

THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA & BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2021/0409

BETWEEN:

ASOT A. MICHAEL

Claimant

and

[1] MARY-CLARE HURST

In her capacity as General Secretary of the Antigua and Barbuda Labour Party

[2] PAUL CHET GREENE

In his capacity as Chairman of the Antigua and Barbuda Labour Party

[3] GASTON BROWNE

In his capacity as the Political Leader of the Antigua and Barbuda Labour Party

Defendants

Appearances:

Mr. Hugh Marshall for the Claimant

Mr. David Dorsett appearing with Ms. Gail Christian for the Defendants

2022: April 19th
May 11th

Judgment

[1] **Robertson J.: An Overview.** The general elections for the nation state of Antigua and Barbuda are constitutionally due before the end of the first quarter in 2023. The parties to these proceedings are members of a single political organization, the Antigua and Barbuda Labour Party [ABLP]. The ABLP, having won the general elections of 2014 and 2018, is the

political organisation which is in Government in Antigua and Barbuda. The ABLP is governed by the Revised Constitution of the ABLP.

- [2] The claimant has filed an application seeking injunctive relief to restrain the respondents, by themselves or through members of the ABLP, from holding out Rawdon Turner to be candidate for the ABLP for the constituency of St. Peter. Subsequent to the hearing of the application filed by the claimant for urgent interim relief the defendants filed an application seeking urgent interim relief that, until the determination of the matter, it is declared that the defendants, as the executive of the ABLP are entitled to secure the nomination of Rawdon Turner (or any person duly qualified pursuant to sections 38 and 39 of the Constitution of Antigua and Barbuda) in accordance with Part II of the Election Rules, to be the candidate for elections and sought a discharge of the interim order.
- [3] Having considered the submissions of the parties, this court indicates, for the reasons provided hereunder, that upon the claimant/applicant giving an undertaking to abide by any order in damages that the court shall deem to have been sustained to the defendants/respondents as a consequence of this order if it is later determined that the injunction ought not to have been granted **it is ordered** that the defendants/respondents are hereby restrained by themselves, their servants and/or agents or otherwise from holding out directly or indirectly any person to represent the constituency of St. Peter on behalf of the Antigua and Barbuda Labour Party who is not selected in accordance with the provisions of the Revised Constitution of the Antigua and Barbuda Labour Party.
- [4] An interim declaration is granted that Rawdon Turner was not selected in accordance with the provisions of the Revised Constitution of Antigua and Barbuda Labour Party. The interim injunction to stand until the hearing and determination of this action or until there are fresh actions/proceedings initiated and conducted in accordance with the Revised Constitution of the Antigua and Barbuda Labour Party.
- [5] This court also ordered that:
- a. The costs of the claimant's application are costs in the cause.

- b. The Defendants' application filed on 13th April 2022 is dismissed with costs quantified in the sum of \$3000.00 payable by the defendants to the claimant. Such costs to be paid within twenty-one days from today's date.

[6] **Introduction.** The applicant/claimant has proceedings which are pending before the court. The applicant seeks an interim injunction to restrain the Respondents/Defendants personally and all members of the ABLP, who the applicant contends may act under their direction, administration and leadership, from holding out Rawdon Turner as the ABLP candidate for the constituency of St. Peter in the upcoming general elections. These general elections are constitutionally due within the first quarter of 2023. Rawdon Turner is an individual who the suitability committee of the ABLP indicated was the person to contest the Parliamentary seat for the Constituency of St. Peter.

[7] The principal ground of the application of the applicant is that the selection of Rawdon Turner was not in accordance with the Revised Constitution of the ABLP. The primary issue before the court is the determination of whether the interim relief ought to be granted to the applicant.

[8] As an interim order this court restrained the defendants/respondents personally or through members of the ABLP from holding out a representative for the constituency of St. Peter, until the hearing and later, until the determination of this application.

[9] The day after the hearing of the claimant's application, the respondents filed an application seeking urgent interim remedy that the defendants/respondents, as the executive of the ABLP, be entitled to secure the nomination of Rawdon Turner or any other person duly qualified, to be the ABLP candidate for election to the House of Representatives for the constituency of St. Peter, under sections 38 and 39 of the Constitution of Antigua and Barbuda and in accordance with Part II of the Elections Rules. The defendants/respondents also sought to discharge the interim injunctive order which was granted to restrain the

defendants/respondents from holding out a representative for the constituency of St. Peter until the determination of the instant application.

[10] The counsel for the claimant/applicant objected to the application of the respondents. The claimant/applicant argued that the documents filed by the respondents in respect to their application were not filed in accordance with the provisions of CPR 3.6 (3) and that the application was an abuse of the process of the court. These objections will be addressed in the course of this judgment.

[11] Prior to concluding this portion of the judgement, it is relevant to note that in these proceedings the claimant previously had the benefit of injunctive orders. The subsisting order of the court (differently constituted) is that of 16th December 2021 when it was ordered that the “respondents are restrained from excluding the applicant from Central Executive meetings of the Antigua and Barbuda Labour Party until the determination of the proceedings”.

[12] **Relevant Background.** The applicant in the substantive pleadings of the claim indicated that the respondents excluded the applicant from attendance of a meeting held by the Central Executive of the ABLP on 22nd October 2021. The applicant also pleaded that the meeting held on 22nd October 2021 was not a valid meeting of the Central Executive and that all decisions taken at that meeting were null and void and of no legal effect under the Revised Constitution.

[13] The applicant further pleaded that the meeting of 27th October 2021 of the Executive of the Constituency Branch at which a new executive and members for the Constituency Branch of St. Peter were elected was in breach of the provisions of the Revised Constitution. The applicant contended that this meeting was in breach of the Revised Constitution since the meeting was held to the exclusion of the applicant who, as the Parliamentary representative of the constituency, was an ex-officio member of the executive.

[14] The applicant seeks on his claim, on the matter of declaratory relief, that there be declarations that:

- a. The Central Executive of ABLP cannot lawfully convene to the exclusion of the applicant who is the duly elected Member of Parliament for the Constituency of St. Peter.
- b. The sitting of the Central Executive of the ABLP on 22nd October 2021 to the exclusion of the applicant was contrary to Article 8.5.24 of the Revised Constitution of ABLP.
- c. All decisions taken at the Central Executive Meeting of 22nd October 2021 which was held to the exclusion of the claimant were contrary to the Articles 8.34, 8.35 and 8.38 of the Revised Constitution of the ABLP.
- d. The meeting on 27th October in the Constituency of St. Peter by the respondents to the exclusion of the applicant was contrary to Articles 8.34, 8.35 and 8.38 of the Revised Constitution.

[15] The applicant also sought injunctive relief to restrain members of the ABLP and the respondents from convening meetings of the Central Executive and recognising the Executive or members of the Constituency Branch of St. Peter who were elected on 27th October 2021.

[16] The Respondents defended the applicant's claim, and a counter claim was issued. In its pleadings the respondents contended, among other things, that disciplinary proceedings were instituted against the applicant as a consequence of the applicant having breached the provisions of the Revised Constitution. In their defence the respondents indicated that the decision to exclude the applicant from the meeting of 22nd October 2021 was as a result of the first defendant/respondent being of the view that by the deeds or actions of the applicant, the applicant renounced any rights of membership to the ABLP. The defence also pleads that the applicant did not generally attend meetings of the Central Executive.

[17] Additionally, the respondents pleaded that Article 8.37 of the Revised Constitution makes provision for the Constituency Branches to be subject to the authority of the Central

Executive and therefore the Constituency Branch is not solely responsible for the election of its officers. The respondents continued to plead that the respondents acted within the terms of the Revised Constitution to protect the ABLP generally and to specifically protect the ABLP from the actions of the applicant.

[18] The respondents also contended that the applicant ought to be estopped from relying on the terms of any contract (arising under the Revised Constitution) since the applicant publicly ridiculed and scorned the leadership of the ABLP.

[19] Further, the respondents in their pleadings made reference to Regulation 14 of the Revised Constitution and noted that Regulation 14 provides that the “Central Executive shall determine the suitability of all prospective candidates and shall approve the candidate or list of candidates to contest in the primary election at the Constituency level”.

[20] Finally, the respondents pleaded that the suitability of a candidate or list of candidates as determined by the Central Executive is a nonjusticiable issue. Thus, a candidate who has been determined to be unsuitable by the Central Executive cannot be a candidate and available for elections whether through by-elections or during general elections.

[21] In the counter claim, the respondents sought a declaration that the suitability of a candidate or list of candidates as determined by the Central Executive is a nonjusticiable issue. The respondents also sought a declaration that a candidate or list of candidates who are deemed by the Central Executive to be unsuitable, cannot be the candidate(s) for the ABLP in an election.

[22] **The Status of the Substantive Matter.** The claim in these proceedings is being case managed to trial. The defendant on 28th February 2022 obtained a default judgment against the applicant’s counterclaim with “the terms of the judgment to be determined by the court pursuant to Rules 12.10(4) and (5) of the CPR 2000”. The applicant, on 11th March 2022, filed an application seeking an order for the default judgment to be set aside.

The Application for Injunctive Relief filed by the Claimant.

The Evidence

[23] The evidence of the applicant is that, at the core of the various litigation actions among the parties, there is a breakdown in the personal relationship between the applicant and the third respondent, who is both the Political Leader of the ABLP and the Prime Minister of the country.

[24] The applicant deposes that the third respondent has in the past used and continues to use both his executive office and his office in the ABLP to cause injury to the applicant's political career. This injury includes the obscuration of the applicant from selection to represent the ABLP for the constituency of St. Peter in the upcoming general elections.

[25] The applicant notes that on 25th March 2022 the third respondent posted on social media (Facebook page of the third respondent) a list of ABLP approved candidates for the upcoming general elections. With reference to the constituency of St. Peter, this list excluded the applicant's name but included the name of one, Rawdon Turner. The post was followed by a press release on 26th March 2022 which mirrored the information posted on social media.

[26] The applicant contends that he is the elected representative for constituency of St. Peter and is therefore an ex-officio member of the Constituency Branch Executive. Accordingly, the applicant indicates that he is entitled to be present at all executive meetings of the Central Executive and the Constituency Branch and that he was not aware of anyone expressing an interest to the Constituency Branch Executive to represent the constituency for the upcoming elections. The applicant contends that if such an interest were indicated the Constituency Branch would, according to the Revised Constitution, be required to communicate this information to the Central Executive and make arrangements for a primary to be conducted for the selection of the appropriate candidate. Additionally, the applicant contended that as a member of the executive of the Branch he had no knowledge of the organisation of an activity to facilitate the selection of Rawdon Turner.

[27] The applicant adopted this position as the primary reason for not attending a meeting of the suitability committee of the ABLP to which the applicant was invited. The evidence of the applicant is that *“I can categorically state that I have been given no notice of any Branch Meeting nor made aware of any such meeting where a resolution has been passed to hold or otherwise contemplate a Primary or select any other candidate”*.

[28] The evidence for the respondent was provided by Lionel Hurst who is The Chief of Staff in the Prime Minister’s Office and an Executive Member of the ABLP. Mr. Hurst was elected to the ABLP Tribunal. The evidence of Mr. Hurst is that on 27th October 2021 the Constituency Branch of St. Peter met at Parham and persons were elected to the various offices on the St. Peter’s Executive Constituency Branch. Mr. Hurst indicated that the Branch determined that there were two candidates offering themselves for general elections due by March 2023 and that the Constituency had to ready itself. There was no additional evidence from Mr. Hurst on the matter of how the Constituency Branch arrived at the conclusion that there were two candidates offering themselves for the general elections.

[29] The additional evidence of Mr. Hurst is that the Branch of the Constituency of St. Peter held regular meetings and that there was neither the practice nor was there a need for invitations to the Branch meetings to be issued. Mr. Hurst compared the meetings of the Branch Executive to a church gathering on Sundays for which there are no invitations issued but that persons present themselves and attend the church services.

[30] Mr. Hurst’s evidence also addressed the lack of competence of the applicant in the applicant’s role as Parliamentary Representative for the constituency and referred to the applicant’s arrest in London in 2017. Mr. Hurst indicated that a tribunal to determine the future of the applicant in the ABLP was convened.

The Submissions

[31] The submissions of the applicant/claimant are relatively simple. Counsel contended that the applicant is a member of the ABLP and the representative for the constituency of St. Peter. The Revised Constitution makes provisions for the role of a representative on the

Constituency Branch Executive and on the Central Executive. The Revised Constitution also makes provisions for the action to be taken by a Branch Executive for the selection of candidates, if more than one person expresses an interest in representing a particular constituency. Counsel for the applicant contended that due process under the Revised Constitution was not followed in the removal of the applicant/claimant as the representative for the Constituency of St. Peter and for the selection of Rawdon Turner as the candidate.

[32] Counsel for the applicant/claimant also contended that the Revised Constitution governs the relationships within the ABLP and it establishes the role of the applicant/claimant in the administration of the affairs of the ABLP between ABLP's National Conventions. These responsibilities are within the Constituency Branch and the Central Executive. As it relates to the Constituency Branch, the applicant/claimant is an ex officio member of the Executive of the Constituency Branch and that there are no provisions within the Revised Constitution which fetter the rights and entitlements of an ex officio member.

[33] Counsel noted the evidence of the applicant/claimant that the applicant/claimant had no notice of any meeting where the issue of another candidate for the constituency was raised and therefore was not able to participate in any discussions on the matter. Counsel for the applicant/claimant indicated that the claimant is the primary person responsible for the Constituency Branch carrying out its functions and that the Branch is responsible and empowered to select its candidate for the national elections. The decision to select Rawdon Turner as the candidate for the upcoming elections was not made by the Branch or if made by the Branch was contrary to the Revised Constitution since it could have only been made at a meeting to which the parliamentary representative was excluded. The counsel also indicated that if the decision to select Rawdon Turner was made by the Central Executive, then the selection is void as it is contrary to the Revised Constitution.

[34] The submission of counsel for the applicant/claimant can be summarised in the following manner:

- a. A contractual relationship exists between the applicant/claimant and the respondents on how the parties should conduct themselves as members of the ABLP.
- b. The respondents have breached the agreement in a material manner by:
 1. Undermining the applicant's/claimant's position as a member of the Central Executive by holding meetings to his exclusion;
 2. Undermining the position of the applicant/claimant as a member of the Constituency Branch of St. Peter, by holding meetings to his exclusion; and
 3. Undermining the applicant's/claimant's position by naming Rawdon Turner as the ABLP candidate for the upcoming national elections contrary to the expressed provisions of the Revised Constitution which mandated that there must be communication from the constituency of St. Peter to the Central Executive indicating that Rawdon Turner has expressed an interest in representing the constituency and to allow for a Primary to be held.

[35] The submissions of the counsel for the respondents, some of which were repeated in the respondents' subsequent application, were more extensive. The submissions can be summarised thus:

- a. In light of the fact that a default judgment was entered against the applicant in respect of the counterclaim filed by the respondents, the applicant may only be heard on matters raised in CPR 12.13. Thus, the applicant's application for injunctive relief ought not to be entertained by the court.
- b. The application and the proposed injunctive relief do not restrain any legal wrong and therefore the court does not have jurisdiction to grant the relief sought.
- c. The fact that a default judgment has been entered on the counterclaim means that the matter relating to suitability of the court to hear the proceedings is *res judicata*.
- d. A court ought not grant to the applicant a remedy in private law so as to deny a third party, Mr. Turner, a right in public law

- e. The circumstances do not indicate that it is “just or convenient” for a court to grant injunctive relief.
- f. An injunction of this nature would be antithetical to what should obtain in a democratic state since the applicant would be prohibiting a political party from putting forward a person, Mr. Rawdon Turner, who the political party has chosen to be one of its candidates for the upcoming general elections.
- g. The injunction, if granted, would fetter the constitutional right of the ABLP’s freedom of expression.
- h. The proposed interim injunction subverts elections rules as Mr. Rawdon Turner, a non-party to the proceedings, would be deprived from being nominated for an election as provided by the Election Rules.
- i. There is no legal basis for Mr. Rawdon Turner, if nominated in accordance with the Election Rules by members of the Labour Party being denied the benefit of the ABLP’s symbol on the ballot paper.

[36] At the hearing of the application the court ruled that the jurisdiction of the court to hear the injunction was not fettered and reference was made to the provisions of the CPR 17 and the existing substantive claim. The other submissions raised by the counsel for the respondent will be addressed herein.

[37] The defendants, one day after the hearing of the application for injunctive relief filed an application seeking, among other things,

- a. An order that there be an interim declaration that the applicants/respondents as executives of the ABLP are entitled to secure the nomination of Rawdon Turner (or any person duly qualified pursuant to sections 38 and 39 of the Constitution of Antigua and Barbuda) in accordance with Part II of the Election Rules, to be the ABLP’s candidate for election to the House of Representatives for the constituency of St. Peter.
- b. A discharge of the interim order of 12th April 2022.

[38] The grounds for the defendants' application are that the provisions of section 1 of the Constitution of Antigua and Barbuda identify the State of Antigua and Barbuda as a unitary democratic state. Free and fair elections and the ability of persons (whether in association with others by way of political parties or otherwise) to put forward themselves or others for the purposes of contesting elections for membership in the legislature is a quintessential feature of a democratic state.

[39] Counsel for the defendants/applicants contended that the ABLP is a long-established political party in Antigua and Barbuda and that elections are not free and fair if a political party is prohibited in the absence of constitutional or other statutory impediment from putting forward candidates for elections. A prohibition is antithetical to what should obtain in a democratic state and is contrary to the provisions of sections 38 and 39 of the Constitution of Antigua and Barbuda. Section 38 of the Constitution of Antigua and Barbuda dictates the requirements for membership in the House of Representatives and section 39 of the Constitution identifies the matters which would disqualify a person from being a member of the House of Representatives.

[40] Counsel for the defendants/applicants noted that section 60 of the Constitution of Antigua and Barbuda provides that the Governor-General acting in accordance with the advice of the Prime Minister may prorogue or dissolve Parliament at any time and that section 61 indicates that a general election of the members of the House of Representative shall be held within three months after every dissolution of Parliament as the Governor-General acting in accordance with the advice of the Prime Minister, shall indicate. In such circumstances the court ought not to grant the relief sought by the claimant as such relief has public law implications.

[41] On the matter of the discharge of the existing injunction the counsel for the defendants/applicants contended that the existing injunction limits the ability of the third defendant to exercise his right under section 60 of the Constitution, specifically to determine that Parliament should be dissolved and that national elections be held within 90 days thereafter. This restraint would be inconsistent with what is to obtain in a democratic state

where the Prime Minister is at liberty to require the dissolution of Parliament and that there be national elections.

[42] The counsel for the defendants/applicants also contended that the third defendant/applicant in his capacity as Prime Minister is unable to call national elections since the elections would not be conducted in a free and fair manner since the person constitutionally eligible for election is being deprived by the court from being put forward as a candidate to contest the elections. In short, the ABLP is unable to field a full slate of candidates to contest the elections.

[43] In support of the defendants' application affidavits were filed by the second defendant and Rawdon Turner.

[44] The second respondent deposed that as the chairman of the ABLP he is required under Article 8.10.2 of the Revised Constitution to supervise and manage the affairs of the ABLP and its activities. This witness contended that one of the key elements to managing the affairs of the ABLP is to ensure that the candidates are in place in a timely and reasonable fashion to contest the general election once it is called by the Prime Minister. The timeliness is required to ensure that the persons who are selected have sufficient time to canvass and to obtain support ahead of the polls. The second named defendant/applicant contended that these proceedings have stymied the efforts of the ABLP to present a slate of 17 candidates to the people of Antigua and Barbuda and to place the party in a state of full readiness in the event of a general election date being scheduled.

[45] The second defendant/applicant indicated that the Revised Constitution of the ABLP requires that all Candidates be ratified at a National Convention ahead of the General Elections and as a consequence of the interim order the second defendant/applicant is unable "to ready the Party for this Convention". This is to be contrasted from the position of the opposition parties which this deponent says are in "full campaign mode". The main opposition having listed all its candidates who are to stand in the upcoming national elections.

[46] While Rawdon Turner did not provide affidavit evidence in opposition to the application of claimant for injunctive relief, he did file an affidavit in support of the defendants' application.

[47] It is noted that no reason was provided by the defendants/ applicants as to the absence of evidence from Rawdon Turner for the hearing of the claimant's application for injunctive relief. It is additionally noted that the affidavit of Rawdon Turner makes no reference to material matters which would not have been available to Mr. Turner at the time of the hearing of the claimant's application for injunctive relief.

[48] The evidence of Rawdon Turner is that he was present at a meeting of the Central Executive of the ABLP on 25th March 2022 and at this meeting 17 candidates were approved and named for the upcoming national elections. Mr. Rawdon Turner was named as the candidate for the constituency of St. Peter. Mr. Turner also indicated that the interim order has created a situation in which he is unable to campaign for the upcoming elections.

The Finding of the Court on Preliminary Objections Raised against the Defendants' Application.

[49] While a party can apply to the court for interim injunctive relief to be discharged the general principle is that the party must bring their whole case before the court at the inter-parties hearing or as much of the case that is available and necessary to meet the application for injunctive relief. The evidence provided in support of the defendants' application does not disclose any material additional information which would not have been available to the defendants at the inter-parties hearing. For whatever reason Rawdon Turner chose not to provide an affidavit at that time but chose to do so on the separate application of the respondents. Courts must be mindful to ensure that applications are not used to provide parties, in this case the defendants, a second opportunity to present evidence which was available to the defendants when the application was previously heard. The matter of the form of interim relief will be addressed in the subsequent paragraphs.

[50] On the matter of respondent's application not being in compliance with the provisions of CPR 3.6 this court notes that if there is an infraction, such infraction can be addressed under the court's case management powers.

The Law and Relevant Provisions

[51] The ABLP is an unincorporated political organization. The parties to these proceedings are members of that political organization which has as its governing document, the Revised Constitution. The members of the ABLP enjoy the rights and owe obligations to each other as outlined on the Revised Constitution. These rights and obligations arose when the parties became members of the ABLP. The jurisdiction of the court arises from its jurisdiction to protect rights of contract¹. On the matter of an unincorporated association the authors of **Chitty on Contracts** remind that the "relations between the members of a club are governed between the members which may be expressed or implied and which is usually found in the rules of the club"².

[52] Accordingly, if a party acts contrary to the provisions of the Revised Constitution, a cause of action will potentially arise for breach of contract for an aggrieved member. This becomes the cause of action for which an aggrieved party can approach the court seeking injunctive relief. In the circumstances of this case the applicant is contending that the respondents have breached the provisions of the Revised Constitution and thus the applicant seeks the protection of the court to preserve his rights under the provisions of the Revised Constitution. This court therefore dismisses the submission of counsel for the respondents that there is no underlying cause of action.

[53] **The Law on Injunctive Relief Applications.** The courts have jurisdiction to grant injunctive relief. Reference is made to section of 24 of the Eastern Caribbean Supreme Court Act³.

¹ Abbott v Sullivan [1952] 1 All ER 226.

² Chitty on Contracts 34th Edition para. 12-074.

³ Section 24(1) provides:

"A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the High Court or of a judge thereof in all cases in which it appears to the Court or Judge to be just or convenient that the order should be

The principles to be considered by the court when treating with an application for injunctive relief are generally settled. The *locus classicus* is **American Cyanamid Co. v Ethicon Ltd**⁴. The guidelines are whether there is a serious question to be tried, the adequacy of damages and a consideration of the balance of convenience or the balance of justice. The application of these guidelines can overlap. Thus, for example, in the consideration of the balance of convenience or the balance of justice the court has regard to the matter of the adequacy of damages to either side and the least irremediable prejudice to one party or the other⁵. It is also noted that the court considers the principles set out in **American Cyanamid case** in the context of the statutory jurisdiction afforded to the court.

[54] The court also notes whether there are any special considerations which ought to influence the granting of an injunction, a discretionary relief. Special circumstances include, but are by no means limited to, an analysis of the evidence before the court and the seriousness of the issues to be tried, whether the injunctive relief effectively disposes of the substantive action⁶, whether there is an issue of delay which ought to defeat the application for injunctive relief, whether there are public interest considerations.

[55] Importantly, at the end of the process the court would take a step back and ask itself what decision in relation to the application for injunctive relief would result in the least irremediable prejudice to one party or the other⁷.

The Relevant Provisions of the Revised Constitution.

[56] The relevant provisions of the Revised Constitution of the ABLP are indicated hereunder.

- a. Article 5 provides: "The Supreme Authority of the Party shall be and hereby is vested in the National Party Convention."

made and any such order may be made either unconditionally or upon such terms and conditions as the court or judge thinks just"

⁴ [1975] AC 396.

⁵ National Commercial Bank of Jamaica v Olint Corp Ltd [2009] AC 396, 408

⁶ NWL Ltd v Woods [1979] 1 W.L.R. 1294 at 1306.

⁷ National Commercial Bank of Jamaica v Olint Corp Ltd [2009] AC 396, 408.

b. Article 8 provides: "The Party shall comprise of and function within the following structure:

1. National Party Convention
2. Central Executive
3. Party Constituency Branches
4. Party Caucus

[57] Article 8.19 provides for the Duties and Responsibilities of the Central Executive.

"8.19 Subject to the Convention and the provisions of this Constitution, the Central Executive shall have the following duties and responsibilities:

8.19.1 To regulate its own proceedings

8.19.2. To make regulations for the effective operation of the Central Executive, Constituency Branches, and Affiliate Groups with the exception of AT&LU. Such regulations shall be subject to the ratification of the National Convention.

8.19.3 To prescribe the forms to be used of any purpose related to the business of the Party.

8.19.4 To administer the affairs of the Party.

8.18.5 To administer and control the finances of the Party.

8.19.6. To take all appropriate steps to enforce all regulations of the Party; and shall (subject to the authority of the Convention) have powers to decide upon all matters which this Constitution or any regulations are silent, and to resolve any ambiguous or doubtful provisions thereof until the holding of the next Special or National Convention.

8.19.7 To establish Committees including a Fundraising Standing Committee and Sub-Committees from time to time as it may think fit for the advancement of the aims and objectives of the Party, and to receive reports from these Committees.

8.19.8. To do such other things as are reasonably necessary for effective administration of the affairs of the Party subject to the consideration and ratification by the National or Special Convention.

8.19.9. To meet at least once per month, the agenda for such meeting to be determined by the Chairman and the General Secretary.

[58] Articles 8.34 to 8.38 address the Constituency Branch. These provisions provide that:

“8.34 There shall be a Constituency Branch in each of the Constituencies for the purpose of organising and managing the affairs of the Party at the constituency level and it shall be responsible to elect its own officers, and to elect the candidate for national elections, and to elect delegates to the National or Special Convention.

8.35 The Parliamentary Representative or Interim Candidate shall serve as an ex-officio member of the Constituency Branch Executive.

8.36 The Branch shall elect an Executive body comprising of the following:

1. Chairman
2. Vice Chairman
3. Secretary
4. Treasurer
5. Women Development Officer
6. Youth Development Officer
7. A Management Committee of no less than five and no more than twenty members.

8.37. Each Constituency Branch shall be subject to the supervision of the Central Executive which shall have authority to make regulations governing the conduct and responsibilities of the Constituency Branch.

8.38 Each Parliamentary Representative or Interim Candidate, in conjunction with the Chairman of the Party Branch, shall be responsible to the Central Executive for the conduct and performance of the Branch.

[59] Article 12 addresses the matter of the selection of the constituency representative and makes provisions that:

“12.1 The Constituency Branch shall be responsible for the election of a candidate for general elections, whenever it become necessary.

12.2 The conduct of such elections is subject to the Regulations of this Constitution.”

[60] Article 20 provides that:

“20.1. The Central Executive shall have the authority to make Regulations for the effective administration of the Party.

20.2 These Regulations shall form part of this Constitution, shall take effect after ratification by the National Convention, and shall govern the following:

1. Constituency Branch
2. ALP Women’s Action Group
3. ALP Youth Group
4. General Business of the Party

20.3 ...

20.4 ...

20.5. The Regulations governing this Constitution are reflected in a separate document attached hereto.

The following are the Regulations made by the Executive in accordance with the provisions of Article 20.5 of the Constitution of the Party.

[61] Regulations accompany the Revised Constitution. Regulation 14 provides that:

“The Constituency Branch shall be responsible for the election of its candidate for Parliamentary Elections.

The Constituency Branch shall be responsible for organizing all activities concerned with the election of candidates for Parliamentary Elections.

Where there are two or more candidates, the Constituency Branch shall arrange a Primary. In respect of this regulation, the following rules shall be followed:

The Central Executive shall determine the suitability of all prospective candidates and shall approve the candidate or list of candidates to contest in the primary election at the Constituency level.

Each candidate shall be nominated and seconded by registered voters who are members of the Party; a candidate may reside and be registered to vote in a constituency other than the constituency in which he/she offers himself as a candidate.

At least twenty-eight days' notice shall be given by the Supervisor of Party Elections to all candidates concerning the date, time and place of, as well as other terms and conditions governing, the Primary. The Primary shall be concluded at least twelve months prior to the date of the Parliamentary Elections.

Only registered Party members of the respective constituency, in good financial standing for at least twelve consecutive weeks prior, shall be permitted to take part in the Primary. Each party member shall exercise one vote. Each Party Branch office shall keep a register of Party members and such a register shall be prepared by the Party Branch Secretary, checked by the General Secretary, and such a register shall be available at the Secretariat for inspection by all Party members. The Register of Party members shall be closed at least three days prior to the date of a Primary.

Verification of any query about the Register shall be undertaken by the Supervisor of Party Elections. Appeals in respect of the Register shall be through the General Secretary to the Executive and, finally, the National Convention.

[62] Regulation 21 provides that "All amendments to the Constitution shall be by resolution considered first by the Executive prior to the consideration and approval of the National Convention."

The Finding of the Court

[63] **Whether there is a serious issue to be tried.** The applicant is required to establish, based upon the evidence presented, that there is a serious issue to be tried. The need for the case to be at least an arguable one was established by the **American Cyanamid** case. There obviously can be no value in a court considering the grant of an interim relief in circumstances where an arguable case does not exist. In this regard the court considers the applicant's case, the evidence offered by the applicant and the respondents and the strength of the cases. It is accepted that at a hearing for interim relief a mini trial is not conducted. This court makes the following observations.

[64] Article 8.34 of the Revised Constitution provides that the Constituency Branch is to operate for the purpose of organising and managing the affairs of the Party at the constituency level. It is also the responsibility of the Branch to elect its own officers, its candidate for national elections, and delegates to the National or Special Conventions.

[65] Regulation 14 clearly outlines that the Branch is responsible for the election of its candidate for Parliamentary Elections and that it is required to organise all activities relating to the election of the candidate for the Parliamentary elections. Where there are two or more candidates the Branch is required to arrange a Primary. There are specific regulations with respect to the hosting of a Primary for the selection of the candidate.

[66] When a Primary is required, the responsibility falls to the Central Executive to determine the suitability of the prospective candidates and to approve the candidate or candidates who will contest in the Primary election at the Constituency level.

[67] It is clear that the framers of the Revised Constitution intended that particular activities were to be the responsibilities of the Constituency Branch. It appears that the Branches were to be intimately involved with the activities relating to the election of candidates for the Parliamentary elections although it is the Central Executive that determines the suitability of the prospective candidates when more than one person expresses an interest to represent the constituency in the Parliamentary elections.

[68] It is to be noted that although the Branches are given specific responsibilities, this does not mean that the Branches operated in a vacuum. The Branches operate within a wider political structure which includes the National Party Convention, the Central Executive and Party Caucus. The National Party Convention is the supreme authority; the Central Executive has oversight over the Constituency Branches. The Central Executive, subject to the Convention and the provisions of the Constitution, has the duty of regulating its own proceedings, making regulations for the effective operation of, the regulations, and, among other organs, the Constituency Branches.

[69] The evidence in this case is that the applicant was not aware of any other person expressing an interest to represent the ABLP for the constituency of St. Peter. Mr. Hurst refers to the Branch having determined that two candidates offered themselves for the upcoming national elections but Mr. Hurst neither provided information on how the knowledge was obtained nor provided a minute or resolution of a meeting of the Branch indicating a recognition by the Branch Executive that there was more than one prospective candidate. Mr. Rawdon Turner did not provide evidence at the time of the hearing of the claimant's application. In support of defendants' subsequent application Mr. Turner exhibited a correspondence of interest dated 28th October 2021. The evidence of Mr. Turner on this matter is disregarded as it was evidence which was available at the time of the hearing of the application but not offered to the court. Even if the court were to consider the correspondence it is noted that the correspondence was dated after the meeting of the executive of the Constituency Branch.

[70] It is clear from the provisions of the Revised Constitution that an expression of interest regarding representing the constituency in a Parliamentary election is required to be articulated to the Constituency Branch so that that Branch can determine whether it is necessary for a Primary to be held. The applicant, as a member of the Executive of the Branch, maintains that he was unaware of there being such an expression of interest at the relevant time.

[71] This court notes that there is only one meeting of the Constituency Branch Executive to which reference was made by the applicant and the respondents. This is the meeting of 27th October 2021. The applicant contends that he was not given notice that this meeting was to be convened and received the information while the meeting was in progress. When the applicant arrived at the location the meeting had concluded. It was at this meeting that a new executive for the Constituency Branch was elected.

[72] Mr. Hurst indicated in his evidence that the Branch of the Constituency of St. Peter met regularly and that there was no requirement for invitations to be issued and that there was no practice of invitations being issued. However, Mr. Hurst does not provide evidence of the dates and times of the previous meetings which would have demonstrated that there is a pattern of meetings so that a court could conclude that the applicant could reasonably have known that the meeting of 27th October 2021 would have been convened.

[73] Even if Mr. Hurst's account were to be accepted it must be that a meeting for the election of an executive and other members of the Branch would be an important meeting with a different agenda. One would expect that a meeting which would treat with the election of persons to office of the executive of the Branch would be sufficiently publicised to not only invite persons to offer themselves for service but also to provide opportunities for incumbent members of the executive to prepare themselves to defend his/her record from any possible challenge on the Executive.

[74] Mr. Hurst makes the point that the applicant, as an ex-officio member of the St. Peter's Branch, has no voting rights. However, whether or not an ex-officio member has voting rights is not relevant to their right to attend a meeting of the executive of the Branch. In any event, Mr. Hurst has not indicated the basis upon which he has arrived at the conclusion that the rights of an ex officio member of the Executive Branch are fettered.

[75] The respondents refer to Regulation 8.19.8 which permits the Central Executive to "*do such things as are reasonably necessary for effective administration of the affairs of the Party subject to the consideration and ratification by the National or Special Convention*". Mr.

Hurst contends that this regulation provides the flexibility and that it became “*the acceptable practice within the Central Executive of the ABLP, primarily to avoid the harmful and corrupt outcomes when the ABLP held primaries to select candidates. Polling throughout constituencies proved more effective in determining victorious election outcomes than primaries and became the norm*”. Mr. Hurst indicated that the “*flexibility allowed in Section 8.19.8 was intended to cure that potentially corrupting and other systemic manipulation that would unfairly twist the outcome. Polling of Constituencies turned out to be a better system, history has revealed. Polling was utilized before the 2014 and 2018 general elections, and the results proved to be scientifically correct*”.

[76] On the matter of Article 8.19 this court notes that the duties indicated in Article 8.19 of the Revised Constitution are subject to the Convention and the provisions of the Revised Constitution. The Revised Constitution makes provisions for the enactment and operation of Regulations. It would be an error on the part of the Executive to use its general powers under 8.19.8 to address a matter for which there are specific provisions in the Revised Constitution. The specific provisions being Article 8.34, Articles 12.1, 12.2 and Regulation 14.

[77] Mr. Hurst identifies that the use of the primary system, has in the past, resulted in undesirable consequences such as registered voters from the constituency who never participated in the selection of candidates being encouraged to register as ABLP members for the first time and encouraged to vote for a weak candidate in the ABLP primary. The identification of shortcomings in the primary process does not, on its own, empower the Central Executive to utilize a procedure different from what is set out in the Revised Constitution. In any event there is no evidence before the court that the process of ‘polling’ was conducted, and Mr. Rawdon Turner was the successful candidate as a result of this process.

[78] As a consequence of the foregoing this court has not only formed the view that there is an arguable case but has noted that the preponderance of the evidence, at least at this time, in

favour of the applicant on the specific question of the infraction of rights accruing to the applicant and the possible breach of obligations owed by the respondents.

[79] **Whether this matter is Justiciable.** Counsel for the respondents contended that, at the core of the application, the Court is being asked to address the suitability of the individual to represent a political party and that this request is non-justiciable. Respectfully, this court does not agree with this submission. The court is not being asked to address its mind to the suitability of individuals to represent a political party. The court is being asked by the applicant/claimant to preserve or to protect what the applicant/claimant perceives to be a likely infringement of his rights as afforded to him under the Revised Constitution. This court notes that there is no dispute that the parties to these proceedings are members of the ABLP and subscribe to the Revised Constitution. In this regard the court is only concerned with “contractual” relationship between the parties and the evidence as it stands at present regarding the propriety of process of selection.

The Balance of Justice and the Adequacy of Damages.

[80] The often-quoted *American Cyanamid* case reminds that injunctive remedy is both temporary and discretionary. After considering whether there is a serious issue to be tried, the court is concerned with the balance of convenience and the adequacy of damages. This analysis is born out of a recognition that circumstances within which applications for injunctive relief are considered are usually complex and there may be circumstances where it is difficult to determine whether damages or the cross-undertaking will be adequate⁸, thus the court addresses the wider question of where the balance of convenience falls.

[81] Certain authorities subsequent to the *American Cyanamid* case have suggested that the phrase “balance of convenience” does not adequately address the considerations of the court. The indication being that the concept of the balance of justice or the “*balance of the risk of doing an injustice*”⁹ better encapsulates the considerations of the court at this juncture. In *East Coast and Workover Services Ltd. v. Petroleum Co of Trinidad and Tobago*

⁸National Commercial Bank Jamaica Ltd v Olint Corp Ltd [2009] UKPC 16.

⁹ Cayne v Global Natural Resources Plc [1984] 1 All E.R. 225 at [237h] dicta May LJ.

Ltd.¹⁰, a case of the Court of Appeal in Trinidad and Tobago, de la Bastide CJ (as he then was) noted that:

“The phrase ‘balance of convenience’ was used in the past to describe this next phase of the inquiry, but it does not adequately encapsulate the factors which govern the exercise of the discretion to grant or refuse an interlocutory injunction. A more modern approach, which was

adopted in *Jetpak Services Ltd. v. BWIA International Airways Ltd.* (1998) 55 W.I.R. 362, is to pose the question: where does the greater risk of injustice lie, in granting or in refusing the injunction? If I may venture respectfully to suggest it, one criticism of this phrasing is that

it does not make it clear that one has to assess and compare not only the quantum of the risk that injustice may occur, but also the extent of the injustice that may occur. The risk of injustice may be greater if an injunction is granted when the case for the plaintiff is not a strong one,

but the consequences of refusing the injunction may be far more disastrous for the plaintiff than the consequences to the defendant of wrongly granting it.”

[82] In the case of ***National Commercial Bank Jamaica Ltd v Olint Corp Ltd***¹¹ the Privy Council noted that:

“17. In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in the *American Cyanamid* case [1975] AC 396, 408:

¹⁰ (2001) 58 W.I.R. 351 at 358.

¹¹ [2009] UKPC 16.

“It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.”

18. Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court’s opinion of the relative strength of the parties’ cases.”

Adequacy of Damages

[83] It is noted that the parties in these proceedings are politicians or part of a political organization. The matter at stake for both the applicant and the respondents relates to who will represent the ABLP in the specific constituency for the elections which are constitutionally due within eleven months. In many respects it is fair to say that damages would not be an adequate remedy for either party.

[84] The applicant has deposed on the matter of the adequacy of damages and noted that the publications by the ABLP are injurious to the applicant in the applicant’s campaign to represent the ABLP for the constituency of St. Peter. The applicant further states that the position being articulated by the respondents creates confusion in the minds of the voters regarding the representation for the constituency. This confusion is generally adversely impacting his political prospects. The applicant further contends that the challenge of representation is more acute since Rawdon Turner is being endorsed by the Political Leader and by the Central Executive.

[85] The respondents have not spoken to the matter of the adequacy of damages if it were to be determined that the injunction ought not to have been granted. However, this court takes judicial notice of the fact that respondents are influential members of the ABLP and that the

ABLP is in the process of readying itself for general elections. The granting of an injunction is very likely to affect the ABLP's elections preparations.

Balance of Convenience or Least Irremediable prejudice.

[86] The counsel for the respondents has raised the following matters which this court understands provides an indication of the irremediable prejudice which will occur if injunctive relief is granted or remains in place:

- a. The ABLP will be restrained in their freedom of expression as guaranteed by the Constitution of Antigua and Barbuda.
- b. The injunctive order would affect the rights of a third party to offer himself for elections and thereby subvert and undermine the Election Rules.
- c. The grant of injunctive relief would have the effect of denying a third party, Mr. Turner, a right in public law.

[87] On the matters raised by the counsel for the respondents this court makes the observations indicated in this and the following paragraphs. The state of Antigua and Barbuda is a democratic State. The ABLP has identified itself as a political organization offering itself to remain in governance in the democratic State. The tenets of the ABLP are publicly stated to the electorate in the Revised Constitution of the ABLP. These tenets not only treat with the philosophy of the ABLP but also with the process of selection of the candidates for elections. There is no reason that the members of the ABLP ought not to be held to the commitment which ABLP has made in its Revised Constitution.

[88] Counsel for the respondents has raised the matter of the Elections Rules as found in the Representation of People (Amendment) Act 2002. Counsel made specific reference to Rules 9 and 20 which make provisions for the nomination of candidates and the allotment of symbols. Counsel further noted that it is *"wholly improper for there to be an injunction the effect of which is to deprive a non-party to these proceedings, Mr. Turner, from being nominated for an election as provided for by the Election Rules. The Applicant has no legal basis for asserting that Mr. Turner should not be a person who can be nominated in*

accordance with the Election Rules.” This court makes the point that the issue is not whether Rawdon Turner is a person who can be nominated in accordance with the Election Rules the issue is whether the respondents have acted contrary to the Revised Constitution of the ABLP in the selection of Mr. Turner to represent the ABLP. Mr. Turner can present himself as a candidate and/or the ABLP can present Mr. Turner to be its candidate for an election but if a candidate is being presented as a candidate on behalf of the ABLP the Revised Constitution indicates how that selection is to be effected.

[89] On the matter of assessing the likely prejudice, it is noted that while the effect of granting or refusing to grant injunctive relief would adversely affect the respective parties the consequences of granting relief to the applicant would be least irremediable since the respondents may have recourse within the organization. This is to be contrasted with the consequence to the applicant who appears to have little recourse, if any, within the organization if the injunctive relief sought is not granted.

[90] Counsel for the respondents referred the court to the dicta of Cavanagh J in the case of ***Rothery v Evans (sued on behalf of all other members of the Labour Party except the claimant)***¹² (Queen's Bench Division) where it was indicated that:

“179. The importance of adopting a cautious approach in a case such as this has been emphasised in the authorities. Courts should be careful before granting an injunction which might have the effect, directly or indirectly, of requiring a political party to adopt a candidate for public office in whom it does not have confidence. In **Choudry v Treisman**, Stanley Burnton J said, at paragraph 87,

“In my judgment, save possibly the most exceptional circumstances, the court should not compel a registered political party to permit candidates to stand for election in its name if the party has genuine and substantial concerns as to the regularity and honesty of the procedure for their selection. In the present case, the defendant has established that, at the very least, it has such concerns. While the

¹² [2021] EWHC 577 (QB).

claimants have established a triable issue, they have not established any exceptional circumstances that could justify the granting of a mandatory injunction.”

180. At paragraph 90, Stanley Burnton said that, the Court should not grant an injunction of (*sic.*) its effect would be to,

“place pressure on the Labour Party to authorise the claimants in whose selection it has no confidence, on grounds that are genuine and substantial, to stand as candidates in its name.”

181. I accept that the relief that is being sought by Ms Rothery does not go that far, but nonetheless this passage strikes a cautionary note.

182. Similarly, in **Nattrass**, a selection case involving a different political party and different rules, the judge, Judge Purle QC said, at paragraph 15,

‘Again, in the court should require exceptional circumstances before it interferes with the selection process of a political party.’

[91] It is accurate as stated in the case of **Rothery v Evans** that a court is careful before granting an injunction which might have the effect, directly or indirectly of requiring a political party to adopt a particular candidate for public office. This is because, among other things, the matters for consideration for public office by a political party are as wide as they are varied. The considerations may range, just to name a few, from competence to ethnicity to familiar relationships, from the appearance of impropriety of a prospective candidate to considerations of loyalty. It is for these and other reasons that the selection of candidates to represent a political organization is best left in the hands of that political organization.

[92] However, it is to be noted that the case of **Rothery v Evans** differs from the case at bar in very significant ways. The first is that the application in the **Rothery** case was brought by a person who was short-listed and then informed that she would not be short-listed, secondly, the applicant to the injunction in those proceedings did not identify any provision in the constituent document of that political organisation which was breached. This is not the circumstance in these proceedings.

[93] Thirdly, there were wide provisions set out in the constituent document in the matter of ***Rothery v Evans*** regarding the selection process for candidates while the Revised Constitution of the ABLP sets out the specific process for the selection of candidates.

[94] It is also important to note that in proceedings before this court, the court is not concerned with the suitability of a candidate.

[95] Prior to concluding, this court notes that in its Revised Constitution the ABLP identifies as one of its aims and objectives is to operate in the context of the 'due process of law'¹³. Due process of law and the rule of law are concepts that co-exist in any democratic society. Having stated the commitment to 'due process of law' the balance of justice favours an order from the court which supports the ABLP maintaining its commitment.

[96] As a consequence of the foregoing this court orders that upon the claimant/applicant giving an undertaking to abide by any order in damages that the court shall deem to have been sustained to the defendants/respondents as a consequence of this order if it is later determined that the injunction ought not to have been granted ***it is ordered*** that the defendants/respondents are hereby restrained by themselves, their servants and/or agents or otherwise from holding out directly or indirectly any person to represent the constituency of St. Peter on behalf of the Antigua and Barbuda Labour Party who is not selected in accordance with the provisions of the Revised Constitution of the Antigua and Barbuda Labour Party.

[97] An interim declaration is granted that Rawdon Turner was not selected in accordance with the provisions of the Revised Constitution of Antigua and Barbuda Labour Party. The interim injunction to stand until the hearing and determination of this action or until there are fresh actions/proceedings initiated and conducted in accordance with the Revised Constitution of the Antigua and Barbuda Labour Party.

[98] It is also ordered that:

¹³ See Article 3.12 "To seek justice, equal opportunity and the due process of law".

- a. The costs of the claimant's application are costs in the cause.
- b. The Defendants' application filed on 13th April 2022 is dismissed with costs quantified in the sum of \$3000.00 payable by the defendants to the claimant. Such costs to be paid within twenty-one days from today's date.

Marissa Robertson
High Court Judge

By the Court

Registrar