

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

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0049

**IN THE MATTER OF THE ST. VINCENT AND THE GRENADINES CONSTITUTION ORDER CAP. 10 OF
THE LAWS OF ST. VINCENT AND THE GRENADINES 2009 REVISED EDITION (“THE
CONSTITUTION”)**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION 16 OF THE
CONSTITUTION FOR CONTRAVENTIONS OF SECTIONS 1(a), 3(1), 5, 8 and 12 THEREOF**

AND

**IN THE MATTER OF AN APPLICATION FOR DECLARATORY AND OTHER RELIEF PURSUANT TO
SECTION 16 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT ACCEDED TO BY ST. VINCENT AND THE
GRENADINES ON 1st AUGUST, 2001 (“THE CONVENTION”) AND IN PARTICULAR ARTICLES 1, 2, 4,
5 and 16 THEREOF**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS FOR CONTRAVENTIONS OF THE
CONVENTION**

AND

**IN THE MATTER OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ACCEDED TO BY ST. VINCENT AND THE GRENADINES ON 9th NOVEMBER 1981 ARTICLE 7
THEREOF**

AND
IN THE MATTER OF AN APPLICATION FOR REDRESS FROM CONTRAVENTIONS OF THE
INTERNATIONAL COVENANT

BETWEEN:

HON. DANIEL E. CUMMINGS

CLAIMANT

and

(1) **THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES**

(2) **HON. HENDRICK ALEXANDER**

(SPEAKER OF THE HOUSE OF ASSEMBLY)

(3) **ASST. SUPERINTENDENT OF POLICE CHRISTOPHER BENJAMIN**

(4) **ASST. SUPERINTENDENT OF POLICE ARNON KING**

(5) **ASST. SUPERINTENDENT OF POLICE WILLISFORD CAESAR**

(6) **POLICE CORPORAL NO. 632 BENZIL MORRIS**

(7) **POLICE CORPORAL NO. 695 SEDAN SEARLES**

(8) **POLICE CORPORAL NO. 488 CUTHBERT SAMUEL**

DEFENDANTS

Appearances:

Mr. Keith Scotland for the claimant.

Mr. Richard Williams with him Ms. Danielle France for the 1st, 2nd, 3rd, 4th, 5th, 6th and 8th defendants.

Mr. Ronald Marks with him Ms. Chantal Belmar for the 7th defendant.

2019: Jan. 30
Mar. 6

DECISION

BACKGROUND

[1] **Henry, J.:** This case involves a claim by Mr. Daniel Cummings in which he seeks several reliefs including declarations that his constitutionally guaranteed rights to liberty, protection of the law and

protection from inhumane and degrading punishment treatment were breached during an incident which allegedly took place on 3rd March 2011, at a sitting of the House of Assembly in Saint Vincent and the Grenadines. Mr. Cummings was a Member of Parliament and a member of the New Democratic Party ('NDP'), the opposition political party in the Parliament on that day.

- [2] He alleged that he was lawfully attending a sitting of the House of Assembly that day when the Hon. Prime Minister moved a motion to amend the Representation of the People Act. Mr. Cummings claimed that the Hon. Leader of the Opposition, Mr. Arnhim Eustace then rose and asked the Hon. Prime Minister to withdraw the proposed amendment. Mr. Cummings claimed that the Speaker of the House, the Hon. Hendrick Alexander asked Mr. Eustace to sit, which he refused to do.
- [3] He alleged further that a number of other exchanges took place between the Speaker and Members of the House of Assembly and that the sitting of the House was suspended at approximately 10.45 a.m. Mr. Cummings pleaded that the sitting resumed around 10.58 a.m. and soon after the Speaker ruled that all members of the Opposition be withdrawn from the House, then suspended the sitting at approximately 11.02 a.m. He averred that the Speaker asked the Sergeant-at-Arms to seek the assistance of other police officers to have them removed.
- [4] Mr. Cummings alleged that a number of police officers immediately surrounded him and other members of the Opposition and began to brutally, aggressively and violently shove him and other Opposition Members out of the chamber. He claimed that he fell to the floor and was trampled by police officers. He alleged further that at one point his foot was caught in the doors which were closed by one or more police officers.
- [5] He averred that he suffered excruciating pain which was exacerbated by other persons being piled on top of him. He alleged that this was further compounded when the police officers brutally, cruelly and inhumanly assaulted, kicked, punched and trampled on him with their boots thereby aggravating the damage to his ankle. Mr. Cummings asserted that the Speaker observed this and did nothing to stop the alleged assault.
- [6] He pleaded that the police officers picked him up and hurled him bodily head first down the stairs; threw other Members of Parliament on top of him; grabbed him by his arms and legs and dragged

him on his back down a flight of stairs and then threw him on the concrete entrance to the Courthouse. He pleaded that he suffered physical injury, pain and embarrassment as result of the police officers' conduct.

- [7] Mr. Cummings named the Honourable Attorney General, the Speaker and six police officers (Asst. Commissioner of Police Christopher Benjamin, Former Asst. Superintendent of Police Arnon King, Former Asst. Superintendent of Police Willisford Caesar, Police Corporal No. 632 Cutberth Morris, Police Corporal No. 131 Sedan Charles and Police Corporal No. 488 Grafton Samuel) as the 1st through 6th and 8th defendants respectively. He accused the named police officers as the officers who assaulted him. Mr. Cummings filed an Originating Motion on 3rd March 2014 supported by affidavit. He subsequently filed¹ an Amended Originating Motion in which he sought several declarations, vindictory damages and other relief.
- [8] The defendants each filed² an acknowledgement of service in which they signaled that they intended to defend the claim. Mr. Searles filed an affidavit on 4th July 2014 in which he denied being present at the House of Assembly on 3rd March 2011. On 10th June 2014, the Honourable Attorney General, the Hon. Hendrick Alexander, Messieurs King, Caesar, Morris and Samuel applied for an extension of time to file their defence. They listed several reasons for the requested extension including the complexity and depth of the matters; the necessity to obtain various international conventions and covenants; the time needed to research the matters. By order dated 11th June 2014 they were granted an extension of time to July 4th 2014 to file their defence.
- [9] By Notice of Application filed on 4th July 2014, the 1st through 6th and 8th defendants applied for an order striking out the Originating Motion and Amended Originating Motion and costs. They contended that the Amended Originating Motion does not disclose a reasonable cause of action; is frivolous and vexatious and is an abuse of the court's process. They did not file a defence to the claim. Mr. Cummings resisted the application.

¹ On 8th April, 2014.

² On 24th April 2014 and 7th May 2014 respectively.

ISSUE

- [10] The issue is whether Mr. Daniel Cumming's Originating Motion and Amended Originating Motion should be struck out?

ANALYSIS

Issue – Should Daniel Cumming's statement of case be struck out?

- [11] The Civil Procedure Rules 2000 ('CPR') empower the High Court to strike out a claim and statement of case which discloses no reasonable ground for making such a claim; or if it constitutes an abuse of the court's process.³ However, such orders are seldom made and are reserved for the most glaring cases. The court will strike out a claim if it is satisfied that 'the statement of case is just plain bad in law'⁴ or 'cannot be sustained on the allegations'⁵. The Court considers a striking out order to be drastic and employs it sparingly.
- [12] When considering an application to strike out a statement of case, the court must seek to give effect to the overriding objective to act justly. It is required to evaluate the parties' respective pleaded cases. For such purposes, it assumes that the allegations are factual. Even if a claim is weak, the court generally errs on the side of permitting the case to go to trial. The court must consider whether justice can be best served by ordering 'the claimant to supply further details or to serve an amended statement of claim.'⁴
- [13] The foregoing legal principles have been outlined and considered in several cases including **Baldwin Spencer v Attorney General of Antigua**⁶; **Michael Wilson et al v Temujin International Limited et al**⁷, **Tawney Assets Limited v East Pine Management Limited**⁸,

³ Rule 26.3 (1) (b) of the CPR.

⁴ *Didier et al v Royal Caribbean Cruises Ltd.* SLUHCVP2014/0024 (unreported), at para. 24 per Pereira CJ.

⁵ *Michael Wilson and Partners Limited v Temujin International Limited et al* BVIHCV2006/0037.

⁶ ANUHCVP1997/20A, (unreported).

⁷ BVIHCV2006/0037 (unreported).

⁸ BVIHCVP2012/007 (unreported).

Attorney General of St. Lucia v Allen Chastenet et al⁹, **Norde v Mannix**¹⁰ and **Real Time Systems v Renraw Ltd.**¹¹. I am bound to follow those decisions and I will therefore apply the referenced legal principles to the facts of the instant case.

[14] At the hearing on January 30th 2019, Mr. Searles made no submissions in respect of the present application. Learned counsel Mr. Richards Williams made oral submissions on the Honourable Attorney General's, the Hon. Hendrick Alexander's, Messieurs King's, Caesar's, Morris' and Samuel's behalves. It is convenient and neater to refer to them collectively as 'the defendants'. I shall do so from time to time, going forward. Learned counsel Mr. Keith Scotland made oral submissions on Mr. Cummings' behalf.

[15] The defendants submitted that the Claim is not properly before the court. They argued that the Originating Motion alleges breaches of the Constitution. They reasoned that it is a fundamental principle that constitutional redress can be sought only when there are no alternative remedies. They submitted that Mr. Cummings could have brought a claim for assault instead of seeking constitutional redress.

[16] They argued that most of the claim relates to assault and that Mr. Cummings may pursue judicial review options for appropriate relief. They contended further that none of the allegations in the claim satisfy the requirements to advance the constitutional motion. They concluded that for those reasons the Originating Motion should be struck out. They relied on the cases of **Johnson Moise v Attorney General & Chief of Police**¹²; **Antonio Webster v the Attorney General of Trinidad and Tobago**¹³; and the Saint Vincent and the Grenadines Constitution Order¹⁴. No specific provision of the Constitution Order or the Constitution was cited.

⁹SLUHCVAP2015/007 (unreported).

¹⁰ ANUHCVAP2015/0034 (unreported).

¹¹ [2014] UKPC 6.

¹² DOMHCV2015/0132 (unreported).

¹³ [2011] UKPC 22.

[17] Mr. Cummings countered that the reliefs sought at paragraphs Q, R, N, L are purely constitutional points. He contended that the Notice of Application provides no reasons, is not supported by an affidavit and should be struck out. He submitted subsequently that the affidavit contains nothing which suggests that it is made in support of the application. In this regard, he argued that it does not refer to the application; does not state that it is made in support of it and does not refer to the grounds in it. He argued that there is no legal basis for making the application.

[18] Mr. Cummings submitted further that the affidavit does not state in what way the claim does not disclose a reasonable cause of action, why the case is frivolous and vexatious and an abuse of the court's process. He submitted further that the deponent does not state that he makes the affidavit on behalf of the other defendants. He argued too that the Application does not include the particulars required by CPR 8.7. He cited the Trinidad and Tobago case of **Sprott v Scott**¹⁵ in support.

[19] The Privy Council has made pronouncements and rendered judgments which set out the legal principles to be applied in respect of the issues in contention. The Court of Appeal of the Eastern Caribbean Supreme Court has also enunciated applicable legal principles. I am bound by those decisions and must follow them. I will be guided by the referenced legal principles in arriving at the decision in this case.

[20] In this regard, it is perhaps useful to repeat an established principle of the law in respect of claims for redress under section 1 of most Commonwealth Caribbean Constitutions. That section contains a declaration of the broad fundamental human rights and freedoms which are more specifically delineated in subsequent provisions. In the Constitution of Saint Vincent and the Grenadines sections 2 through 15 elaborate on those rights and freedoms.

[21] Section 1 of the Constitution of Saint Vincent and the Grenadines provides:

'1. Fundamental rights and freedoms

¹⁴ Cap. 10 of the :Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

¹⁵ CV2016/01524, para. 16, page 9.

Whereas every person in Saint Vincent and the Grenadines is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.’ (bold added)

[22] In **Blomquist v. Attorney-General of the Commonwealth of Dominica**¹⁶, the Privy Council Board examined sections 1 and 16 of the Dominica Constitution which are identical to the Saint Vincent and the Grenadines Constitution except for the name of the State. In both Constitutions section 16 sets out the procedure for the enforcement of those rights and freedoms.

[23] It provides:

‘16 Enforcement of protective provisions

(1) **If any person alleges that any of the provisions of sections 2 to 15 inclusive** of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) ... , then, without prejudice to any other action with respect to the same matter that is lawfully available, **that person ... may apply to the High Court for redress.**’ (bold added)

¹⁶ [1987] UKPC 5.

[24] It is now established and accepted that the language of section 1 in such Constitutions does not create an enforcement mechanism by which legal action may be taken for its breach. It is not a justiciable provision.

[25] In the **Grape Bay Ltd. case** the Board highlighted its decision as to the effect of section 1 of the Constitution of the Commonwealth of Dominica is similar. It remarked further:

‘18. The Constitutions of certain of the U.K. Overseas Territories ... and many of the former British possessions, now independent States, have a family resemblance. Typically they contain a chapter on the protection of the fundamental rights and freedoms of the individual which is introduced by a provision such as section 1 of the Bermuda Constitution, stating those rights and freedoms and their limitations in general terms, followed by a series of sections dealing with particular rights and more detailed exceptions and qualifications. Finally, there is an enforcement provision which gives any person who alleges a contravention of some or all of the provisions of the chapter the right to claim constitutional relief from the court.

19. On the other hand, the constitutions differ in detail and also on whether the general statement of fundamental rights and freedoms at the beginning of the chapter is separately enforceable.’¹⁷

[26] The Board noted:

‘... in *Blomquist v. Attorney-General of the Commonwealth of Dominica* [1987] A.C. 489 the Board was considering the constitution of Dominica, ...

20. **The constitution therefore makes it clear that section 1 is not to be separately enforceable and the Privy Council so held.**¹⁸ (bold added)

¹⁷ Per Lord Hoffman at paras. 18 and 19.

¹⁸ At paras. 19 and 20.

[27] It follows from that determination that section 1 of the Saint Vincent and the Grenadines Constitution is also not separately enforceable. None of the parties addressed this point in the instant application, however, the court cannot overlook the references in Mr. Cummings' Originating Motion where he seeks to ground his claim in that provision. They will be highlighted as they arise and addressed accordingly.

[28] In similar fashion, the Board has made pronouncements on the suitability of employing Constitutional proceedings in cases where alternative remedies are available. Section 16 (2) of the Saint Vincent and the Grenadines Constitution is relevant. It states:

'(2) The High Court shall have original jurisdiction-

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising from any person which is referred to it in pursuance of subsection (3) of this section,

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution:

Provided that **the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.**'

(bold added)

[29] In the case of **Jaroo v The Attorney General of Trinidad and Tobago**¹⁹, the Board ruled that where an alternative relief is available, constitutional redress should be invoked only in exceptional cases. In that case Mr. Jaroo's car was detained by the police for 7 months while they conducted investigations as to whether it was stolen. Mr. Jaroo filed a claim seeking relief under sections 4 and 14 of the Constitution of Trinidad and Tobago.

¹⁹ [2002] UKPC 5.

[30] He complained that he had been unlawfully 'deprived of the enjoyment of his property without due process of law and ... had not been afforded protection under the law'. He contended that the police's actions were therefore unconstitutional. On appeal to the Privy Council, the question arose as to whether his chosen route by way of originating motion was an abuse of the court's process since there was an alternative common law remedy by way of an action at common law for damages for detainee.

[31] Their Lordships were unanimous in their conclusion. They declared:

'... it has been made clear more than once by their Lordships' Board that the right to apply to the High Court which section 14(1) of the Constitution provides **should be exercised only in exceptional circumstances where there is a parallel remedy**. In *Harrikissoon v Attorney General of Trinidad and Tobago* [1980] AC 265, 268, Lord Diplock said with reference to the provisions in the Trinidad and Tobago (Constitution) Order in Council 1962:

"The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious. The right to apply to the High Court under ... the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court ..., the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court ... if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no

contravention of any human right or fundamental freedom.”²⁰ (bold and underlining added)

[32] Their Lordships concluded that Mr. Jaroo was entitled to seek recourse from the court by an alternative (albeit a more time consuming) route of seeking damages for detinue. They noted that he should have been aware that the facts suggested that he had contravened certain provisions of the traffic laws since doubt had arisen regarding the true ownership of the vehicle. They reasoned that this uncertainty revealed that the State’s allegations were disputed.

[33] Their Lordships added:

‘... the originating motion procedure under section 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law. ... But instead of amending his pleadings to enable him to pursue the common law remedy that had always been available to him, the appellant chose to adhere to what had now become an unsuitable and inappropriate procedure.’²¹ (underlining added)

[34] They explained:

‘... the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it.’²²

They concluded that Mr. Jaroo’s claim by way of originating motion was an abuse of the Court’s process and they dismissed his appeal.

²⁰ At para. 29.

²¹ At para. 36.

²² At para. 39.

[35] Similar sentiments were expressed by the Board in **Kemrajh Harrikissoon v Attorney-General of Trinidad and Tobago**. Lord Diplock opined:

'The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6 (1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the Court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right of fundamental freedom.'²³ (underlining added)

[36] In the case of **The Attorney General of Trinidad and Tobago v Ramanoop** Lord Nicholls of Birkenhead recalled the earlier **Harrikissoon** decision and reiterated:

'In *Harrikissoon* the Board gave guidance on how this discretion should be exercised where a parallel remedy at common law or under statute is available to an applicant. Speaking in the context of judicial review as a parallel remedy, Lord Diplock warned against applications for constitutional relief being used as a general substitute for the normal procedures for invoking judicial control of administrative action.

In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a

²³ [1980] AC 265; [1979] UKPC 3 (15 January 1979).

special feature would be a case where there has been an arbitrary use of state power.²⁴
(underlining added)

[37] In another seminal case from the Republic of Trinidad and Tobago - **Antonio Webster v The Attorney General of Trinidad and Tobago**²⁵, the Board provided clarification on what would constitute 'exceptional circumstances', where allegations of assault and battery are the underlying complaints.

[38] Lord Wilson described a feature the Board considered to have been aggravating and which elevated a claim from one of common assault, battery and false imprisonment to the exceptional category. He said:

'What was the feature which entitled the claimant in *Ramanoop* not to make his claims in tort for assault, battery and false imprisonment and therein to claim exemplary damages including by reference to breaches of his constitutional rights? The Board's answer was that the police officer's conduct, which had been "quite appalling", had represented a shameful misuse of the coercive powers with which the state had endowed him: ... The facts in *Ramanoop* exemplify the exceptional circumstances to which in *Jaroo* the Board had made reference.²⁶ (bold and underlining added)

[39] In **The Attorney General of Trinidad and Tobago v Ramanoop case**²⁴, the claimant alleged that following an altercation with a man at a bar, he was accosted at home later that evening by the man and a police officer. He claimed that the police officer slapped him across his face, handcuffed him and started to beat him. Mr. Ramanoop detailed a chain of assaults by the police officer including cuffs and slaps which lasted for about 13 minutes at his home and further blows on a subsequent drive to the police station. He recounted that at the police station the police officer rammed his head into a wall wounding him, poured rum into the wound and soaked him in a shower.

²⁴ [2005] UKPC 15.

²⁵ [2011] UKPC 22 per Lord Wilson.

²⁶ At para. 19.

- [40] The police officer later allowed Mr. Ramanoop to get dressed, interviewed him and using threats and more slaps forced him to initial a written statement. Only after this was Mr. Ramanoop taken home by the man with whom he had the altercation at the bar. By then it was around 2.00am. The Board characterized the police officer's conduct as 'quite appalling behaviour'. It described Mr. Ramanoop as 'the victim of egregious violence at the hands of the police.'
- [41] Mr. Ramanoop filed a claim in the High Court for infringement of his constitutional rights. He sought damages and declarations that his right had been infringed. On behalf of the Board, Lord Wilson explained that the circumstances of that case placed it into the exceptional category. Mr. Ramanoop was permitted to present his claim as one purely for constitutional redress. He was awarded vindicatory damages.
- [42] Lord Wilson pointed to a number of circumstances which distinguished this case from the 'unexceptional ones'. He observed:
- 'It swiftly became clear that the Attorney General disputed none of his factual allegations. ... The Board's decision was to uphold the conclusion of the Court of Appeal that the vindicatory damages to which the claimant was entitled ... could exceed the level of compensatory damages comparable to that provided at common law in that it could include an additional element "needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches":'²⁴
- [43] From the foregoing, it is apparent that an alleged assault by State functionaries may in certain instances be considered repugnant to what society can tolerate as being routine for the associated purposes. The circumstances in the **Ramanoop** case clearly assailed good sense and offended the sensibilities of right thinking members of the society. The Board has signaled that such cases may be commenced by originating motion for vindication of constitutional protections of the subject's fundamental human rights and freedoms.
- [44] The guidance provided by the Board suggests that the Court is entitled to and should consider any

defence advanced whether by way of preliminary letters or formal pleading. The learning is that where there is no dispute as to the facts, the originating motion procedure may be utilized. Where however there are divergent factual contentions, the appropriate approach would be to resolve the matter by trial of 'in the ordinary courts' under the common law. To proceed otherwise would be viewed as an abuse of the court's process and will likely result in the claim being struck out. However, cases involving factual disputes may still proceed as an originating motion if the conduct complained of is egregious. I am guided by and will apply those principles.

[45] Mr. Cummings' Originating Motion rehearsed two principal allegations arising from which he claimed 20 individual reliefs. It is necessary to set them out and examine them in light of the legal principles highlighted by the parties and summarized above. For ease of reference, I will use the same paragraph letters utilized in the Amended Originating Motion'.

[46] Mr. Cummings claimed redress 'in respect of:

- (a) **The direction by the second defendant** given in the Chamber of the House of Assembly ("the Chamber") ... on 3rd March 2011 to the Sergeant-at-Arms and to police officers, ... **to have the Opposition Members of Parliament including the Claimant forcibly removed from the Chamber and the subsequent and immediate use of excessive, cruel and force inhuman force** by the Third to Eighth Defendants upon the said direction of the Second Defendant to forcibly remove the Opposition Members of Parliament including the Claimant from the Chamber; and
- (b) **The actions of the Third to Eight Defendants** by and/or following **their said cruel, inhuman and forcible removal of the Claimant from the Chamber and their several acts of brutality towards the Claimant including their vicious manhandling and violent shoving of the Claimant through the precincts of the house, trampling upon him with their military boots, hurling the Claimant head first down one flight of stairs and dragging him down a second flight of stairs to the ground floor and thereafter forcibly throwing him on to the concrete entrance to the High Court on the ground floor of the building in which the House and the High Court function**, commonly called the Courthouse.

- [47] It is readily apparent that Mr. Cummings' allegations involve legal issues as to assault and battery. He particularized them further in his affidavit²⁷. In it, he alleged that the second defendant directed that he be withdrawn from the house by police officers. He complained that he was aggressively, brutally and violently shoved out of the Chamber of the House of Assembly by the 3rd through 8th defendants through its eastern entrance, which caused him maximum humiliation before persons present in the public gallery. He claimed that he fell to the floor and was trampled by police officers.
- [48] Mr. Cummings averred further that when he was shoved by the police officers he fell between the doors of the eastern chamber and the doors were closed on his foot by one of the 3rd through 8th defendants and that this lasted for several minutes. He deposed that his left foot was crushed as a result and he suffered excruciating pain. He alleged further that the 3rd through 8th defendants threw or pushed the other opposition members on him and using obscene language, shouted at him to leave the Chamber,. He averred that he suffered excruciating pain when the other opposition members were thrown on top of him.
- [49] He said that he asked the 3rd through 8th defendants for a stretcher to take him out of the chamber to seek medical attention because he was in agonizing pain and they ignored his pleas and instead brutally, cruelly and inhumanly assaulted, kicked, punched and trampled over him with their boots. He claimed that this aggravated the damage to his left ankle and exacerbated his pain.
- [50] Mr. Cummings alleged that while this was taking place, the Honourable Speaker was looking on from the doorway of his office and did nothing to stop the brutal and cruel actions and violence being meted out by the 3rd through 8th defendants against him. He deposed that the 3rd, 6th, 7th and 8th defendants grabbed him by his arms and legs, thereby inflicting further pain to his injured foot and that they dragged him towards the top of the first flight of stairs, lifted him and swung his body like a sack of potatoes head first down the stairs. He claimed that he endured further pain as a result because he landed head first on his back on the landing between the first and second flight of stairs heading to the eastern entrance of the Chamber.

²⁷ Filed on 6th March 2014.

[51] He deposed that the 3rd, 6th, 7th and 8th defendants then threw Senator Frederick on him and that she landed on his injured foot causing him enormous pain and distress. He claimed that the 3rd, 6th, 7th and 8th defendants caused him further pain when they threw the Hon. Dr. Goodwin Friday on him and on Senator Frederick while he was lying on his back. He accused the 3rd, 6th, 7th and 8th defendants of grabbing him by his arms and legs and dragging him on his back from the landing down the second flight of stairs. He claimed that he hit every step and as a result sustained further damage and pain, especially to his back.

[52] Mr. Cummings alleged that at the bottom of the second flight of stairs, the 3rd, 6th, 7th and 8th defendants threw him on the concrete entrance to the Courthouse causing further damage and pain to his back and left ankle and damaging his right shoulder. He deposed that he was thereby humiliated. He deposed that the 3rd, 6th, 7th and 8th defendants then threw Senator Frederick on him and she landed on his injured right shoulder and right arm resulting in pain to him. He claimed that he lay there in pain and distress

[53] He averred that much to his embarrassment and humiliation, members of the public were taking pictures of him. He claimed that the pictures were circulated on the internet and on social media websites. He complained that his whole body was in severe pain and he could not walk or stand properly. He averred that as a result he went to a private hospital where he was treated by Dr. D.S. Garraway. He alleged that he was subsequently seen and treated by Dr. Steve V. Mahadeo, a neurosurgeon.

[54] Mr. Cummings deposed that he has flown to Trinidad for therapy several times but that the pain has remained constant; his back went into spasm in March 2013 and he was bed-ridden for 7 days. He complained that he continued to have difficulty standing or sitting for long periods and that he had no such difficulties prior to the alleged incident of March 3rd 2011. He deposed that he has suffered damages, loss, injury, pain, distress and public humiliation and has been put to expense.

[55] Mr. Cummings outlined a list of injuries which he averred are chronicled in his doctor's reports. They are omitted from this decision in the absence of witness statements or affidavits from the referenced doctors. Mr. Cummings deposed further that the incidents complained of have been

reported in the print media and that he has been the subject of jokes and ridicule (on radio stations) in respect of the treatment he received from the 3rd, 6th, 7th and 8th defendants.

[56] He deposed that the Honourable Speaker never gave him a reasonable or any opportunity to withdraw voluntarily from the Chamber before he called on the police and Sergeant-at-Arms to have him removed. Mr. Cummings averred too that the Honourable Speaker did not follow the procedure outlined in Standing Order 43 (4) for such removal. He claimed that he did not hear any motion or vote on such motion calling for him to be suspended from the sitting.

[57] The 1st through 6th and the 8th defendants have filed no defence. The 7th defendant by his defence denied being present in the Chamber on March 3rd, 2011. He is not a party to this application. In his affidavit filed on 10th June 2014, Mr. Richard Williams deposed that instructions were received on 24th April 2014 to act on behalf of the 1st through 6th and the 8th defendants. He added that the originating motion, amended originating motion and supporting documentation were forwarded to Mr. Astaphan. He averred that they were unable to file relevant affidavits in defence before the first hearing scheduled for 10th June 2014.

[58] Mr. Hendrick Alexander filed an affidavit²⁸ in support of the present application. He deposed that he presided over the 8th sitting of the First session of the ninth Parliament of Saint Vincent and the Grenadines on 3rd March 2011. He averred that a motion was moved by the Hon. Dr. Ralph Gonzalves and seconded by the Hon. Girlyn Miguel that the Hon. Leader of the Opposition withdraw from the Chamber.

[59] Mr. Alexander deposed that he ordered that the Honourable Leader of the Opposition be suspended from the house for the rest of the sitting and requested the Sergeant-at-Arms to escort the Leader of the Opposition out of the house. He deposed that he suspended the sitting of the House and when it resumed he observed that the Leader of the Opposition was surrounded by members of the Opposition who had formed a protective barrier or circle around him. He said he asked the

²⁸ On 4th July 2014.

other opposition members to take their seats and he was bluntly ignored. He averred that they continued to huddle around the Leader of the Opposition in a defiant stance.

[60] He averred that he considered the behavior of the opposition members to be disrespectful, grossly disorderly and amounting to a severe misconduct in the House. He deposed that he ruled that all members of the opposition be withdrawn from the House of Parliament and he requested the Sergeant-at-Arms to seek assistance from police officers to have the members of the opposition removed from the House. Mr. Alexander averred that the 'second request was complied with and upon resumption of the business of the house continued in the absence of the members of the opposition.'

[61] Mr. Alexander deposed that he believed that the only reason Mr. Cummings has brought this claim for redress under the Constitution is because he is barred from bringing proceedings under the general law for assault and battery, against the purported wrong because the one year limitation period set out in section 3 and 4 of the Public Officers Protection Act Cap 274 of the Revised Edition of the Laws of Saint Vincent and the Grenadines 2009 has expired. He provided no basis for this belief. I make no finding and draw no inference on the merits of such belief.

[62] In their Acknowledgement of Service filed on 24th April 2014, the 1st through 6th and the 8th defendants denied the claim and signaled an intention to defend it. There is no document on the court file which hints at or sets out their defence.

[63] The allegations outlined by Mr. Cummings in his originating Motion paint the picture of an aggressive beating of him by the 3rd through 6th and 8th defendants. The defendants have as yet provided no counter factual assertions. At face value, if Mr. Cummings' assertions are made out and if it turns out that there was no legitimate or lawful justification for such an assault, the Court may conceivably find that in view of all the circumstances and material evidence, that the behavior by the 3rd through 6th and 8th defendants was beyond the pale and possibly brings this case into the exceptional category. I hasten to add that this is an observation. I make no such finding as there is no evidence before the court at this stage.

- [64] The most that I can safely hazard at this juncture is that the factual allegations made by Mr. Cummings are in extent not too dissimilar from the facts found in the **Ramanoop case**. It might be that the 3rd through 6th and 8th defendants intend to advance a defence which paints an entirely different picture. It would be speculative of me to try to divine their intentions in this regard.
- [65] It would also be premature of me to make a finding that the 3rd through 6th and 8th defendants' behaved on March 3rd, 2011 towards Mr. Cummings as alleged. I am satisfied however that Mr. Cummings' factual assertions at face value could place this case into the exceptional category described by the Board in the above-referenced cases. This observation gives me pause about characterizing this claim as one which should be pursued in the normal way, for damages for assault and battery.
- [66] There appears merit in permitting Mr. Cummings to pursue his claim for constitutional relief to the extent that he has supplied adequate pleadings. I turn therefore to examine the reliefs sought in the claim to ascertain whether they disclose a reasonable ground for bringing a claim or constitute an abuse of the court's process.
- [67] Mr. Cummings claimed 20 separate reliefs and set them out in paragraphs lettered sequentially from A through T. Some of them may be considered together since they are related to each other. I will adopt that approach. I propose to set out each paragraph verbatim and then to apply to the legal principles which have been rehearsed above.

Paragraphs A through G

- [68] Paragraphs A through G refer to the direction and procedures allegedly adopted by the Honourable Speaker Mr. Alexander to secure Mr. Cummings' removal from the Chamber of the House of Assembly; and the alleged manner in which the said direction was allegedly effected by the 3rd through 6th and 8th defendants. Mr. Cummings contended that the referenced direction, procedures and manner violate:

1. the rules made pursuant to section 45 (1) of the Constitution for the orderly conduct of proceedings in the House; and

2. Order 43 of the House of Assembly Standing Orders 1989 construed with paragraph 3 (6) of the Second Schedule to the Constitution.

[69] Mr. Cummings claimed that he was entitled (by Standing Orders 43) to have been given a reasonable opportunity to withdraw from the House before the Speaker notifies that House that recourse to force is necessary and before the Speaker issued a direction for his forcible removal. He claimed declarations pursuant to section 16 of the Constitution that:

1. he has an implicit and/or necessary right to attend and participate in sittings of the House and to represent his constituents and not to be forcibly removed from there or in any way be prevented from attending or participating there except in accordance with rules made by the House under section 45 (1) of the Constitution;²⁹
2. Order 43 of the Standing Orders when interpreted in accordance with paragraph 3 (6) of the Second Schedule to the Constitution requires that a Member of Parliament who is ordered to withdraw from the House by the Speaker given a reasonable or any opportunity to withdraw before the Speaker issues a direction for his removal;³⁰
3. the referenced direction made for his removal was:
 - a) unconstitutional, illegal and unlawful;³¹
 - b) without him having been given a reasonable or any opportunity to withdraw from the House contravened his right as a Member of Parliament:
 - i) to attend and participate in sittings of the House and represent his constituents;
 - ii) not to be forcibly removed from there or in any way be prevented from attending or participating there except in accordance with rules made by the House under section 45 (1) of the Constitution;³²
4. the referenced means employed by the 3rd through 6th and 8th defendants for his removal were unconstitutional, illegal and unlawful;

²⁹ Paragraph A.

³⁰ Paragraph B.

³¹ Paragraph C.

³² Paragraph D.

[70] Paragraphs F and G claimed damages and other unspecified relief. It is self-evident that there is an overlap in some of the paragraphs.

[71] Paragraphs A and B state:

- A. A declaration pursuant to section 16 of the Constitution that the Claimant, as a Member of Parliament of St. Vincent and the Grenadines has, by virtue of the terms and structure of the Constitution which established a system of democratic representative government, an implicit and/or necessary right to attend and participate in sittings of the House and to represent his constituents therein and not to be forcibly removed therefrom or in any way prevented from attending or participating therein except in accordance with rules made by the House for the orderly conduct of proceedings under section 45 (1) of the Constitution;
- B. A declaration pursuant to section 16 of the Constitution that Order 43 of the House of Assembly Standing Orders, 1989 (“the Standing Orders”) construed in accordance with paragraph 3 (6) of the Second Schedule of the Constitution requires that a member of Parliament who has been ordered by the Speaker to withdraw from the House be given a reasonable opportunity to so do before the Speaker notifies the House that recourse to force is necessary and in any event before the Speaker gives any direction for the purpose of enforcing his said order;’.

[72] Paragraphs C and D are as follows:

- C. A declaration pursuant to section 16 of the Constitution that the said direction on 3rd March 2011 given by the Second Defendant to the Sergeant-at-Arms and to police officers, including the Third to Eight Defendants, to have the Opposition Members including the Claimant forcibly removed from the chamber without the Claimant being given a reasonable or any opportunity to voluntarily withdraw from the Chamber pursuant to Order 43 of the Standing Orders was accordingly unconstitutional, illegal and unlawful.
- D. Consequent upon C above, a Declaration pursuant to section 16 of the Constitution that the said direction on 3rd March 2011 given by the Second Defendant to the

Sergeant-at-Arms and to police officers, including the Third to Eight Defendants, to have the Opposition Members including the Claimant forcibly removed from the Chamber without the Claimant being given a reasonable or any opportunity to voluntarily withdraw from the same was in contravention of the Claimant's right as a Member of Parliament to attend and participate in sittings of the House of Representatives and to represent his constituents therein and not to be forcibly removed therefrom or in any way prevented from attending or participating therein except by rules made by the House for the orderly conduct of proceedings under section 45 (1) of the Constitution and accordingly unconstitutional, illegal and unlawful. requires construction of the provisions. No sufficient arguments advanced, reserve decision.'

[73] Paragraphs E and F state:

- E. Consequent upon any orders made in A to D (inclusive) above, a Declaration under section 16 of the Constitution that the said actions of the Third to Eight Defendants by and/or following upon their cruel, inhuman and forcible removal of the Claimant from the Chamber and their several acts of brutality towards the Claimant including their vicious manhandling and violent shoving of the Claimant through the precincts of the House, trampling upon him with their heavy military boots, hurling the Claimant head first down one flight of the stairs and dragging him down a second flight of stairs to the ground floor and thereafter forcibly throwing him on to the concrete entrance to the Courthouse were accordingly unconstitutional, illegal and unlawful.
- F. Consequent upon any orders made in A to E above, damages under section 16 of the Constitution including special, aggravated and vindictory damages.'

[74] Paragraphs A and B are seeking essentially the same relief: that the procedures for removal of a Member of Parliament from the House must be adhered to whenever such decision is taken. Even if there is merit to seeking such relief, one of those paragraphs is unnecessary. Paragraph B seeks an interpretation of Order 43 of the Standing Orders which is being advanced as the applicable Order which sets out the procedure for such removal. The court would have to consider this in relation to any of the reliefs sought at paragraphs A through D.

- [75] Paragraph C relates the alleged direction given by the Speaker Mr. Alexander to the 'applicable Order' (Order 43) and seeks a ruling that the direction was unconstitutional, illegal and unlawful. The Court would necessarily have to consider the matters highlighted in paragraphs A and B to arrive at a conclusion in respect of the declaration sought at Paragraph C, making it unnecessary to retain paragraphs A and B in any event.
- [76] Paragraph D seeks the identical declaration sought in C and adds the further prayer that the court makes a declaration that Mr. Cummings right to attend sittings of the House as an MP were violated for non-conformity with the rules. Paragraph C is therefore unnecessary.
- [77] An integral part of evaluating the constitutionality and lawfulness of the impugned direction would be a consideration of the relevant law including rules of the House of Assembly. If illegality or breach of a constitutional provision is established, Mr. Cummings would be entitled to a declaration if the Court is satisfied that this is a just case in which to make such an order. In the premises and in view of the considerations outlined earlier, I am satisfied and find that paragraph D establishes a reasonable cause of action and is not an abuse of the court's process. Paragraphs A, B and C do not. Therefore, they must excised.
- [78] Paragraph E addresses the alleged unconstitutionality and illegality of the 3rd through 6th and 8th defendants' method of removal of Mr. Cummings from the House. This goes directly to the heart of the case. In light of my observations regarding the state of the pleadings and the posture taken by the defendants respectively regarding the central issues; the absence of a defence; considerations relating to issues of sufficiency of evidence and credibility; I am satisfied that this paragraph discloses a reasonable cause of action and is not an abuse of the court's process. The issues identified in it arise for consideration and may legitimately be pursued under section 16 of the Constitution.
- [79] Paragraph F and G identify the consequential reliefs which can flow from the declarations sought in the preceding paragraphs. Paragraph G states:
- 'G. Consequent upon any of the orders made in A to E above any further and/or other relief that the Court considers appropriate pursuant to section 16 of the Constitution.'

It is trite law that damages may be awarded for a breach of a constitutional provision. The court

may in an appropriate case grant such other relief it considers just, depending on the facts of the case as proved. For those reasons, I do not interfere with paragraphs F or G.

Paragraphs H and I

[80] Paragraphs H and I seek relief for the alleged breach of section 3 (1) of the Constitution which enshrines the subject's right not to be deprived of his liberty except for lawful reasons. Mr. Cummings claimed that the impugned direction and his removal from the Chamber by the 3rd through 6th and 8th defendants' violated that right. He sought declarations to that effect in paragraphs H and I.

[81] He also pleaded that this right is protected by section 1 (a) of the Constitution and its breach was a violation of that provision. For the reasons outlined earlier regarding the section 1 provisions of the Constitution, I cannot agree with Mr. Cummings that this right is enforceable pursuant to that section.

[82] Paragraphs H and I state:

'H. A declaration that the said direction on 3rd March, 2011 given by the Second Defendant to the Sergeant-at-Arms and to police officers, including the Third to Eight Defendants, to have the Opposition Members including the Claimant forcibly removed from the Chamber without the Claimant being given a reasonable or any opportunity to voluntarily withdraw from the Chamber was in contravention of the Claimant's right to liberty and not to be deprived thereof save as may be authorized by law under sections 1 (a) and 3 (1) of the Constitution and accordingly unconstitutional and unlawful.

I. Consequent upon H above, a Declaration that the said actions of the Third to Eight Defendants by and/or following upon their said cruel, inhuman and forcible removal of the Claimant from the Chamber and their several acts of brutality towards the Claimant including their vicious manhandling and violent shoving of the Claimant through the precincts of the House, trampling upon him with their heavy military boots, hurling the Claimant head first down one flight of the stairs and dragging him down a second flight of stairs to the ground floor and thereafter forcibly throwing him on to the concrete entrance to the Courthouse were in contravention of the Claimant's right to liberty and

not to be deprived thereof save as may be authorized by law under sections 1 (a) and 3 (1) of the Constitution and accordingly unconstitutional, illegal and unlawful.’

[83] On one possible view of the assertions made by Mr. Cummings regarding what transpired on 3rd March 2011, it is not outside the realm of possibilities that the evidence adduced at trial might establish that he was deprived of his liberty during the process of his removal. The factual findings will depend on the nature of the evidence actually elicited. Having found that the circumstances described by him in his affidavit, could if proved, lead to a finding that his treatment was severe enough to invoke public outrage, it follows that the Court is entitled to examine all of the facts and law to determine what, if any, breach of the fundamental rights and freedoms sections of the Constitution took place.

[84] This includes an examination of section 3 (1) the chapeau of which provides:

‘(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say- ...’

I am satisfied that the factual allegations made by Mr. Cummings contain a basis on which he may found a claim for deprivation of liberty. I find therefore that paragraphs H and I establish a cause of action under section 16 of the Constitution and are not an abuse of the court’s process. References to section 1 (a) must however be excised for the reasons given.

Paragraph J

[85] Paragraph J invokes section 5 of the Constitution which provides protection to subjects from torture, inhuman and degrading punishment. Mr. Cummings claimed a declaration in this paragraph that the impugned behaviour towards him by the 3rd through 6th and 8th defendants’ amounted to such inhuman and degrading treatment.

[86] That paragraph states:

‘J. A Declaration that the said actions of the Third to Eight Defendants by and/or following upon their said cruel, inhuman and forcible removal of the Claimant from the Chamber and their several acts of brutality towards the Claimant including their vicious manhandling and violent shoving of the Claimant through the precincts of the House, trampling upon him with their heavy military boots, hurling the Claimant head

first down one flight of the stairs and dragging him down a second flight of stairs to the ground floor and thereafter forcibly throwing him on to the concrete entrance to the Courthouse were in contravention of the Claimant's right not to be subjected to inhuman and degrading punishment and other treatment under section 5 of the Constitution and accordingly unconstitutional, illegal and unlawful.'

[87] A central contention by Mr. Cummings is that his removal from the Chamber was characterized by unnecessary and excessive violence. His description of the treatment if unchallenged at trial may establish this. The allegations provide an adequate platform from which he may legitimately pursue this cause of action under section 16 of the Constitution. I make no finding that it does not or that it is an abuse of the court's process.

Paragraphs K and L

[88] By paragraphs K and L, Mr. Cummings seeks declarations pursuant to sections 1 (a) and 8 of the Constitution. He thereby contended that the impugned direction and behavior of the 3rd through 6th and 8th defendants' violated his right to protection of the law under those sections. Having regard to the observations made earlier in respect of section 1 (a), suffice it to say that that part of the paragraphs discloses no cause of action.

[89] Paragraphs K and L state:

'K. A declaration that the said direction on 3rd March, 2011 given by the Second Defendant to the Sergeant-at-Arms and to police officers, including the Third to Eight Defendants, to have the Opposition Members including the Claimant forcibly removed from the Chamber without the Claimant being given a reasonable or any opportunity to voluntarily withdraw from the Chamber was in contravention of the Claimant's right to protection of the law under sections 1 (a) and 8 (1) of the Constitution and accordingly unconstitutional and unlawful.

L. Consequent on K above, a Declaration that the said actions of the Third to Eight Defendants by and/or following upon their said cruel, inhuman and forcible removal of the Claimant from the Chamber and their several acts of brutality towards the Claimant including their vicious manhandling and violent shoving of the Claimant through the precincts of the House, trampling upon him with their heavy military boots, hurling the

Claimant head first down one flight of the stairs and dragging him down a second flight of stairs to the ground floor and thereafter forcibly throwing him on to the concrete entrance to the Courthouse were in contravention of the Claimant's right to protection of the law under sections 1 (a) and 8 of the Constitution and accordingly unconstitutional, illegal and unlawful.'

[90] Section 8 of the Constitution contains certain protections which are enjoyed by persons charged with criminal offences³³ or involved in any proceeding before a court of law or other authority charged with determination of the existence or extent of any civil right or obligation³⁴. Mr. Cummings has made no submissions that such matters arise for consideration in this case. I find that they do not. In the premises, both paragraphs (K and L) must be excised.

Paragraphs M and N

[91] By paragraphs M and N Mr. Cummings sought declarations that the impugned direction and alleged conduct of the 3rd through 6th and 8th defendants were in breach of his right to freedom of movement which is guaranteed by section 12 of the Constitution. Section 12 protects the right of subjects to move freely within the State of Saint Vincent and the Grenadines. An unlawful detention would constitute a breach of this right as would other restrictions on such person's movement.

[92] Paragraphs M and N provide:

'M. A declaration that the said direction on 3rd March, 2011 given by the Second Defendant to the Sergeant-at-Arms and to police officers, including the Third to Eight Defendants, to have the Opposition Members including the Claimant forcibly removed from the Chamber without the Claimant being given a reasonable or any opportunity to voluntarily withdraw from the Chamber was in contravention of the Claimant's right to freedom of movement under section 12 of the Constitution and accordingly unconstitutional and unlawful.

³³ Subsections 1 through 7 and 12 through 14.

³⁴ Subsections 8 through 11.

N. Consequent upon the direction given by the Second Defendant on 3rd March, 2011 and upon M above, a Declaration that the said actions of the Third to Eight Defendants by and/or following upon their said cruel, inhuman and forcible removal of the Claimant from the Chamber and their several acts of brutality towards the Claimant including their vicious manhandling and violent shoving of the Claimant through the precincts of the House, trampling upon him with their heavy military boots, hurling the Claimant head first down one flight of the stairs and dragging him down a second flight of stairs to the ground floor and thereafter forcibly throwing him on to the concrete entrance to the Courthouse were in contravention of the Claimant's right to freedom of movement under section 12 of the Constitution and accordingly unconstitutional, illegal and unlawful.'

[93] Mr. Cummings has not alleged that his movement on March 3rd 2011 was circumscribed in any such manner which is not captured in his allegation that his right to liberty was breached. There is an overlap in those areas in view of the allegations. To that extent, the court's process is being abused by being asked to consider these separate causes of action in relation to the same factual matrix. While these paragraphs disclose a cause of action, those matters can be conveniently canvassed under the previous paragraphs H and I or Paragraphs M and N, not both sets.

Paragraphs O and P

[94] As with paragraphs F and G, paragraphs O and P merely seek the consequential reliefs which can flow from the declarations sought in the immediately preceding paragraphs. They provide:

- 'O. Consequent upon any of the orders made in H to N above, damages under section 16 of the Constitution including special, aggravated and vindictory damages.
- P. Consequent upon any of the orders made in H to N above, all such orders, writs and directions as may be necessary or appropriate to secure redress by the Claimant for the contravention of the human rights and fundamental freedoms guaranteed to him by the Constitution.'

[95] Mr. Cummings has claimed damages and such other relief the Court considers appropriate. There is no basis on which to strike out those paragraphs, although it might be argued that all of those related reliefs can be subsumed in one or two paragraphs.

Paragraphs Q, R and S

[96] Under Paragraphs Q, R and S Mr. Cummings seek declarations under:

1. 'Articles 4, 5 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment acceded to by St. Vincent and the Grenadines on 1st August 2001 ('the Convention'); and
2. Article 7 of the International Covenant on Civil and Political Rights acceded to by St. Vincent and the Grenadines on 9th November 1981 ('the International Covenant');

that the impugned direction was in violation of the referenced articles, in respect of which he has a genuine and legitimate expectation to enjoy those rights, in that he was not given a reasonable or any opportunity to voluntarily withdraw from the Chamber. He sought damages for such breach.

[97] Paragraphs Q, R and S state:

- Q. A Declaration that the said direction on 3rd March, 2011 given by the Second Defendant to the Sergeant-at-Arms and to police officers, including the Third to Eight Defendants, to have the Opposition Members including the Claimant forcibly removed from the Chamber without the Claimant being given a reasonable or any opportunity to voluntarily withdraw from the Chamber was in violation of the rights outlined in Articles 1, 2, 4, 5, and 16 of the Convention and in respect of which the Claimant has a genuine and legitimate expectation to the enjoyment of those rights.
- R. A Declaration that the said direction on 3rd March, 2011 given by the Second Defendant to the Sergeant-at-Arms and to police officers, including the Third to Eight Defendants, to have the Opposition Members including the Claimant forcibly removed from the Chamber without the Claimant being given a reasonable or any opportunity to voluntarily withdraw from the Chamber was in violation of the rights outlined in Article 7 of the International Covenant in respect of which the Claimant has a genuine and legitimate expectation to the enjoyment of those rights.

- S. Consequent upon any of the orders made in Q and R above, damages under Convention and the International Covenant including special, aggravated and vindicatory damages.’

[98] Mr. Cummings has identified no domestic law which incorporates the referenced treaty obligations. Furthermore, he has not provided the full citation of the Convention to enable the Court of appreciate to what he is making reference. More fundamentally, he has repeated in these paragraphs reliefs which were set out in paragraphs C and D. Those have been addressed earlier. Paragraphs Q, R and S add nothing to the claim and are therefore abusive of the Court’s process. They are therefore excised.

Paragraph T

[99] Under paragraph T Mr. Cummings seeks costs. If he succeeds with this claim he may be awarded costs. There is nothing objectionable about this paragraph. It reads:

- T. Costs to be assessed in accordance with Rules 65.11 and 65.12 of the Civil Procedure Rules 2000 as amended (CPR) certified fit for the Claimant’s Senior and Junior Counsel and Legal Practitioners. ...’

I make no finding that it does not disclose a cause of action or is abusive. It is therefore not struck out as prayed by the defendants.

Costs

[100] The parties have enjoyed mixed results in this round of the proceedings. The claim remains substantively intact. Mr. Cummings was largely successful. He is entitled to recover his costs. He will be required to file an application for assessment of those costs.

ORDER

[101] It is accordingly ordered and declared:

1. The application by the 3rd through 6th and 8th defendants to strike out Mr. Cummings’ Originating Motion and Amended Originating Motion is allowed in part.
2. Paragraphs A, B, C, K, L, M, N, Q, R and S of the reliefs sought in the Amended Originating Motion are excised.

3. The rubric '1 (a)' is excised wherever it appears in paragraphs H and I of the reliefs sought in the Amended Originating Motion.
4. The 3rd through 6th and 8th defendants shall pay to Daniel Cummings costs to be assessed on application to be filed and served by Mr. Cummings on or before 28th March, 2019.

[102] The court is grateful to the parties for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar