

election mark on the ballot paper' as set out in 'Handbook for Election Workers' produced by the Electoral Office of St Vincent and the Grenadines, 2015 under the hand of the 4<sup>th</sup> Respondent, for 'the more effective conduct of the election process'.

[86] Mr. Exeter has not provided an explanation as to why he did not in his 2015 application include an allegation that the ballots were not pre-printed with the official mark and were later stamped by the presiding officer. It is noteworthy that in his affidavit filed on 9<sup>th</sup> November 2017, he referred to and exhibited photographs which he said are of copies of ballots and ballot papers which he photographed at the final count in December 2015. That account demonstrates that Mr. Exeter by his own admission had documentary proof of what one or more ballot papers looked like on election day 2015. Moreover, Mr. Exeter and/or his representatives were present at the final count as attested to by Ms. Maia Eustace and him.

[87] Ms. Eustace deposed<sup>19</sup> that on 10<sup>th</sup> December 2015, during the final count of the ballots (from polling station CL A) Mr. Gaymes emptied the ballots on the table and proceeded to count them. She recalled asking to be permitted to count them. On doing so, she obtained a different figure from Mr. Gaymes, whereupon they repeated the process and arrived at the same figure. Ms. Eustace deposed that thereafter a procedure was adopted whereby Mr. Gaymes counted the ballots in lots of 10, handed them to Mr. Robinson who followed suit; that the ballots were then handed to Ms. Cummings and to her (Ms. Eustace) in tens and they in turn counted and stacked them. Ms. Eustace recalled that Mr. Gaymes complained intermittently that they were moving too slowly when they inspected a ballot or made an objection.

[88] Ms. Eustace averred<sup>20</sup> that while counting the ballots from ballot box marked CL F1 Ms. Morris and Ms. Shirlan 'Zita' Barnwell (another of Mr. Exeter's representatives) discovered a further 99 mutilated ballots. She explained that the expression 'mutilated' refers to ballots which bore neither the official stamp nor initials of the presiding officer. These observations by Ms. Eustace reflect that

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<sup>19</sup> See paragraphs 31 through 35 of Affidavit in Support of Application for production & Inspection orders filed on 17<sup>th</sup> December 2015.

<sup>20</sup> At paragraph 57 of her affidavit filed on 17<sup>th</sup> December 2015.

Mr. Exeter's representatives or some of them had the opportunity to examine the ballots during the final count, sufficient to enable them to note any alleged 'irregularities' with the ballot papers.

[89] This is further confirmed by the allegations made by Mr. Exeter and his witness in 2015, that the ballots bore neither the stamp nor initials of the presiding officer and the later allegations outlined in Mr. Exeter's Amended Motion - the subject of this decision.

[90] It is useful to review the assertions made by Mr. Exeter in 2015 regarding the placement of the official mark and the presiding officer's initials on the ballot papers. The affidavit testimony provided at that time will also be considered to bring context to present proceedings in connection with the allegation under consideration. Similarly, the relevant portions of Cottle J.s judgment will be outlined.

[91] In 2015, Mr. Exeter alleged (in the grounds of his application) that the returning officer:

1. ignored the objections of his representatives (at the final count) and counted as valid, in excess of 300 'defective ballots' which appeared to have been willfully mutilated in that contrary to rule 31(1) of the HAER they contained neither an official mark nor initial of the presiding officer; and
2. ruled invalid similarly mutilated ballots for other polling stations.

[92] The record reflects that the affidavit testimony of Ms. Maia Eustace and Mr. Exeter was presented to the court on that occasion. They both testified to having seen mutilated ballots in ballot boxes which bore neither an official mark nor initial of the presiding officer. Ms. Eustace deposed that those ballots were from ballot boxes marked CLF and CLF1.

[93] Mr. Gaymes the returning officer also supplied sworn testimony by affidavit at that time. He deposed that when he opened box CLF he discovered that the ballots in that box did not have the initial of the presiding officer or any official mark on the ballots, as a result of which he was minded to reject all of the votes in that box. He added that Mr. Exeter and his agents indicated to him that they were not objecting to the ballots and consented to all of the votes in that box being counted, whereupon he (Mr. Gaymes) said 'what's good for the goose is good for the gander'. He explained that by this

he meant that Mr. Exeter's consent was the right thing to do as both candidates would and did in fact receive votes from that box.

[94] Mr. Gaymes stated further that he called the presiding officer to inquire about the ballots with no official mark in box CLF, and she informed him that 'the official marks were on the ballot paper but were actually printed on the counterfoils.' On this subject the Supervisor attested:

'There is also the allegation that some ballots did not have the official mark. This is inaccurate. All ballot papers issued to the Presiding Officers had the official mark as required by law. What however I noticed was that in a few instances the official mark was printed on the counterfoil. The counterfoil is part of the ballot paper.'<sup>21</sup>

[95] In a later affidavit, filed on 19<sup>th</sup> July 2017 the Supervisor stated:

'When the petition was filed, I noticed that the Petitioner was alleging that the ballot papers for the constituency of Central Leeward were pre-printed with the official mark, that is to say, the ballot papers which were presented to the Presiding Officers already had the official mark printed on them. On re-reading paragraph 11 of my said affidavit, I realized that I may have given the false impression that the ballot papers were in fact pre-printed with the official mark. But that is decidedly not the case. Accordingly, I immediately wrote a letter dated 6<sup>th</sup> January 2016 to my attorney at law informing him of the error. ... I confirm as well that the contents of my said affidavit, with the exception of paragraph 11, are true and correct.'<sup>22</sup>

[96] It is important to note that the motion contains 20 grounds, some of which have multiple sections. Among them are statements which repeat one or more of the allegations contained in the prayer under consideration. It seems more efficient to set out related allegations at the first available occasion than to address them in sequence as they arise. In this regard, I note that paragraphs 6, 8 and 9 of the grounds are connected with Mr. Exeter's 2015 complaint that the ballot papers in polling station CLF did not have the initials of the presiding officer or the official mark. For

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<sup>21</sup> At paragraph 11 of her affidavit filed on 21<sup>st</sup> December 2015.

<sup>22</sup> At paragraph 5.

completeness, I will set them out fully. It should be noted that the Amended Motion contains two paragraphs numbered '6'.

[97] The original paragraph 6 appears after the amended insertion (of a new paragraph 6). It states:

'6. In an application which was filed on the Petitioner's behalf on 17<sup>th</sup> December 2015 for orders pursuant to Rule 53 of the Elections Rules, for production and inspection of ballots and counterfoils, on the basis that the Petitioner intended to bring the substantive Petition herein, the 1" (sic) respondent swore an affidavit in opposition stating inter alia, as follows:

6.1 That when he opened box CLF, he discovered that the ballots in this specific box did not have the initials of the Presiding Officer nor any official mark;

6.2 That as a result, he stated that he was minded to reject all the ballots in this specific box;

6.3 That the Petitioner and his lawyers however indicated to him that they were not objecting L. (sic) to the ballots and consented to all the votes in box CLF being counted;

6.4 That this is the time and occasion he said "what is good for the goose is good for the gander". That he meant the Petitioner's consent was the right thing to do as both candidates would receive and in fact received votes from this box; and

6.5 That he called the Presiding Officer to inquire about the ballots with no official mark in the box CLF, and was informed by the Presiding Officer that the official marks were on the ballot paper but were actually printed on the counterfoils;'

[98] Paragraphs 8 and 9 of the grounds contain:

1. aspects of the Supervisor's testimony regarding whether the official mark was on the ballot papers when they were delivered to the presiding officers; and
2. purported to set out the contents of the letter that the Supervisor admitted writing to her solicitor.

[99] They state respectively:

- '8. The Supervisor of Elections, the 4<sup>th</sup> respondent herein, also filed an affidavit in the same proceedings, in which she stated that all ballot papers issued to Presiding Officers bore the official mark as required by law; and that what however she noticed was that in a few instances, the official mark was printed on the counterfoil and that the counterfoil is part of the ballot paper.
9. In a letter dated 11<sup>th</sup> January 2016 addressed to her solicitor Richard Williams Esq., which the latter forwarded to the Registrar, the Supervisor of Elections, the 4<sup>th</sup> Respondent herein informed that:
- 9.1 The ballots were not printed with the official mark prior to the conduct of the election as she had initially suggested.
- 9.2 There was no official mark printed on the ballots which she delivered to the Presiding Officers for the conduct of the General Election.
- 9.3 That in fact, the Presiding Officers were all issued rubber stamps and ink to stamp the official mark on the ballot paper prior to the ballot being handed to the voter to enable him or her to vote.
- 9.4 That the official mark was stamped by the Presiding Officers on the ballots during the course of the General Election.
- 9.3 That it is therefore obvious that she may not have appreciated the discussion which she had with Mr. Richard Williams and that she made an error.
- 9.4 The only ballots which she saw after the election were the ones at North Leeward where she was present and assisted with the Final Count.
- 9.5 That she had not seen any other ballots in or from the other constituencies since the election as the ballot boxes are and remain sealed and secured, and
- 9.6 That It was at this count in North Leeward that she observed a few instances in which the official mark was stamped partly on the ballot and partly on the counterfoil.'

[100] In his judgment, Cottle J. stated:

'According to Mr. John QC, the affidavit evidence discloses some basis, although the extent is in dispute, for believing that there were breaches of the elections laws amounting to material noncompliance. Mr. John also submitted that the evidence showed a breach of the elections rules at Rule 31(a). As I understand this submission, the legislation required the elections officer to receive ballots and put on them the official mark along with his initials. It appears that the ballot papers were supplied to the elections officers with the official marks already stamped on them and all the officers were then required to do was to initial the papers before giving them to the voters. If this position is correct it would of course apply to all the ballots cast in the election and not just those in Central Leeward Constituency.'<sup>23</sup>

[101] Cottle J. noted that the application was for an order to produce election documents. He observed that no complaint was made about the preliminary vote or the accuracy of the count. He commented that Mr. Exeter was present at the final count and now wishes to have another opportunity to inspect the ballots 'to conclusively assess the validity of the final count.' He remarked that Mr. Exeter was objecting to certain disputed ballots on the final count, described as mutilated, and further that they were not counted at the final count.

[102] He took into account that Mr. Exeter proffered no evidence regarding for whom those ballots were counted; or whether their inclusion or exclusion from the count would have affected the outcome of the election. He observed that Mr. Exeter did not identify those ballots or make any suggestions about what the final outcome of such an exercise would have been. He characterized the application as a fishing expedition in light of those observations.

[103] Cottle J. concluded that Mr. Exeter had not shown any grounds or any strong grounds as a basis for granting the application. He expressed the view that to make an order granting the application would in the words of Jamadar JA be akin to granting permission to embark on an unfettered roving commission of inquiry. He reasoned that the only 'legitimate parameters are those

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<sup>23</sup> SVGHCV2015/0195 Benjamin Exeter v Sylvia Findlay-Scrubb Supervisor of Elections, issued on December 28, 2015, (unreported).

circumscribed by the grounds and material facts contained in the (application) in light of the relief sought and the relevant law.’<sup>24</sup>

[104] While Mr. Exeter has not given evidence from which the court could glean a reason why he did not include the present allegation in his 2015 application, Learned Queens Counsel Mr. John contended that they (the petitioner and his representatives) were under the impression that no official mark was printed on the ballot papers which were issued to the presiding officers. He submitted that the situation has now been clarified by the Supervisor.

[105] In view of the surrounding circumstances attested to by Mr. Exeter and his witness, he no doubt would at the very least, have had constructive notice that some or all of the ballot papers were pre-printed with the official stamp or stamped by the presiding officer, if in fact they were. He might conceivably have omitted this assertion from the 2015 application through inadvertence, for tactical reasons or otherwise. That Mr. Exeter failed to take those further points in 2015 when he made his application remains unexplained. I am nonetheless satisfied that he was aware of them or had the opportunity to discover them by then, with reasonable diligence.

[106] Mr. John Q.C. reasoned that if a ballot is successfully impugned because it is void, it ought not to have been counted and the effect is that the voters affected would have been disenfranchised through no fault of their own, but rather, because of the misconduct of the election officials in preparing and treating with the ballot. He contended that in the face of such pervasive deformity of the electoral process, it is ludicrous and smacks of a parody that these very parties should now assert that ‘his application for inspection of the ballots, with a view to scrutiny of the impugned ballots and a recount, is abuse of the court’s process.’

[107] Mr. John Q.C. submitted further that the Supervisor gave sworn evidence which informed Cottle J.’s decision. He argued that notwithstanding, the Supervisor subsequently contradicted critical portions of her previous testimony 14 days later. He contended that she subsequently swore to a further affidavit in the instant application, in which she supplied contradictory testimony.

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<sup>24</sup> In the Trinidadian and Tobagoan case of Tunapuna et al v Wayne Munroe et al CA No. S 229-234/20015 and CA No. 235-240/2015 (unreported, dated 30<sup>th</sup> November 2015).

- [108] He highlighted those alleged discrepancies and noted for example that in her December<sup>25</sup> affidavit the Supervisor deposed that all ballot papers issued **to** Presiding Officers had the official mark as required by law, but that she noticed in a few instances that the official mark was printed on the counterfoil which is part of the ballot paper. Those statements do appear in paragraph 11 of the Supervisor's affidavit mentioned earlier<sup>21</sup>.
- [109] Mr. John Q.C. also referred to a letter in which the Supervisor allegedly provided other information. This was mentioned in the Supervisor's later affidavit, portions of which were quoted in a preceding paragraph of this decision. Learned Queens Counsel indicated that the Supervisor wrote that all ballot papers issued **by** Presiding Officers were stamped with the official mark as required by law; the ballots were not printed with the official mark prior to the conduct of the election as she initially suggested; there was **no official mark** printed on the ballots delivered to the Presiding Officers by her for the conduct of the General Elections. He added that she said that it is therefore obvious that she may not have appreciated the discussion she had with Mr. Richard Williams and made an error.
- [110] Learned Queens Counsel asked rhetorically 'If it was simply a typographical error that instead of the word "by" the word "to" was typed, what is the misunderstanding referred to? He wondered: '... how reliable is her evidence that all ballot papers issued by Presiding Officers were stamped with the official mark as required by law?' I remain mindful that the burden rests on Mr. Exeter to establish that an inspection order is required for the purpose of the elections petition arising from the alleged irregularities.
- [111] Mr. John Q.C. pointed to the contents of the Supervisor's affidavit filed in July 2016. In it, she asserted that:-
- '... the ballot papers did not have the official mark pre-printed on them. I supervised the preparation of the templates of the ballot papers for all constituencies which were sent to the printer for printing. ... They did not have the official mark on them. I also had cause to visit the printers to examine the ballot papers which were being printed because of certain problems that had arisen. There was no official mark printed on any of the ballot papers I saw. When the ballot papers were returned to me from the printer, I examined

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<sup>25</sup> Filed on December 21<sup>st</sup> 2015, at paragraph 11.



some of them. There was no official mark printed on any of the ballot papers I examined.<sup>26</sup>

Learned Queens Counsel argued that the effect of such repeated contradictions by the Supervisor must be to leave the court in a state of perplexity on those issues.

[112] The court notes the variations in the Supervisor's affidavit testimony and her explanation for the same. It also has regard to the submissions by Learned Queens Counsel that it places the court in a quandary as to where the truth lies. It is important to note that in arriving at a determination on the issues, the court takes into account all of the testimony advanced by all parties and not simply the Supervisor's account.

[113] The court notes that there has been no appeal from the 2015 decision of Cottle J. Both parties have therefore accepted that ruling on the matters which were before the court so constituted. I am not authorized to set aside that judgment, it being a determination by a court of co-ordinate jurisdiction. Unless and until that judgment is overturned by the Court of Appeal, it stands and is binding on the parties.

[114] It seems to me that in December 2015, it was open to Mr. Exeter to make the assertions he now makes about the official mark being pre-printed on the ballot papers. There appears to have been nothing which prevented him from doing so, except perhaps his conviction that the ballot papers had neither the official mark nor the presiding officer's initial on them.

[115] However, by 31<sup>st</sup> December 2015, 3 days after Cottle J. had rendered his decision and 6 days before the Supervisor allegedly dispatched the referenced letter to her attorney and made her first attempt to correct her testimony, Mr. Exeter had filed his petition setting out allegations that all of the ballot papers were pre-printed with the official mark. It is therefore reasonable to infer that when he filed his application and affidavits in December 2015, he either knew or had the means of ascertaining the factual position; and was armed with the necessary material to include that allegation in his pre-petition application.

[116] I am reminded of the principles of *res judicata* rehearsed above. Likewise, sentiments expressed

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<sup>26</sup> Paragraph 6 of the Supervisor's affidavit filed on 19<sup>th</sup> July 2017.

by Sir Hugh Rawlins in **Ezechiel Joseph v Alvina Reynolds** are quite apposite and bear repeating. He remarked:

‘It is my view that lawyers who wish to practice in our election courts have a solemn duty, obligation and responsibility to be well acquainted with electoral laws and procedures in order to facilitate the right to access, the democratic process and the vindication of electoral rights guaranteed ultimately by the Constitution.’<sup>27</sup>

[117] Equally instructive and relevant are the words uttered by His Lordship in **Frampton Pinard v Ian Pinard** regarding the dispatch with which elections petitions case are to be handled. Commenting on the tight timelines prescribed in elections laws, Rawlins J. (as he was then) enunciated some general principles of law (regarding the time limits in elections laws) which are applicable in interpreting elections statutes. He noted:

‘The statutory time limits provide a rigid timetable to ensure that everything necessary is done, in a timely manner, to bring these petitions to trial because the public interest requires it. The persons who are returned as legislators should know quickly whether they have been lawfully elected. The country needs to know who the elected representatives are with certainty. Election challenges should be mounted before a new legislature sits and begins to work, or as soon as possible thereafter, in order that the legislature might be definitively lawfully constituted. It goes to the issue of legitimacy. Electoral laws and their interpretation by the courts are intended to facilitate this.’<sup>28</sup>

[118] Although the issue which is at hand does not involve the interpretation of a provision which stipulates a timeline for complying with a statutory requirement, the court cannot disregard the general principles which govern the expedition with which it is expected to dispose of elections petitions. Accordingly, the subsequent *volte face* by the Supervisor, while it reverses her earlier position, does not by itself give Mr. Exeter a legal basis to make an application which he could have made earlier, had he marshaled all of the relevant background details.

[119] The testimony regarding this aspect of the motion demonstrates that Mr. Exeter had actual or

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<sup>27</sup> HCVAP2012/0014 (unreported).

<sup>28</sup> DOMHCV2005/0149, (unreported).

constructive knowledge of the state or condition of the ballot papers or a significant portion of them when he filed the 2015 application. In this regard, I note that the 2015 application was filed on 17<sup>th</sup> December 2015, argued before the court 5 days later (December 22) and a decision was rendered on December 28, 2015.

[120] Mr. Exeter filed a 12 page petition on 31<sup>st</sup> December 2015 which included the allegations that '*all of the ballot papers issued to presiding officers had the official mark pre-printed on them*'<sup>29</sup>. This seems similar to one aspect of the assertion under consideration, where he alleged that '*all of the said ballot papers were pre-printed with the official stamp or stamped by the presiding officers or otherwise ...*'.

[121] Mr. Exeter did not allege in the petition that the presiding officers stamped the ballot papers. To the extent that such assertion forms the basis of the prayer for inspection, it does not satisfy the criterion of being 'required for the purpose of this election petition', because the petition is silent on that point. In the premises, that part of the allegation is irrelevant to the matters which the court must now evaluate. It is therefore ignored.

[122] In any event, Rule 31(1) of the HAER mandates that the presiding officer places the official mark on the ballot paper immediately before delivering to a voter for the purpose of casting his vote. Accordingly, such conduct by the presiding officer if it took place, would be commensurate with the statutory edict and would not amount to an irregularity, without more.

[123] I interpret Mr. Exeter's choice of words '*the official mark pre-printed on them*' and '*pre-printed with the official stamp*' to convey the same idea. It appears that Mr. Exeter had concluded by December 31, 2015 that the ballot papers were all pre-printed with the official mark or official stamp. The Supervisor had not yet corrected her earlier testimony. It seems then that Mr. Exeter had information which was independent of the Supervisor, which enabled him to include those assertions in his petition, a short time after the referenced determination by Cottle J.

[124] Ms. Eustace's, Ms. Barnwell's and Mr. Exeter's testimony as to the procedure adopted during the counting of the ballots suggests that Mr. Exeter's agents had ample opportunity to examine, count and note the condition of the ballots cast at the polling stations where they were stationed. It is

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<sup>29</sup> Paragraph (22) of the Petition filed on 31<sup>st</sup> December 2015.

worth noting that the court will not lightly entertain an application for inspection of ballot papers and will definitely not grant such an order based on spurious aspersions. A petitioner is therefore required to take care in formulating his or her case.

[125] In light of the foregoing and in the absence of any substantive reason urged on the court why Mr. Exeter is now raising the matter of the official mark being pre-printed on the ballot papers and the presiding officer's initials being stamped on the ballots as a basis for an order to inspect the ballot papers, I am satisfied on a balance of probabilities that there was nothing preventing Mr. Exeter from including those assertions in his 2015 application. They are matters which could have been discovered and of which he would be expected to have had constructive notice through his representatives.

[126] Ms. Eustace deposed that several ballot papers were handed to her and Ms. Barnwell which they examined. Mr. Exeter took pictures. Surely, it would have come to their attention at the very latest, during the final count that the ballot papers or some of them had the official mark pre-printed and the presiding officer's initials stamped on them. Presumably, the agent(s) assigned by Mr. Exeter to monitor the proceedings during the course of election day would have noted that the presiding officer was not affixing a stamp and initials pursuant to the statutory provisions, and would have brought this to his attention before he filed the application in 2015.

[127] This may or may not have taken place. To permit Mr. Exeter to 'amend' his case in this manner after having had an opportunity to lodge those complaints as a basis for inspection, does not in my opinion, accord with what is contemplated by the elections rules and procedures and practice in the court.

[128] I am reasonably satisfied that Mr. Exeter had the opportunity to discover with diligence, all necessary information to satisfy himself about the sustainability of this allegation when he filed the 2015 application. He has provided no explanation as to when he obtained that information and why he did not include it in the earlier application.

[129] The public has a real and ongoing interest in discovering whether the election held in the Central Leeward Constituency was valid or plagued by the alleged irregularities. For obvious reasons, Mr. Exeter and Sir Louis Straker each has similar and more personal interests. Sir Louis Straker and the other respondents were and have remained entitled to know the case against them in a timely

manner so that they can give appropriate instructions to their counsel. Each party has a right to have all relevant information at the earliest possible time to ensure that each is operating on a level playing field.

- [130] The court and the overall administration of justice system has a similar interest to enable it to discharge its adjudicating function in an efficient and effective manner without unnecessary delays amidst re-emerging and repetitive contentions. This is the heart of justice.
- [131] I am satisfied that when Mr. Exeter filed the 2015 application, he had access to the material on which he now relies to launch the allegation that all of the ballot papers were pre-printed or stamped with the official mark. He did not allege that he only suspected or discovered this when the Supervisor transmitted her letter in January 2016, and could only have done so then. There was nothing preventing the court from determining that point at the same time it entertained the previous application for inspection. This and all of the other circumstances lead me to conclude that there is no factual or other basis which justifies a consideration of that assertion at this juncture.
- [132] I remain mindful of dicta in **Buckland v Palmer**<sup>30</sup> and **Turner v. Grovit**<sup>31</sup> which address the vexed concept of abuse of the court's process. In the former case, Sir John Donaldson M. R. remarked that the rationale behind the rule rests largely on the 'public interest in avoiding the possibility of two courts reaching inconsistent decisions on the same issue'. In the same case, Griffiths L. J. explained that the rule against multiplicity of proceedings in a single cause of action is soundly based on public policy considerations designed to prevent the harassment of litigants by exposing them to the anxiety and expense of unnecessary legal proceedings.
- [133] Similar sentiments were express in **Turner and Grovit**. Applying those principles as well as those previously explained, I find that in all the circumstances, it would be an abuse of the court's process to permit Mr. Exeter to ventilate at this time, his allegations that the ballot papers were pre-printed with the official mark. In my considered opinion, for the foregoing reasons, it would amount to an abuse of the court's process to entertain that aspect of Mr. Exeter's motion.

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<sup>30</sup> [1984] 1 W. L.R. 1109; at pages 1110 E & 1113 B et seq.

<sup>31</sup> [1999] 3 WLR 794, at page 804.

Paragraph II ii.

[134] Mr. Exeter founded his prayer for an inspection order on several other allegations. He alleged:

‘... that ... 222 ballots at Polling Station CLF and ... 99 ballots at Polling Station CLF1 appeared defective and willfully cut in such a manner that a portion of the ballot paper was absent and that they bore neither the stamp nor initials of the Presiding Officer;’ and/or

[135] In sub-paragraph ii. Mr. Exeter (in referring to 222 ballots from Polling station CLF and 99 ballots from polling Station CLF1) employs the descriptive phrase ‘that they appeared defective and/or willfully cut in such a manner that they ... bore neither the stamp nor initials of the Presiding Officer’. By doing so, he captures an aspect of his complaint from the 2015 Application.

[136] On that occasion, he pleaded:

‘(d) Contrary to the House of Assembly Elections Rules the Returning Officer ignored objections by the Petitioner’s representatives at the final count and counted as valid more than ... (300) ballots which **were defective in material respects in that they appeared to have been willfully mutilated in such a manner**, that contrary to Rule 31 (1) of the House of Assembly Elections Rules, **neither an official mark nor initial of the Presiding Officer appeared on them**; ...’ (bold added)

[137] On the surface, the 2015 complaint appears to have been only about the returning officer’s alleged disregard of the objections by Mr. Exeter’s representatives relating to the counting of ‘defective ballots’ which bore ‘neither an official mark nor initial of the Presiding Officer’. However, an examination of the submissions made then, by Mr. John Q.C., dispels that notion.

[138] He argued at the time that there was ample evidential basis in the filed affidavits which disclosed the Supervisor’s admissions that ‘all ballot papers bore the official mark when they were issued to the presiding officer.’ Learned Queens Counsel contended further that such action is contrary to Rule 31(1) (a) which required the ballot paper ‘to be so marked with the official mark of the Presiding Officer before it is delivered to the voter who applies for same;’<sup>32</sup>

[139] In the premises, I am satisfied that the referenced clause ‘that they appeared defective and/or

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<sup>32</sup> Paragraph 3.7 (d) of Submissions filed on 24<sup>th</sup> December 2015, by Cato & Cato, Barristers and Solicitors, in Support of the Application for Production & Inspection Orders.

willfully cut in such a manner that they ... bore neither the stamp nor initials of the Presiding Officer' reproduced an identical complaint which was made in 2015. Mr. Exeter has advanced no special circumstances which would exclude this aspect of his case from the *res judicata* application. I perceive none. Applying the principles distilled from **Henderson v Henderson, Ferguson v Ferguson, Johnson v Gore Wood, Buckland v Palmer and Turner v. Grovit**<sup>[22]</sup> and reproduced earlier; and taking into account the respective interests of the parties and the public described above, I find that to permit Mr. Exeter to pursue this aspect of his application would be an abuse of the court's process. I refrain from doing so.

[140] The remainder of subparagraph ii of paragraph II of the Motion deals with an assertion that the referenced ballot papers '... appeared defective and/or willfully cut in such a manner that **a portion of the ballot paper was absent**'. Mr. Exeter did not include in his petition, any allegation that a portion of the ballot paper was absent. It therefore does not arise on the pleadings and may not be entertained at this juncture. It is not necessary to decide if that clause amounts to an abuse of the court's process.

**Paragraph II iii.**

[141] Paragraph II iii of the Motion alleged:

'That ... 238 ballots at Polling Station CLB and ... 210 at Polling Station CLB I respectively bore the Presiding Officer's initials **below the line which should have separated the names (sic) of the candidates from the remainder of the top portion of the ballot paper and were deliberately cut in an irregular manner, whereby the top portion of the ballot which should have contained the space for the endorsement of the Presiding Officer's initials and the official mark was severed and absent;**' (bold added)

[142] That paragraph mirrors in part, one section of the prayer in the petition. In this regard, paragraph (3) (b) of the prayer stated:

'Wherefore the Petitioner prays that:

- (3) An order for scrutiny and recount in respect of the defective ballots to which objections were made by the Petitioner or his representatives/agents including but not restricted to the following namely:

- (b) Ballots which **bore the official mark and the presiding officer's initials below the perforation line** including two hundred and thirty-eight ... at Polling Station CL B and two hundred and ten ... at Polling Station CLB1 respectively'. (bold added)

It is also repeated at paragraph 2.3.2 of the motion in the grounds.

[143] This is a new allegation, not having been made during the 2015 application. Rule 15 (2) (d) of the HAER and the prescribed Form 7 respectively describe and illustrate the design of the ballot paper. It is useful to consider both provisions to comprehend the gravamen of this allegation. Form 7 has already been reproduced. Rule 15 (2) (d) states:

'(2) A ballot paper shall be in Form 7 in the Appendix and shall be printed in accordance with the directions therein and shall-

(a) ...

(b) ...

(c) ...

(d) Have attached a counterfoil and a stub, and a line or perforations between the ballot and the counterfoil and between the counterfoil and stub, the whole as in Form 7 in the Appendix.'

[144] An examination of the language used in this subparagraph demonstrates that the ballot paper is printed on the same page as the counterfoil and stub but is separated from the counterfoil and stub by a line or perforation. This is borne out by the design of the ballot paper, counterfoil and stub depicted in Form 7.

[145] Mr. Exeter deposed;

'44. ... these are "described as mutilated" which in this affidavit and in the Petition are stated to be ballots that bore neither the stamp nor initials of the Presiding Officer and **others in which the Presiding Officers' initials and official mark were below the line which should have separated the names of the candidates from the remainder of the top portion of the ballot paper** ... whereby the top portion of the ballot which should have contained the space for the endorsement of the Presiding Officer's initials and the official mark was severed and absent. Indeed, this latter space was missing from



the design of the ballots and in relation to some counterfoils of which my representatives and I were able to have sight, the official mark and the Presiding Officer's initials were endorsed on the counterfoils.

53. It was evident from an examination of the ballot papers which were used in the elections that they were not designed in a manner which is consistent with that prescribed under Rule 15 and Form 7 of the House of Assembly Election Rules.

54. I have procured from the University of North Carolina at Chapel Hill website ... a copy of a cancelled ballot paper No 5054 (hereinafter "the 1994 ballot") which was used in the elections for the constituency of West St George held on 21<sup>st</sup> February 1994 and which I believe, based on the rules, is a ballot paper designed in accordance with the provisions of Rule 15 and Form 7. A copy of the 1994 ballot is exhibited herewith marked BE 12.

55. This shows distinctly how the counterfoil should be printed separate from the ballot paper and how provision should be made for the initials of the Presiding Officer and the official mark to be endorsed on the ballot paper, such that it can be folded in a manner that would preserve the secrecy of the ballot cast by electors.

56. Upon an examination of a complete ballot paper from the central Leeward election I contested, it is evidence that they were not designed appropriately so as to achieve this critical objective, which is fundamental to the conduct of elections under the election laws of St Vincent and the Grenadines.

57. At the final count, I photographed a ballot with my smartphone. When compared with the 1994 ballot, I find that the compete ballot paper from the subject election is defective in design in that it locates the space reserved for the initials and official mark of the Presiding Officer in the counterfoil instead of in the ballot proper.<sup>33</sup>

[146] Mr. Exeter attested also:

'I photographed a ballot with my smartphone and that when compared with the ballot paper which was prepared in conformity with Rule 15 and Form 7 of the House of Assembly elections Rules and used in the 1994 elections exhibited thereto as "BE 12", I find that the

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<sup>33</sup> Paras. 44, 53 -57 of the Petitioner's affidavit filed on 2<sup>nd</sup> March 2017.

complete ballot paper used in the December 2015 Central Leeward election exhibited thereto as "BE 13" is defective in design, in that **it locates the space reserved for the initials and official mark of the Presiding Officer in the counterfoil, instead of in the ballot proper.** And that as a consequence, after the elector had voted, it could not be folded in a manner that would preserve the secrecy of the ballot cast by electors. In this regard, **in addition to the ballots showing the absence of the official mark** exhibited as "BE 10", at the final count **I also observed the improper manner in which the apparent initials of Presiding Officers and the official mark was positioned on some ballots used by voters to cast their votes in the Central Leeward election.** A copy each of the photograph which I took at the time and which depicts this non-compliance with the election laws, is attached hereto and marked "BE23a" and "BE23b".<sup>34</sup> (bold added)

[147] Mr. Exeter alleged further:

'... I ... reiterate that on the basis of my own perusal of the Rules and the confirmation of my counsel in this matter, that hundreds of ballots were invalidated in each respect and have the effect of disenfranchising voters at the polls in Central Leeward **by reason of the erroneous design of the ballots, the absence of the official mark on hundreds of ballots counted by the 1<sup>st</sup> respondent at the final count, and the placing by the Presiding Officers of the Official Mark on the ballot papers in such a manner that they infringed the mandatory provisions of the election laws including Rule 31(2) of the Rules which stipulates that that (sic) the voter shall secretly mark his ballot paper and that the voter shall then fold the ballot paper so that the initials of the Presiding Officer and the official mark can be seen without opening it and hand it to the Presiding Officer who shall without unfolding the ballot paper ascertain by examination of the numbers, the initials and the official number, that it is the same paper delivered to the voter.**<sup>35</sup> (bold added)

[148] He deposed further:

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<sup>34</sup> Para. 4 of the Petitioner's affidavit in support of the petition filed on 9<sup>th</sup> November 2017.

<sup>35</sup> Para. 6 of the Petitioner's affidavit in support of the petition filed on 9<sup>th</sup> November 2017.

7. ... the Court ought therefore to be satisfied based on the pleadings, including my affidavit, that there may be reason to examine the ballots and may demand that all records relating to the ballots be brought intact into the Court by the 4<sup>th</sup> respondent who has custody of them.

8. In all the circumstances, in order that this Honourable Court may be in apposition to confirm the allegations made in my witness account, which are stated in no uncertain terms and depicted in photographs exhibited of the marks on the ballots, there can be little as to what the Court can expect to see upon inspection of the used ballots and counterfoils in all fifteen polling stations and the effect this would have on the elections; which is that **over ninety percent (90%) of these ballots would be invalid for the said reasons**. The consequence of which is that the voters are thereby disenfranchised and the election void for substantial non-compliance or in the alternative, hen these are taken into account, the Petitioner will be found to have received more valid votes than the 4<sup>th</sup> Respondent.<sup>36</sup> (bold added)

[149] The evidence presented by Mr. Exeter reveals that he is here claiming that the official mark and presiding officer's initial were entered not on the ballot paper but on the counterfoil or stub. He claims as much at paragraph 22 of his petition where he asserted: 'Contrary to Rule 31(1) (a) of the Rules, all of the ballots papers issued to presiding officers by the 4<sup>th</sup> Respondent had ... in some instances the official mark ... printed on the counterfoil.' This appears to be the import of this allegation. However, Mr. Exeter has not sought inspection of the counterfoils as a relief in this Motion. The court therefore may not entertain this aspect of his application. It is not necessary to consider the question of abuse of the court's process in relation to that part of his case.

[150] At the same time, the assertion outlined at paragraph II iii of the motion, it appears at first blush that Mr. Exeter is alleging that the presiding officer's initials and the official mark were placed on the ballot proper (i.e. on that part of the ballot paper which contained the names and symbols of the candidates). If this is his contention, he has supplied no reasons why he did not so allege in the earlier application. He has not indicated what if any exceptional circumstances exist which would justify not applying the *res judicata* principles and the rule in the **Henderson case**. I am aware of

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<sup>36</sup> Paras. 7 and 8 of the Petitioner's affidavit in support of the petition filed on 9<sup>th</sup> November 2017.

none. In the premises, in view of the previously referenced guiding rules, I hold that the presentation of such an allegation at this juncture constitutes an abuse of the court's process for the reasons outlined earlier in this judgment, in relation to paragraph II i and ii of the motion.

[151] The second part of this allegation embodies two elements:-

1. That the ballot papers was deliberately cut in an irregular manner; and
2. The top portion of the ballot paper (reserved for the official mark and the presiding officer's initials) were severed or absent.

[152] Neither of these assertions appears in the petition. However, Mr. Exeter refers to the first element at paragraph 5 of the grounds in the motion. Referring to certain ballots, he stated there:

'... Moreover, that many ballots willfully cut in an irregular manner were counted, including four hundred and forty-eight (448) ballots at polling stations CLB and CLB1'.

In circumstances where Mr. Exeter has not pleaded these matters in his petition, it cannot properly be maintained that inspection of the ballot papers to determine the accuracy of those assertions, is required for the purposes of the election petition. It is therefore not necessary to consider them for present purposes.

#### Paragraph II iv.

[153] Sub-paragraph iv. was removed and not replaced. Nothing arises for the court's consideration in respect of the deleted point. I therefore move on to the next sub-paragraph.

#### Paragraph II v.

[154] Sub-paragraph v. of paragraph II states:

'That the said **ballots appeared to have been willfully mutilated in such a manner that they are contrary to Rule 15(2), Rule 16, Rule 31(1) and 40(1)(a)** respectively, of the Rules:' (bold added)

[155] Rule 15 (2) of the HAER prescribes the design of the ballot papers. Some elements have already been examined. Rule 16 deals with the placement of the official mark on the ballot paper and specifies the intervals at which it should be changed. Rule 31 (1) sets out the procedure to be

utilized when the ballot paper is delivered to a voter for voting purposes; and rule 40 (1) (a) describes ballot papers which are void and should not be counted.

[156] Mr. Exeter supplied additional particulars regarding the ballots he described as mutilated contrary to those provisions. He did so under the grounds of the Motion, at paragraphs 2.3.1, 5, 6<sup>37</sup>, 7, 8 and 9. I will take a closer look at them together.

[157] Paragraphs 6, 8 and 9 have already been reproduced in the judgment. The germane sections of paragraphs 2.3.1 and 5 of the grounds state:

'1. The Petitioner who is a candidate was representing the New Democratic Party (hereinafter "NDP") in relation to the elections held on 9<sup>th</sup> December 2015 ... instituted the subject Petition ... complaining of the undue return or undue election of the 3<sup>rd</sup> Respondent.

The Petitioner prays in the Petition for reliefs following, namely:

2.3 An order for scrutiny and recount in respect of the defective ballots to which objections were made by the Petitioner and/or his representatives/agents including but not restricted to the following, namely: -

1.3.1. Two hundred and twenty-two ... ballots in respect of Polling Station CLF and ninety-nine (99) ballots in respect of Polling Station CLF1 **which ballots appeared defective and/or willfully mutilated;**

5. It is alleged that at the final count, contrary to House of Assembly Election Rules, the 1<sup>st</sup> Respondent ignored objections by the Petitioner and/or his representatives/agents and counted as valid more than **three hundred ... ballots** which were **defective in material respects**, in that they appeared to have been **willfully mutilated** in such a manner that contrary to Rule 31 (1) of the House of Assembly Election Rules, **neither an official mark nor any initial of the Presiding Officer appeared on them**, and that others which were **similarly mutilated ballots were ruled invalid by the 1<sup>st</sup> Respondent.**' (bold added)

[158] Paragraph 7 states:

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<sup>37</sup> The second paragraph 6.

‘Furthermore, the 1<sup>st</sup> respondent denied the allegation that 99 mutilated ballots were found as alleged or at all and asserted that the allegation is completely false. He denied the allegation that ballots were mutilated as alleged or at all, and that in any event there was no objection to any of the ballots on this ground of alleged mutilation.’

[159] The kernel of Mr. Exeter’s criticism at the referenced paragraph 2.3.1. is that the 222 ballots at polling station CLF and 99 ballots at polling station CLF1 appeared defective or willfully mutilated. He explained in paragraph 5 that this deficiency was occasioned by reason that they bore neither an official mark nor the initial of the presiding officer.

[160] He included in the grounds at paragraphs 6, 7 and 8, a large part of the Supervisor’s and the returning officer’s testimony on this issue. Paragraph 9 outlined the contents of the Supervisor’s letter dated 11<sup>th</sup> January 2016 as indicated earlier. It is not necessary to repeat them. Suffice it to say that this contention (regarding the absence of the official mark and the presiding officer’s initials) consumed a significant part of the court’s attention at the hearing and adjudication of the 2015 application.

[161] At that time Mr. Exeter pleaded:

‘(d) Contrary to the House of Assembly Elections Rules the Returning Officer ignored objections by the Petitioner’s representatives at the final count and counted as valid more than ... (300) ballots which were defective in material respects in that they appeared to have been willfully mutilated in such a manner that contrary to Rule 31 (1) of the House of Assembly Elections Rules, neither an official mark nor any initial of the Presiding Officer appeared on them, and others similarly mutilated which appeared among the ballots in the boxes for other Polling Divisions were ruled as invalid by the Respondent.’

[162] The allegation he now makes is identical to the one made in 2015. Mr. Exeter has not offered any factual or legal bases which satisfy me that another judicial examination of those matters at this level is justified. In light of the principles emerging from the **Henderson v Henderson**, **Johnson v Gore Wood**, **Buckland v Palmer** and **Turner v. Grovit** line of cases, I hold that this aspect of his motion is an abuse of the court’s process for the reasons enunciated earlier.

**Paragraph II vi.**

[163] Sub-paragraph vi. of paragraph II of the Motion sets out a further allegation. It states:

'That there are were also **similar looking ballots** in ballot boxes from various polling stations **which were ruled invalid by the 1<sup>st</sup> Respondent even after he accepted similar looking ballots in "CLF" and "CLF1".**' (bold added)

[164] The use of the words 'similar looking' embodies a reference to ballots, in a preceding statement. That previous statement referred to mutilated ballots and has been addressed in the paragraphs immediately above. It is also self-evident that this sub-paragraph echoes part of the 2015 pleading in all material respects.

[165] As demonstrated before, Mr. Exeter seeks to particularize this matter at paragraph 5 of the grounds in this Motion. For the reasons laid out in respect of sub-paragraph v of paragraph II of the Motion, I am satisfied that there is no justifiable basis to consider this aspect of Mr. Exeter's Motion, since an authoritative ruling was rendered on it by Cottle J. in 2015. It is therefore an abuse of the court's process for Mr. Exeter to raise it again in the motion.

**Paragraph II vii.**

[166] Paragraph II, sub-paragraph vii. states:

'That further and in addition to the above, the majority of ballots (over ninety percent (90%)) counted at the purported final count by the 1<sup>st</sup> Respondent bore the official mark and the Presiding Officer's initials in a manner which is contrary to the Rules'

[167] This allegation is further particularized under paragraphs 6, 13, 14 and 16 of the grounds<sup>38</sup> which state respectively:

'6. It is further alleged in the Petition that **the majority of ballots** (over ... 90%) counted at the purported final count by the 1<sup>st</sup> Respondent **bore the official mark and the Presiding Officer's initials in a manner** which is **contrary to the Rules**; and that **if the Presiding Officer or the voter folded the ballot to the line marked 'Do Not Fold Beyond This Line' the Presiding Officer could have only verified that it was the same ballot as she/he is required to do by law, by examining her/his initials and the official mark by**

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<sup>38</sup> It appears first in the Motion, but was inserted by amendment when the Amended Motion was filed on 9<sup>th</sup> November 2017.

**opening the ballot**, thereby invading the secrecy of the poll contrary to section 54(3) of the RPA and Rule 31(2) of the Rules.'

13. The ballot papers which were used in the election were not designed in a manner which is consistent with that prescribed under Rule 15 and Form 7 of the House of Assembly Elections Rules in that the counterfoil should be printed separate from the ballot paper in such a manner that it can be easily separated from the ballot paper at the appropriate time and provision should be made for the initials of the Presiding officer and the official mark to be endorsed not on the counterfoil but on the ballot paper, such that it can be folded in a manner that would preserve the secrecy of the ballots cast by electors.

14. Upon an examination of a complete ballot paper from the Central Leeward election it is evident that they were nor (sic) designed in accordance with the above Rule and Form 7 so as to achieve this critical objective, which is fundamental to the conduct of elections under the election statutory/regulatory provisions.

16. It is alleged in the said Petition that the 3<sup>rd</sup> Respondent acted in breach of Rule 40 (1) (a) of the House of Assembly Elections Rules when in the Final Count he counted the said mutilated ballots which did not show either the official mark or the Presiding Officer's initials as required by law and/or those on which the official mark and the Presiding Officer's initials were placed in such a manner that the Presiding Officer in verifying that it was the same ballot, as she or he is required to do by law, be examining her/his initials and the official mark, could only have done so by opening the ballot thereby invading the secrecy of the poll contrary to section 54(3) of the Representation of the People Act and Rule 31 (2) of the Rules.'

[168] Mr. Exeter included these charges in his petition. He pleaded:

'... the majority of ballots (over ninety percent (90%)) counted at the purported final count by the 1<sup>st</sup> Respondent bore the official mark and the Presiding Officer's initials in a manner which is contrary to Rule 31 (2) as a result the Petitioner and his representatives/agents objected persistently to their inclusion in the count because:

(a) Rule 31 (2) of the Rules (Voting procedure) provides that the 'The voter, on receiving the ballot paper shall forthwith proceed into one of the compartments in the polling



station and there secretly mark his ballot paper ...' He shall then fold the ballot paper so that the initials of the presiding officer and the official mark can be seen without unfolding it, and hand the paper to the presiding officer who shall without unfolding it ascertain by examination of the initials, the numbers and the official mark appearing thereon that it is the same paper as that delivered to the voter and if it is the same, he shall forthwith in full view of the voter and all others present remove the counterfoil and deposit the ballot paper in the box'.

- (b) If the Presiding Officer folded the ballot to the line marked 'Do not Fold Beyond this Line' he could have only verified that it was the same ballot as she or he is required to do by law, by examining his initial and the official mark by opening the ballot thereby invading the secrecy of the poll.
- (c) The invasion of the secrecy of the vote is inimical to one of the core principles for the conduct of the election namely that of secrecy of the vote and is tantamount to a substantive departure from the law with regard to the conduct of elections and specifically, section 54 (3) of the Representation of People Act and Rule 31 (2) of the Rules.'

[169] With this objection, Mr. Exeter surmises and invites the court to conclude that an order for inspection of the ballot papers would assist him and the court to determine two things:

1. the majority of the ballot papers contained the presiding officer's initials and the official mark on that part which fell below the perforation mark (in other words, on the part of the ballot paper which contained the candidates' names and symbols); and
2. (a) the presiding officer could only have verified that the ballot paper contained his initials and the official mark if he unfolded the ballot paper to reveal candidates' names and symbols and by extension the voter's 'election, "x", mark or vote'; and  
  - (b) If the presiding officer did fold the ballot paper in this manner, it would have been contrary to the Rules and would have violated the secrecy of the vote.

[170] Those claims could have been made in 2015. They were not. No reasons were advanced for Mr. Exeter's failure to do so. No special circumstances were highlighted which would shield them from the application of the rule in the **Henderson case**. In the round, it strikes me that Mr. Exeter could

have with reasonable diligence, uncovered the underlying factual basis on which to found those complaints and to include them as part of his application in 2015. In considering the merits of all sides' cases and remaining mindful of the principles extracted from the **Henderson case** and the other associated cases referenced earlier, I am satisfied that inclusion of these contentions in the present motion is an abuse of the court's process.

[171] Moreover, aspects of Mr. Exeter's complaint, on this score, invite the court to speculate about what the presiding officer may or may not have done or must have been compelled to do when verifying the presence of the official mark and signature on the ballot papers, after the voters had cast their vote. Such speculation would of necessity extend to the proposed inspection as no witness has alleged that they observed the presiding officer breach the secrecy of the vote in the manner suggested. The court cannot engage in speculation.

[172] The second limb of this allegation calls for speculation as to what the presiding officer did in respect of the referenced 'majority of ballots'. Neither Mr. Exeter nor his witnesses made any allegations that the presiding officer did in fact unfold the ballot papers to reveal her initials or the official mark. Furthermore, they proffered no methodology which is guaranteed to demonstrate conclusively (on such inspection) whether the presiding officer did in fact unfold the ballot paper in the manner described. The court is not permitted to speculate.

**Paragraph II viii.**

[173] Sub-paragraph viii. of paragraph II states:

'That if the Presiding Officer folded the ballot to the line marked '*Do Not Fold Beyond this Line*' she/he could have only verified that it was the same ballot as she or he is required to do by law, by examining his/her initials and the official mark by opening the ballot thereby invading the secrecy of the poll contrary to section 54(3) of the Representation of the People Act and Rule 31(2) of the Rules.'

[174] I have already addressed this contention under the immediately preceding paragraphs. For the reasons provided in respect thereto, I make the identical ruling that this complaint constitutes an abuse of the court's process.

**Paragraph II ix.**

[175] Sub-paragraph ix. of paragraph II states:

‘That contrary to the provisions of Rule 41(7) of the Rules **no Form 16 Statement of the Poll was presented at the Final Count for Polling Station CL 11** and in the case of others the **Form 16 Statement of the Poll presented, manifested various errors and inconsistencies** including that the total number of ballots cast and the number of names on the voters’ list, there appeared to have been a 100% voter turnout in polling stations CLA1, CLE, CLF1 and CL; and in polling station CLD1 where 485 ballots are stated to have been used by the 480 names stated to be on the official list of electors used at the poll. If there had been a 101% voter turnout.’

[176] This complaint is further detailed in grounds 10, 11 and 12 which read respectively:

‘10. In respect of Polling Station CL DI, it was drawn to the Petitioner’s attention that the Presiding Officer’s figures on the Form 16 Statement showed that more ballots were accounted for (485) than were stated as having been received from the 1<sup>st</sup> Respondent (480). The 1<sup>st</sup> Respondent denied the Petitioner’s request for a recount in this Polling Station.

11. In respect of the said CL F Polling Station, the number of unused ballots returned was not stated on the Form 16 Statement.

12. In Polling Station CL A1 the number of ballots given to the Presiding Officer by the 1<sup>st</sup> Respondent was not stated, and based on the information on the Form 16 Statement for that Polling Station, there was a 100% voter turnout in relation to the number of names on the official list used at the poll.’

[177] It is self-evident that these contentions do not relate to the ballot papers but rather to the Form 16 Statement. The motion does not seek an order for inspection of those election records. These contentions therefore fall outside of the ambit of the reliefs sought and need not detain the court. It is not necessary to consider whether they are an abuse of the court’s process.

### Additional grounds

[178] Mr. Exeter included several other grounds in his motion. They consist largely of recitals of the factual background to the petition, the relevant law and the purpose of the motion. They are dealt with for completeness. They are outlined in paragraphs 3, 4, 15, 17-19 and 15 of the motion. I reproduce them immediately below, except for paragraphs 18 and 19 which merely reproduce rules 52 and 53 of the HAER. Paragraphs 3, 4, 15, 17 and 15 state respectively:

- '3. The Petitioner brought the subject Petition on the basis that as a result of the alleged breaches and irregularities under the Representation of the People Act CAP 9 and the House of Assembly Elections Rules, the election was conducted so badly that it was not substantially in compliance with the law as to elections and/or that the alleged breaches materially affected the result of the election.
  
4. The Petitioner alleges in the Petition, inter alia, that accompanied by his representatives/agents he attended the final count of votes cast in the polls for the Central Leeward Constituency which was conducted by the 1<sup>st</sup> Respondent as the Returning Officer of the said constituency.
  
15. The Return relating to the 3<sup>rd</sup> respondent certifying him to be the candidate with the greater amount of ballots (2,497 to 2,184) and hence the winning candidate was made on 10<sup>th</sup> December 2015 by the 1<sup>st</sup> Respondent, after purporting to conduct the Final Count, the result of which was challenged by the Petitioner.
  
17. Section 57 of the Representation of the People Act CAP 6 of the Laws of St. Vincent and the Grenadines Revised Edition 2009 provides that Petition complaining of an undue election or undue return of a member of the House of Assembly be presented within 21 days after the return of the Writ is made by the Returning Officer.
  
- 15.<sup>39</sup> The orders sought hereby ate (sic) required for the purpose of determining issues in the subject Election Petition which has been lodged on behalf of the Petitioner, in accordance with the law thereunto applicable.'

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<sup>39</sup> This appears to have been mis-numbered out of sequence.

[179] Those paragraphs add nothing to the motion by way of complaints regarding the manner in which the elections were held. They contain no claims, allegations or complaints which need to be considered and determined by the court. It is not necessary to make an independent finding on them regarding the issue of abuse of the court's process.

[180] In light of the foregoing, I am satisfied that the petitioner Mr. Benjamin Exeter has failed to advance any allegations or grounds on which the court may properly find that inspection of the ballot papers is required for the purpose of the petition filed by him. The motion adds nothing which could not have been discovered in 2015 with reasonable diligence on his part. Mr. Exeter has not indicated if he obtained such details after the December 2015 judgment was made nor has he pointed to any exceptional circumstances which would compel the court to re-open those aspects of the earlier proceedings.

[181] Having regard to how the court is required to apply the rule in **Henderson** and the related principles extracted from the referenced decided cases, I hold that the motion is an abuse of the court's process. Mr. Exeter's application for an order for inspection of the ballot papers in the polling stations in the Central Leeward Constituency is dismissed.

**Issue No. 2 – Whether the court should make an order directing the Supervisor of Elections to deliver to the Registrar of the High Court ('the Registrar') documents relating to the election held in the constituency of Central Leeward on 9<sup>th</sup> December, 2015?**

**First relief – paragraph I of the Motion**

[182] This issue involves a consideration of the first relief sought in the prayer. In view of the foregoing findings, I make no order for the Supervisor to deliver to the Registrar of the court, the ballot boxes and the documents relating to the election held in the Constituency of Central Leeward on 9<sup>th</sup> December 2015.

**ORDER**

[183] It is accordingly ordered:

1. The Motion filed by Benjamin Exeter for orders that the Supervisor of Elections delivers to the Registrar the ballot boxes from the 2015 elections; and for inspection of the ballot papers is dismissed as an abuse of the court's process.
2. The petitioner Benjamin Exeter shall pay costs to the respondents Winston Gaymes, Kathleen Jeffers, Sir Louis Straker and Sylvia Findlay-Scrubb to be assessed if not agreed. Application for costs to be assessed must be filed and served on or before March 30th, 2018.
3. The Registrar in consultation with the parties, is to fix dates for case management and trial of the petition, and issue notices of hearing with proof of service.
4. The hearing of the elections petition is adjourned to a date to be fixed by the Registrar in consultation with the parties.

[184] I am grateful to counsel who provided written submissions and/or forwarded them electronically as ordered. Your contributions in this regard are indispensable to the effective, timely and efficient resolution of court cases.

#### **POSTSCRIPT**

[185] By way of postscript, I must confess that I remain disappointed and askance that some counsel without proffering an explanation, did not supply electronic copies of written submissions, pleadings and affidavits in accordance with the court order dated 12<sup>th</sup> July 2017. The two legal practitioners who did not fall into this category are Messieurs Grahame Bollers and Carlos James. Legal practitioners for the Petitioner Benjamin Exeter provided electronic copies of some but not all documents, including their skeleton arguments/written submissions and affidavits sworn to by Mr. Exeter.

[186] Whether it was due to inadvertence, design or otherwise, the flouting of the court's order in a case of some significance in which no less than 10 legal practitioners appear on the record, is frightening and cause for concern. It paints a very stark and vocal picture of the state of aspects of the administration of justice, especially in circumstances when some of the region's leading lawyers appear.

[187] Such conduct is alarming and sends the wrong signals. Equally significantly, it militates against the expeditious dispatch of the court's work since the judge must of necessity sit to reconstruct the relevant portions of pleadings, affidavits and exhibits instead of cutting, pasting and adjusting in a more timely fashion as permitted by the technology. Suffice it to say, that if this is how the legal practitioners intend to conduct themselves during this matter, it is unlikely that the final decision will be rendered within the timelines contemplated by the Court of Appeal, when it sent this matter back to the High Court for determination in March 2017.



**Esco L. Henry  
HIGH COURT JUDGE**

By the Court  
  
REGISTRAR'S OFFICE  
ST. VINCENT AND THE GRENADINES  
Registrar