THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0161

IN THE MATTER OF CHAPTER 1, SECTION 1 (A) OF THE ST. VINCENT AND THE GRENADINES CONSTITUTIONAL ORDER) CHAPTER 10 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES REVISED EDITION 2009

AND

IN THE MATTER OF AN APPLICATION BY THE CLAIMANT FOR DECLARATIONS, DAMAGES AND OTHER RELIEFS ALLEGING A BREACH OF HIS RIGHTS UNDER SECTION 3 OF THE CONSTITUTION AND REDRESS PURSUANT TO SECTION 3 (6) OF SAINT VINCENT AND THE GRENADINES

BETWEEN:

LEONET ANDERSON

CLAIMANT

AND

THE ATTORNEY GENERAL

1st DEFENDANT

THE COMMISSIONER OF POLICE

2nd DEFENDANT

CORPORAL 286 DERBY

3rd DEFENDANT

POLICE CONSTABLE 976 EDWARDS

4th DEFENDANT

Appearances:

Mr. Richard Williams for the claimant.

Mrs. Joezel Allen for the defendants.

2019: Nov. 27

Dec. 4

DECISION

BACKGROUND

[1] **Henry, J.:** The Constitution provides certain protections and rights to citizens and residents of the State. Provision is also made to enable a person to apply to the High Court for relief where he or she alleges that any of those constitutionally guaranteed and protected rights and freedoms is being, has been or is likely to be infringed. Mr. Leonet Anderson has filed the instant claim[1] to vindicate certain constitutional protections that he alleged were breached by two police officers directly and by the State vicariously. He claimed damages and other remedies against the officers, the Honourable Attorney General and the Commissioner of Police[2].

[2] The Honourable Attorney General filed[3] an application to strike out the claim. He argued that Mr. Anderson did not give the stipulated two month notice of his intention to make the claim. He contended further that the court has no jurisdiction to entertain this claim; and that Mr. Anderson is entitled to seek other remedies without launching a constitutional challenge.

[3] Mr. Anderson alleged that he and his daughter were socializing at a restaurant in Arnos Vale one night in October 2018, when he observed three uniformed police officers enter the business place. He claimed that as two of the officers passed him, he (Anderson) said 'It can't be the music they come to turn off when there is so much crime to fight outside'. He alleged that one of the police officers approached him after speaking with the disc jockey, and asked him to repeat his utterances which he did. Mr. Anderson pleaded that the police officer, pushed him in his chest, drew his service pistol and shoved it in his stomach. He identified the officer as Corporal 286 Derby.

[4] Mr. Anderson contended that the other police officer, PC Edwards, joined Corporal Derby in assaulting him and as a result he suffered personal injury. He claimed further that they took him to the police transport outside and then to the Calliaqua Police station, where he was imprisoned. He

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[1] On 10th October 2019.

[2] Referred to collectively as 'the defendants'.

[3] On 14th November 2019.

asserted that he was released the next day without being charged. He is seeking damages for assault, trespass to the person; and a declaration that he was wrongfully and/or unlawfully arrested and detained; and was deprived of the opportunity to consult with a legal practitioner of his choice. He charged that his alleged arrest and detention was unconstitutional. The Honourable Attorney General and the Commissioner of Police were joined as defendants to the claim.

[5] The Honourable Attorney General submitted that the Court has no jurisdiction to hear this claim because it is statute-barred pursuant to sections 3 and 5 of the Public Officers' Protection Act ('the Act')[4]. He reasoned that that Mr. Anderson's failure to comply with the provisions of the Act is fatal to his claim. He submitted that the fixed date claim should be struck out because of the alleged non-compliance with the Act; and because there are alternative remedies which Mr. Anderson may pursue.

[6] The Honourable Attorney General argued further that Mr. Anderson did not supply affidavit evidence in support of his claim as stipulated by rule 56.7(3) of the Civil Procedure Rules 2000 ('CPR'). He submitted that the claim is frivolous and vexatious and an abuse of the court's process. He sought costs. The Honourable Attorney General's application is to strike out the claim is granted.

ISSUES

[7] The issues are:

1. Whether the court has jurisdiction to entertain this claim? and
2. Whether Mr. Anderson's fixed date claim should be struck out against the Hon. Attorney General, the Commissioner of Police, Corporal Derby and/or Constable Edwards?

ANALYSIS

Issue 1 - Does the court have jurisdiction to entertain this claim?

[8] The Honourable Attorney General advanced 6 principal grounds to support the application disputing the court's jurisdiction and for an order to strike out the claim. Those grounds appear to have been conflated to some degree. They may conveniently be summarized as:

1. failure to comply with the Act issue;

[4] Cap. 276 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

2. the alternative remedies challenge;
3. non-compliance with CPR 56.7 (3) contention;
4. frivolous and vexatious and abuse of process argument; and
5. statute-barred claim.

Written Notice

[9] One of the principal grounds for the jurisdictional challenge is based on the alleged failure by Mr. Anderson to serve the statutory notice pursuant to the Act. The Honourable Attorney General pleaded that section 3 of the Act provides that no action may be brought against any public officer for anything done or purported to be done in the exercise of his office, unless he has been given two calendar months' written notice, by the person who intends to bring the action, or by that person's lawyer or agent. The notice is to be served at the intended defendant's residence.

[10] The Honourable Attorney General pleaded further that Mr. Anderson did not supply such notice to him or his co-defendants; and has not proved that he did serve such notice. He pleaded that the court therefore has no jurisdiction to hear the claim and it must be dismissed.

[11] Corporal Debry and Melicia Gilchrist made[5] affidavits in support of the Application. Corporal Debry averred that he was not served with the stipulated notice of intended action prior to being served[6] with the fixed date claim and statement of claim. He attested that the Honourable Attorney General, the Commissioner of Police and Constable Edwards have not received any such notice. Ms. Gilchrist made similar averments based on conversations she reportedly had with legal counsel. She averred that she is the vault attendant employed at the chambers of the Honourable Attorney General.

[12] Mr. Anderson filed no affidavit in response to Corporal Derby's and Ms. Gilchrist's. He did not allege in his statement of case that he served any such notice on the defendants at any time. At the

[5] Filed on 14th November 2019.

[6] In October 2019.

hearing on November 27th 2019, his legal practitioner indicated that he did not wish to cross-examine the affiants and that he intended to rely on his written submissions.

[13] Mr. Anderson submitted that the notice requirement in the Act applies only to public officers acting in the due execution of their duty. He argued that Corporal Debry and Constable Edwards were not acting in the execution of their duty 'by assaulting, slapping and falsely imprisoning' him. He contended that they cannot therefore avail themselves of protection from suit contained in the referenced provisions of the Act. He cited in support, the cases of **Felix Da Silva v Hermine P. Griffith et al**[7] and **Richard MacLeish et al v Donald John**[8], two cases decided by the High Court in Saint Vincent and the Grenadines.

[14] Mr. Anderson highlighted certain pronouncements of the respective judges in both cases. In the **Felix Da Silva case**, Joseph J. outlined section 3 of the Act and opined:

> 'The question to be determined is whether the defendants can shelter under the umbrella of the Act. To succeed in convincing the Court that the defendants are not protected by the Act, the plaintiff has to show that the defendants acted outside of or in excess of their jurisdiction.'[9]

The learned judge held that the first defendant could shelter under the Act because he acted within his authority in respect of the actions complained about by the plaintiff. She dismissed the claim against him. She found however that the second defendant acted on his own authority and was therefore unable to avail himself of the protection provided by the Act.

[15] In the **Richard MacLeish case**, the learned Judge dismissed the claim against the defendants following a trial. He found that the plaintiffs had not complied with section 3 of the Act. He remarked that the defendants wasted time in allowing the matter to proceed to trial instead of raising the defence earlier[10]. Consequently, he made no order as to costs.

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[7] Saint Vincent and the Grenadines Civil Suit No. 300 of 1988 at page 6.

[8] Saint Vincent and the Grenadines Civil Suit No. 305 of 1998 at para. 9.

[9] At page 7.

[10] At para. 12.

[16] Mr. Anderson submitted that a determination of whether the police officers in the instant case were acting in the execution of their office, can be made only after trial and a finding by the court. He argued that those matters are therefore live issues for the court. He contended that applicability of the referenced provisions of the Act, are not issues which can be resolved on the pleadings, but rather, must await trial when the claimant can provide the requisite proof of service. He referred to the **Richard MacLeish case**[11] and the case of **Sharon Sprott v Corporal 599 Foster Scott et al**[12] as authorities for that submission.

[17] The learned judge in the **Sharon Sprott case** opined:

> '... it would be for the Claimant to prove at the trial that the requisite notice had been served. ... If the Claimant fails to prove at the trial that she has given notice of the proceedings under section 3 of the Public Officer's Protection Act, the trial judge will have no discretion in the matter and will be bound to enter judgment for the Defendant with or without costs.'[12]

[18] The learned justice in the **Richard MacLeish case** made similar pronouncements. He stated that the authorities:

> '... establish that **section 5 is not a matter of pleading by the defence**. It is a matter for evidence at the trial. Proof has to be provided at trial in the same way as proof of any fact in issue relevant to the action has to be given.'[11] (bold added)

[19] Later in the judgment, he stated:

> 'The Plaintiffs were required to issue their writ ... after serving the requisite notice on the Defendants. There is no suggestion that they served any notice.'[13]

He ruled:

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[11] At para. 10.

[12] Saint Vincent and the Grenadines Claim No. 377 of 2006, at para. 63.

[13] At para. [11].

'Because of the waste of time incurred by the Defendants in allowing the matter to proceed to trial instead of having raised the statutory defence as an interlocutory issue, in exercise of the court's discretion as to costs, I make no order as to costs.'[10]

[20] These submissions by Mr. Anderson suggest that it is not open to the court at this stage, to entertain an application to determine whether the statutory notice has been served. He maintained that this must wait until the pleadings are closed and the matter has proceeded to trial. The Honourable Attorney General did not respond directly to those arguments. However, he placed reliance on the decision of Justice of Appeal Louise Blenman in the case of **Bryan James v the Attorney General**[14]. The learned Justice of Appeal was there considering an appeal involving a successful application by the Attorney General to strike out a claim, for failure by Mr. James (the claimant) to serve a similar notice.

[21] In the court below, the learned Master found that there was no evidence that notice of the claim was served on the Attorney General. She had before her the claim, amended claim, statement of claim and the defence. The matter had not proceeded to trial and no witness statements had been filed. Based on the pleadings, the claimant applied to strike out the defence and for an order for summary judgment. The Honourable Attorney General filed a cross-application to strike out the claim on the ground that the statutory notice had not been served. It was supported by affidavit evidence to that effect. The learned Master accepted the uncontroverted affidavit evidence filed by the Honourable Attorney General and dismissed the claim against him.

[22] The appeal from that decision was dismissed. In her decision on appeal, the learned Justice of Appeal noted:

"'The master was careful to indicate ... that '[t]here has been no response to the application of [the Attorney General].' Mr. Lee submitted that in view of the uncontroverted evidence that was before the learned master that Mr. James had not served the Attorney General with notice of the suit, the master was correct in holding that Mr. James's non-compliance with article 28 of the Code of Civil Procedure was fatal.

[14] SLUHCVAP2013/0023.

[15] There is great force in Mr. Lee's submissions on this ground of appeal and I entirely agree with him.'"[15]

[23] The decision in the **Bryan James case** illustrates that an application to strike out a claim for failure to serve the requisite notice under section 5 of the Act, may be made before trial. Such an application may then be entertained and determined without the need for the parties to embark on a trial. This was recognized by the learned judge in the **Richard MacLeish case** when he sanctioned the defendants by ordering them to pay costs for their failure to take the point much earlier in the proceedings (i.e. before the trial).

[24] It is now a well-established and codified principle of law and matter of procedure that the court in furthering the overriding objective to act justly and in furtherance of its case management functions, is empowered and has a duty to take appropriate steps to resolve disputes in an efficient, effective and expeditious manner. This includes deciding which issues need full investigation and trial and which can be disposed of summarily.[16] In view of the clear precedent set in the **Bryan James case**, it is beyond doubt that this court may decide before trial, whether this is an appropriate case to dispose of this point, in light of the available evidence.

[25] Section 3 of the Act provides:

> '**No action shall be brought against any public officer for anything done, or purported to be done in the exercise of his office unless and until two calendar months after notice in writing has been delivered to him** or left at his usual place of residence with some person there, by the party who intends to bring such action or his legal practitioner or agent, and in every such notice shall be clearly and explicitly stated-
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> (a) the cause of action;
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> (b) the name and address of the person who is bringing the action; and
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> (c) the name and address of his legal practitioner or agent, if any,

[15] At paras. 14 and 15.

[16] CPR Parts 1, 25 and 26.

and no evidence of the cause of action shall be produced, except in so far as the cause of action has been spelt out in the notice.' (bold added)

[26] Section 5 of the Act states:

'In every proceeding for an action as referred to in section 3, **it shall be incumbent** upon **the party bringing the action to prove**-

(a) **that the notice as required under section 3 has been given**;

(b) that the action has been brought **within the time specified in section 4**[17]; and

(c) the cause of action;

and **upon the failure to establish any of the same, the action shall be dismissed or otherwise terminated and a verdict shall be given against the person** who brought the action, with or without costs.' (bold added)

[27] The conjoint effect of those provisions mandates the service of the specified notice at least two months before a claim is filed. Section 4 stipulates that the action be filed within 12 months of the date of the cause of action. The Act defines 'public officer' as 'any person holding any public office (which shall include the office of a minister) in Saint Vincent and the Grenadines, whether permanent or temporary and whether with or without salary or remuneration.' This definition applies to the Honourable Attorney General, the Commissioner of Police and police officers.[18]

[28] It follows that, to the extent that Mr. Anderson alleged that he was wronged by the conduct of Corporal Derby and Constable Edwards 'in the exercise of their offices', such behavior is caught by the Act and is actionable only after the statutory notice has been served. Mr. Anderson acknowledged that he received the Notice of Application and supporting affidavits. He has not disputed the assertions made by Ms. Gilchrist and Corporal Derby that the defendants were not served with the requisite notice. His failure to refute those allegations leaves them unanswered.

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[17] Section 4 sets the time period at 12 calendar months.

[18] In accordance with section 105 of the Constitution, Cap. 10 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

[29] Based on the learning in the **Richard Mac Leish** and **Bryan Adams cases**, I find that it is not necessary to await trial to decide whether the statutory notice was served on the Honourable Attorney General, the Commissioner of Police and police officers Derby and Edwards. I accept the unchallenged affidavit testimony of Corporal Derby and Ms. Gilchrist on this score. I find that the Honourable Attorney General, the Commissioner of Police and officers Derby and Edwards were not served with the statutory notice by Mr. Anderson, his lawyer or agent.

[30] Mr. Anderson's assertions that the defendants are not shielded by the statutory provisions, because their conduct was unlawful, must be examined against his pleadings. He pleaded that the Honourable Attorney General is liable for the acts and omissions of police officers Derby and Edwards and is a necessary party pursuant to the Crown Proceedings Act. The Honourable Attorney General and the other co-defendants did not address this issue.

[31] Mr. Anderson claimed further that the Commissioner of Police is the Chief Officer of the Royal Saint Vincent and the Grenadines Police Force and in ultimate command of officers Derby and Edwards. He averred that the officers were acting under the Commissioner of Police's direction and control in the performance or purported performance of their duties on the night of his encounter with them.

[32] Throughout his statement of claim, Mr. Anderson identified the two officers by virtue of their rank and assigned numbers within the Royal Saint Vincent and the Grenadines Police Force. Unlike the claimant in the referenced **Felix Da Silva case**, he did not attempt to separate them from their public official persona *qua* public officers, for purposes of the suit.

[33] His assertions expressly linked Corporal Derby's and Constable Edwards' alleged behavior on the night of October 13th 2018, to the performance of their duties as police officers. Such acts or omissions are covered by the 'protection' offered to public officers by sections 3 and 5 of the Act. Mr. Anderson did not launch his claim against Corporal Derby and Constable Edwards in their private capacities. The factual allegations as pleaded by Mr. Anderson and mirrored in Corporal Derby's affidavit distinguish this case from the **Felix Da Silva case**.

[34] In this regard, Mr. Anderson claimed that both police officers were dressed in uniform. Corporal Derby deposed that he was on duty at Calliaqua police station when he was dispatched around 12.10 a.m. to respond to a noise complaint at the Chill Spot Bar and Night Club. Mr. Anderson

pleaded that he was detained by the uniformed police officers and kept for several hours at the Calliaqua police station, without being placed under arrest.

[35] Mr. Anderson outlined in his statement of claim that there was no reasonable grounds for suspecting that he had committed an indictable offence; obstructed the officers in the due execution of their duties; and no reasonable grounds or honest belief by the officers that a warrant had been issued by a court of competent jurisdiction in the State of Saint Vincent and the Grenadines for his arrest. He claimed he was released without charge the following day.

[36] He alleged further that he was never told of the reason for his arrest or detention or what offence he had committed or was about to commit. He claimed that he suffered loss of liberty for 6 hours and suffered personal injury. He contended that he was wrongfully and/or unlawfully arrested and detained.

[37] Framed as they were, the acts complained of were allegedly executed by the officers during the course of their duties. This is pleaded by Mr. Anderson and acknowledged by Corporal Derby. Mr. Anderson did not attempt to craft his claim in the alternative by ascribing personal liability to Corporal Derby and Constable Edwards for acts done by them as private citizens. He was entitled to make such allegations and seek relief from them in that capacity[19]. His claim evinced a clear intention to attach liability to them solely as public officers who were answerable to the State and acting as servants or agents of the State.

[38] This means that unless Mr. Anderson served the statutory notice stipulated by the Act, the impugned conduct is not actionable against any of the public officers – the Honourable Attorney General, the Commissioner of Police and/or officers Derby and Edwards.

[39] CPR 9.7 sets out the procedure for disputing the court's jurisdiction. The applicant must first file an acknowledgement of service and make his application within the period for filing a defence. The Honorable Attorney General has satisfied the requirements. Applying the applicable principles as articulated above, I have no difficulty finding that Mr. Anderson was obliged to serve the Honourable Attorney General, the Commissioner of Police and police officers Derby and Edwards with the statutory notice pursuant to sections 3 and 5 of the Act. He did not.

[19] Inland Revenue Commissioner & A.G. v. Lilleyman and another (1964) 7 WIR 496.

[40] In the premises, the court does not have the necessary jurisdiction to proceed with the hearing. In accordance with sections 3 and 5 of the Act, the court must refuse to entertain the claim against the Honourable Attorney General, the Commissioner of Police and police officers Derby and Edwards. Their objection to this claim on the jurisdictional ground is upheld. Mr. Anderson's claim must fail. I so find. This finding essentially disposes of the claim. However, for completeness, I will consider the other issues in a summary manner.

Issue 2 – Should Mr. Anderson's fixed date claim be struck out against the Hon. Attorney General, the Commissioner of Police, Corporal Derby and/or Constable Edwards?

[41] The CPR empowers the High Court to strike out a statement of case if it constitutes an abuse of the court's process; if it is non-compliant with a rule; or if it discloses no reasonable ground for making such a claim.[20] Such orders are rarely made. They are considered to be sanctions of last resort and are activated sparingly. In making its determination, the court must seek to give effect to the overriding objective to act justly. It assesses the parties' respective pleaded cases and evaluates whether justice can be best served by ordering 'the claimant to supply further details'.[21] The judgments in **Baldwin Spencer v Attorney General of Antigua**[22]; **Tawney Assets Limited v East Pine Management Limited**[23], and **Real Time Systems v Renraw Ltd.**[24] are also instructive.

Alternative Remedy and Abuse of the Court's Process

[42] The Honourable Attorney General contended that Mr. Anderson's non-compliance with the statutory requirements in the Act amounts to an abuse of the court's process and should be met with an order striking it out. He submitted further that Mr. Anderson may seek alternative remedies under the general law of assault and battery or trespass to the person; personal injury, wrongful and unlawful arrest and false imprisonment in tort. He argued that this is another ground on which the court should find that Mr. Anderson's claim is an abuse of the court's process.

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[20] Rule 26.3 (1) of the CPR.

[21] Didier et al v Royal Caribbean Cruises Ltd. SLUHCVAP2014/0024 (unreported), at para. 24 per Pereira CJ.

[22] ANUHCVAP1997/20A, (unreported).

[23] BVIHCVAP2012/007 (unreported).

[24] [2014] UKPC 6.

[43] He advanced the decisions in **Grape Bay Limited v The Attorney General of Bermuda**[25]; **Blomquist v Attorney General**[26]; **Harrikissoon v Attorney General**[27]; **Moise v The Attorney General et al**[28]; **Jaroo v Attorney General of Trinidad and Tobago**[29]; **Attorney General of Trinidad and Tobago v Ramanoop**[30]; and **Webster v Attorney General of Trinidad and Tobago**[31] as legal authorities for those propositions.

[44] Mr. Anderson rejoined that the option of striking out a claim is one used sparingly because it deprives a party of the normal procedure for establishing rights, through a trial. He cited the **Sharon Sprott case** in support.

[45] The line of cases relied on by the Honourable Attorney General establish and underscore that litigants should opt to pursue constitutional redress only in exceptional cases, if an alternative relief is available and suitable. In **Harrikissoon v Attorney General of Trinidad and Tobago** Lord Diplock opined:

> '... 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.'[27]

[46] This posture is generally adopted by the courts. By law, Mr. Anderson may pursue his claim against the police officers in their private capacities, for relief in respect of their alleged tortious behaviour.

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[25] [1999] UKPC 43.

[26] [1987] A.C. 489.

[27] [1980] A.C. 265.

[28] DOMHCV2015/0132.

[29] [2002] UKPC 5.

[30] [2005] UKPC 15.

[31] [2011] UKPC 22.

There does not appear to be any impediment to him taking that course even now. While it is arguable that their alleged conduct on the October 2018 evening went beyond the pale, Mr. Anderson may recover damages which reflect the severity of the loss and injury incurred in an ordinary claim, if it is established that they behaved in the manner alleged. He would still have his day in court, if he chooses that route.

[47] In view of the foregoing analysis and specifically the statutory prescription in the Act, the instant case is one of the rare occasions where the nuclear option of striking out a claim is unavoidable. It is therefore ordered that Mr. Anderson's Fixed Date Claim and statement of claim filed on 10th October 2019 be struck out by reason that the statutory notice was not served.

Non-compliance with CPR 56.7 (3)

[48] The Honourable Attorney General submitted that Mr. Anderson did not file a supporting affidavit with his claim in accordance with CPR 56.7(3). He contended that this is fatal to the claim. Mr. Anderson did not answer this charge in his submissions. Indeed he has not filed any affidavit in support of his claim. The CPR 56.7(3) stipulation does not attract an express sanction. It is therefore an irregularity which may be cured by an order for extension of time to comply.

Claim Time-barred

[49] The Honourable Attorney General submitted that the instant claim was filed after the 12 month period limited in section 4 of the Act. He argued that this is another ground for striking out the claim pursuant to CPR 26.3 (1) (c). Mr. Anderson has not responded to this submission. He filed his claim a little less than 12 months after the alleged encounter with the police officers. The assertion that his claim is time-barred is without merit.

Affidavit Evidence

[50] The Honourable Attorney General submitted that Mr. Anderson did not file affidavit evidence in support of his claim as mandated by CPR 56.7 (3). He argued that Mr. Anderson was required to file such evidence when he filed his Fixed Date Claim Form. He did not do so. This amounts to a procedural irregularity which could have been cured by order of the court granting him extension of time to do so.

Costs

[51] The Honourable Attorney General has prevailed in this matter. Usually the unsuccessful party is ordered to pay costs. This practice is not generally followed in administrative actions where the State is the successful party, unless the claimant acted unreasonably[32]. It seems to me that Mr. Anderson's allegations provided material which could have resulted in a successful outcome for him at trial, depending on how the evidence unfolded. I am not of the opinion that he acted unreasonably in filing his fixed date claim form. I therefore make no order that he pays costs to the defendants. Accordingly, each party shall pay his own costs.

ORDER

[52] It is accordingly declared and ordered:

1. The court does not have jurisdiction to entertain this claim.
2. The Application by the Honorable Attorney General to strike out the fixed date claim form is granted.
3. Each party shall pay his own costs.

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

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

[32] CPR 56.13(6).