in such a manner that they infringed the mandatory provisions of the election laws including Rule 31(2) of the Rules which stipulates that that (sic) the voter shall secretly mark his ballot paper and that the voter shall then fold the ballot paper so that the initials of the Presiding Officer and the official mark can be seen without opening it and hand it to the Presiding Officer who shall without unfolding the ballot paper ascertain by examination of the numbers, the initials and the official number, that it is the same paper delivered to the voter.**<sup>35</sup> (bold added)

[148] He deposed further:

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<sup>34</sup> Para. 4 of the Petitioner’s affidavit in support of the petition filed on 9<sup>th</sup> November 2017.

<sup>35</sup> Para. 6 of the Petitioner’s affidavit in support of the petition filed on 9<sup>th</sup> November 2017.

7. ... the Court ought therefore to be satisfied based on the pleadings, including my affidavit, that there may be reason to examine the ballots and may demand that all records relating to the ballots be brought intact into the Court by the 4<sup>th</sup> respondent who has custody of them.
8. In all the circumstances, in order that this Honourable Court may be in apposition to confirm the allegations made in my witness account, which are stated in no uncertain terms and depicted in photographs exhibited of the marks on the ballots, there can be little as to what the Court can expect to see upon inspection of the used ballots and counterfoils in all fifteen polling stations and the effect this would have on the elections; which is that **over ninety percent (90%) of these ballots would be invalid for the said reasons**. The consequence of which is that the voters are thereby disenfranchised and the election void for substantial non-compliance or in the alternative, hen these are taken into account, the Petitioner will be found to have received more valid votes than the 4<sup>th</sup> Respondent.<sup>36</sup> (bold added)

[149] The evidence presented by Mr. Exeter reveals that he is here claiming that the official mark and presiding officer's initial were entered not on the ballot paper but on the counterfoil or stub. He claims as much at paragraph 22 of his petition where he asserted: 'Contrary to Rule 31(1) (a) of the Rules, all of the ballots papers issued to presiding officers by the 4<sup>th</sup> Respondent had ... in some instances the official mark ... printed on the counterfoil.' This appears to be the import of this allegation. However, Mr. Exeter has not sought inspection of the counterfoils as a relief in this Motion. The court therefore may not entertain this aspect of his application. It is not necessary to consider the question of abuse of the court's process in relation to that part of his case.

[150] At the same time, the assertion outlined at paragraph II iii of the motion, it appears at first blush that Mr. Exeter is alleging that the presiding officer's initials and the official mark were placed on the ballot proper (i.e. on that part of the ballot paper which contained the names and symbols of the candidates). If this is his contention, he has supplied no reasons why he did not so allege in the earlier application. He has not indicated what if any exceptional circumstances exist which would justify not applying the *res judicata* principles and the rule in the **Henderson case**. I am aware of

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<sup>36</sup> Paras. 7 and 8 of the Petitioner's affidavit in support of the petition filed on 9<sup>th</sup> November 2017.

none. In the premises, in view of the previously referenced guiding rules, I hold that the presentation of such an allegation at this juncture constitutes an abuse of the court's process for the reasons outlined earlier in this judgment, in relation to paragraph II i and ii of the motion.

[151] The second part of this allegation embodies two elements:-

1. That the ballot papers was deliberately cut in an irregular manner; and
2. The top portion of the ballot paper (reserved for the official mark and the presiding officer's initials) were severed or absent.

[152] Neither of these assertions appears in the petition. However, Mr. Exeter refers to the first element at paragraph 5 of the grounds in the motion. Referring to certain ballots, he stated there:

'... Moreover, that many ballots willfully cut in an irregular manner were counted, including four hundred and forty-eight (448) ballots at polling stations CLB and CLB1'.

In circumstances where Mr. Exeter has not pleaded these matters in his petition, it cannot properly be maintained that inspection of the ballot papers to determine the accuracy of those assertions, is required for the purposes of the election petition. It is therefore not necessary to consider them for present purposes.

#### Paragraph II iv.

[153] Sub-paragraph iv. was removed and not replaced. Nothing arises for the court's consideration in respect of the deleted point. I therefore move on to the next sub-paragraph.

#### Paragraph II v.

[154] Sub-paragraph v. of paragraph II states:

'That the said **ballots appeared to have been willfully mutilated in such a manner that they are contrary to Rule 15(2), Rule 16, Rule 31(1) and 40(1)(a)** respectively, of the Rules:' (bold added)

[155] Rule 15 (2) of the HAER prescribes the design of the ballot papers. Some elements have already been examined. Rule 16 deals with the placement of the official mark on the ballot paper and specifies the intervals at which it should be changed. Rule 31 (1) sets out the procedure to be



utilized when the ballot paper is delivered to a voter for voting purposes; and rule 40 (1) (a) describes ballot papers which are void and should not be counted.

[156] Mr. Exeter supplied additional particulars regarding the ballots he described as mutilated contrary to those provisions. He did so under the grounds of the Motion, at paragraphs 2.3.1, 5, 6<sup>37</sup>, 7, 8 and 9. I will take a closer look at them together.

[157] Paragraphs 6, 8 and 9 have already been reproduced in the judgment. The germane sections of paragraphs 2.3.1 and 5 of the grounds state:

‘1. The Petitioner who is a candidate was representing the New Democratic Party (hereinafter “NDP”) in relation to the elections held on 9<sup>th</sup> December 2015 ... instituted the subject Petition ... complaining of the undue return or undue election of the 3<sup>rd</sup> Respondent.

The Petitioner prays in the Petition for reliefs following, namely:

2.3 An order for scrutiny and recount in respect of the defective ballots to which objections were made by the Petitioner and/or his representatives/agents including but not restricted to the following, namely: -

1.3.1. Two hundred and twenty-two ... ballots in respect of Polling Station CLF and ninety-nine (99) ballots in respect of Polling Station CLF1 **which ballots appeared defective and/or willfully mutilated;**

5. It is alleged that at the final count, contrary to House of Assembly Election Rules, the 1<sup>st</sup> Respondent ignored objections by the Petitioner and/or his representatives/agents and counted as valid more than **three hundred ... ballots** which were **defective in material respects**, in that they appeared to have been **willfully mutilated** in such a manner that contrary to Rule 31 (1) of the House of Assembly Election Rules, **neither an official mark nor any initial of the Presiding Officer appeared on them**, and that others which **were similarly mutilated ballots were ruled invalid by the 1<sup>st</sup> Respondent.**’ (bold added)

[158] Paragraph 7 states:

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<sup>37</sup> The second paragraph 6.

'Furthermore, the 1<sup>st</sup> respondent denied the allegation that 99 mutilated ballots were found as alleged or at all and asserted that the allegation is completely false. He denied the allegation that ballots were mutilated as alleged or at all, and that in any event there was no objection to any of the ballots on this ground of alleged mutilation.'

[159] The kernel of Mr. Exeter's criticism at the referenced paragraph 2.3.1. is that the 222 ballots at polling station CLF and 99 ballots at polling station CLF1 appeared defective or willfully mutilated. He explained in paragraph 5 that this deficiency was occasioned by reason that they bore neither an official mark nor the initial of the presiding officer.

[160] He included in the grounds at paragraphs 6, 7 and 8, a large part of the Supervisor's and the returning officer's testimony on this issue. Paragraph 9 outlined the contents of the Supervisor's letter dated 11<sup>th</sup> January 2016 as indicated earlier. It is not necessary to repeat them. Suffice it to say that this contention (regarding the absence of the official mark and the presiding officer's initials) consumed a significant part of the court's attention at the hearing and adjudication of the 2015 application.

[161] At that time Mr. Exeter pleaded:

'(d) Contrary to the House of Assembly Elections Rules the Returning Officer ignored objections by the Petitioner's representatives at the final count and counted as valid more than ... (300) ballots which were defective in material respects in that they appeared to have been willfully mutilated in such a manner that contrary to Rule 31 (1) of the House of Assembly Elections Rules, neither an official mark nor any initial of the Presiding Officer appeared on them, and others similarly mutilated which appeared among the ballots in the boxes for other Polling Divisions were ruled as invalid by the Respondent.'

[162] The allegation he now makes is identical to the one made in 2015. Mr. Exeter has not offered any factual or legal bases which satisfy me that another judicial examination of those matters at this level is justified. In light of the principles emerging from the **Henderson v Henderson**, **Johnson v Gore Wood**, **Buckland v Palmer** and **Turner v. Grovit** line of cases, I hold that this aspect of his motion is an abuse of the court's process for the reasons enunciated earlier.

**Paragraph II vi.**

[163] Sub-paragraph vi. of paragraph II of the Motion sets out a further allegation. It states:

‘That there are were also **similar looking ballots** in ballot boxes from various polling stations **which were ruled invalid by the 1<sup>st</sup> Respondent even after he accepted similar looking ballots in “CLF” and “CLF1”.**’ (bold added)

[164] The use of the words ‘similar looking’ embodies a reference to ballots, in a preceding statement. That previous statement referred to mutilated ballots and has been addressed in the paragraphs immediately above. It is also self-evident that this sub-paragraph echoes part of the 2015 pleading in all material respects.

[165] As demonstrated before, Mr. Exeter seeks to particularize this matter at paragraph 5 of the grounds in this Motion. For the reasons laid out in respect of sub-paragraph v of paragraph II of the Motion, I am satisfied that there is no justifiable basis to consider this aspect of Mr. Exeter’s Motion, since an authoritative ruling was rendered on it by Cottle J. in 2015. It is therefore an abuse of the court’s process for Mr. Exeter to raise it again in the motion.

**Paragraph II vii.**

[166] Paragraph II, sub-paragraph vii. states:

‘That further and in addition to the above, the majority of ballots (over ninety percent (90%)) counted at the purported final count by the 1<sup>st</sup> Respondent bore the official mark and the Presiding Officer’s initials in a manner which is contrary to the Rules’

[167] This allegation is further particularized under paragraphs 6, 13, 14 and 16 of the grounds<sup>38</sup> which state respectively:

‘6. It is further alleged in the Petition that **the majority of ballots** (over ... 90%) counted at the purported final count by the 1<sup>st</sup> Respondent **bore the official mark and the Presiding Officer’s initials in a manner which is contrary to the Rules**; and that **if the Presiding Officer or the voter folded the ballot to the line marked ‘Do Not Fold Beyond This Line’ the Presiding Officer could have only verified that it was the same ballot as she/he is required to do by law, by examining her/his initials and the official mark by**

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<sup>38</sup> It appears first in the Motion, but was inserted by amendment when the Amended Motion was filed on 9<sup>th</sup> November 2017.

**opening the ballot**, thereby invading the secrecy of the poll contrary to section 54(3) of the RPA and Rule 31(2) of the Rules.'

13. The ballot papers which were used in the election were not designed in a manner which is consistent with that prescribed under Rule 15 and Form 7 of the House of Assembly Elections Rules in that the counterfoil should be printed separate from the ballot paper in such a manner that it can be easily separated from the ballot paper at the appropriate time and provision should be made for the initials of the Presiding officer and the official mark to be endorsed not on the counterfoil but on the ballot paper, such that it can be folded in a manner that would preserve the secrecy of the ballots cast by electors.

14. Upon an examination of a complete ballot paper from the Central Leeward election it is evident that they were nor (sic) designed in accordance with the above Rule and Form 7 so as to achieve this critical objective, which is fundamental to the conduct of elections under the election statutory/regulatory provisions.

16. It is alleged in the said Petition that the 3<sup>rd</sup> Respondent acted in breach of Rule 40 (1) (a) of the House of Assembly Elections Rules when in the Final Count he counted the said mutilated ballots which did not show either the official mark or the Presiding Officer's initials as required by law and/or those on which the official mark and the Presiding Officer's initials were placed in such a manner that the Presiding Officer in verifying that it was the same ballot, as she or he is required to do by law, be examining her/his initials and the official mark, could only have done so by opening the ballot thereby invading the secrecy of the poll contrary to section 54(3) of the Representation of the People Act and Rule 31 (2) of the Rules.'

[168] Mr. Exeter included these charges in his petition. He pleaded:

'... the majority of ballots (over ninety percent (90%)) counted at the purported final count by the 1<sup>st</sup> Respondent bore the official mark and the Presiding Officer's initials in a manner which is contrary to Rule 31 (2) as a result the Petitioner and his representatives/agents objected persistently to their inclusion in the count because:

(a) Rule 31 (2) of the Rules (Voting procedure) provides that the 'The voter, on receiving the ballot paper shall forthwith proceed into one of the compartments in the polling

station and there secretly mark his ballot paper ...' He shall then fold the ballot paper so that the initials of the presiding officer and the official mark can be seen without unfolding it, and hand the paper to the presiding officer who shall without unfolding it ascertain by examination of the initials, the numbers and the official mark appearing thereon that it is the same paper as that delivered to the voter and if it is the same, he shall forthwith in full view of the voter and all others present remove the counterfoil and deposit the ballot paper in the box'.

- (b) If the Presiding Officer folded the ballot to the line marked 'Do not Fold Beyond this Line' he could have only verified that it was the same ballot as she or he is required to do by law, by examining his initial and the official mark by opening the ballot thereby invading the secrecy of the poll.
- (c) The invasion of the secrecy of the vote is inimical to one of the core principles for the conduct of the election namely that of secrecy of the vote and is tantamount to a substantive departure from the law with regard to the conduct of elections and specifically, section 54 (3) of the Representation of People Act and Rule 31 (2) of the Rules.'

[169] With this objection, Mr. Exeter surmises and invites the court to conclude that an order for inspection of the ballot papers would assist him and the court to determine two things:

1. the majority of the ballot papers contained the presiding officer's initials and the official mark on that part which fell below the perforation mark (in other words, on the part of the ballot paper which contained the candidates' names and symbols); and
2. (a) the presiding officer could only have verified that the ballot paper contained his initials and the official mark if he unfolded the ballot paper to reveal candidates' names and symbols and by extension the voter's 'election, "x", mark or vote'; and  
  - (b) If the presiding officer did fold the ballot paper in this manner, it would have been contrary to the Rules and would have violated the secrecy of the vote.

[170] Those claims could have been made in 2015. They were not. No reasons were advanced for Mr. Exeter's failure to do so. No special circumstances were highlighted which would shield them from the application of the rule in the **Henderson case**. In the round, it strikes me that Mr. Exeter could

have with reasonable diligence, uncovered the underlying factual basis on which to found those complaints and to include them as part of his application in 2015. In considering the merits of all sides' cases and remaining mindful of the principles extracted from the **Henderson case** and the other associated cases referenced earlier, I am satisfied that inclusion of these contentions in the present motion is an abuse of the court's process.

[171] Moreover, aspects of Mr. Exeter's complaint, on this score, invite the court to speculate about what the presiding officer may or may not have done or must have been compelled to do when verifying the presence of the official mark and signature on the ballot papers, after the voters had cast their vote. Such speculation would of necessity extend to the proposed inspection as no witness has alleged that they observed the presiding officer breach the secrecy of the vote in the manner suggested. The court cannot engage in speculation.

[172] The second limb of this allegation calls for speculation as to what the presiding officer did in respect of the referenced 'majority of ballots'. Neither Mr. Exeter nor his witnesses made any allegations that the presiding officer did in fact unfold the ballot papers to reveal her initials or the official mark. Furthermore, they proffered no methodology which is guaranteed to demonstrate conclusively (on such inspection) whether the presiding officer did in fact unfold the ballot paper in the manner described. The court is not permitted to speculate.

**Paragraph II viii.**

[173] Sub-paragraph viii. of paragraph II states:

'That if the Presiding Officer folded the ballot to the line marked '*Do Not Fold Beyond this Line*' she/he could have only verified that it was the same ballot as she or he is required to do by law, by examining his/her initials and the official mark by opening the ballot thereby invading the secrecy of the poll contrary to section 54(3) of the Representation of the People Act and Rule 31(2) of the Rules.'

[174] I have already addressed this contention under the immediately preceding paragraphs. For the reasons provided in respect thereto, I make the identical ruling that this complaint constitutes an abuse of the court's process.

**Paragraph II ix.**

[175] Sub-paragraph ix. of paragraph II states:

'That contrary to the provisions of Rule 41(7) of the Rules **no Form 16 Statement of the Poll was presented at the Final Count for Polling Station CL 11** and in the case of others the **Form 16 Statement of the Poll presented, manifested various errors and inconsistencies** including that the total number of ballots cast and the number of names on the voters' list, there appeared to have been a 100% voter turnout in polling stations CLA1, CLE, CLF1 and CL; and in polling station CLD1 where 485 ballots are stated to have been used by the 480 names stated to be on the official list of electors used at the poll. If there had been a 101% voter turnout.'

[176] This complaint is further detailed in grounds 10, 11 and 12 which read respectively:

'10. In respect of Polling Station CL DI, it was drawn to the Petitioner's attention that the Presiding Officer's figures on the Form 16 Statement showed that more ballots were accounted for (485) than were stated as having been received from the 1<sup>st</sup> Respondent (480). The 1<sup>st</sup> Respondent denied the Petitioner's request for a recount in this Polling Station.

11. In respect of the said CL F Polling Station, the number of unused ballots returned was not stated on the Form 16 Statement.

12. In Polling Station CL A1 the number of ballots given to the Presiding Officer by the 1<sup>st</sup> Respondent was not stated, and based on the information on the Form 16 Statement for that Polling Station, there was a 100% voter turnout in relation to the number of names on the official list used at the poll.'

[177] It is self-evident that these contentions do not relate to the ballot papers but rather to the Form 16 Statement. The motion does not seek an order for inspection of those election records. These contentions therefore fall outside of the ambit of the reliefs sought and need not detain the court. It is not necessary to consider whether they are an abuse of the court's process.

### Additional grounds

[178] Mr. Exeter included several other grounds in his motion. They consist largely of recitals of the factual background to the petition, the relevant law and the purpose of the motion. They are dealt with for completeness. They are outlined in paragraphs 3, 4, 15, 17-19 and 15 of the motion. I reproduce them immediately below, except for paragraphs 18 and 19 which merely reproduce rules 52 and 53 of the HAER. Paragraphs 3, 4, 15, 17 and 15 state respectively:

3. The Petitioner brought the subject Petition on the basis that as a result of the alleged breaches and irregularities under the Representation of the People Act CAP 9 and the House of Assembly Elections Rules, the election was conducted so badly that it was not substantially in compliance with the law as to elections and/or that the alleged breaches materially affected the result of the election.
4. The Petitioner alleges in the Petition, inter alia, that accompanied by his representatives/agents he attended the final count of votes cast in the polls for the Central Leeward Constituency which was conducted by the 1<sup>st</sup> Respondent as the Returning Officer of the said constituency.
15. The Return relating to the 3<sup>rd</sup> respondent certifying him to be the candidate with the greater amount of ballots (2,497 to 2,184) and hence the winning candidate was made on 10<sup>th</sup> December 2015 by the 1<sup>st</sup> Respondent, after purporting to conduct the Final Count, the result of which was challenged by the Petitioner.
17. Section 57 of the Representation of the People Act CAP 6 of the Laws of St. Vincent and the Grenadines Revised Edition 2009 provides that Petition complaining of an undue election or undue return of a member of the House of Assembly be presented within 21 days after the return of the Writ is made by the Returning Officer.
- 15.<sup>39</sup> The orders sought hereby ate (sic) required for the purpose of determining issues in the subject Election Petition which has been lodged on behalf of the Petitioner, in accordance with the law thereunto applicable.'

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<sup>39</sup> This appears to have been mis-numbered out of sequence.



[179] Those paragraphs add nothing to the motion by way of complaints regarding the manner in which the elections were held. They contain no claims, allegations or complaints which need to be considered and determined by the court. It is not necessary to make an independent finding on them regarding the issue of abuse of the court's process.

[180] In light of the foregoing, I am satisfied that the petitioner Mr. Benjamin Exeter has failed to advance any allegations or grounds on which the court may properly find that inspection of the ballot papers is required for the purpose of the petition filed by him. The motion adds nothing which could not have been discovered in 2015 with reasonable diligence on his part. Mr. Exeter has not indicated if he obtained such details after the December 2015 judgment was made nor has he pointed to any exceptional circumstances which would compel the court to re-open those aspects of the earlier proceedings.

[181] Having regard to how the court is required to apply the rule in **Henderson** and the related principles extracted from the referenced decided cases, I hold that the motion is an abuse of the court's process. Mr. Exeter's application for an order for inspection of the ballot papers in the polling stations in the Central Leeward Constituency is dismissed.

**Issue No. 2 – Whether the court should make an order directing the Supervisor of Elections to deliver to the Registrar of the High Court ('the Registrar') documents relating to the election held in the constituency of Central Leeward on 9<sup>th</sup> December, 2015?**

**First relief – paragraph I of the Motion**

[182] This issue involves a consideration of the first relief sought in the prayer. In view of the foregoing findings, I make no order for the Supervisor to deliver to the Registrar of the court, the ballot boxes and the documents relating to the election held in the Constituency of Central Leeward on 9<sup>th</sup> December 2015.

**ORDER**

[183] It is accordingly ordered:

1. The Motion filed by Benjamin Exeter for orders that the Supervisor of Elections delivers to the Registrar the ballot boxes from the 2015 elections; and for inspection of the ballot papers is dismissed as an abuse of the court's process.
2. The petitioner Benjamin Exeter shall pay costs to the respondents Winston Gaymes, Kathleen Jeffers, Sir Louis Straker and Sylvia Findlay-Scrubb to be assessed if not agreed. Application for costs to be assessed must be filed and served on or before March 30th, 2018.
3. The Registrar in consultation with the parties, is to fix dates for case management and trial of the petition, and issue notices of hearing with proof of service.
4. The hearing of the elections petition is adjourned to a date to be fixed by the Registrar in consultation with the parties.

[184] I am grateful to counsel who provided written submissions and/or forwarded them electronically as ordered. Your contributions in this regard are indispensable to the effective, timely and efficient resolution of court cases.

#### **POSTSCRIPT**

[185] By way of postscript, I must confess that I remain disappointed and askance that some counsel without proffering an explanation, did not supply electronic copies of written submissions, pleadings and affidavits in accordance with the court order dated 12<sup>th</sup> July 2017. The two legal practitioners who did not fall into this category are Messieurs Grahame Bollers and Carlos James. Legal practitioners for the Petitioner Benjamin Exeter provided electronic copies of some but not all documents, including their skeleton arguments/written submissions and affidavits sworn to by Mr. Exeter.

[186] Whether it was due to inadvertence, design or otherwise, the flouting of the court's order in a case of some significance in which no less than 10 legal practitioners appear on the record, is frightening and cause for concern. It paints a very stark and vocal picture of the state of aspects of the administration of justice, especially in circumstances when some of the region's leading lawyers appear.

[187] Such conduct is alarming and sends the wrong signals. Equally significantly, it militates against the expeditious dispatch of the court's work since the judge must of necessity sit to reconstruct the relevant portions of pleadings, affidavits and exhibits instead of cutting, pasting and adjusting in a more timely fashion as permitted by the technology. Suffice it to say, that if this is how the legal practitioners intend to conduct themselves during this matter, it is unlikely that the final decision will be rendered within the timelines contemplated by the Court of Appeal, when it sent this matter back to the High Court for determination in March 2017.

**Esco L. Henry**  
**HIGH COURT JUDGE**

By the Court

Registrar