

IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO. 640 OF 2019

(JITENDRA CHAWLA d.b.a CLAIMANT
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BETWEEN (AND
(
(DIRECTOR OF IMMIGRATION DEFENDANTS
(THE ATTORNEY GENERAL

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Godfrey Smith S.C. along with Hector Guerra of Marine Parade Chambers for the Claimant

Agassi Finnegan Crown Counsel in the Attorney General's Ministry for the Defendants

1. This is an Application by the Claimant for damages and other relief due to Constitutional Breaches alleged against the Defendants. The Claimant, Jitendra Chawla, is a businessman who employed 2 Indian Nationals, X and Y at one of his businesses. It is alleged that X and Y stole a large amount of money and a vehicle from the Claimant, and absconded to Mexico with the stolen items. X and Y were then arrested in Mexico and returned to Belize and

the Claimant lodged a criminal complaint against them. Instead of prosecuting X and Y for the crime of theft, the Government of Belize through the Immigration Department repatriated X and Y to India on the ground that they had been victim of human trafficking by the Claimant. Mr. Chawla now seeks relief through this constitutional action seeking declarations and damages for breach of his constitutional rights to protection of law. By consent of the parties, the court now proceeds to determine this matter on the basis of written submissions.

2. ISSUE

Did the state breach the Claimant's constitutional rights under Section 6 of the Constitution to equal protection under the law by repatriating X and Y before the Claimant was able to bring an action against them for the stolen property? If so, is the Claimant entitled to the declarations and damages sought, including vindicatory damages?

3. Legal Submissions on Behalf of the Claimant/Applicant

What this constitutional claim is about

1. This claim challenges the lawfulness of specific actions and omissions by the Defendants which left the Claimant without any legal recourse in the courts of Belize. The Claimant says that two of his employees ("the suspects") absconded across the border into Mexico with his

private property – cash and a car – for which he then filed a criminal complaint. The suspects were apprehended, returned to Belize and, one year later, repatriated by the Defendants to India on the ground that they were alleged victims of human trafficking by the Claimant.

2. The Claimant was never informed of any specific allegations against him, never given any opportunity to say anything whatsoever in his defence and never informed of any hearing or decision. He was deprived of his property and denied both his right:

- (a) to recover the loss of his property in a civil court; and
- (b) to have his criminal complaints investigated and prosecuted.

His contention is that such actions by the state were fundamentally unfair and an arbitrary abuse of state power in breach of his right to equal protection of the law.

The fundamental constitutional principle at the heart of this case

3. This claim rests squarely on the section 6 guarantee of equal protection of law under the Belize Constitution (the “Constitution”). This right – as interpreted by the Caribbean Court of Justice (‘CCJ’), regional courts and the international human rights system – is evolutive, broad and all-encompassing of natural justice, fundamental fairness and protection from abuse of state power.

4. The claimant's fundamental proposition of law is that his right to equal protection of the law was violated by the irrational, unfair and arbitrary repatriation of the suspects in total disregard for his right to obtain an effective remedy for the unlawful deprivation of his property through legal processes in Belize.

Facts giving rise to the claim

5. In September 2017, the Claimant lodged a criminal complaint against Keyur Barot, an employee of the Claimant and Jitendra Kumar a past employee of the Claimant ("the employees" or "suspects"), for the theft of his grey Chevy Equinox and monies they had collected on his behalf as proceeds of sales. On or about 23rd September 2017, following a collaborative effort among the Belize Police Department, Mexican law enforcement officials and the Belize diplomatic mission in Mexico City, the employees were discovered and apprehended in Monterey Mexico with approximately BZ \$26,000.00 or USD \$13,000.00.
6. On or about 1st October 2017, the employees were returned to Belize by Mexican officials to face criminal charges in Belize for the offence of theft. However, upon their return, the Claimant was informed that the employees had been put into protective custody pending the results of a trafficking in persons investigation in which they were allegedly the victims, and the claimant the perpetrator.
7. For a period of over ten months, the suspects were kept in protective custody. During this time, the Claimant repeatedly made inquiries of

the Belize Police Department as to when they would be charged with theft but was informed that the department of immigration was looking into the allegations of human trafficking.

8. The Claimant was not informed of the specific allegations made against him. As deposed in paragraph 16 of his Affidavit, persons from the Anti-Trafficking in Persons Council asked him general questions about the working and living conditions of one of the employees, Barot. The claimant answered all the questions and fully complied with their requests.
9. Then, on or about the 28th August 2018, without the Claimant's knowledge, and with the direct assistance of the Defendants, the employees were escorted to the Phillip Goldson International Airport where they boarded Copa Flight Number 281 to Panama with final destination to India: paragraph 14 of the First Affidavit of Jitendra Chawla.
10. To date, no criminal charges have been laid against either the Claimant or the suspects. According to paragraph 15 of the First Affidavit of Briana Williams, the criminal investigation against the claimant is still ongoing.

The Claimant's Case

11. As previewed above, the Claimant contends that the First Defendant's repatriation of the suspects was arbitrary, unreasonable and in flagrant breach of his right to the protection of the law in that:

- (1) His right to access the courts for the recovery of property unlawfully taken by his employees was frustrated, thereby denying him any effective relief for the unlawful deprivation of his property; and
- (2) The repatriation arbitrarily, irrationally and unreasonably interfered with and obstructed the Claimant's outstanding criminal complaint to the Police Department against the employees for the theft of the Claimant's grey Chevy Equinox and the sum of \$62,357.00, leaving the criminal complaint unresolved and the imputation that he is a human trafficker.

The Defendant's Defence

12. The Defendants resist the claim arguing that the Claimant's constitutional right to protection of the law was not breached because:

- i. The Supreme Court (Civil Procedure) Rules 2005 ("CPR") allows for service outside of the jurisdiction so that the Claimant's access to the courts was not denied; and

ii. Section 27 of the Trafficking in Person (Prohibition) Act 2013¹(“the Act”) precludes the state from laying any charges against the suspects.

Why the Defence is untenable

13. The state’s defence rests on two arguments: one procedural, the other substantive. Firstly, the state says nothing prevented the Claimant from applying for service of the claim outside of the jurisdiction under the CPR. As will be demonstrated in full below, this argument is ineffective against the constitutionally protected principle that equal protection of law requires not only access to the court but also effectiveness of remedy which cannot now be obtained by the Claimant with the suspects in India.

14. The substantive argument is equally inadequate. It contends that the suspects were not charged because s. 27 of the Act prohibits the laying of criminal charges against victims of human trafficking. This defence is unavailable. There was no legally cognizable process under which the suspects were found to be victims of human trafficking. Somebody, somewhere in some state office, deemed them to be victims without any recognition of the claimant’s right – as the alleged trafficker, and also victim of theft – to equal protection of law.

¹ The Defendants refer to Section 10, which is the section in the Trafficking in Persons (Prohibition Act) 2003, which was repealed and replaced with the Trafficking in Persons (Prohibition) Act 2013. The valid provision is contained in Section 27 of Trafficking in Persons (Prohibition) Act 2013

15. The insufficiency of the defence will be demonstrated below, after a brief word on the supremacy of the Constitution, the paramouncy of human rights and the approach to constitutional adjudication.

Supremacy of the Constitution

16. It is trite law that the Constitution reigns supreme over all other laws. Section 2 expressly entrenches the principle of Constitutional supremacy into Belize's legal system so that laws which conflict with the Constitution are rendered null and void to the extent of their inconsistency.

17. Also entrenched in the Constitution are the protection and enforcement of fundamental rights and freedoms, rendering any law which is inconsistent with these fundamental rights and freedoms null and void.

18. Thus, both the doctrine of Constitutional supremacy and the protection of fundamental rights and freedoms constitute foundational precepts of Belize's constitutional framework.

Paramouncy of Fundamental Rights

19. Fundamental rights and freedoms are especially protected. The deference to and the significance of fundamental rights and freedoms are reflected from the onset in the Preamble of the Constitution:

“Whereas the people of Belize

(a) affirm that the Nation of Belize shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator,

(d). recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and upon the rule of law;

e) require policies of state which protect and safeguard the unity, freedom, sovereignty and territorial integrity of Belize; which eliminate economic and social privilege and disparity among the citizens of Belize whether by race, colour, creed or sex; which protect the rights of the individual to life, liberty and the pursuit of happiness; which preserve the right of the individual to the ownership of private property and the right to operate private businesses; (underlining supplied)”

20. Section 3 then affirms that “*every person in Belize is entitled to the fundamental rights and freedoms of the individual... namely the (a) life, liberty security of the person and the protection of the law; (c) protection for his family life, his personal privacy, the privacy of his home and other property and recognition of his human dignity; and (d) protection from arbitrary deprivation of property” Part II then sets out in detail the specific fundamental rights and freedoms constitutionally protected.*

21. Accordingly, from the above, the rights to the protection of the law and protection from arbitrary deprivation of property are jealously guarded

under the Constitution, with the preamble requiring policies of the state to preserve private property rights.

Approach to Constitutional Adjudication

22. It has long been established that fundamental rights are to be given a liberal and purposive interpretation. As Lord Keith in **Attorney General of Trinidad and Tobago v Whiteman**² [TAB1] said at page 927 of the judgment: *“the language of the constitution falls to be construed, not in a narrow and legalistic way, but broadly and purposively, so as to give effect to its spirit, and this is particularly true of those provisions which are concerned with the protection of human rights.”*

23. In his speech in **Minister of Home Affairs v Fisher**³ [TAB2], Lord Wilberforce declared that, to ensure the full benefit of the constitutional provisions, the constitution calls for a *“generous interpretation avoiding what has been called “the austerity of tabulated legalism”*⁴

24. Similarly, Byron CJ in **Attorney General of Grenada v The Grenada Bar Association**⁵ [TAB3], echoed, at paragraph 7, that:

“The nature of a Constitution requires that a broad, generous and purposive approach be adopted to ensure that its interpretation reflects the deeper inspiration and aspiration of

²[1991] 2 AC 240, 247

³[1980] AC 319

⁴ Page 328 of the judgment

⁵ Civil Appeal No. 8 of 1999

the basic concepts on which the Constitution is founded. Respect must be paid to the language that is used and its context, by considering all relevant provisions bearing on the subject for interpretation as a whole, and to the traditions and usages.”

25. In **Attorney-General v Dr. Denzil Douglas** [TAB4], ⁶CJ Pereira emphasized:

*“Important is the fact that constitutions are not rigid texts which are of fixed application and which contemplate limited matters; they are rather living instruments that are always speaking. Accordingly, the fact that particular circumstances would not have been contemplated at the time of the framing of a constitution is not a bar to its application to the circumstances. Indeed, and as Jackson JA in *Inland Revenue Commissioners and Attorney General v Lilleyman and Others* stated: “[a constitution’s] full import and true meaning can often only be appreciated when considered as the years go on, in relation to the vicissitudes of fact which from time to time emerge.”.*”

26. Concomitantly, there is the principle that limitations or derogations from the fundamental rights and freedoms must be restrictively construed. As explained by Sir Dennis Byron, in **Nervais and another v The Queen**⁷, [TAB5] at paragraph 39,

“It is a general principle of constitutional interpretation that derogations from the fundamental rights and freedoms must be narrowly construed and there should be applied an interpretation which gives voice to the aspirations of the people who have agreed to make this document their supreme law should be applied.... This Court should give effect to the

⁶ SKBHCVAP2019/0007

⁷[2018] CCJ 19 (AJ), para. 39

interpretation which is least restrictive and affords every citizen of Barbados the full benefit of the fundamental rights and freedoms.”

27. Lastly, it is important to bear in mind that international instruments and jurisprudence serve as aids to interpretation of these rights. As Lord Hoffman stated at paragraph 25 in **Joseph and Boyce v the Queen**⁸ [TAB6], it is a well-established principle that domestic law should be construed in light of the state’s international obligations.

“...international law can have a significant influence upon the interpretation of the Constitution because of the well-established principle that the courts will so far as possible construe domestic law so as to avoid creating a breach of the State's international obligations. “So far as possible” means that if the legislation is ambiguous (“in the sense that it is capable of a meaning which either conforms to or conflicts with the [treaty]”: see Lord Bridge of Harwich in R v Home Secretary, ex parte Brind [1991] 1 AC 696, 747) the court will, other things being equal, choose the meaning which accords with the obligations imposed by the treaty.”

28. Applying the principles outlined above, the proper approach to the present case must be such that the Claimant’s right to protection of the law must be interpreted in a broad and purposive manner, and any limitation, such as that contained in s. 27 of the Act, interpreted in a narrow and restrictive manner.

⁸ [2004] UKPC 32, para. 25

Right to Equal Protection of law

29. Section 6 of the Constitution provides:-

“6.-(1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

(7) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.”

30. The jurisprudence from the CCJ, other courts in the commonwealth, and regional courts have interpreted and developed the right to protection of the law to mean not only access to court but also safeguard against the arbitrary, irrational and unreasonable exercise of discretion or denial of any of the constitutional rights.

The CCJ on the Nature and Scope of the Right to Protection of the Law

31. In a line of cases, the CCJ has consistently affirmed that the right to the protection of the law is broad, multifaceted and interrelated with the rule of law and the principles of natural justice. The CCJ first examined

the nature and scope of the right to protection of the law in the landmark case of *A-G and others v Boyce and Joseph*⁹ [TAB7]. The right was described as “*broad and pervasive*”. Justices de la Bastide and Saunders at paragraph 60 of their Joint judgment explained that: -

“... In the case of the right to the protection of the law, however, it is clear that section 18 does not provide, nor does it purport to provide, an exhaustive definition of what that right involves or what the limitations on it are...Indeed, the right to the protection of the law is so broad and pervasive that it would be well-nigh impossible to encapsulate in a section of a constitution all the ways in which it may be invoked or can be infringed. Section 18 deals only with the impact of the right on legal proceedings, both criminal and civil, and the provisions which it contains are geared exclusively to ensuring that both the process by which the guilt or innocence of a man charged with a criminal offence is determined as well as that by which the existence or extent of a civil right or obligation is established, are conducted fairly. But the right to the protection of the law is, as we shall seek to demonstrate, much wider in the scope of its application. The protection which this right was afforded by the Barbados Constitution, would be a very poor thing indeed if it were limited to cases in which there had been a contravention of the provisions of section 18.”

32. Wit J, at paragraph 20 in his judgment in the same case, highlighted the connection between the right to the protection of the law and the concept of the rule of law and the guarantee of effective remedies:

“[20] The multi-layered concept of the rule of law establishes, first and foremost, that no person, not even the Queen or her Governor-General, is above the law. It further imbues the Constitution with other fundamental requirements such as

⁹ [2006] CCJ 3 (AJ)

rationality, reasonableness, fundamental fairness and the duty and ability to refrain from and effectively protect against abuse and arbitrary exercise of power. It is clear that this concept of the rule of law is closely linked to, and broadly embraces, concepts like the principles of natural justice, procedural and substantive “due process of law” and its corollary, the protection of the law. It is obvious that the law cannot rule if it cannot protect. The right to protection of the law requires therefore not only law of sufficient quality, affording adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power. It also requires the availability of effective remedies. (Underlining supplied)”

33. **Attorney General of Belize v Phillip Zuniga et. al.**¹⁰ [TAB8] further emphasizes (at para 63 of the joint judgment of Saunders J, Nelson J and Hayton J) that the right to protection of the law embraces the concepts of the principles of natural justice which safeguards against irrational, unreasonable and arbitrary exercise of power.

34. **Juanita Lucas and Celia Carillo v Chief Education Officer, Minister of Education et al.**¹¹ [TAB9] reaffirmed the wide amplitude of the right to protection of law and resolved that the right includes not only access to the court but also to administrative tribunals.¹² While ruling against the Appellants on the specific facts, the Court accepted that, where the investigative body or authority could reach a prima facie¹³ conclusion that the person be disciplined, the right to due

¹⁰CCJ Appeal No CV8 of 2012-[2014] CCJ 2 (AJ), para. 63

¹¹ [2015] CCJ 6 (AJ)

¹² Ibid p. 59

¹³ Ibid p. 74

process, including the right to be heard, should be afforded, even in the early stages of the investigative process.¹⁴

35. Shortly after, in the **Maya Leaders Alliance v Attorney General of Belize**,¹⁵ [TAB10] the Court further interpreted that the state may in some case have a positive duty to secure and ensure the enjoyment of the rights, and that such failure of the state may result in a violation of the right to protection of the law. The CCJ reaffirmed the principles set out above and resolved that:

“[47] The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen to access the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.” The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have

¹⁴ Ibid p.76

¹⁵ [2015] CCJ 15 (AJ)

otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.”(Underlining supplied)

36. In **Nervais and another v The Queen**,¹⁶ a constitutional challenge to the mandatory death penalty in Barbados, the CCJ once more reiterated the connection between the protection of the law and the concept of the rule of law and the protection against arbitrary exercise of power:

[45] The right to protection of the law is the same as due process which connotes procedural fairness which invokes the concept of the rule of law. Protection of the law is therefore one of the underlying core elements of the rule of law which is inherent to the Constitution. It affords every person, including convicted killers, adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power. (Underlining supplied)

McEwan and others v The Attorney General of Guyana and others¹⁷ [TAB11] is the most recent case on the right to the protection of the law decided by the CCJ. The Court recognized that the right protects against unintelligible (or vague) laws which do not provide for fair notice to the citizens or control of discretion. Relevant to the instant case is the control of discretion, which the Court explains protects against arbitrary exercise of discretion by public officials. Paragraph 127 states:

¹⁶TAB-5

¹⁷ [2018] CCJ 30 (AJ)

“[127] The second factor outlined by Gonthier J in R v Nova Scotia Pharmaceutical Society relates to the fact that vague laws give public officials the power to subject individuals to arbitrary exercise of discretion. This is a particularly important issue in this case since the appellants were never informed of any details of the charges being made against them, including the alleged “improper purpose” of which they were being accused, and were denied the opportunity to make phone calls after their arrest and detention despite repeated requests.”

37. Distilled to their essence, these cases are compelling authority for the proposition that the right encompasses: 1) the right to access courts with the availability of effective remedies; 2) safeguards against unfairness, unreasonableness and arbitrary exercise of power; 3) the right to be heard where the investigative body has the power to make an adverse decision; and 4) the state has a positive duty to secure and ensure the enjoyment of rights. The claimant submits that the defendants failed in all four aspects.

Right of Access to Courts

38. The claimant submits that the arbitrary and reckless repatriation of the suspects to India to the detriment of the claimant’s criminal complaint effectively denied him his right to access the courts to obtain redress for the deprivation of his property.

39. As acknowledged by the CCJ in **Maya Leaders Alliance**¹⁸ and this Honourable Court in **Chawla v The Attorney General of Belize and The Commissioner of Sales Tax** [TAB12],¹⁹ the guarantee of equal protection of law, though not explicitly contained, inherently encompasses the right to access the courts. In **R v Secretary of State for the Home Department, ex p Leech**²⁰ [TAB13] the UK Court of Appeal described the right to access the Courts as a ‘basic right’ of fundamental importance recognized even in the UK’s unwritten constitution:

“Now we turn to a principle of greater importance. It is a principle of our law that every citizen has a right of unimpeded access to a court ... Even in our unwritten constitution it must rank as a constitutional right.”

40. Similarly, the Court of Appeal of the Eastern Caribbean, in **Cannonier v Director of Public Prosecutions; Isaac and others v Director of Public Prosecutions**²¹ [TAB14], determined that the right to access to the court is ‘*inherent in these fair trial provisions*’ set out in the right to protection of the law. Thus, the right to access the courts is a right rooted in the fair trial provisions entrenched in Section 6 of the Belize Constitution.

41. The South African Constitutional Court in **President of the South Africa v Modderklip Boerdery (Pty) Ltd**²² [TAB15] stressed the functional importance of the right to the maintenance of public order

¹⁸ TAB 10, para. 44

¹⁹ Claim No. 256 of 2013

²⁰[1994] QB 198, 210

²¹(2012) 80 WIR 260 para. 32

²²(2005) (5) SA 3 (CC)

and stability:

“[t]he right of access to court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalized mechanisms to resolve disputes, without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle against self-help in particular, access to court is indeed of cardinal importance. As a result, very powerful considerations would be required for its limitation to be reasonable and justifiable.” [footnote omitted]

42. Importantly, the right to access must be interpreted as comprising not only the right to formal access to justice but also to effective recourse for seeking redress. The Human Rights Committee in its **General Comment No. 32**²³ [TAB16] observed that access to courts must not be frustrated by de jure or de facto situations.

9. Article 14 encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. Access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice... A situation in which an individual's attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14, paragraph 1, first sentence. This guarantee also prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds.

²³ The Human Rights Committee interpret the States' obligation under the International Covenant on Civil and Political Rights of which Belize has been a party since June 1999

43. The Human Rights Committee also opined that the right of access to justice includes the right to seek and obtain effective remedies and reparation, as a matter specifically guaranteed under article 2(3) of the ICCPR.

44. The Inter-American Court of Human Rights in the **Case of Hiliare, Constantine and Benjamin v Trinidad and Tobago** [TAB17] stated:

150) ...this Court has reiterated that it is not enough that legal recourse exist in theory, if such recourses do not prove effective in preventing violations of the rights protected in the Convention. The guarantee of an effective recourse "constitutes one of the basic pillars, not only of the American Convention, but also the Rule of Law in a democratic society as per the Convention." (underlining supplied)

45. The rule of law undoubtedly requires that persons be able to access the courts in order to seek appropriate and effective remedy. The right therefore must guarantee meaningful access to the courts capable of granting appropriate and effective remedies to those whose rights have been violated. As observed by Wit J CCJ in **A-G v Joseph and Boyce**²⁴:

"The right to protection of law requires therefore not only law of sufficient quality, affording adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power. It also requires the availability of effective remedies."

46. The Claimant submits that by repatriating the employees in the manner

²⁴ [TAB7]

in which they did, the Defendants created a de facto situation which frustrated his right of meaningful access to the courts. It is plain and obvious that the suspects' removal from Belize significantly curtailed the courts' capacity to grant appropriate and effective remedies to the Claimant against them.

Service under CPR not effective

47. The Defendants disputes the charge that the repatriation has deprived the Claimant of his right to access the courts. They contend that, under the provisions of the CPR, the Claimant could serve his claim form outside of the jurisdiction and access the court to proceed with his claim. This argument ignores the requirement that there must be effective recourse for redress. By deliberately removing the tortfeasors from the jurisdiction, the Defendants neutered the capacity of the Claimant to obtain effective remedy substantially in circumstances where there is no *Reciprocal Enforcement of Judgments* treaty with India.

48. Further, it is disingenuous for the Defendants to contend that the employees are easily within the reach of the Claimant through the mechanism of service outside the jurisdiction when they repatriated the suspects to India as victims of the offence of trafficking in persons at the hands of the Claimant. The purpose of repatriation is to assist and protect the victims of offences of trafficking in persons and in fact place them beyond the reach of the Claimant.

49. In these circumstances, the Claimant submits that it is clear that the Defendants are relying on a formalistic conception of the right to access the courts since, as a result of the repatriation, they are fully aware that the courts would not be able to grant him redress capable of being effectively enforced in Belize or indeed in India. As stated in the principles set out above, it is not enough that legal recourse exists in theory.

50. This ground of defense is, thus, demonstrably empty and reveals the Defendants' unconsidered actions.

Arbitrary and Irrational Repatriation

51. The Claimant also contends that, in the circumstances, the Defendants' repatriation of the suspects was arbitrary, unreasonable and irrational, and to the grave detriment of the Claimant's right to protect his property through both civil and criminal proceedings.

52. It was fundamentally unfair and an arbitrary exercise of power for the Defendants to have simply repatriated the suspects on the ground that they were allegedly being trafficked by the claimant because:

- (1) The Claimant was given no opportunity whatsoever to challenge the allegation of trafficking and is completely unaware of any finding or decision to that effect.
- (2) He had criminal complaints pending against the suspects.

- (3) Inasmuch as the Act serves a salutary purpose in protecting legitimate victims of trafficking in persons, the court must not lose sight of the fact that equal protection of law requires that the alleged trafficker also be given the opportunity to vindicate his name.

53. As set out in paragraph 34 above, the CCJ in **Lucas**²⁵ confirmed that the right to be heard may be constitutionally protected under the protection of the law where the person is subjected to an investigative process which may result in the person facing disciplinary action. *A fortiori* a person subjected to a criminal investigation should be afforded the right to be heard, especially if actions will be taken to his detriment on the basis of the allegations being made.

54. Yet, in the case at bar, the claimant was not afforded an opportunity to be heard on the specific allegations being made against him. As his uncontroverted evidence sets out, he was only asked general questions about the living and working conditions of one of the employees. He was not even notified of the particular allegations made against him by employees who stole his property and who, when caught, made allegations against him. The blind acceptance by the authorities of the allegations made by the suspects in these circumstances shocks even the most basic notion of logic, reasonableness and fairness.

²⁵ Tab 9

55. By arbitrarily acting on the allegations made by the suspects, the defendants failed to adhere to their duty under the protection of the law to take positive steps to ensure and protect the rights of individuals. As held in the case of *Maya Leaders Alliance and others v The Attorney General of Belize*²⁶, at paragraph 47, the right may impose a positive obligation on the State to take positive action to secure and ensure the enjoyment of constitutional rights. At paragraph 52, the Court stated:

“52 The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.”(underlining supplied)

56. The Inter-American Court of Human Rights in **Hilari Constantine** has also stated that the right to equal protection of the law also includes a positive duty on the part of the State to guarantee the rights of all individuals within their jurisdiction. The Court stated:

“151) This Tribunal has also indicated that within the general obligations of States, there exists a positive duty to guarantee the rights of all individuals within their jurisdiction. This includes the duty to take all necessary measures to remove any

²⁶ Tab 10

impediments which might exist that would prevent individuals from enjoying the rights the Convention guarantees. Any state which tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is consequently in violation of Article 1(1) of the Convention.²⁷”

57. This positive duty to protect individuals from the violations, applies not only to actions by state authorities, but also by private actors. This third-party dimension was recognized in the landmark case of **Velasquez Rodriguez v Honduras**²⁸ [TAB18] emanating from the Inter-American Court on Human Rights. The Court established that the state is obligated to investigate every situation involving a violation of a right.

“176. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.”

58. Similarly, the South African Constitutional Court has also recognized this duty to protect against the actions of private actors. In **President of the South Africa v Modderklip Boerdery (Pty) Ltd**²⁹, the Court

²⁷Case of Hiliare, Constantine and Benjamin v Trinidad and Tobago [TAB17]

²⁸Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988)

²⁹Tab6

resolved that the state has a constitutional obligation to ensure the protection of constitutional rights – notably, the applicant’s right to property. The state, thus, was required to take reasonable steps to ensure that the applicant was provided with effective relief for the infringement of his right to property by private persons. The Court considered that it was, *“unreasonable of the state to stand by and do nothing in the circumstances”* and the failure of the State to do anything, *“breached Modderklip’s constitutional rights to an effective remedy as required by the rule of law and entrenched in section 34 of the Constitution.”*

59. In the instant case, the actions of the Defendants were more egregious than a mere failure to take positive action to guarantee the claimant’s rights. Here, the Defendants took actions in diametric opposition to their positive duty. In repatriating the suspects in a manner which unreasonably frustrated and obstructed the recent criminal complaints filed against them, the Defendants acted against their duty to protect. Further, as mentioned above, it also frustrated the Claimant’s right to seek effective relief via civil proceedings.

60. The Defendants have not shown to this Honourable Court any consideration whatsoever to the rights and interests of the Claimant when the decision to repatriate the suspects was taken, neither is any shown now.

61. The Claimant highlights that he took all the appropriate and necessary steps to ensure the protection of his property under the law and the

relevant authorities. He was under the impression that the Defendants were cooperating with him, and that the investigation was still ongoing so that he could not proceed against the suspects.

62. In breach of the basic principles of fairness and reasonable, the Defendants assisted and cooperated with the suspects, thereby implying the Claimant's guilt in a serious criminal offence without charging him or giving him an opportunity to be heard, or even informing him of the precise allegations made against him.

63. To date, neither the Claimant nor this Honourable court has been provided with any of the allegations against the Claimant. Without the opportunity to clear his name, the Claimant has effectively been found guilty through the denial of following-up on his criminal complaint, as well as the frustration of his right of access to court to pursue civil proceedings.

Trafficking in Persons (Prohibition) Act

64. The Defendants' second and final argument relies on s. 27 of the Act. In a feeble attempt to avoid responsibility for their plainly irrational actions, the Defendants say that they did not pursue the claimant's criminal complaint because the section precluded them from laying criminal charges against the suspects. The Claimant respectfully submits that this contention is utterly misconceived.

65. Section 27 reads as follows:

“27. A victim of trafficking in persons shall not be criminally liable for any immigration related offence or any other criminal offence that is a direct result of that victim being trafficked.”

66. The *Trafficking in Persons (Prohibition) Act* (the “Act”) was enacted in 2013, repealing the 2003 *Trafficking in Persons (Prohibition) Act*. The long title of the Act states that the statute is:

“AN ACT to prohibit and prescribe punishment for Trafficking in Persons; to give effect to and implement the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons; to make provision for the offence of trafficking in persons, trafficking for the purpose of adoption and other related offences; to repeal the Trafficking in Persons (Prohibition) Act, (No. 18 of 2003); and to provide for matters connected therewith or incidental thereto.”

67. The Act is divided into six substantive parts: 1) Preliminary; 2) Anti-Trafficking in Person Council; 3) Offences; 4) Assistance and Protection of the Victims; 5) Forfeiture; and 6) Miscellaneous. These set out the legal framework for tackling trafficking in Belize, providing measures for prevention, prosecution and victim protection. The legislative schema alone manifests the clear intention of the framers to create parts which speak to one another to function as one whole system.

68. In terms of prevention, the Act establishes the Anti-Trafficking in Persons Council to coordinate the implementation of the Act, formulate

policies and programs to prevent and suppress trafficking in persons as well as to educate the public on the preventative and protective measures.

69. As regards prosecution, the Act is a penal statute which creates the offence of trafficking in persons and other related to offences, prescribing their respective penalties. The Act also provides procedural safeguards, such as special rules of evidence and defence, and the power of the court to grant civil remedies to the victim as against the convict.

70. For the protection of victims, the Act lays out guiding principles attendant to the investigation and prosecution of offences related to trafficking in person. These include the duty to take all measures to identify the victims of trafficking and protect the personal integrity of the victim and the victim's family. Of note, Article 31 imposes an obligation on the Director of Public Prosecution to inform the victim of the progress of the criminal court proceedings and his or her right to claim for compensation.

71. From the above, the general framework is a sequential pattern to investigate, prosecute, protect, and remedy; all working together to secure both the punishment of the trafficker and relief for the victim.

72. The term "victim of trafficking in persons" must be understood in this overall scheme of the Act. Article 6(2) of the **UN Protocol to Prevent,**

Suppress and Punish Trafficking in Persons [TAB19], the UN Protocol expressly sought to be implemented through the Act, expressly preserves and emphasizes, under the section for the assistance and protection of victims, the rights of the defence. Article 6 provides that the assistance shall not be provided in a manner prejudicial to the rights of the defence.

“Article 6

Assistance to and protection of victims of trafficking in persons

2. *Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:*

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.”

73. Furthermore, Article 8 (2), which deals with the repatriation of victims of trafficking in persons, underscores that the return of the victim shall be carried out with due regard for the status of any legal proceedings related to the fact that the person is a victim of trafficking. The presumption, therefore, is that the assistance and protection would be working along with the institution of legal proceedings.

“Article 8

Repatriation of victims of trafficking in persons

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.”

74.No legal proceedings were instituted here. Indeed, according to the Defendants the investigation has not been concluded. The repatriation of the suspects was premature and carried out without any regard to the rights of the defence and the interest in bringing legal proceedings for the court to determine the guilt or innocence of the defendant, and concomitantly the victimhood of the complainants.

75.Further, s. 27 does not confer immunity for ALL criminal offences. It confers immunity for immigration-related offences or any other criminal offences – like immigration-related offences or those committed under the instructions of the trafficker– that are a direct result of a victim being trafficked. What is the rationale for this immunity from criminal liability? Clearly, the protection of the victim from criminal liability for acts carried out either by deception or coercion. If a victim being trafficked enters Belize without the proper immigration documentation he or she cannot be culpable for that and hence is exempted from liability. That is a sensible and just outcome.

76. What could be other criminal offences that are a direct result of being trafficked? These could include: being without a work permit; not having a driver's license and being forced to drive by the trafficker, not having a gun license and being forced to carry one on the instructions of the trafficker; or loitering for the purpose of prostitution.

77. There are a myriad of offences that could be committed by a victim but to engage the immunity provision of s. 27, the offence must have been:

- (1) as a **direct result**;
- (2) of a **victim**; and
- (3) being **trafficked**.

78. On a proper interpretation of s. 27, it is difficult to conceive how the theft of a car and cash could be viewed as a direct result of being trafficked. As set out above, the spirit and intent of the kinds of offences exempted are clear. The language of s. 27 does not extend to criminal acts in furtherance of escape from an alleged trafficker. We would be descending a slippery slope indeed if a victim, rather than seeking the aid of the police, could commit criminal acts to escape from a trafficker.

79. The evidence suggested that the suspects were involved in driving around the country of Belize collecting cash from sales for the Claimant. Firstly, the liberty of access to a vehicle driving all over the country and collecting substantial sums of cash is hardly associated with being a victim of trafficking.

80. Secondly, with all that liberty, the suspects could have easily gone into a police station and made a complaint. Instead they fled to Mexico and were arrested in Monterrey near the border with the United States where they were no doubt headed in search of the American dream. Having been caught they have run a story about being victims of trafficking.

81. Neither the court, nor indeed anyone else, will ever know the truth because the defendants returned the suspects to India without any transparent process that was ever revealed to the Claimant.

82. Then, logically, for someone to be considered a victim of trafficking, it must be shown that an offence of trafficking in persons was committed. Then, for person to be relieved from any criminal liability, it must be shown that the he or she was the victim of that offence. These are logical preconditions to section 27's exemption of criminal liability. At minimum, this requires a proper and concluded investigation.

83. The Defendants themselves aver that the criminal investigation remains open. If the investigation is still open, it is incomprehensible that the suspects could have been repatriated to India as victims.

84. The offence of trafficking in persons has various elements and may be carried out in various ways. The offence is defined as follows:-

“11. (1) A person who engages in, conspires to engage in or attempts to engage in, or assists another person to engage in, or

organizes or directs another person to engage in, trafficking in persons commits an offence and is liable on conviction on indictment, to imprisonment for a term of eight years.”

85. The Defendants have not provided any evidence to this Honourable Court on which this Court is able to find that there was, at least, a prima facie case against the Claimant. At paragraph 8 of the Affidavit of Briana Williams, the Defendants simply make the bare statement that “*the two individuals disclosed certain information*” that led to the reasonable suspicion that the individuals were victims of human trafficking. No further information is provided. From the date of that interview to the date of the repatriation almost one year had passed, and yet, no information of any further evidence uncovered against the Claimant by the Police Department’s Major Crimes Unit is disclosed. This is woefully inadequate to justify the failure of the Defendants to protect the rights of the Claimant to his property.

86. The Defendants must specify at the very least the precise particulars of the offence alleged to have been committed by the Claimant against the employees. Fairness necessitates that accused persons be informed of the particulars of the alleged offence so that he may be allowed to defend himself and clarify the facts at the earliest.

87. Being reminded also that any limitation on the rights must be construed narrowly, Section 27 simply does not avail the Defendants of their duty

and responsibility to act reasonably and fairly in investigating and prosecuting the Claimant's criminal complaint against the suspects.

88. It is clear that the Defendants breached the Claimant's right to the protection of the law as they did not act with the requisite reasonableness and fairness and failed in their positive duty to protect the property rights of the Claimant for which he had already lodged a criminal complaint.

Damages

89. Section 20 of the Belize Constitution vests the court with a wide and broad discretion to grant relief for breaches of fundamental rights and freedoms constitutionally protected. Under the section, the Court is empowered to "*make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution*".

90. The CCJ stressed the significance of the breadth of this discretion at paragraph 6 in **The Maya Leaders Alliance and others v The Attorney General of Belize**³⁰ stating:

'The power thus granted to the courts to provide redress for constitutional infractions confers, and again this bears

³⁰TAB10

emphasis, a broad discretion to fashion effective remedies to secure the enforcement of constitutional rights.”

91. The CCJ made clear at paragraph 7 that this remedial jurisdiction includes the power to award damages where:

- i. There is a specific constitutional right;
- ii. There is a contravention of the right; and
- iii. A monetary award is appropriate in the circumstances.

92. The claimant has established i and ii above in the preceding sections of these submissions. As regards the appropriateness of damages, in **Vancouver v Ward**³¹ [TAB20], the Supreme Court of Canada explained that:

“[24] A functional approach to damages finds damages to be appropriate and just to the extent that they serve a useful function or purpose.

[25] I therefore turn to the purposes that an order for damages under s. 24(1) may serve. For damages to be awarded, they must further the general objects of the Charter. This reflects itself in three interrelated functions that damages may serve. The function of compensation, usually the most prominent function, recognizes that breach of an individual’s Charter rights may cause personal loss which should be remedied. The function of vindication recognizes that Charter rights must be maintained, and cannot be allowed to be whittled away by

³¹2010 SCC 27

attrition. Finally, the function of deterrence recognizes that damages may serve to deter future breaches by state actors.

[27] *Compensation has been cited by Lord Woolf CJ (speaking of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (Rome, 4 November 1950; TS 71 (1953); Cmnd 8969)) as 'fundamental'. In most cases, it is the most prominent of the three functions that Charter damages may serve. The goal is to compensate the claimant for the loss caused by the Charter breach; '[t]he applicant should, in so far as this is possible, be placed in the same position as if his convention rights had not been infringed': **Anufrijeva v Southwark London BC** [2003] EWCA Civ 1406, [2004] 1 All ER 833 at [59] per Lord Woolf CJ."*

93. The Claimant has detailed at paragraphs 22 and 23 of his Affidavit his personal loss caused by the Defendants' breach. Damages, it is submitted, is appropriate as it serves the functional purpose as per **Vancouver v Ward**. Placing the applicant as far as possible in the same position as if his constitutional rights had not been infringed means restoring the claimant's property which the Defendants placed out of his reach to recover.

94. Furthermore, the Privy Council in **Attorney of Trinidad and Tobago v Ramananoop**³² [TAB21] considered that in certain circumstances an additional award of damages may be awarded to reflect the importance of the constitutional right and the sense of public outrage.

³²[2006] UKPC 15

“18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. ‘Redress’ in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions ‘punitive damages’ or ‘exemplary damages’ are better avoided as descriptions of this type of additional award.”

95. The award of vindicatory damages is discretionary and dependent on the circumstances of the case. In **Titan International Securities Inc v**

the Attorney General of Belize and another³³ [TAB22], the CCJ instructs that:

“[59] The approach is therefore to assess the nature of the breach in terms of the particular facts of the case and to decide whether an additional award was required which would not only vindicate the rights of the party but would also deter the authorities from engaging in such conduct.”

96. The Claimant respectfully submits that the circumstances of this case call for an additional award of damages to vindicate the right of protection of the law and underscore its importance. The absolute disregard and carelessness displayed by the Defendants in their investigation of the criminal complaints made by and against the claimant should be met with serious reprobation. It is clear that the Defendants do not seriously regard their duty to act fairly, and reasonably and consider the rights of all parties. The defendants’ seemingly flippant approach to these basic principles led to the persisting and damning implication that the claimant was/is guilty of the acts of which the suspects accused him. Put in stark terms, the Claimant is left with the taint of being a criminal human trafficker.

97. An additional award would go a long way to reflect the outrage at the deliberate actions of the state, which could discourage persons from reporting crime to the state authorities in fear that they may be in turn unfairly investigated and punished.

³³ [2018] CCJ 28 AJ

98. There is no comparable precedent for vindictory damages for the facts of this case. The additional sum is largely based on the court's determination to award an additional sum to vindicate the right and register the disapprobation of the actions of state authorities. Nonetheless, the case *Wade v Roches* [TAB23]³⁴ provides some guidance since the case engaged the corollary right to protection of the law, the right against discrimination. The Court of Appeal awarded a global sum of \$60,000.00 for the breach.

99. The CCJ in Titan Securities awarded \$100,000.00 in vindictory damages alone.

100. In this case, the claimant humbly suggests an additional sum of \$100,000.00 to sum claimed in compensatory damages.

101. Based on the above, the Claimant respectfully requests this Honourable Court to grant the Claimant the following relief for the breach of his Constitutional rights:

- a) The declarations sought;
- b) Damages in the sum of \$66,197.00; and
- c) Vindictory damages in the sum of \$100,000.00.

Legal Submissions on Behalf of the Defendant/Respondent

³⁴ Civil Appeal No. 5 of 2004

The Claimant's claim is for Constitutional relief arising from the repatriation of Keyur Barot and Jitendra Kumar ("the Indian Nationals") to India on the 28th August 2018. The substance of the claim is that the First Defendant's repatriation of the Indian Nationals frustrated the Claimant's criminal complaint against the Indian Nationals and also frustrated the Claimant's right to claim for the recovery of property stolen by the Indian Nationals in the civil courts of Belize. The reliefs sought by the Claimant are Declarations that the Claimant's constitutional right under **section 6(1)** of the **Constitution** have been violated and damages including vindictory damages, costs and such other relief as this Honourable Court deems just.

102. Defendants' Grounds for Defending the Constitutional Claim

The Defendants accept the Claimant's statement of law that **section 6(1)** of the **Constitution** which guarantees equality before the law and equal protection of the law is evolutive, broad and all-encompassing of natural justice, fairness and that it guards against the abuse of state power. The Defendants do however defend this Claim on the grounds that:

The Claimant's Constitutional Right to equal protection of the law as provided by **Section 6(1)** of the **Constitution** has not been frustrated or denied in respect of any claim which the Claimant may wish to bring against the Indian Nationals. The **Supreme Court (Civil Procedure) Rules 2005** provide the Claimant with a mechanism for the service of any Claim Form against the Indian Nationals outside of Belize and the commencement of a civil claim for the recovery of the Claimant's property unlawfully taken by the Indian Nationals.

103. The Claimant is precluded from being granted Constitutional relief where other effective causes of action are available to the Claimant. An effective alternative remedy to Constitutional relief is available to the Claimant.

The non-institution of criminal charges against the Indian Nationals did not arbitrarily, irrationally nor unreasonably obstruct the Claimant's criminal complaint against the Indian Nationals because the power to institute criminal proceedings is vested in the Director of Public Prosecutions to the exclusion of any other person or authority.

104. **Submission 1:** *The Defendants have not breached the Claimant's Right to Equal Protection of the Law because The Supreme Court (Civil Procedure) Rules 2005 provide the Claimant with a mechanism for the service of any Claim Form against the Indian Nationals outside of Belize and the commencement of a civil claim for the recovery of the Claimant's property unlawfully taken by the Indian Nationals.*

Section 6(1) of the **Constitution** provides: *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."*

105. **Part 7** of the **Supreme Court Civil Procedure Rules 2005** (“CPR”) deals with the service of Court processes out of the jurisdiction. So far as is material **Part 7** of the **CPR** provides:

- a. “7.2 *A claim form may be served out of the jurisdiction only if –*
 - i. *Rule 7.3 or 7.4 allows; and*
 - ii. *the court gives permission.*

- b. 7.3 (1) *The court may permit a claim form to be served out of the jurisdiction if the proceedings are listed in this Rule.”*

- c. **Features which may arise in any type of claim**
- d. *A claim form may be served out of the jurisdiction where –*
 - (c) *a claim is made against someone on whom the claim form has been or will be served, and –*
 - (i) *there is between the claimant and that person a real issue which it is reasonable for the court to try; and*
 - (ii) *the claimant now wishes to serve the claim form on another person who is outside the jurisdiction and who is a necessary and proper party to that claim.*

- e. **Claims in tort**
- f. *A claim form may be served out of the jurisdiction where a claim in tort is*
 - i. *made and –*
 1. *the damage was sustained within the jurisdiction; or*
 - ii. *the damage sustained resulted from an act committed within the jurisdiction.”*

106. The Caribbean Court of Justice (“CCJ”) in *Maya Leaders Alliance v Attorney General of Belize* [2015] CCJ 15 (AJ) [TAB 1] at [47] provides guidance as to constitute the right to equal protection of the law and equality before the law. The CCJ did so in the following terms:

i. *“The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, “adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.” The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the State may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.”*

b. The approach in *Maya Leaders Alliance v Attorney General of Belize* is consistent with other CCJ judgments concerning the right to equal

protection of the law such as *Attorney General of Barbados v Joseph & Boyce* CCJ Appeal No CV 2 of 2005 [TAB2] and *Attorney General of Belize v Phillip Zuniga* [2014] CCJ 2 (AJ) [TAB3]. *Attorney General of Barbados v Joseph & Boyce* and *Attorney General of Belize v Phillip Zuniga* are both referred to and relied upon in the Claimant's written submissions.

107. The Defendants humbly submit that the repatriation of the Indian Nationals did not deprive the Claimant of access to the Court to prosecute and demand effective relief to remedy the theft of the Claimant's property by the Indian Nationals. The repatriation did not frustrate nor deny the Claimant his right to equal protection of the law as prescribed by **section 6(1)** of the **Constitution**. The repatriation of the Indian Nationals did not prevent the Claimant from seeking the Court's permission to serve out of the jurisdiction a Claim Form for a claim in the Tort seeking the recovery of the Claimant's property which had been stolen by the Indian Nationals. The Claimant would be able to satisfy the requirements of **Rules 7.2** and **7.3** of the **CPR** if he had chosen to seek the Court's permission and pursue a claim against the Indian Nationals. The Claimant has not provided evidence that he is unable to seek the Court's permission to serve out of the jurisdiction a Claim Form against the Indian Nationals. Furthermore, the repatriation of the Indian Nationals did not frustrate the Claimant's right to access to the Court. The Claimant merely needed to comply with **Part 7** of the **CPR**. It is humbly submitted that the circumstances of the Claimant's claim are such that there is no breach of **section 6(1)** of the **Constitution**. None of the prohibitions which the right to equal protection of the law as stated in *Maya Leaders Alliance*

v Attorney General of Belize [2015] CCJ 15 (AJ) at [47] obtain in the case at Bar.

108. The Defendants further submit that the availability of **Part 7** of the **CPR** and the fact that the Claimant would be able to satisfy the requirements in **Rules 7.2** and **7.3** of the CPR are an indication that there has been no breach of the Claimant's right under **section 6(1)** of the **Constitution**. The Claimant's right to equality before the law and equal protection of the law is safeguarded by the Claimant's ability to utilize **Part 7** of the **CPR** against the Indian Nationals whom are now resident in India after having been repatriated to India by the Defendants. This is an effective remedy for the theft of the Claimant's property by the Indian Nationals. The Claim Form and statement of Claim against the Indian Nationals would largely be the same whether the Indian Nationals were resident in Belize or in India at the time of the issuance and service of the Claim Form. It is for this further reason humbly submitted that the procedure under **Part 7** of the **CPR** provides an effective remedy as against the Indian Nationals notwithstanding their repatriation to India. Furthermore, the Claimant has not provided any evidence that it would be onerously difficult or impossible to serve the Claim Form in India.

109. **Submission 2:** *The Claimant is precluded from being granted Constitutional relief where other effective causes of action are available to the Claimant.*

The Privy Council in *Thakur Persad Jaroo v Attorney General of Trinidad & Tobago* [2002] 5 LRC 258 [TAB 4] restated the law on the availability

of Constitutional Relief where a Claimant has a parallel remedy to those under the Constitution of Trinidad and Tobago in the following terms:

1. *'Nevertheless, it has been made clear more than once by their Lordships' Board that the right to apply to the High Court which s. 14(1) of the Constitution [of Trinidad and Tobago] provides should be exercised only in exceptional circumstances where there is a parallel remedy.'*³⁵

110. The Privy Council repeated the position restated in *Thakur Persad Jaroo v Attorney General of Trinidad & Tobago* in the case of *Attorney General of Trinidad & Tobago. v Ramanoop* [2006] 1 AC 328 [TAB 5] in the following terms:

- (a) *'In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means*

³⁵ *Thakur Persad Jaroo v Attorney General of Trinidad & Tobago* [2002] 5 LRC 258 at [29], PC

*exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.*³⁶

111. The Court of Appeal of Trinidad and Tobago in *Attorney General of Trinidad & Tobago v Luciano Vue Hotel (1998) Limited* (2001) 61 WIR 406³⁷ [TAB 6] also provides guidance where the alternative remedy to Constitutional relief is a common law cause of action and does so in the following terms:

1. *“It is time in my view that this abuse of using constitutional motions for the purpose of complaining of breaches of common law rights should be stopped. The only effective way of doing so is for the court at first instance to dismiss summarily any process which on its face seeks to force into the mold of a constitutional motion, a complaint of some tort or other unlawful act for which the normal remedy is an action at common law for damages or injunctive relief.”*

112. What is the Adequate Alternative Remedy?

³⁶ *Attorney General of Trinidad & Tobago v Ramanoop* [2006] 1 AC 328 at [25], PC

³⁷ (2001) 61 WIR 406 at 411C-D, CoA T&T

The Defendants respectfully submit that the Claimant has an alternative remedy available to him for the resolution of the dispute between the Claimant and the Defendants. It is open to the Claimant to seek resolution of his dispute with the Defendants by bringing a claim in the tort of misfeasance in public office against the Defendants in the Supreme Court. The Court of Appeal of Belize in *Ya'axche Conservation Trust v Wilber Sabido Etal* Civil Appeal No. 8 of 2011 [TAB 7] provides guidance as to the elements that need to be established in order for a claim of misfeasance in public office to succeed. Mendes JA writing for the Court of Appeal of Belize states the following at paragraph 46 of *Ya'axche Conservation Trust v Wilber Sabido Etal*:

1. *'When the appellant commenced these proceedings it included a claim for damages against the parties then joined, namely the Chief Forest Officer and the Attorney General, the latter no doubt as representative of the State. The only complaint was that the Chief Forest Officer had acted ultra vires his powers under the Act. But to sustain a claim for damages against the Chief Forest Officer for the exercise of statutory powers it would have been necessary for the appellant to establish that he was guilty of misfeasance in public office, a tort which involves an element of bad faith and arises when a public officer exercises his power specifically intending to injure the claimant, or when he acts in the knowledge of, or with reckless indifference to, the illegality of his act and in the knowledge of, or with reckless indifference to, the probability of causing injury to the claimant or persons of*

*a class of which the claimant was a member, or when he is subjectively reckless in the sense of not caring whether the act was illegal or whether the consequences happened - see **Three Rivers District Council and Others v Governor and Company of the Bank of England (No 3)** [2003] 2 AC 1.'*

b. The Court of Appeal's judgment in *Ya'axche Conservation Trust v Wilber Sabido Etal* was upheld on appeal to the Caribbean Court of Justice.³⁸ See also *Florencio Marin and Jose Coye v Attorney General of Belize* [2011] CCJ 9 (AJ) [TAB 8] at paragraph 61 where Bernard J states:

i. *'The abundance of judicial dicta reflected in the cases on the tort of misfeasance demonstrates unequivocally its special nature and characteristics. Strict proof of its ingredients is required, these being establishing that a public officer abused power vested in him by virtue of his office whereby some person or entity with a sufficient interest to sue suffered consequential loss or damage.'*

113. The substance of the complaints raised in the Claimant's Constitutional Claim are that: The Defendants breached the Claimant's right to equal protection of the law as prescribed by **section 6(1)** of the **Constitution** because: (i) the repatriation of the Indian Nationals by the Defendants denied the Claimant the right to recover the loss of his property in the civil courts and also denied the Claimant the opportunity to have his criminal complaints

³⁸ *Ya'axche Conservation Trust v Wilber Sabido Etal* [2014] CCJ 14(AJ), CCJ

against the Indian Nationals investigated and prosecuted.³⁹ (ii) the Defendants were fully aware of the criminal complaints against the Indian Nationals which were made to the police by the Claimant, but the Defendants nevertheless unlawfully repatriated the Indian Nationals and thereby left the Claimant's criminal complaint unresolved.⁴⁰ The Claimant's written submissions go on to argue that the Defendants' actions in this regard were arbitrary, unreasonable and in flagrant breach of the Claimant's right to protection of the law in that the Claimant's right to recover the vehicle and cash stolen by the Indian Nationals was frustrated by the repatriation. Those written submission go on to further argue that the repatriation arbitrarily, irrationally and unreasonably interfered with and obstructed the Claimant's outstanding criminal complaint against the Indian Nationals for the theft of the Claimant's vehicle and cash.⁴¹

114. The Defendants humbly submit that the Claimant's complaints against the Defendants' repatriation of the Indian Nationals fall within the category of circumstances that give rise to an actionable claim for misfeasance in public office. The acts and or omissions of the Defendants which the Claimant finds fault with, **if proven**; establish that the Defendants acted in the knowledge of, or with reckless indifference to, the illegality of repatriating the Indian Nationals whilst the Claimant's criminal complaint to the police remained to be prosecuted and in the knowledge of, or with reckless indifference to, the probability of causing injury to the claimant. Or that the Defendants were

³⁹ See paragraph 2 of the Claimant's Written Submissions, See also paragraph headed 'Nature of Claim' at page 1 of the Claimant's Fixed Date Claim Form and paragraph headed 'Relief Claimed' at page 2 of the Claimant's Fixed Date Claim Form

⁴⁰ See paragraphs 17 to 21 of the Claimant's Affidavit in support of his Fixed Date Claim

⁴¹ See paragraph 11 of the Claimant's Written Submissions

subjectively reckless in the sense of not caring whether the repatriation was illegal or whether the consequences of the repatriation would be that the Claimant's right to protection of the law would be violated; in that the Claimant's right to recover the vehicle and cash stolen by the Indian Nationals was frustrated and that the repatriation would obstruct the Claimant's outstanding criminal complaint against the Indian Nationals. The Claimant himself states that the Defendants acted in full knowledge that the Claimant had a pending criminal complaint before the Police against the Indian Nationals.⁴² This averment by the Claimant, if accepted by the Court, would establish reckless indifference to, the probability of causing injury to the Claimant which is one of the elements of the tort of misfeasance in public office according to *Ya'axche Conservation Trust v Wilber Sabido Etal.*

115. The Defendants humbly submit that the availability of a claim in the tort of misfeasance in public office in relation to the Defendants' repatriation of the Indian Nationals is a bar against the grant of any constitutional relief to the Claimant. An application of the dicta in *Thakur Persad Jaroo v Attorney General of Trinidad & Tobago* [2002] 5 LRC 258⁴³ [TAB 4]; *Attorney General of Trinidad & Tobago. v Ramanoop* [2006] 1 AC 328⁴⁴ [TAB 5] and *Attorney General of Trinidad & Tobago v Luciano Vue Hotel (1998) Limited* (2001) 61 WIR 406⁴⁵ [TAB 6] on the restriction on constitutional relief where alternative and effective causes of action are available to a Claimant should cause this honourable Court to refuse the grant of the reliefs

⁴² See paragraph 18 of the Claimant's Affidavit in support of his Fixed Date Claim

⁴³ *Thakur Persad Jaroo v Attorney General of Trinidad & Tobago* [2002] 5 LRC 258 at [29], PC

⁴⁴ *Attorney General of Trinidad & Tobago. v Ramanoop* [2006] 1 AC 328 at [25], PC

⁴⁵ (2001) 61 WIR 406 at 411C-D, CoA T&T

sought by the Claimant in his Fixed Date Claim for Constitutional Relief. A process which on its face seeks to force into the mould of a constitutional motion, a complaint of some tort or other unlawful act for which the normal remedy is an action at common law for damages or injunctive relief is cause for refusing constitutional relief. A claim for misfeasance in public office against the Defendants would effectively address the Claimant's Claim without resorting to a constitutional claim.

116. **Submission 3:** *A claim against the Defendants in misfeasance in public office would provide the Claimant with an effective remedy for the deprivation of his property and the frustration and or obstruction of his criminal complaint against the Indian Nationals.*

It is submitted that a successful claim in misfeasance in public office would entitle the Claimant to damages. The purpose of such damages would be to place the Claimant in the same position as if the tort had not been committed by the Defendants. This would involve damages for the consequential loss suffered by the Claimant, namely for the deprivation of his vehicle and cash which the Claimant argues he can no longer recover from the Indian Nationals. Such general damages would also take into account the criminal complaint against the Indian Nationals which was not prosecuted. As such, it is respectfully argued that the tort of misfeasance in public office would be an effective remedy for the Claimant removing the need for the Claim to be pursued as a Constitutional Claim. The availability to the Claimant of this course of action and the effectiveness of the available relief under misfeasance in public office also goes to illustrate that the Claimant's right

to equal protection of the law under **section 6(1)** of the **Constitution** has not been breached. The damages which would be available to the Claimant upon proof of his claim would make good the loss or damage suffered by the Claimant's property and the obstruction and or frustrated criminal complaint against the Indian Nationals. The remedies available under the tort of misfeasance are effective within the meaning of *Maya Leaders Alliance v Attorney General of Belize* [2015] CCJ 15 (AJ) **[TAB 1]** at paragraph [47] and the judgments on equal protection of the law which are cited in the Claimant's written submissions.

117. **Submission 4:** *'The non-institution of criminal charges against the Indian Nationals did not arbitrarily, irrationally nor unreasonably obstruct the Claimant's criminal complaint against the Indian Nationals because the power to institute criminal proceedings is vested in the Director of Public Prosecutions to the exclusion of any other person or authority.'*

The Claimant at paragraph 59 of his Written Submissions argues that the repatriation of the Indian Nationals obstructed the recent criminal complaints made against them by the Claimant and that the Defendants acted against their duty *'to protect'* The Claimant at paragraph 63 of his Written Submissions argues that *'without the opportunity to clear his name the Claimant has effectively been found guilty through the denial of following up on his criminal complaint.'* The Defendants respectfully submit that non institution of criminal charges against the Indian Nationals did not arbitrarily, irrationally nor unreasonably obstruct the Claimant's criminal complaint against the Indian Nationals because the power to institute

criminal proceedings is vested in the Director of Public Prosecutions to the exclusion of any other person or authority.

118. In *Florencio Marin and Jose Coye v Attorney General of Belize* [2011] CCJ 9 (AJ) [TAB 8] the Caribbean Court of Justice at paragraph 139 explained the nature of the Director of Public Prosecution's powers and the reviewability of decision on whether to prosecute. The CCJ stated the following:

- i. *'Thus, as a general rule, the Attorney General has no control over the initiation of criminal prosecutions; the decision of the Director of Public Prosecutions on whether to prosecute is based upon a wide range of policy considerations including his independent judgment of whether there exists evidence to prove the case to the requisite criminal standard and whether prosecution would be in the public interest. The Attorney General has no authority to direct the Director of Public Prosecutions on this matter; even in the two Commonwealth Caribbean States where the Attorney General retains limited supervisory functions over criminal proceedings (Antigua and Barbuda Constitution, Section 89; Barbados Constitution, Section 79A) this competence does not cover the present case. The decision of the Director of Public Prosecutions on whether to prosecute is, in general terms, beyond the scope of judicial review: Leonie Marshall v DPP; Millicent Forbes v Attorney-General.'*

119. The Privy Council in *Sharma v Brown-Antoine and others* [2007] 1 WLR 780 [TAB 9] also provides guidance on the reviewability on the Director of Public Prosecution's decision on whether to prosecute. The Privy Council at paragraph 14 of its judgment in *Sharma v Brown-Antoine and others* states the following:

- i. *'(5) It is well-established that a decision to prosecute is ordinarily susceptible to judicial review, and surrender of what should be an independent prosecutorial discretion to political instruction (or, we would add, persuasion or pressure) is a recognised ground of review: Matalulu, above, pp 735-736; Mohit v Director of Public Prosecutions of Mauritius [2006] UKPC 20, paras 17, 21. It is also well-established that judicial review of a prosecutorial decision, although available in principle, is a highly exceptional remedy. The language of the cases shows a uniform approach: "rare in the extreme" (R v IRC, ex parte Mead [1993] 1 All ER 772, 782, [1992] STC 482, 65 TC 1); "sparingly exercised" (R v Director of Public Prosecutions, ex parte C [1995] 1 Cr App Rep 136, 140, 159 JP 227); "very hesitant" (Kostuch v A-G of Alberta (1995) 128 DLR (4th) 440, 449); "very rare indeed" (R (Pepushi) v Crown Prosecution Service [2004] EWHC 798 (Admin), [2004] Imm AR 549, para 49); "very rarely" (R (Birmingham) v Director of the Serious Fraud Office [2006] EWHC 200 (Admin), [2006] 3 All ER 239, para 63. In R v Director of Public Prosecutions, ex parte Kebilene [2000] 2 AC 326, 371, [1999] 4 All ER 801, [1999] 3 WLR 175, Lord Steyn said:*

1. “My Lords, I would rule that absent dishonesty or mala fides or an exceptional circumstance, the decision of the Director to consent to the prosecution of the Applicants is not amenable to judicial review.”

120. The non-institution of criminal charges against the Indian Nationals did not arbitrarily, irrationally nor unreasonably obstruct the Claimant’s criminal complaint against the Indian Nationals. The Defendants humbly submit that an application of the law as stated in *Florencio Marin and Jose Coye v Attorney General of Belize* [2011] CCJ 9 (AJ) at paragraph 139 to the instant claim results in the decision of the Director of Public Prosecutions to refrain from prosecuting the Indian Nationals , beyond the scope of judicial review. The Claimant cannot as a matter of law establish that the non-institution of criminal charges against the Indian Nationals was arbitrary, irrational nor unreasonable. The Claimant has not provided any evidence of a surrender of the DPP’s independent prosecutorial discretion and the Claimant has also not shown exceptional circumstances, mala fides or dishonesty. The Claimant’s claim does not satisfy paragraph 14 of *Sharma v Brown-Antoine and others*. It is for the same reason submitted that the fact that the Indian Nationals were deemed to be victims under **section 27** of the **Trafficking in Persons (Prohibition) Act [TAB 10]** and a prosecution against them not pursued by the Director of Public Prosecutions up to 10 months⁴⁶ after the Claimant’s criminal complaint and the repatriation of the

⁴⁶ The complaint was made on the 13 September 2018. See paragraph 13 of the Claimant’s Affidavit in support of his Fixed Date Claim. The repatriation took place on the 28 August 2018. See affidavit of Briana Williams

Indian Nationals cannot be deemed arbitrary, unreasonable nor irrational in the manner claimed by the Claimant.

121. **Submission 5:** *'The Defendants' repatriation of the Indian Nationals without charging the Claimant and without hearing from the Claimant did not breach the basic principles of fairness and reasonableness*

The Claimant argues in his submissions that the Defendants were required to inform the Claimant of allegations made against the Claimant by the Indian Nationals. The Claimant cites the CCJ judgment in *Juanita Lucas Etal v Chief Education Officer Etal* [\[2015\] CCJ 6 \(AJ\)](#) in support by pointing out at paragraph 34 of his Written Submissions that the CCJ decided that *'where the investigative body or authority could reach a prima facie conclusion that the person be disciplined, the right to due process and the right to be heard should be afforded even in the early stage of the investigative process.'*

122. The Defendants submit that *Juanita Lucas Etal v Chief Education Officer Etal* [\[2015\] CCJ 6 \(AJ\)](#) which is cited by the Claimant dealt with disciplinary investigations and not criminal investigations. That judgment is therefore inapplicable to the instant claim. Furthermore, the right to be informed of criminal allegations only arises once a person has been detained or arrested. See **section 5(2) of the Constitution** **[TAB11]**. The Claimant has not deposed in his affidavit that he was detained or arrested. The failure to inform the Claimant of allegations made against the Claimant by the Indian Nationals cannot be deemed to be a ground for finding a breach of

the right to equal protection under **section 6(1)** of the **Constitution** because the right to be informed of criminal allegations under **section 5(2)** of the **Constitution** does not apply to the facts of the instant claim. The Claimant was not arrested. He was not detained.

123. **Conclusion**

The Defendants humbly submit that the Claimant's claim and the reliefs sought be dismissed with Costs to the Defendants for above reasons. Namely,

The Claimant's Constitutional Right to equal protection of the law as provided by **Section 6(1)** of the **Constitution** has not been frustrated or denied in respect of any claim which the Claimant may wish to bring against the Indian Nationals. The **Supreme Court (Civil Procedure) Rules 2005** provide the Claimant with a mechanism for the service of any Claim Form against the Indian Nationals outside of Belize and the commencement of a civil claim for the recovery of the Claimant's property unlawfully taken by the Indian Nationals.

124. The Claimant is precluded from being granted Constitutional relief where other effective causes of action are available to the Claimant. An effective alternative remedy to Constitutional relief is available to the Claimant.

The non-institution of criminal charges against the Indian Nationals did not arbitrarily, irrationally nor unreasonably obstruct the Claimant's criminal

complaint against the Indian Nationals because the power to institute criminal proceedings is vested in the Director of Public Prosecutions to the exclusion of any other person or authority.

125. Claimant's Submissions in Reply

These written submissions are made pursuant to a consent order dated 19th March 2020 which permitted the Claimant to file and serve written submission in response to 1st and 2nd Defendants' submissions.

In particular, the Claimant shall respond to the Defendants' following contentions:

- a.** The Claimant is precluded from being granted constitutional relief because alternative and effective relief is available to the Claimant.
- b.** The non-institution of criminal charges against the Indian nationals did not arbitrarily, irrationally nor unreasonably obstruct the Claimant's criminal complaint against the Indian nationals because the power to institute criminal proceedings is vested in the Director of Public Prosecution to the exclusion of any other person or authority.
- c.** The 1st and 2nd Defendants were not obligated to give the Claimant any opportunity whatsoever to respond to the specific allegations of trafficking being made against him by Keyur Barot and Jitendra Kumar (together "the Suspects") before repatriating the Suspects as victims of trafficking.

126. The Claimant intends to deal with the preceding three points under two primary headings: firstly, that no effective alternative remedy exists which shall address contention (a) and secondly, that the Claimant was entitled to an opportunity to respond to the allegations of trafficking which will deal with contentions (b) and (c).

The Claimant notes that the Defendants have failed to show how the Claimant would be able to obtain effective relief from courts in Belize notwithstanding the fact that the suspects have been repatriated to India and the fact that Belize enjoys no treaty with India that would allow for the reciprocal enforcement of judgments. In this respect the Claimant relies fully on his initial submissions, which at paragraphs 38-50 demonstrate that the constitutional imperative of access to the court extends beyond being able to initiate a claim, and includes the fundamental concept that a litigant must be able to obtain effective relief.

Response

No Effective alternative remedy exists

127. The Defendants submit that the Claimant is precluded from being granted constitutional relief where effective alternative relief exists in private law which the Claimant can take advantage of. The Defendants aver that the Claimant may institute a claim for misfeasance in public office and may obtain effective relief through an award of damages at common law.

It is misguided to rely on this rigid approach adopted by Courts in older cases in deciding not to grant constitutional relief in cases where an alternative remedy exists. This approach changed with the repeal of the proviso once contained at section 20 of the Belize Constitution which read:

“Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law”

128. The Caribbean Court of Justice in *Stephen Edwards v the Attorney General of Guyana and another*⁴⁷ is instructive, in this respect, since the CCJ considered the impact of the removal of this proviso from the Guyanese Constitution. Justice Pollard opined at Paragraph 46 that:-

“46.It may be argued with considerable persuasive force that the deletion of this proviso from Article 153(2) removed the obligation, peremptorily imposed on the High Court by the 1980 Guyana Constitution, to desist from exercising its fundamental rights jurisdiction “if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.” As such, the High Court was no longer obliged to desist from employing its constitutional jurisdiction where it was persuaded that the complainant

⁴⁷ [2008] CCJ (A) [TAB1]

had an adequate alternative procedure in the common law or administrative law or any other law.”

129. While *obiter dicta*, the passage provides useful guidance on the diminished role of the existence of alternative remedies in the proper exercise of the Court’s exercise of its protective fundamental rights jurisdiction.

Further, the facts alleged by Claimant do give rise to features which make the instant claim ripe for a constitutional action. In the Privy Council case of *Attorney of Trinidad and Tobago v Ramananoop*⁴⁸, Lord Nicholls, at paragraphs 25 to 26, provided useful guidance on when a litigant may seek constitutional relief:

“In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.

That said, their Lordships hasten to add that the need for the courts to be vigilant in preventing abuse of constitutional proceedings is not intended to deter citizens from seeking constitutional redress where, acting in good faith, they believe the circumstances of their case contain a feature which

⁴⁸[2006] UKPC 15 [TAB 21] of Claimant’s initial submissions

*renders it appropriate for them to seek such redress rather than rely simply on alternative remedies available to them. Frivolous, vexatious or contrived invocations of the facility of constitutional redress are to be repelled. But "bona fide resort to rights under the Constitution ought not to be discouraged": Lord Steyn in *Ahnee v Director of Public Prosecutions* [1999] 2 AC 294, 307, and see Lord Cooke of Thorndon in *Observer Publications Ltd v Matthew* (2001) 58 WIR 188, 206 (underlining supplied.)*

130. The current proceedings are possessed of the special feature alluded to by Lord Nichols in ***Ramanoop***. It was fundamentally and grossly unfair and an arbitrary exercise of power for the Defendants to have repatriated the suspects when:

- a. The Claimant was given no opportunity whatsoever to challenge the allegation of trafficking and was completely unaware of any finding or decision to that effect despite the fact that the suspects were ostensibly repatriated as victims of trafficking.
- b. There was a pending criminal complaint against the suspects which had been lodged by the Claimant.

131. The factual circumstances giving rise to this suit therefore render it appropriate for constitutional redress. The Claimant seeks vindication of his right to equal protection of the law in that:

- a. The Claimant's right to access the courts and obtain effective relief against the suspects has been neutered by the Defendant's repatriation of the Suspects.
- b. The repatriation arbitrarily, irrationally and unreasonably interfered with and obstructed the Claimant's outstanding criminal complaint to the Police Department against Keyur Barot and Jitendra Kumar for the theft of the Claimant's Grey Chevy Equinox vehicle with license plate number C-34875 and the sum of BZ \$62,357.00

132. As mentioned in the *Ramanoop* case which is quoted at paragraph 94 of the Claimant's initial submissions, the fact that a constitutional right has been violated adds an extra dimension to the wrong suffered by the Claimant. The common law measure of damages awarded for private wrongs would not suffice. The violation of the Claimant's constitutional right to equal protection of the law requires an award to vindicate that Constitutional right that has been violated, to reflect the sense of public outrage, emphasize the importance of the constitutional right and deter further breaches. This is only possible through a constitutional claim.

Further, this Court should be slow to deter the Claimant who, in good faith has instituted these proceedings in circumstances where his right to obtain effective relief from this Honourable court has been frustrated.

As a result, the Claimant respectfully submits that the instant proceedings for constitutional relief is warranted and has been properly instituted.

133. *Claimant was entitled to an opportunity to respond to the allegations of trafficking before Suspects were repatriated as victims of trafficking*

The Defendants at paragraph 16 of their submissions appear to have misinterpreted one of the Claimant's primary contentions by erroneously summarizing the claimant as positing that the non-institution of criminal charges against the Indian Nationals arbitrarily, irrationally and unreasonably obstructed the Claimant's criminal complaint against the Indian nationals.

The Claimant's true position is that the repatriation of the Suspects arbitrarily, irrationally and unreasonably interfered with and obstructed the Claimant's outstanding criminal complaint to the Police Department by rendering it inevitably unresolved.

134. The Claimant also submits that the reparation was unfair and unreasonable because it tainted the claimant with guilt since the suspects were ostensibly repatriated as persons who at the hands of the Claimant had suffered as victims of trafficking, without the suspects' victimhood having been determined by an independent and impartial court process and without the Claimant having had a chance to review and defend himself against said allegations.

It is in this context that the Claimant commended the Caribbean Court of Justice case of *Juanita Lucas and Celia Carillo v Chief Education Officer*,

***Minister of Education et al.*⁴⁹ The *Juanita Lucas* case is good authority for the proposition that the Constitutional principle of equal protection of the law guaranteed by section 6 of the Belize Constitution may require a person whose rights may be affected by a preliminary investigation to be afforded an opportunity to be heard at an early or preliminary stage. The case is not relied on for any similarity of facts but instead for the constitutional principle just alluded to.**

135. In the instant case, the preliminary investigation and determination that the Suspects were victims of human trafficking adversely affected the Claimant's right to access the courts and obtain effective relief against the suspects. The suspects' repatriation also left the Claimant's criminal complaint against them in abeyance. In these circumstances it is submitted that the Defendants bore a collective, positive duty to ensure that the Claimant had an idea of the specific allegations being brought against him and an opportunity to respond to those allegations.

For these reasons and those stated in the Claimant's initial submissions, the Claimant respectfully requests this Honourable Court to grant the following reliefs for the breach of his Constitutional rights:

1. The declarations sought;
2. Damages in the sum of \$66,197.00; and
3. Vindictory damages in the sum of \$100,000.00.

⁴⁹ [2015] CCJ 6 (AJ) [TAB 9] of Claimant's initial submission

136. **Decision**

I wish to thank counsel for the Claimant and the Defendants for their written submissions on this Application for Constitutional Relief due to alleged breach of the Claimant's constitutional right to equal protection of the law under section 6(1) of the Constitution of Belize. Having read the submissions for and against this Application, I am of the respectful view that the submissions of the Defendants should prevail. Let me say at the outset that it is not every wrong committed by the State that will result in a constitutional breach. I believe that on the facts of this case, the Defendants have provided a complete answer to the issue of the Claimant's criminal complaint not being heard in that it is the Director of Public Prosecutions acting in the independent role ascribed to her by the Constitution, who determines which criminal cases will be prosecuted in Belize; as the authorities submitted by the Defendants indicate, judicial review of the DPP's decision to prosecute is a highly exceptional remedy. I also agree that as the Claimant was neither arrested nor detained on the allegation of human trafficking, no right to be informed of the investigation arises on the facts of this case. In relation to the Claimant's civil case, the Claimant is saying that the immigration authorities repatriated the Indian nationals before he had an opportunity to bring his case against them for the stolen property. I do note however that in the case at bar, the Claimant by his own admission has stated that

X and Y were present in Belize for (10) ten months before they were repatriated to India. One wonders why there was no civil action brought against them by the Claimant during this time. In addition, I fully agree with the Defendants' submissions that where there is an alternative means of redress there is no constitutional breach. The Claimant has available to him an action against the Defendants for the tort of misfeasance in public office and this availability illustrates that the Claimant's constitutional right to protection under the law under section 6(1) has not been breached; damages awarded under such a claim, if successfully litigated by the Claimant, would put the Claimant in the same position he would have been in if the Defendants had not committed the tort of misfeasance. These damages would include compensation to the Claimant for the injuries which resulted from the Defendants' tort including the state's inability to criminally prosecute the Indian Nationals for the stolen property of the car and money, and the Claimant's inability to pursue a civil action for recovery of his property.

I therefore find in favour of the Defendants and dismiss this Claim.

Costs awarded to the Defendants to be paid by the Claimant to be agreed or assessed.

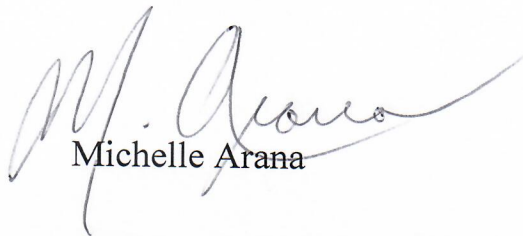
Dated this day of June 2021

Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize

Dated this 29th day of June 2021



Michelle Arana

Chief Justice (Acting)

Supreme Court of Belize