

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

**CLAIM NO. BVIHCV2025/0163
BETWEEN:**

SEAN MCCALL
(Chairman of the Police Welfare Association)

Applicant/Claimant

and

HIS EXCELLENCY THE GOVERNOR

Respondent/Defendant

Appearances:

Mr. Terrence Williams KC, with him Ms. Karlene Thomas-Lucien instructed by
Chase Law for the Applicant/Claimant
Mr. Remi-Felix Reichhold for the Respondent/Defendant

2025: June 12; July 16;
August 11.
Reissued August 25, 2025 pursuant to Rule 42.10 of CPR 2023

JUDGMENT

[1] **ANDERSON J [Ag]:** This is an application for interim relief pending the determination of a mixed judicial review-constitutional claim.

- [2] The Applicant/Claimant (hereafter “**Applicant**” or “**Claimant**”) is a police officer and claims in his capacity as a Chairman of the Police Welfare Association of the Royal Virgin Islands Police Force (“**RVIPF**”). He claims against His Excellency the Governor (“**Governor**”) or (“**His Excellency**”). The substantive claim filed on 2 June, 2025 seeks declaratory relief and diverse administrative orders in respect of the promulgation of the Police (Amendment) Regulations 2024 (the “**2024 Regulations**”) and the Police (Amendment) Regulations 2025 (the “**2025 Regulations**”) (together the “**Regulations**”). The 2024 Regulations introduced a rigorous vetting process for existing and prospective police officers of the RVIPF. It requires them to make various disclosures regarding their personal circumstances and financial information; and also, disclosure from certain categories of persons related to, or associated with, these officers. The contention is that the Regulations go too far: some of these requirements are onerous, others worded too vaguely and still others too intrusive. For example, those third parties must waive their right to self-incrimination and expose themselves to criminal proceedings for the provision of inaccurate information. Police officers must obtain these third-party consents as part of their vetting obligations under the Regulations.
- [3] The Claimant also cites the absence of an Information Commissioner pursuant to the Data Protection Act 2021. He is concerned about the power that the Regulations give to the Governor to outsource the retention and analysis of the information collected in the vetting process to third parties; and questions why the mechanisms already in place in the law – such as the Information Commissioner – are not actioned instead. Concern is also expressed that the Respondent has removed the Police Service Commission (“**PSC**”) for certain functions.
- [4] He cites in aid constitutional provisions relating to privacy, freedom of association and equal protection under the law. He claims that the Regulations are irrational and ultra vires section 97 of the 2007 Constitution Order in Council (the “**Constitution**”) and section 112 of the Police Act which provide, among other things, for the establishment of regulations for the operation of the PSC. He seeks writs to quash the promulgation of the Regulations; to establish an Information Commissioner; and

to compel the passage of regulations for the PSC to better empower it to carry out some of these functions.

The injunction application

- [5] The application was filed on 10 June and asks for the Respondent to be restrained whether by himself his servants and or agents from implementing, bringing, enforcing or continue to implement, bring or enforce the Regulations pending determination of the substantive claim. The harm that the Applicant seeks to mitigate against is set out at Ground 8 of the Application being the threat of:
- a. Invasive background checks without lawful basis or consent;
 - b. Disciplinary or reputational consequences without appeal or hearings;
 - c. Irreversible career prejudice, including loss of promotion or employment and retirement benefits; and
 - d. Irreversible release of personal data.
- [6] The Applicant also sought various disclosure orders, but this aspect was not pursued at the hearing.
- [7] The Respondent filed a Notice of Opposition on 11 June in the face of the court setting a date of 12 June for hearing of the application. The Notice asserted that:
- i. The Governor was not served with the application or the claim;
 - ii. The application was short served and that the Respondent would in any event have needed more time to respond in accordance with CPR provisions; and that
 - iii. The standing of the Claimant needed to be further considered.
- [8] The application was adjourned to 16 July, the first hearing date of the substantive claim. By that time the Respondent had filed an affidavit sworn 26 June in response to the claim and to the application. His Excellency deponed that the Regulations

were lawfully made, that the claim's grounds had no merit; that the injunctive relief sought also had no merit; and that it differed from the main claim. It was also pointed out that members of the police force are subjected to limitations on their constitutional rights in certain circumstances, citing section 10(2) Constitution. In any event the Respondent says, the Regulations are a proportionate way of achieving a legitimate aim and are in accordance with internationally recognized standards.

[9] I am unable to agree with Counsel for the Respondent's contention that the grounds of the claim and the injunction are different to the extent that it should materially affect the exercise of the court's discretion. The application was worded to align with language consistent with that used for interim relief of the type sought. Both have the same objective which is to suspend the operation of the Regulations altogether.

[10] The Claimant argued the application on the basis of the principles set out in **American Cyanamid v Ethicon**.¹ This test remains relevant but must be modified as appropriate to take the public law element of this matter into account per the Eastern Caribbean Supreme Court of Appeal in **Telecommunications Regulatory Commission (TRC) v Caribbean Cellular Telephone Ltd (CCT)**.² The court also has "a wide discretion to take a course which seems most likely to produce a just result or minimize the risk of injustice" per **Belize Association of Conservation Non-Governmental Organizations v Department of the Environment and another**.³

[11] The Respondent supplemented his filed submissions of 12 June with oral submissions at the hearing. It was submitted that the court does not have the jurisdiction to injunct the Governor from implementing, bringing or enforcing the

¹¹[1975] 1 All ER 504.

² Claim No. BVIHCVAP 2015/0015 at paragraph 19 decision delivered 2 December, 2015, reasons delivered 16 December, 2015.

³ [2003] UKPC 63 cited at paragraph 19 of TRC v CCT supra.

Regulations, relying on **British Railways v Board and Pickin (on appeal)**.⁴ **British Railways** does not address this point. The contention there concerned an allegation in pleadings that a private Act of Parliament was passed based on fraud. The House of Lords held that it was not open to the court to examine the internal workings of parliament or inquire into whether its procedures were followed. In this case, the Applicant does not challenge the means by which the Regulations were brought into law, but the legality of certain of its terms or, on a broader view, the legality of the vetting scheme overall.

[12] The Applicant in turn relied on **Regina v Secretary of State for Transport ex parte Factortame Ltd and other (No. 2)**⁵ for the contention that an interim injunction may be granted in public law matters and particularly to restrain the operation of already existing legislation. **Factortame** also resolved that rather than disapplying legislation, a court may instead aim its decision at the administrative acts undergirding it.

[13] I do not agree with the Respondent's submission that there is no properly arguable legal complaint. There is a case to be determined as to whether the obligations imposed upon members of the RVIPF in this respect are justifiable for the purpose. The matter of third-party consents will call for careful scrutiny by the court given the seemingly wide categories of persons who may fall within the stated categories set out. It is not clear what rights these parties have with respect to the use of their information but, more to the point, as the Regulations stand a police officer may not obtain vetting clearance without third-party consents. He may not remain in the RVIPF or be promoted without this clearance. The possible outsourcing of information retention and management functions to unnamed entities is also a matter that deserves careful scrutiny, more so where there appears to be unused mechanisms available in existing legislation. These measures may well end up being reasonable or justified and in line with international standards as the Respondent asserts, but they are matters to be ventilated at trial. There are

⁴ [1974] AC 765.

⁵ [1991] 1 AC 603.

therefore serious issues to be tried and I find that a prima facie case has been made out for some of them.

[14] There are likely to be negative, tangible and possibly some intangible effects from being subject to disciplinary proceedings in one's employment. These would be matters of record which might or might not prejudice the perception of the employee. As to the provision of the information sought, if the Claimant's concerns about collection and safe retention and possibly the risk of misuse of the information are made out then the harm to the provider(s) of that information could likewise be difficult to quantify. I am not satisfied in the round that damages are an adequate remedy.

[15] I am further mindful of the guidance of the Court of Appeal in **TRC v CCT** that the balance of convenience must be looked at more widely. I acknowledge the inherent public interest in existing legislation being implemented. On the other hand, I have some evidence of the risk occasioned by halting the vetting process but not such that a delay in fully implementing the process will be irreparably injurious. To the extent that Counsel was allowed to submit on the point, I understood that it was still at a fairly early stage, the implementation date being delayed from May 30 to July 21, 2025. It could be gleaned from the evidence that the delay in implementing the Regulations might have been partly due to some of the same expressed concerns that have now made their way to this Court. There was no initial indication as to whether or how outsourcing had already taken place. A hearing date for the claim has already been set.

[16] I am of the view that a just result is best achieved by granting relief to the Applicant. However, I find that such relief should not, in this instance, be in as broad terms as the Applicant suggests. Whilst the injunctive application was worded to suspend the legislation itself, it is apparent that the harm that the Applicant seeks to mitigate at this time arises from (i) the provision of information which may be too wide or inadequate etc. (ii) arrangements for where, how and by whom such information is retained and managed; (iii) potential adverse consequences for police officers who

do not obtain "vetting clearance"; and (iv) the waiver of the privilege of self-incrimination. They might merit, at this juncture, measured interim relief.

[17] I do not consider that it is necessary to include in the grant of relief, persons who are desirous of being police officers but have not yet been made so. Prospective or present applicants are free to decide whether they wish to subject themselves to the current requirements for entry to the RVIPF. Serving officers of the police force are another matter. They would not have been given an option as to whether to subject themselves, their families and or associates to this regime.

[18] I am allowed by r. 56.9(3) CPR (as amended) to grant such interim relief as appears just. I do not consider that an undertaking in damages is necessary.

The orders are therefore as follows:

1. The Commissioner of Police of the Royal Virgin Islands Police Force and the Police Services Commission may not by themselves or through any servant and or agent initiate, recommend, refer, carry on, progress, continue, or facilitate any disciplinary or criminal proceedings against any existing member of the Royal Virgin Islands Police Force for any failure to adhere to the following provisions of the Police (Amendment) Regulations 2025 until the determination of this matter or until further order of the court:
 - i. Regulation 3(B)(2) requiring police officers to submit the prescribed Vetting Form;
 - ii. Regulation 3B (3) requiring police officers to submit a consent form set out in Form 2 to Schedule 3, from a third party where the Vetting Form includes financial information that pertains to a third party;
 - iii. Regulation 3D (2) requiring police officers who have already submitted Vetting Forms to inform the Governor in writing of any changes to such forms.

2. The Commissioner of Police of the RVIPF and the Police Services Commission may not by themselves or through any servant and/or agent require any police officer to take any steps to cure any deficiency in their vetting information within the meaning of section 3F(2)(b) or 3H(1)(b) of the Police (Amendment) Regulations 2025 until the determination of this matter or until further order of the Court.
3. This order affects current members of the Royal Virgin Islands Police and does not apply to such persons as have not yet made an application for consideration to be included in the Royal Virgin Islands Police Force or whose applications for either are currently pending.
4. The terms of Orders (1) to (3) above apply equally to the Auxiliary Force as if the term were substituted for the "Royal Virgin Islands Police Force" in each instance.
5. The Respondent shall indicate within 14 days whether any Vetting Forms or any other information within the meaning of Regulation 3(G)(1) of the Police (Amendment) Regulations 2025 have already been forwarded to any independent body within the meaning of that Regulation.
6. A copy of this Order shall be served by the Applicant on the Commissioner of Police and the Police Services Commission in accordance with r.42.12 CPR and the Order shall be endorsed with a notice in Form 13.
7. The Applicant shall have carriage of the final form of this Order.
8. The parties shall address the Court in writing on costs within 21 days.

Akilah Anderson
High Court Judge (Ag)

By the Court


Registrar