

Injunction – Application for the grant of an interlocutory injunction – Application for the grant of an interlocutory injunction made against the background of a constitutional claim challenging the legality of an inmate being held in solitary confinement – Whether there is a serious issue to be tried – Whether the application is frivolous and vexatious or amounts to an abuse of the process of the court

Natural justice – Due process – Inmate allegedly found in possession of a prohibited article – Inmate employed to his cell while investigations are pending – Whether inmate afforded the right to due process

Civil procedure – Amendment to statement of case – Amendment to statement of case prior to the first hearing of the fixed date claim form – Whether the amendment is properly made – Whether the permission of the court is required for the amendment to be made – Whether the amendment amounts to an abuse of the process of the court

Misjoinder – Misjoinder of parties – Whether the proper parties have been named to the application – The Judicature (Supreme Court) Act, section 49(h), The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, sections 16 and 19, The Corrections (Amendment) Act, 2021, sections 3, 5, 6, 7, 9, 35, 36 and 38A, The Correctional Institution (Adult Correctional Centre) Rules, 1991, rules 129 and 157, Civil Procedure Rules, 2002, as amended, rules 17.1(1)(a), 17.4, 19.2(1) and 19.2(2)

A. NEMBHARD J

INTRODUCTION

[1] This matter raises important considerations in relation to the Claimant's Constitutional right to due process. The Claimant, Mr Adidja Palmer, asserts that his Constitutional right to due process was breached by certain actions on the part of the Department of Correctional Services, which affected him directly. He

specifically asserts that he was subjected to solitary confinement, without a hearing, in contravention of section 16 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 (“the Charter”), and section 36 of the Correctional Services Act.

The Claim

[2] These assertions are encapsulated in the Amended Fixed Date Claim Form, which was filed on 22 June 2023, by virtue of which Mr Palmer seeks the following Orders: -

- i. A Declaration that the Claimant’s right to due process was breached by the Department of Correctional Services and the Superintendent of the Tower Street Adult Correctional Centre, in that they subjected him to solitary confinement, without a hearing, and contrary to section 16 of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 and section 36 of the Correctional Services Act.
- ii. An Order prohibiting the Department of Correctional Services and the Superintendent of the Tower Street Adult Correctional Centre and or their agent from enforcing the Order for solitary confinement, which was placed on the Claimant on 23 March 2023, due to those conditions being a breach of his Constitutional rights, of his status as being an inmate who has appealed against his conviction and sentence, and of section 45.2 of the Mandela Rules.
- iii. A Declaration that the Claimant’s rights, as a second division inmate, was breached by the Department of Correctional Services, without reason and contrary to its rules.
- iv. Damages for breach of the Claimant’s Constitutional rights.

- v. A Declaration that the Department of Correctional Services, as a public authority, has an obligation by virtue of sections 13(2) and 13(3)(h) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, to exercise its functions to treat citizens of Jamaica equitably and humanely.
- vi. Such further Order, Declaration, Writ, Direction, and other relief the Court considers appropriate for enforcing or securing the enforcement of any of the provisions of the Constitution to the protection of which the Claimant, as the person concerned, is entitled.
- vii. Cost of this Claim to the Claimant to be agreed or taxed.

[3] The Claim is brought on the bases that: -

- i. The fundamental rights guaranteed and acknowledged by the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, are rights which existed from time immemorial. The acts and omissions of the Defendants and other servants or agents of the Government of Jamaica contravened the Common Law rights afforded to the Claimant.
- ii. These rights are fundamental rights which need to be respected by the Defendants and all State organs who are enjoined to take no actions which abrogate or infringe these basic rights.
- iii. These rights will be vindicated by granting the relief sought against the named Defendants.
- iv. As a result of these Constitutional breaches, the Claimant has suffered loss, injury, and damage.

- v. It is within the power of the Court to grant the relief sought.
- vi. There are no adequate means of redress for the alleged contravention available to the Claimant under any law.
- vii. It is equitable for the Court to grant the Orders as prayed.
- viii. As a result of the unlawful conduct, actions, and inactions of the servants or agents of the State, the Claimant has suffered breaches [sic] and contravention of his fundamental human, statutory and constitutional rights and has sustained injury, loss, and damage.
- ix. The Claimant requests that this Court enhances the respect for his inherent dignity as a person and a citizen of a free and democratic society as well as his Constitutional rights by granting the relief sought herein.

BACKGROUND

The factual substratum

- [4]** On 13 March 2014, Mr Palmer was convicted of the offence of Murder. He was sentenced to imprisonment for life at hard labour, to serve a minimum of thirty-five (35) years before becoming eligible for parole. He was incarcerated at the Tower Street Adult Correctional Facility and has been so incarcerated since 2 February 2021 to present, pending his appeal to His Majesty, the King of England.
- [5]** The Tower Street Adult Correctional Centre is a maximum-security correctional institution where persons who are found guilty of particularly heinous crimes are housed for the duration of their sentences.

The position advanced by the Department of Correctional Services

- [6] On 19 May 2023, at approximately 6:45 a.m., following a search of his person, Mr Palmer was found with an electronic communication device in the form of a mobile cellular phone, which is a prohibited article.² ³ This device was confiscated from Mr Palmer.
- [7] Similarly, on 21 May 2023, at approximately 12:00 noon, following a search of his person, Mr Palmer was found with another electronic communication device, also in the form of a mobile cellular phone.⁴ This device was also confiscated.⁵
- [8] In light of these infractions, the high security risk involved, and the need for the maintenance of good order and discipline within the penal institution, the Superintendent of the Tower Street Adult Correctional Centre, Mr Leslie Campbell, avers that he decided to employ Mr Palmer to his cell. This was done with effect from 22 May 2023.
- [9] Additionally, Mr Campbell avers that the Department of Correctional Services does not engage in the practice of placing inmates in solitary confinement. Prior to doing so, Mr Campbell asserts, the principles of natural justice would be followed and a medical assessment would be carried out on the inmate. Any inmate who is placed in solitary confinement is fed the bare minimum diet of bread and water, through a hole, with further mandatory medical assessments done on the said inmate whilst he is in solitary confinement.
- [10] Conversely, an inmate who is employed to his cell has all the privileges of diet and access to the commissary. Such an inmate is allowed out of his cell and is

² See – Paragraph 6 of the Second Affidavit of Leslie Campbell in support of Application for Court Orders, which was filed on 12 July 2023.

³ See – Section 3(b) of The Corrections (Amendment) Act which includes “any computer or electronic communication device” in the definition of the term “prohibited article”.

⁴ See – Paragraph 7 of the Second Affidavit of Leslie Campbell in support of Application for Court Orders, which was filed on 12 July 2023.

⁵ See – Paragraphs 5 and 6 of the Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed on 12 June 2023.

allowed access to visitors. An inmate in solitary confinement does not have those privileges.⁶

[11] Mr Campbell further avers that Mr Palmer was employed to his cell, which contains bedding and a standing fan,⁷ for twenty-three (23) hours per day, from 22 May 2023 until 30 May 2023, when a medical Order was issued requiring him [Mr Palmer] to be allowed out of his cell for one (1) hour, every two (2) hours. Mr Campbell maintains that Mr Palmer was always provided with medical care, in accordance with his requests.⁸

[12] On 31 May 2023, all restrictions were lifted and Mr Palmer returned to enjoying privileges as other inmates.⁹ Mr Campbell avers that the investigation surrounding the possession of the prohibited articles is ongoing and that the appropriate action will be taken once that investigation is concluded.¹⁰

The position advanced by Mr Palmer

[13] For his part, Mr Palmer avers that he suffers from Graves' Disease with associated Atrial Fibrillation and Thyrotoxic Cardiomyopathy. He maintains that he has a history of Dyslipidaemia,¹¹ as a direct result of which he suffers from an

⁶ See – Paragraph 9 of the Second Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed on 12 July 2023.

⁷ See – Paragraph 11 of the Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed on 12 June 2023. Mr Campbell further avers that during the period within which Mr Palmer was employed to his cell, he [Mr Palmer] had access to the shower area and a lavatory. See also paragraph 16 of the Second Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed on 12 July 2023. Mr Campbell avers that there is a working white standing fan in the cell which houses Mr Palmer and further that the cell is properly ventilated, with four (4) vents which are located on the inside of the cell to provide proper ventilation.

⁸ See – Paragraph 17 of the Second Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed on 12 July 2023.

⁹ See – Paragraphs 8, 9 and 10 of the Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed on 12 June 2023.

¹⁰ See – Paragraph 15 of the Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed on 12 June 2023.

¹¹ See – Exhibit “KP-1”, a copy of the Medical Report for Adidja Palmer, dated 29 March 2023 and prepared by Dr Karen Phillips, which is exhibited to the Affidavit of Dr Karen Phillips in Support of Fixed Date Claim Form, which was filed on 19 June 2023.

irregular heartbeat, increased nervousness, irritability, excessive sweating, frequent bowel movements and a continuously growing thyroid gland.

- [14] Mr Palmer contends that he was placed in solitary confinement without there being a hearing to determine his guilt. Mr Palmer also contends that he was not informed of the reason that he was placed in solitary confinement. He maintains that the cell in which he was incarcerated, has a three (3) feet by one (1) foot opening for ventilation and that he has been sleeping on a small piece of sponge which is no more than three (3) inches thick, as his right to provide his own bedding has been denied.¹²
- [15] Mr Palmer further contends that his medical condition has been exacerbated^{13 14} by the poorly ventilated cell in which he is kept for twenty-two and a half (22 ½) hours each day, which he contends is punishment, in the form of solitary confinement, for his having been found in possession of two mobile cellular phones.¹⁵

THE INTERLOCUTORY APPLICATIONS

The application for injunctive relief

- [16] It is against this background that the application for injunctive relief is made. It is contained in the Amended Notice of Application for an Interim Injunction, which was filed on 22 June 2023. By virtue of that application, the Claimant/Applicant, Mr Adidja Palmer, seeks the following Orders: -

¹² See – Paragraph 12 of the Affidavit of Adidja Palmer in Support of Injunction, which was filed on 5 June 2023.

¹³ See – Paragraph 10 of the Affidavit of Adidja Palmer in Support of Injunction, which was filed on 5 June 2023.

¹⁴ See – Exhibit “KP-2”, copy of the Medical Report Addendum for Adidja Palmer, dated 12 June 2023 and prepared by Dr Karen Phillips, which is exhibited to the Affidavit of Dr Karen Phillips in Support of Fixed Date Claim Form, which was filed on 19 June 2023.

¹⁵ See – Paragraphs 7, 8 and 9 of the Affidavit of Adidja Palmer in Support of Injunction, which was filed on 5 June 2023. Mr Palmer avers that before the punishment was imposed, he had the opportunity to be outside of his cell and to enjoy fresh air for three (3) hours in the morning and one and a half (1 ½) hours in the afternoon. Since the imposition of the Order, he further avers, he is only allowed a total of one and a half (1 ½) hours outside of his cell.

- i. An interim injunction barring the Department of Correctional Services, the Superintendent of the Tower Street Adult Correctional Centre and or their agent or servant from enforcing or keeping in place the Order for solitary confinement which was placed on the Claimant on 23 May 2023.
- ii. That a date be set for the Claimant/Applicant to be given a hearing for whatsoever allegation in respect of which he is suspected of having committed an offence.
- iii. Any other Order this Honourable Court sees fit.

[17] The injunctive relief is sought on the following bases: -

- i. That the Department of Correctional Services did, on 23 May 2023, make an order that the Claimant/Applicant be placed on Twenty-Three (23) hours solitary confinement.
- ii. That the Claimant/Applicant was not given a hearing to speak to the charges laid against him, before being placed on solitary confinement.
- iii. That section 16 of the Constitution entitles each Jamaican a right to due process of the Law.
- iv. That section 36 of the Correctional Services Act stipulates that before an inmate can be subjected to solitary confinement, he must be given an opportunity to have a hearing on the charges.
- v. Part 17, Civil Procedure Rules, 2002, as amended.
- vi. That it is in keeping with the interest of justice.

The 1st and 3rd Defendants' counter-notice of application for Court Orders

[18] Additionally, on 12 June 2023, the Minister of National Security and the Attorney General, the 1st and 3rd Defendants, respectively, filed a Counter-Notice of Application for Court Orders, by way of which they seek the following Orders: -

- i. That the time for the hearing of this application is abridged.
- ii. That the application for interim injunction is struck out.
- iii. Costs of this application to the Applicants.
- iv. Such further or other relief as may be just in the circumstances.

[19] The Counter-Notice of Application for Court Orders is made on the following bases: -

- i. That pursuant to rule 11.12(4) of the Civil Procedure Rules, 2002, as amended ("the CPR"), the Court has a discretion to exercise any power which it might exercise at a case management conference.
- ii. That pursuant to rule 26.1(2)(c) of the CPR, the Court is empowered to extend time for compliance with any rule.
- iii. That rule 26.3(1)(c) of the CPR empowers the Court to strike out a statement of case if it appears to the Court that the statement of case or the part to be struck out discloses no reasonable grounds for bringing the Claim.
- iv. That the Respondent's application for interim injunction is frivolous or vexatious or otherwise an abuse of the process of the Court.
- v. That the Respondent has misjoined the Minister of National Security and the Attorney General as parties.

- vi. That pursuant to section 2 of the Corrections Act, an “electronic communication device” is a prohibited article.
- vii. That section 34(1) of the Corrections Act provides that every inmate is subject to the provisions of this Act and of the Correctional Institution (Adult Correctional Centre) Rules, 1991 and is subject to the discipline of the Adult Correctional Centre, whether he is within its limits.
- viii. That rule 129 of the Correctional Institution (Adult Correctional Centre) Rules, 1991 provides that no inmate shall have access to or use or possession of any prohibited article.
- ix. That rule 157 of the Correctional Institution (Adult Correctional Centre) Rules, 1991 provides that the Superintendent may, where he considers it desirable for the maintenance of good order or discipline or in the interests of an inmate, direct that such inmate shall, for such time as he thinks fit, be employed in his cell and not in association with other inmates.
- x. That rule 1.1(1) of the CPR establishes the Court’s overriding objective to deal with cases justly.

THE ISSUES

[20] The following issues are determinative of the application for injunctive relief: -

- i. Whether there is a serious issue to be tried.
- ii. Whether the Minister of National Security and the Attorney General of Jamaica are proper parties to the proceedings.

THE LAW

The relevant provisions of The Corrections (Amendment) Act, 2021

- [21] A mobile cellular device is a prohibited article in Jamaican correctional institutions.¹⁶ ¹⁷An inmate, with unauthorized access to, or use, or possession of a mobile cellular device commits a major correctional centre offence and can be found guilty on an enquiry before the Commissioner.¹⁸ ¹⁹
- [22] Section 36 of the Corrections (Amendment) Act, 2021 stipulates that an inmate shall not be punished pursuant to section 35 unless he has had an opportunity of hearing the charge and evidence against him and of making his defence.
- [23] Additionally, section 38A of the Corrections (Amendment) Act, 2021 reads as follows: - ²⁰

“38A. A prohibited article found secreted by or on an inmate, or within a correctional institution shall be confiscated by the Superintendent and dealt with in accordance with the Correctional Institution Rules.”

The Correctional Institution (Adult Correctional Centre) Rules, 1991

- [24] Rule 157(1) and (2) of The Correctional Institution (Adult Correctional Centre) Rules, 1991 provides as follows: -
- “157.- (1) The Superintendent may, where he considers it desirable for the maintenance of good order or discipline or in the interests of an inmate, direct that such inmate shall, for such time as he thinks fit, be employed in his cell and not in association with other inmates.*

¹⁶ See – Section 3 of The Corrections (Amendment) Act, 2021. A mobile cellular device would be considered as a computer or electronic communication device, which, in accordance with the definition of “electronic communication device”, means a device capable of creating, generating, sending, receiving, storing, displaying, or otherwise processing data.

¹⁷ See – Rule 129 of The Correctional Institution (Adult Correctional Centre) Rules, 1991

¹⁸ See – Sections 5 and 6 of The Corrections (Amendment) Act, 2021

¹⁹ See – Section 9 of The Corrections (Amendment) Act, 2021

²⁰ See – section 7 of The Corrections (Amendment) Act, 2021

(2) Any direction made in accordance with the provisions of paragraph (1) shall be revoked if the medical officer so advises.”

The court’s power to grant an interim injunction

[25] Section 49(h) of the Judicature (Supreme Court) Act governs the granting of an injunction. The section reads as follows: -

“49(h) A mandamus or an injunction may be granted or a receiver appointed, by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just, and if an injunction is asked for either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.”

[26] Rules 17.1(1)(a) and 17.4 of the Civil Procedure Rules, 2002, as amended (“the CPR”), also empower the court to grant interim injunctive relief. These rules, in so far as they are relevant, provide as follows: -

“17.1

(1) The court may grant interim remedies including –

(a) an interim injunction;

(b) ...

17.4

(4) The court may grant an interim order for a period of not more than 28 days (Unless any of these Rules permit a longer period) –.”

The purpose of the grant of an interim injunction

- [27] The purpose of an interlocutory injunction is to preserve the status quo although it is, of course, impossible to stop the world, pending trial. The court may order a defendant to do something or not to do something but such restrictions on the defendant's freedom will have consequences, for him as well as for others, which a court must take into consideration.
- [28] The grant of such an injunction serves the additional purpose of improving the court's ability to do justice after a determination of the merits at trial. At the interlocutory stage, the court is required to assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in **American Cyanamid Co v Ethicon Ltd**,²¹ that means that, if damages will be an adequate remedy for the claimant, then there are no grounds for interference with the defendant's freedom of action, by the grant of an injunction.
- [29] Likewise, if there is a serious issue to be tried and the claimant could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy, if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.

The threshold test for the grant of an interim injunction

- [30] In **American Cyanamid Co v Ethicon Ltd**,²² the court developed a set of guidelines to be followed in seeking to determine whether an applicant's case warrants the granting of an interlocutory injunction. The main guidelines are: -
- (i) Whether there is a serious question to be tried (whether the claim has a reasonable prospect of succeeding).

²¹ [1975] AC 396

²² *supra*

- (ii) What would be the balance of convenience of each party should the order be granted, in other words, where does that balance lie?
- (iii) Whether there are any special factors to be considered; and what Lord Diplock referred to as the governing principle.
- (iv) Whether an award of damages would be an adequate remedy.

[31] The basis for these guidelines was explained by Lord Diplock as follows: -

*“...the governing principle is that the court should first consider whether, if the plaintiff were to succeed at trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant’s continuing to do what was sought to be enjoined between the time of the application and the time of the trial. **If damages in the measure recoverable would be an adequate remedy** and the defendant would be in a financial position to pay them, **no interim injunction should normally be granted**, however strong the plaintiff’s case appeared to be at that stage.”*

[Emphasis added]

Whether there is a serious issue to be tried

[32] The law set out by Slade J in **Re Lord Cable (deceased) Garratt and others v Walters and others**,²³ is, respectfully, accepted as being correct. At page 431, Slade J is quoted as follows: -

“...Nevertheless, in my judgment it is still necessary for any plaintiff who is seeking interlocutory relief to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at trial. If the facts adduced by him in

²³ [1976] 3 All ER 417

support of his motion do not by themselves suffice to satisfy the court as to this, he cannot in my judgment expect it to assist him by inventing hypotheses of fact on which he might have a real prospect of success..."

- [33] This reasoning was accepted by the Jamaican Court of Appeal in **Reliance Group of Companies Limited v Ken's Sales and Marketing and another; Christopher Graham v Ken's Sales and Marketing and another**,²⁴ which is consistent with that of Lord Diplock in **American Cyanamid Co v Ethicon Ltd.**²⁵ At page 408, Lord Diplock stated: -

"...So, unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief sought..."

- [34] The failure to establish that there is a real question to be tried means that the application for the grant of injunctive relief ought properly to be denied. Such a failure also obviates the need to consider the issue of whether damages would be an adequate remedy and the balance of convenience.²⁶

The grant of injunctive relief in constitutional cases

The threshold test

- [35] The Supreme Court of Canada, in the authority of **Manitoba (Attorney General) v Metropolitan Stores (MTS) Ltd.**,²⁷ identified a three-part test to be applied in respect of an application for either a stay, or an interlocutory injunction. That three-part test was enunciated as follows: -

"First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be

²⁴ [2011] JMCA Civ 12

²⁵ [1975] AC 396

²⁶ See – **Brian Morgan (Executor of the Estate of Rose I Barrett) v Kirk Holgate** [2022] JMCA Civ 5

²⁷ [1987] 1 SCR 110

determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.”

[36] This tripartite test was later adopted and applied in the authority of **RJR-MacDonald Inc v The Attorney General of Canada**.²⁸ There, the applicants sought to challenge the constitutionality of the Tobacco Products Control Act, on the basis that it violates section 2(b) of the Canadian Charter of Right and Freedoms. The applicants asserted that compliance with the new regulations would require the tobacco industry to redesign all its packaging and to purchase thousands of rotograve cylinders and embossing dies. It was further asserted that the changes would take close to a year to effect and would incur an approximate cost to the industry in the amount of approximately Thirty Million Canadian Dollars (CAD \$30,000,000.00); a substantial, irrecoverable expense.

[37] In considering the application, Justices Sopinka and Cory applied the three-part test to the facts of the case. In looking at the first prong of the test, whether there is a serious question to be tried, their Lordships stated that there are no specific requirements which must be met in order to satisfy the test.²⁹ Importantly, their Lordships stated that the threshold is a low one and that, once the judge is satisfied that the application is neither frivolous nor vexatious, he/she ought to proceed to consider the second and third parts of the test, even if of the opinion that the plaintiff is unlikely to succeed at trial.³⁰

²⁸ [1994] 1 S.C.R.

²⁹ At page 348, Sopinka and Cory JJ state: “*At the first stage, an applicant for interlocutory relief in a Charter case, must demonstrate a serious question to be tried. Whether the test has been satisfied should be determined by a motions judge on the basis of common sense and an extremely limited review of the case on the merits... A motions court should only go beyond a preliminary investigation of the merits when the result of the interlocutory motion will in effect amount to a final determination of the action, or when the constitutionality of a challenged statute can be determined as a pure question of law.*”

³⁰ Justices Sopinka and Cory stated that there are two exceptions that apply to the general rule that a judge should not engage in an extensive review of the merits. These exceptions are: 1) when the result of the interlocutory motion will in effect amount to a final determination of the action (either when the right which the applicant seeks to protect can only be exercised immediately or not at all, or when the result of the application will impose such hardship on one party as to remove any potential benefit from proceeding to trial.)

[38] The term “irreparable” was defined in the following way: -

“Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms, or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court’s decision...where one party will suffer permanent market loss or irrevocable damage to its business reputation... or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined...The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration.”

[39] Their Lordships relied on the dicta of Lord Diplock, in the authority of **American Cyanamid**,³¹ with respect to determining the factors which must be considered in assessing the “balance of inconvenience”.³² They acknowledged that these factors are numerous and that they will vary in each case.

[40] The pronouncements of Sopinka and Cory JJ, at page 344, are set out as follows: -

“Each party is entitled to make the court aware of the damage it might suffer prior to a decision on the merits. In addition, either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought. “Public interest” includes both the concerns of society generally and the particular interests of identifiable groups.

³¹ See – Page 408 of **American Cyanamid**, where Lord Diplock stated: “...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. These will vary from case to case.”

³² At page 348, Sopinka and Cory JJ stated: “The third branch of the test, requiring an assessment of the balance of inconvenience, will often determine the result in applications involving Charter rights. In addition to the damage each party alleges it will suffer, the interest of the public must be taken into account. The effect a decision on the application will have upon the public interest may be relied upon by either party. These public interest considerations will carry less weight in exemption cases than in suspension cases.

We would therefore reject an approach which excludes consideration of any harm not directly suffered by a party to the application.”

[41] Their Lordships formed the view that the concept of inconvenience should be widely construed in Charter cases. Sopinka and Cory JJ are quoted as follows: -

“In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to the responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.”

[42] Their Lordships further stated: -

“A court should not, as a general rule, attempt to ascertain whether actual harm would result from the restraint sought. To do so would in effect require judicial inquiry into whether the government is governing well, since it implies the possibility that the government action does not have the effect of promoting the public interest and that the restraint of the action would therefore not harm the public interest.”

[43] The applications for injunctive relief were subsequently dismissed.

[44] Similarly, in the more recent authority of **Spencer v The Attorney General of Canada**,³³ the Federal Court of Canada dismissed an application for interlocutory injunctive relief. The applicants sought an interlocutory injunction to prohibit the Government of Canada from enforcing the mandatory quarantine of travellers arriving by air at designated facilities while they await the results of their COVID-19 tests. The applicants argued that the measures implemented by the Canadian

³³ 2021 FC 361

government infringed their rights under sections 6, 7, 9, 10(b), 11(d) and (e), as well as section 12, of the Canadian Charter of Rights and Freedoms.

- [45] Pentney J articulated the central issue as being whether the applicants had met their burden of establishing that it is just and equitable to issue an interlocutory injunction, pending a full hearing of the merits of their challenge, under the Charter.
- [46] In his analysis, Pentney J, with reference to **Monsanto v Canada (Health)**³⁴ posited that the three (3) elements of the test for the grant of an interlocutory injunction are cumulative but that strength in one factor may overcome weakness in another. He opined that, because an interlocutory injunction constitutes equitable relief, a degree of flexibility must be preserved, to ensure that the remedy can be effective, when it is required to prevent a risk of imminent harm, pending a ruling on the merits of the dispute.³⁵

ANALYSIS AND FINDINGS

i. Whether the Minister of National Security and the Attorney General of Jamaica are misjoined as parties to the proceedings

- [47] For present purposes, it is expedient for the Court to treat firstly with the complaint made by way of the 1st and 3rd Defendants' Counter-Notice of Application, which was filed on 12 June 2023.

Submissions advanced on behalf of the 1st and 3rd Defendants

- [48] Learned Counsel Mr Louis Jean Hacker submitted that the Minister of National Security and the Attorney General, the 1st and 3rd Defendants, respectively, are misjoined as parties to the Claim. On this basis, Mr Hacker submitted, neither the Claim nor the application for injunctive relief ought properly to proceed against these Defendants and ought properly to be struck out.

³⁴ 2020 FC 1053, at paragraph 50

³⁵ See – **Spencer v The Attorney General of Canada**, supra, at paragraph 51

- [49] Mr Hacker also submitted that the substantive Claim is one for constitutional redress, pursuant to section 19 of the Charter, and are not judicial review proceedings. Nor is the substantive Claim one for civil proceedings, within the meaning of the Crown Proceedings Act. To support this submission, Mr Hacker referred the Court to section 2(2) of the Crown Proceedings Act and the authority of **George Neil v The Attorney General et al.**³⁶
- [50] Additionally, Mr Hacker submitted that the Minister of National Security is misjoined in these proceedings, since there is nothing to suggest that he took any action or failed to take any action or that he did anything whatsoever, in relation to Mr Palmer. The Minister of National Security did not exercise any power or control over Mr Palmer and as a consequence, is not a proper party to this Claim or to the application for injunctive relief.
- [51] Mr Hacker reminded the Court that judicial review proceedings have been identified as being separate from civil proceedings, within the meaning of the Crown Proceedings Act. He further submitted that this was settled by the Judicial Committee of the Privy Council in the authority of **Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd and Anor**,³⁷ and confirmed by the Jamaican Court of Appeal in the authority of **Brady & Chen Limited v Devon House Development Limited**.³⁸
- [52] Mr Hacker maintained that, in judicial review proceedings, it is accepted that the decision must be placed before the court and the decision-maker named as a party, to enable the court to exercise its supervisory jurisdiction over the decision-maker. In the present instance, Mr Hacker asserted, the Superintendent of the Tower Street Adult Correctional Centre has averred that he exercised his discretion under rule 157 of the Correctional Institution (Adult Correctional Centre Rules), 1991 to employ Mr Palmer to his cell.

³⁶ [2022] JMFC FULL 06

³⁷ [1991] 1 WLR 550

³⁸ [2010] JMCA Civ 33

- [53] In those circumstances, no decision was made by the 1st and/or 3rd Defendants and the joinder of these Defendants to the Claim as well as the application for injunctive relief, is improper. In this regard, Mr Hacker referred the Court to the dicta of Mangatal J in the authority of **Index Communications Network Limited v Capital Solutions Limited**.³⁹
- [54] Learned Counsel Mr Isat Buchanan did not provide the Court with any submissions in this regard, whether oral or written.

Findings

- [55] It is clear to this Court that Mr Palmer's main contention in the present instance concerns the punishment, which was meted out to him in the form of what he contends to be "solitary confinement", without first being afforded a hearing. Mr Palmer further contends that this punishment was meted out to him for the two (2) infractions which he is alleged to have committed.
- [56] It is equally clear to this Court that Mr Palmer seeks to challenge the exercise of the discretionary powers which are vested in the Superintendent of the Tower Street Adult Correctional Centre, by virtue of the Correctional Institution (Adult Correctional Centre) Rules, 1991. In fact, the Amended Fixed Date Claim Form, which was filed on 22 June 2023, contains a raft of Orders and relief, all of which are sought because of the alleged breaches of Mr Palmer's Constitutional right to due process, his having been placed in solitary confinement, without first being afforded a hearing.
- [57] The unchallenged evidence of Mr Leslie Campbell, the Superintendent of the Tower Street Adult Correctional Centre, is that he took the decision to employ Mr Palmer to his cell, after the latter was allegedly found in possession of a prohibited article, on two (2) separate occasions. This decision, Mr Campbell

³⁹ [2012] JMSC Civ No 50

avers, was taken in accordance with rule 157 of The Correctional Institution (Adult Correctional) Centre Rules, 1991.

[58] The following evidence of Mr Campbell is instructive: -

“7. The possession of these electronic communication devices is a major infraction and naturally is a high security risk, given that same can be used to facilitate communication.

8. With the repeated infractions, the high security risk and for the maintenance of good order and discipline, I took the decision to employ Mr. Adidja Palmer to his cell and not in association with other inmates as of May 22, 2023.

9. Mr. Palmer was employed to his cell for 23 hours per day to May 30, 2023, when a medical order was issued which required Mr. Palmer to be allowed out of his cell for one hour, every two hours. Mr. Palmer was not moved to a different cell.

10. On May 31, 2023, all restrictions were lifted, and Mr. Palmer is enjoying privileges as other inmates.

...

15. The investigations concerning the possession [sic] the prohibited articles are ongoing, and the relevant steps will be taken pursuant to law will be taken [sic] once same are concluded.”

[59] The Court accepts the submissions of Mr Hacker in this regard. It is readily apparent on the evidence which was adduced that it is Mr Campbell who made the decision to employ Mr Palmer to his cell.

[60] The Court also accepts the submission of Mr Hacker that a Minister of Government, having responsibilities for a department or departments of Government, bears responsibility for his ministerial conduct as well as for the actions of his ministry or department. There is no indication on the evidence adduced before this Court that any decision was made by the 1st and/or 3rd Defendants, in relation to Mr Palmer. There is nothing on the evidence to suggest that the Minister of National Security took any action or failed to take any action or that he did anything whatsoever, in relation to Mr Palmer. Nor is there any evidence before this Court to suggest that any decision was made by the Ministry of National Security, for which the Minister of National Security is responsible. In those circumstances, the Minister of National Security would not then be a proper party to the Claim in the present instance.

[61] Additionally, the Court accepts that Constitutional claims, like judicial review proceedings, are unique and do not fall within the general meaning of Civil Proceedings as contemplated by the Crown Proceedings Act (“the CPA”). Constitutional claims relate to the breaches of the fundamental rights afforded the citizens of Jamaica by the Constitution. For that reason, a Constitutional claim is not to be commenced by way of the CPA but rather, pursuant to section 19 of the Charter. The Attorney General of Jamaica would not then be a proper party to the Claim in the present instance.

[62] The following pronouncements of the Full Court, in the authority of **George Neil v The Attorney General of Jamaica & Ors**, are instructive and bear repeating: -

“[23] At page 274 paragraph D of Scott Davidson v Scottish Ministers, Lord Mance observed that Lord Woolf in M v Home Office drew support from an article entitled Injunctive Relief against the Crown and Ministers in which the late Professor Sir William Wade QC observed that:

‘It is of primary constitutional importance that ministers should not be confused with the Crown. All the ordinary powers of

government, subject to relatively few exceptions are conferred upon ministers in their own names and not upon the Crown.'

This observation is apt in our context. If the view is correct, it reinforces the point that a minister of government, having responsibilities for a department or departments of government bears responsibility for his ministerial conduct and for the actions of his department or ministry. By virtue of Section 70 of our Constitution the Governor General acting in accordance with the advice of the Prime Minister appoints Ministers from members of the two houses of Parliament. Such Ministers are appointed by instrument under the Board Seal of Jamaica.

[24] *The Claimant by his Claim is seeking declarations that his Constitutional rights to freedom of association and equitable and humane treatment were breached by the OUR, SMA and the Minister of Science Energy and Technology. We cannot agree with the submission by learned Queen's Counsel that Constitutional claims are Civil proceedings. Constitutional Claims like Judicial Review are unique and do not fall within the general meaning of Civil Proceedings in the CPA. They are [sic] dealing with a specialized area of law, the breaches of the fundamental rights afforded citizens by the Constitution. We agree that a constitutional claim is not to be commenced by virtue of the CPA but pursuant to Section 19 of the Constitution. We conclude that the Attorney General would not be a proper party to this constitution claim.*

[25] *There is no question that the Attorney General's role as the legal advisor to the Government of Jamaica provides the basis for that officer's interest in any Constitutional claim brought before the Courts. Part 56.11(3) of The Civil Procedure Rules (CPR) recognizes this and states:
'A Claim Form relating to an application for relief under the Constitution must be served on the Attorney General.'*

The Court therefore orders that the Attorney General be removed as a party to the claim and be deemed an interested party to the determination of this claim for breaches of the Claimant's constitutional rights."

[63] In the result, the Court finds that the joinder of the 1st and 3rd Defendants as parties to the Claim is improper and that the Attorney General of Jamaica ought properly to be named as an Interested Party to the Claim.

[64] The Court declines however to strike out the application for injunctive relief against the 1st and 3rd Defendants and will instead determine the application on its merits.

ii. Whether the amendments to the Claimant's statement of case were properly made

Amendments to statements of case

[65] Part 20 of the CPR is instructive for present purposes. It is entitled "Amendments to Statements of Case" and outlines the circumstances in which a party may amend his statement of case. Rule 20.1 of the CPR provides that a party may amend a statement of case at any time before the case management conference without the court's permission, unless the amendment is one to which either of the following applies: -

(a) Rule 19.4 of the CPR (special provisions about changing parties after the end of a relevant limitation period); or

(b) Rule 20.6 of the CPR (amendments to statements of case after the end of a relevant limitation period).

[66] Part 19 of the CPR is specifically applicable in the present instance. It treats with the addition and substitution of parties. Rule 19.2(1) and 19.2(2) of the CPR provides as follows: -

“19.2(1) ***A claimant may add a new defendant to proceedings without permission at any time before the case management conference.***

19.2(2) *The claimant does so by filing at the registry an amended claim form and particulars of claim and Parts 5 and 7 (service of claim form), Part 9 (acknowledgment of service and notice of intention to defend), Part 10 (defence) and Part 12 (default judgments) apply to the amended claim form as they do to a claim form.”*

[Emphasis added]

[67] By way of the Amended Fixed Date Claim Form, which was filed on 22 June 2023, Mr Palmer sought to amend his statement of case by naming the Superintendent of the Tower Street Adult Correctional Centre, as the 2nd Defendant to the Claim. At the same time, the Attorney General of Jamaica was named as the 3rd Defendant to the Claim. Additionally, the formulation of the relief which Mr Palmer seeks was also amended to include the Superintendent of the Tower Street Adult Correctional Centre.

[68] Similarly, by virtue of the Amended Notice of Application for an Interim Injunction, which was filed on 22 June 2023, the Superintendent of the Tower Street Adult Correctional Centre was named as the 2nd Defendant to the application. The formulation of the relief sought was also amended to include the Superintendent of the Tower Street Adult Correctional Centre.

[69] A careful review of the Court’s record reveals that this is the first amendment which Mr Palmer purports to make to his statement of case and is an amendment which was made prior to the first hearing of the Claim. It is equally important to

note that the amendment was made subsequent to the filing and serving of the 1st and 3rd Defendants' Counter-Notice of Application, which was filed on 12 June 2023.

- [70]** It is in those circumstances that Mr Hacker urged the Court to strike out the application for injunctive relief.
- [71]** The Court accepts the submission that it could properly be perceived that Mr Palmer's amendment to his statement of case is in response to the complaint contained in the 1st and 3rd Defendants' Counter Notice of Application, which was filed on 12 June 2023.
- [72]** That notwithstanding, having carefully reviewed and considered the Law in this regard, this Court is of the view that Mr Palmer is allowed to do what he has sought to do, by way of the amendment to his statement of case. Mr Palmer is allowed to so amend his statement of case, without the court's permission, prior to the first hearing (case management conference), in respect of the Claim. In those circumstances, the Court is unable to accept the submission that Mr Palmer's amendment to his statement of case constitutes an abuse of the process of the Court.
- [73]** The Court has not been met with an application to remove the 1st and/or 3rd Defendants as parties to the substantive Claim. In the result, the Court declines to exercise its discretionary power to substitute or remove any of the named Defendants to the substantive Claim, on Mr Palmer's application for injunctive relief.
- [74]** The Court also declines to grant the Order sought at paragraph 2 of the 1st and 3rd Defendants' Counter-Notice of Application, which was filed on 12 June 2023, to strike out the application for injunctive relief.

The application for injunctive relief

iii. *Whether there is a serious issue to be tried*

Submissions advanced on behalf of the Claimant/Applicant

- [75] Mr Buchanan commenced his submissions by referring the Court to the principle of '*audi alteram partem*', which he submitted is reflected in sections 13(2)(r) and (q), 15(5), 16(2) and 16(3) of the Charter. Mr Buchanan submitted that this Latin maxim refers to the right to be heard and includes the right of an individual to know the case which is alleged against him and to be afforded an opportunity to be heard. Mr Buchanan submitted that this fundamental Constitutional right was breached by the Defendants, and that that breach is not demonstrably justified in a free and democratic society.
- [76] It was further submitted that section 36 of the Corrections (Amendment) Act, 2021 and the provisions of the Charter were breached because Mr Palmer was not afforded an opportunity to be heard prior to his being placed in solitary confinement. Mr Buchanan maintained that the actions of the Defendants were in direct contravention of the Corrections (Amendment) Act and the Charter. This issue, Mr Buchanan submitted, is a serious issue to be tried, as these actions constitute breaches of rules 41.1, 42.2 and 45.1 and 45.2 of the Mandela Rules, which were adopted by the Government of Jamaica.
- [77] Finally, Mr Buchanan submitted that Mr Palmer is physically unwell, and, having been subjected to solitary confinement, his medical issues have been exacerbated. In this regard, Mr Buchanan submitted that the applicability of the Mandela Rules and whether the actions of which Mr Palmer complained were in breach of those Rules remain serious issues which are to be determined at trial.

Submissions advanced on behalf of the 1st and 3rd Defendants/Respondents

- [78] For his part, Mr Hacker submitted that, on 19 May 2023, Mr Palmer was found in possession of a prohibited article, an electronic communication device, in the form of a cellular phone. The said cellular phone was confiscated. Mr Hacker also submitted that, having access to or being in possession of a cellular phone whilst incarcerated in a maximum-security prison, a prison which houses persons who have been convicted of the most heinous crimes, is a major infraction and is regarded as a high-security risk. To buttress this submission, Mr Hacker referred the Court to sections 2, 34(1), 35, 36 and 38A of the Corrections (Amendment) Act, 2021. The Court was also referred to rules 129 and 157 of the Correctional Institution (Adult Correctional Centre) Rules, 1991, as well as, the dicta of Lord Diplock in the authority of **Council of Civil Service Unions and Ors v Minister for the Civil Service**.⁴¹
- [79] Mr Hacker further submitted that, it is in those circumstances that Mr Campbell exercised his discretion to employ Mr Palmer to his cell. This was done pursuant to rule 157(1) of the Correctional Institution (Adult Correctional Centre Rules), 1991. Mr Hacker submitted that this exercise of Mr Campbell's discretion was reasonable, appropriate and just in the circumstances. This, Mr Hacker maintained, was not designed to punish Mr Palmer but was strictly geared towards the maintenance of good order and discipline in the penal institution. Mr Hacker submitted that the integrity of the institution was breached, and that Mr Campbell had reasonable grounds for considering such an occurrence to be a major security infraction. Mr Hacker asserted that the possession of a cellular phone could be used to prejudice the lives or safety of persons, the safety of the penal institution, or even to facilitate the escape of an inmate.
- [80] Mr Hacker urged the Court to reject Mr Palmer's assertions that he [Mr Palmer] is being punished by being placed in solitary confinement, without the provisions of

⁴¹ [1984] 3 All ER 935, at page 952 e

section 36 of the Corrections (Amendment) Act, 2021 being followed. Mr Hacker submitted that, by virtue of sections 80A and 80B, possession of a cellular phone is a criminal offence. Should Mr Palmer be charged under either or both of these sections, then he would be subject to the criminal justice system, the procedure of which would afford him due process. It was further submitted that should Mr Palmer be charged pursuant to section 35 of the Corrections (Amendment) Act, 2021, he would be afforded a hearing and would have the opportunity to mount a defence. Mr Hacker reminded the Court that Mr Campbell has averred that the investigations concerning the prohibited articles which were allegedly found in the possession of Mr Palmer, are ongoing and that the relevant steps will be taken once they are concluded pursuant to sections 35, 80A and 80B of the Corrections (Amendment) Act, 2021.

- [81] In the result, Mr Hacker submitted that there is no serious issue to be tried, as the provisions of the Corrections (Amendment) Act, 2021 which entitle Mr Palmer to a fair hearing have not been engaged, for the reason that investigations relating to same are ongoing. It was further submitted that, were the Court to grant the interim injunction in these terms, would be to fetter the authority and discretion of Mr Campbell.

Findings

The necessity for the grant of an interim injunction

- [82] Section 19(1) of the Charter provides as follows: -

“19.- (1) If any person alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.”

- [83] Mr Palmer contends that he was being punished by being placed in solitary confinement, without the provisions of section 36 of the Corrections (Amendment) Act, 2021 being followed. He further contends that without the

grant of an interim injunction, his Constitutional right to due process is likely to be contravened. It is common ground among the parties that, on 22 May 2023, an Order was made to employ Mr Palmer to his cell and that on 30 May 2023, the imposition of that Order ceased.⁴² In those circumstances, the issue for the Court's consideration is whether there is a serious issue to be tried and, by extension, whether the grant of injunctive relief is either appropriate or necessary.

[84] It is Mr Campbell's evidence that the Department of Correctional Services does not practise solitary confinement. In his Second Affidavit, which was filed on 12 July 2023, Mr Campbell avers as follows: -

"8. At no time was Adidja Palmer placed in solitary confinement. Notably, the Department of Correctional Services does not practice solitary confinement, and this has been so for a very long time. Prior to an inmate being placed in solitary confinement, due process, in light of the principles of natural justice, would have to be followed, a medical assessment would have to be ordered, prior to solitary confinement. An inmate placed in solitary confinement is fed through a hole. The bare minimum diet, bread and water, is fed to them. Further mandatory medical assessments are done on the said inmate whilst in confinement. To the best of my knowledge solitary confinement is not practiced across local correctional institutions.

9. When an inmate is placed on solitary confinement, he does not have access to the Tuck Shop, let out of his cell or allowed visitors. An inmate who is employed to cell has all the privileges of diet, access to the commissary, is let of their cell and is allowed access to visitors.

10. During the period of Adidja Palmer being employed to his cell, he was allowed the aforementioned privileges. A request was made by him on May 29, 2023, to see a doctor which was honoured just as it would have been for any other inmate.

⁴² See – Paragraphs 8 and 9 of the Affidavit of Leslie Campbell in Support of Application for Court Orders, which was filed 12 June 2023.

11. During the period, Adidja Palmer was allowed an hour out of his cell in the mornings before all other inmates were unlocked and during the lunch period, he got another hour. There is no arbitrary punishment for inmates by any Superintendent of the Department of Correctional Services.

[85] The Court finds that, by virtue of sections 80A and 80B, possession of a cellular phone is a criminal offence. Should Mr Palmer be charged under either or both sections, he would be subject to the criminal justice system, the practice and procedure of which would afford him the right to be heard. The Court also finds that, should Mr Palmer be charged pursuant to section 35 of the Corrections (Amendment) Act, 2021, he would be afforded a hearing and would have the opportunity to mount his defence. In circumstances where the investigations concerning the prohibited articles which were allegedly found in the possession of Mr Palmer are ongoing, Mr Palmer has failed to demonstrate that there is a serious issue to be tried. This, for the reason that the provisions of the Corrections (Amendment) Act, 2021, which entitle Mr Palmer to a fair hearing, have not been engaged. To grant the interim injunction in the terms in which it has been sought, would be to fetter the authority and discretion of the Superintendent of the Department of Correctional Services.

[86] The evidence before the Court clearly demonstrates the following: -

- i. Mr Campbell sought to exercise his discretionary power, pursuant to rule 157 of the Correctional Institution (Adult Correctional Centre Rules).
- ii. Mr Palmer is no longer being employed to his cell.

[87] In the result, the Court finds that Mr Palmer has failed to provide any evidence which would enable it to make a finding that there is a real likelihood that the Department of Corrections is likely to reimpose an Order employing him to his cell, in contravention of his Constitutional right to be heard. The Court is strengthened in its finding in this regard by the uncontradicted and unchallenged evidence that the Order of 22 May 2023 was suspended as a result of a

subsequent medical Order, as is provided for by section 157(2) of the Correctional Institution (Adult Correctional Centre Rules), 1991.

- [88] Having found that there is no serious issue to be tried, for the reasons stated above, the Court also finds that a consideration of the additional prongs of the tripartite test for the grant of an injunction, is not necessary. There is no requirement for the Court to proceed to a consideration of the other elements of the tripartite test for the grant of the interim injunctive relief as established by the court in the authority of **RJR-MacDonald Inc v The Attorney General of Canada**.⁴⁵
- [89] Additionally, the Court finds that Mr Palmer has failed to demonstrate that the Mandela Rules have been incorporated in domestic Law and that they form part of the Laws of Jamaica.

CONCLUSION

- [90] In summary, the Court accepts the evidence of the Superintendent of the Tower Street Adult Correctional Centre that, during the period 22 May 2023 to 30 May 2023, Mr Palmer was employed to his cell. As of 30 May 2023, Mr Palmer was no longer employed to his cell and was once again allowed to enjoy all the privileges extended to all inmates. The Court finds that Mr Palmer has failed to demonstrate that his Constitutional right to be heard is likely to be contravened by the future actions of the Department of Corrections; that the Mandela Rules have been incorporated in domestic Law; or that there is a serious issue to be tried.
- [91] Consequently, the Order sought at paragraph 1 of the Amended Notice of Application for an Interim Injunction, which was filed on 22 June 2023, is refused.
- [92] The Court declines to grant the order sought by the 1st and 3rd Defendants in the Counter Notice of Application, which was filed on 12 June 2023.

⁴⁵ supra

DISPOSITION

[93] It is hereby ordered as follows: -

1. The Amended Notice of Application for an Interim Injunction, which was filed on 22 June 2023, is refused.
2. There shall be no Order as to Costs to in relation to the Amended Notice of Application for an Interim Injunction, which was filed on 22 June 2023.
3. The Claimants' Attorney-at-Law is to prepare, file and serve these Orders.

[94] The Court makes the following Orders on the 1st and 3rd Defendants' Counter Notice of Application, which was filed on 12 June 2023. It is hereby ordered as follows: -

1. The Court declines to grant the Orders sought by way of the 1st and 3rd Defendants' Counter Notice of Application, which was filed on 12 June 2023.
2. There shall be no Order as to Costs in respect of the 1st and 3rd Defendants' Counter Notice of Application, which was filed on 12 June 2023.
3. The 1st and 3rd Defendants' Attorneys-at-Law are to prepare, file and serve these Orders.

[95] The Court also makes the following Order: -

- (1) The First Hearing of the Amended Fixed Date Claim Form, which was filed on 22 June 2023, is fixed for 23 January 2024 at 2:00 p.m., before a Judge alone in Chambers, for a duration of one (1) hour.