

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**Claim No. 304 of 2019**

**BETWEEN**

<b>DWAYNE EVELYN</b>	<b>1<sup>st</sup> CLAIMANT</b>
<b>SHANE HARRIS</b>	<b>2<sup>nd</sup> CLAIMANT</b>
<b>DEJON JOSEPH</b>	<b>3<sup>rd</sup> CLAIMANT</b>
<b>ELWIN POLLARD</b>	<b>4<sup>th</sup> CLAIMANT</b>
<b>IAN CLARE</b>	<b>5<sup>th</sup> CLAIMANT</b>
<b>JAMES PALACIO JR</b>	<b>6<sup>th</sup> CLAIMANT</b>
<b>JAVAN CLARE</b>	<b>7<sup>th</sup> CLAIMANT</b>
<b>EUSTACE LEWIS</b>	<b>8<sup>th</sup> CLAIMANT</b>
<b>ERIC MARTINEZ by Next of Friend Shafane S. Flowers</b>	<b>9<sup>th</sup> CLAIMANT</b>
<b>AKEEM HUMES</b>	<b>10<sup>th</sup> CLAIMANT</b>
<b>HUGH THOMAS</b>	<b>11<sup>th</sup> CLAIMANT</b>
<b>WARREN DAVIS</b>	<b>12<sup>th</sup> CLAIMANT</b>
<b>TREY GENTLE</b>	<b>13<sup>th</sup> CLAIMANT</b>
<b>MARK AUGUST</b>	<b>14<sup>th</sup> CLAIMANT</b>
<b>AVERY BAIN</b>	<b>15<sup>th</sup> CLAIMANT</b>
<b>TYRICK MCKENZIE</b>	<b>16<sup>th</sup> CLAIMANT</b>
<b>TEVIN ABRAHAM HERNANDEZ</b>	<b>17<sup>th</sup> CLAIMANT</b>
<b>CAMERON SCOTT</b>	<b>18<sup>th</sup> CLAIMANT</b>
<b>ADOLPHUS PALACIO</b>	<b>19<sup>th</sup> CLAIMANT</b>
<b>DUESBURY BOWEN</b>	<b>20<sup>th</sup> CLAIMANT</b>
<b>JAHMY BELGRAVE</b>	<b>21<sup>st</sup> CLAIMANT</b>
<b>MARK PHILLIPS</b>	<b>22<sup>th</sup> CLAIMANT</b>
<b>MARVIN PHILLIPS</b>	<b>23<sup>rd</sup> CLAIMANT</b>

<b>DAMION SALDANO</b>	<b>24<sup>th</sup> CLAIMANT</b>
<b>JAHEIM BENT By Next of Friend Shari Bent</b>	<b>25<sup>th</sup> CLAIMANT</b>
<b>DORIAN DYER</b>	<b>26<sup>th</sup> CLAIMANT</b>
<b>ADRIAN DYER</b>	<b>27<sup>th</sup> CLAIMANT</b>
<b>LLOYD LESLIE</b>	<b>28<sup>st</sup> CLAIMANT</b>
<b>ANDREW TALBERT</b>	<b>29<sup>th</sup> CLAIMANT</b>
<b>LINCOLN HEMSLEY JR</b>	<b>30<sup>th</sup> CLAIMANT</b>
<b>EVERON TECK JR</b>	<b>31<sup>st</sup> CLAIMANT</b>
<b>EDWARD SALDANO</b>	<b>32<sup>nd</sup> CLAIMANT</b>

**AND**

<b>P.C. ABNER ITZA</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>SGT. WALTON BANNER</b>	<b>2<sup>nd</sup> DEFENDANT</b>
<b>CPL. IVAN GALVEZ</b>	<b>3<sup>rd</sup> DEFENDANT</b>
<b>SANDRO MCDUGAL</b>	<b>4<sup>th</sup> DEFENDANT</b>
<b>CPL. DANIEL FLOWERS SPU</b>	<b>5<sup>th</sup> DEFENDANT</b>
<b>CPL. ALISTER CASEY</b>	<b>6<sup>th</sup> DEFENDANT</b>
<b>GANG SUPPRESSION UNIT</b>	<b>7<sup>th</sup> DEFENDANT</b>
<b>MOBILE INTERDICTION UNIT</b>	<b>8<sup>th</sup> DEFENDANT</b>
<b>SPECIAL PATROL UNIT</b>	<b>9<sup>th</sup> DEFENDANT</b>
<b>COMMISSIONER OF POLICE</b>	<b>10<sup>th</sup> DEFENDANT</b>
<b>BELIZE POLICE DEPARTMENT</b>	<b>11<sup>th</sup> DEFENDANT</b>
<b>MINISTER OF NATIONAL SECURITY</b>	<b>12<sup>th</sup> DEFENDANT</b>
<b>KOLBE FOUNDATION (Belize Central Prison)</b>	<b>13<sup>th</sup> DEFENDANT</b>
<b>ATTORNEY GENERAL OF BELIZE</b>	<b>14<sup>th</sup> DEFENDANT</b>

**BEFORE** The Honourable Madam Justice Geneviève Chabot

**Date of Hearing:** June 13, 2022

**Appearances:**

Leroy Banner, Counsel for the Claimants  
Agassi Finnegan, Counsel for the 1<sup>st</sup> to 12<sup>th</sup> and 14<sup>th</sup> Defendants  
Philip Zuniga, Counsel for the 13<sup>th</sup> Defendant

**RULING ON APPLICATIONS FOR RELIEF FROM SANCTIONS  
AND EXTENSION OF TIME**

1. The Claimants apply to this Court for relief from sanctions for their failure to comply with the *Supreme Court (Civil Procedure) Rules, 2005* (the “*Rules*”), and to extend the time for filing and serving their Fixed Date Claim Form. There is no question that this Claim has suffered from procedural irregularities. The Court must decide whether it is proper to exercise its discretion to relieve the Claimants from the sanctions associated with their failure to comply with the *Rules* relating to filing and service.
2. This Court decides to exercise its discretion to relieve the Claimants from sanctions and extend the time for filing the Fixed Date Claim Form. In the Court’s view, there is a good explanation for the Claimants’ failure to file the Fixed Date Claim Form on time and the Defendants will suffer no prejudice as a result of the delay.
3. The Court finds that the Claimants were not in breach of the *Rules* for serving the Fixed Date Claim Form when they did. As such, there is no sanctions to relieve them from, and no need to extend the time for serving the Fixed Date Claim Form.

**Background**

4. This Claim was originally filed on May 23, 2019 as a regular Claim. The Claimants allege that the Defendants breached their constitutional rights when they were each arrested and detained around the same time period. They allege that at the time of their arrest and detention, they were not informed of their constitutional rights, not informed of the reasons for their arrest and detention, never questioned, interrogated or interviewed, and not allowed to call family members or an attorney. One Claimant alleges that he was not given his medication. All Claimants allege that the conditions of detention at the Queen Street Police Station, the Belize Central Prison, and the Wagner’s Youth Facility (Kolbe Foundation) were cruel and inhumane. Some were placed in administrative segregation and/or in the Multi-Max section of the prison. According to the Claimants, they were

arrested and detained by the police officers without having any reasonable grounds for suspecting that they were involved in any criminal activity.

5. The Defendants brought an Application to Strike Out the Claim on July 3, 2019, alleging that the Claim was not as short as practicable, that some Claimants were minors and did not have a next of friend acting on their behalf, that the Claim disclosed no reasonable grounds, and that the Statement of Claim was prolix. The Application was heard by the Acting Chief Justice on November 27, 2019 and judgment was delivered on June 16, 2021. The Application to Strike Out the Claim was dismissed. However, the Acting Chief Justice ordered “that this claim be converted to a constitutional claim under Part 56, a Statement of Claim be filed within two weeks and the Claimants be allowed to properly apply for Next Friend status for the minors to be properly represented in this Claim”. The Claimants therefore had until June 30, 2021 to file their Fixed Date Claim Form.
6. The Fixed Date Claim Form was filed on the Apex e-filing system on July 1, 2021. It was not served on the Defendants until April 14, 2022. The Claimants filed three Applications with respect to those events. We now turn to these applications.

### **The Applications**

7. The First Application is an Application for Relief from Sanction filed on July 1, 2021. The Fixed Date Claim Form was filed on July 1, 2021, one day after the June 30, 2021 deadline set by the Acting Chief Justice in her decision on the Application to Strike Out the Claim. The Application is made under Rule 26.8 of the *Rules*. The Applicants seek the following orders:
  - a. That the Applicants/Claimants be relieved from any sanction pursuant to Rule 26.8 for failure to file the converted claim on or before June 30, 2021;
  - b. An order pursuant to the inherent jurisdiction of this Honourable Court for granting an extension of time to comply with the orders made at the first hearing;
  - c. An order for relief of sanction and extension of the time to the 1<sup>st</sup> day of July 2021 for the Applicants/Claimants to file the converted claim;
  - d. Cost be in the cause.
8. The First Application is accompanied by the First Affidavit of Brena Banner dated July 1, 2021 detailing technical issues she alleges having encountered in trying to file the Fixed Date Claim Form on the Apex e-filing system on June 30, 2021.

9. The Second Application is an Application for Extension of Time to Serve the Converted Claim (Fixed Date Claim Form) filed on June 3, 2022. The Application deals with the Claimants' failure to serve their Fixed Date Claim Form on the Defendants within 6 months after the date when the Claim was issued. The Claimants seek the following orders:
  - a. An Order that time be extended to the 10<sup>th</sup> day of May 2022 for the Claimants to serve the Fixed Date Claim Form and supporting affidavits in the instant claim;
  - b. That the Defendants be deemed to have agreed to the extension by virtue of their acceptance of the Converted Claim (Fixed Date Claim Form);
  - c. Any other order this Honorable Court deems just in the circumstances.
10. The Second Application is accompanied by an Affidavit of Brena Banner dated May 25, 2022 detailing the steps taken by Claimants' Counsel to obtain a date for the first hearing of the Fixed Date Claim. This Court notes that in all of the versions of this Affidavit submitted by the Claimants (including the electronic version uploaded on the Apex e-filing system), the second page is missing.
11. The Third Application is an Application, under Rule 26.8 of the *Rules*, for Relief from Sanction filed on June 10, 2022. This Application complements the Second Application and deals with the same failure to serve the Fixed Date Claim Form within 6 months after the date when the Claim was issued. The Claimants seek the following orders:
  - a. That the Applicants/Claimants be relieved from any sanction pursuant to Rule 26.8 for failure to serve their Converted Fixed Date Claim Form on the Defendants within six months after the date when the claim was issued, per Rule 8.12(1);
  - b. An Order pursuant to the inherent jurisdiction of this Honourable Court for granting an extension of time to serve the Converted Fixed Date Claim Form;
  - c. An order extending the time to the 10<sup>th</sup> day of May, 2022, for the Claimants to serve the Converted Fixed Date Claim Form and supporting affidavits in the instant claim;
  - d. That the Defendants be deemed to have agreed to the extension by virtue of their acceptance of the Converted Fixed Date Claim Form;
  - e. Any other order this Honourable Court deems just in the circumstances.

12. The Third Application is accompanied by an Affidavit of Brena Banner dated June 10, 2022 explaining the steps taken by the Claimants to file and serve the Fixed Date Claim Form.
13. All three Applications were heard on June 13, 2022. The parties were given an opportunity to provide written submissions prior to the hearing.

## **The Parties' Submissions**

### *Claimants' Submissions*

14. Claimants' Counsel explained that his office attempted to file the converted Fixed Date Claim Form on June 30, 2021. However, due to the size of the file and technical difficulties with the Apex e-filing system, the exhibits in support of the Fixed Date Claim Form were not filed until the next day, July 1, 2021. These technical difficulties are expanded on in the First Affidavit of Brena Banner dated July 1, 2021.
15. It was not until May 9, 2022 that Claimants' Counsel received from the Registrar of the Supreme Court two sealed copies of the Fixed Date Claim Form bearing the date of hearing and the name of the judge assigned to the matter. The Fixed Date Claim Form was served on the Defendants the next day, May 10, 2022.<sup>1</sup> The Affidavits of Brena Banner dated May 25, 2022 and June 10, 2022 detail the steps taken by Claimants' counsel to obtain a date for the first hearing of the Fixed Date Claim. These steps include contacting the court office several times between July 2021 and May 2022 in order to ascertain when the Claimants would be provided with the sealed copies of the Claim.
16. Taking into consideration all of the circumstances, the Claimants submit that this Court should exercise its discretion to extend the time for filing the Fixed Date Claim Form and to serve it on the Defendants, and relieve them from sanctions. They rely on the decision in *Lewis v Harewood*<sup>2</sup> for the proposition that a judge should exercise discretion to extend time if there is good reason to do so and if a claimant has given a satisfactory explanation for their failure to apply before the validity of the proceedings expired. That decision also stands for the principle that the judge must consider all the circumstances, including the balance of prejudice or hardship that may be suffered by the parties in deciding whether to extend time.
17. The Claimants also argue that they should be relieved from sanctions because their failure to comply with the *Rules* was not intentional, there is a good explanation for the failure,

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<sup>1</sup> It is unclear to the Court where the May 10, 2022 date comes from. The Acknowledgment of Service filed by the Defendants indicates that service was effected on April 14, 2022. The Court will rely on that date as the actual date of service. In any event, nothing turns on the particular date on which the Defendants were served because it is agreed that that date was well beyond the 6 month time limit provided for by the *Rules*.

<sup>2</sup> [1997] PIQR P 58, CA.

and they have generally complied with all other relevant rules, orders, and directions. They submit the Defendants would suffer no prejudice as a result of the late filing as the Claim was already filed in the Supreme Court and the documents received on May 10, 2022 were only a converted Fixed Date Claim Form of an already existing claim.

### *Defendants' Submissions*

18. The Defendants assert that the Fixed Date Claim Form has no validity, and as such there exists no Claim before this Court.
19. Under Rule 2.4, a claim form is defined as being construed in accordance with Part 8 of the *Rules*. A fixed date claim form is defined as being a claim form in Form 2 upon which there is a date, time, and place for the first hearing. A fixed date claim form is a type of claim form, and as such any rules where the words “claim form” appear include a fixed date claim. Under Rule 8.12, a fixed date claim form must be served within six months after it has been issued. On the form itself, it is stated that the claim form has no validity if it is not served within 6 months of the date appearing on the form, unless accompanied by an order extending that time.
20. The Fixed Date Claim Form was filed by way of the Apex e-filing system on July 1, 2021. The Defendants were not served until April 14, 2022, 9 months after the filing of the Fixed Date Claim Form. The Fixed Date Claim Form is dead and has no validity before this Court.
21. The Claimants should have, but did not make an application to extend the time to serve the Fixed Date Claim Form before the expiration of the 6 month time limit. Their delay in serving the Claim therefore cannot be justified.
22. In addition, relying on *Octavio Flores v Armin Patt and Alberto Patt*,<sup>3</sup> the Defendants submit that upon the Claimants filing the Fixed Date Claim Form, the original Claim ceased to exist on July 1, 2021 and no longer has any value before this Court. As such, there exists no original Claim before this Court to pray in aid of.
23. With regard to the Claimants' failure to file the Fixed Date Claim Form on time, the Defendants note that the Application for Relief from Sanction [the First Application] does not comply with the *Rules*. The First Application is grounded in Rule 26.8, and not in Rules 26.1(2)(c), 27.8(3), and 27.8(4). As such, there is only an application for relief from sanctions before the Court and not an application for extension of time to file the Fixed Date Claim Form, which is necessary to allow the late filing.

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<sup>3</sup> Claim No. 575 of 2018.

24. The Claimants have failed to show that all three elements of Rule 26.8(2) have been met. They failed to show there is a good explanation for the failure to file the Fixed Date Claim Form on time. The Affidavit in support of the First Application does not provide any specific information about the efforts made to get any assistance with the Apex e-filing system, that any document was uploaded on the Apex e-filing system on June 30, 2021, or that the Apex e-filing system was experiencing a problem on June 30, 2021, and as such that no filing could be done. Relying on the Eastern Caribbean Court of Appeal’s decision in *Prudence Robinson v Sagicor (Formerly Barbados Fire and Commercial Insurance Company Inc.)*,<sup>4</sup> the Defendants state that the Affidavit lacks answers to critical questions this Court must consider in making a determination as to whether the explanation offered is good in all the circumstances. The Defendants therefore submit that the Application for Relief from Sanction should be dismissed.

## Analysis

### *First Application*

25. The Court first addresses the Claimants’ Application for Relief from Sanction relating to their failure to file the Converted Fixed Date Claim Form on or before June 30, 2021. The Court notes that in her decision of June 16, 2021, the Acting Chief Justice did not provide for any particular sanction for an eventual failure to comply with her Orders. The *Rules* therefore guide the Court in considering the First Application.
26. The Court accepts the Claimants’ explanation for their failure to file the Converted Fixed Date Claim Form by June 30, 2021 as reasonable. Claimants’ Counsel alleges that his office tried to upload the documents on June 30, 2021, but was unable to do so as a result of technical difficulties with the Apex e-filing system. The only evidence attached to the July 1, 2021 Affidavit of Brena Banner is a picture of a computer screen displaying an error message from the Apex e-filing system website. The picture is undated. In itself, this evidence would be insufficient to persuade the Court that Claimants’ counsel was unable to file the Fixed Date Claim Form on time. However, attached to Ms. Banner’s June 10, 2022 Affidavit is a printout of an automated email from Curia Support to Claimants’ Counsel showing that documents titled “Claim Final.pdf” and “Undertaking Form (FIXED DATE CLAIM)” were uploaded on the Apex e-filing system on June 30, 2021 at 3:53pm.
27. The Court has considered the Respondents’ submission, based on the *Robinson* decision, that the Claimants’ explanation lacks specificity. In *Robinson*, the Court of Appeal found that mere statements constituted bald assertions, and therefore could not be relied on as a basis for granting relief from sanctions. While not all of the Claimants’ assertions are supported by evidence, this Court finds that the evidence provided by the Claimants is

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<sup>4</sup> SLUHC VAP2013/0009 (*Robinson*).



sufficient and constitutes more than bald assertions. Claimants' Counsel provided evidence that his office attempted to file documents on the Apex e-filing system on June 30, 2021. While the Court agrees with Respondents' Counsel that the Supreme Court's Practice Direction No. 1 of 2021 warns parties that they are "responsible for observing any applicable deadlines and shall endeavor to afford sufficient and/or reasonable time for processing by the Court office, taking into account any circumstances that may exist at a particular time", the Court also recognises, as noted by Claimants' Counsel, that there are 32 Claimants (35 Claimants before the conversion of the Claim) in this Claim. Each Claimant had to sign the Fixed Date Claim Form. In addition, the Fixed Date Claim is accompanied by numerous supporting documents. In the circumstances, it does not appear unreasonable for Claimants' Counsel to have waited until the last of the 14 days granted by the Acting Chief Justice to attempt to upload the documents on the Apex e-filing system.

28. The fact that the Claimants did not file a separate application, or cite the appropriate Rule in the title of the Notice of Application is not fatal to the Application. As noted by Justice Young in *Mark King and anor v Moses Sulph*,<sup>5</sup> "the Court is also allowed to exercise its general power to rectify such a failure to comply [with the *Rules*]. The Court may make matters right even where there has been no application by a party". Here, while it is true that the Claimants did not file a separate application for extension of time to file the Fixed Date Claim Form, the Claimants applied for the following orders:
  - a. An Order pursuant to the inherent jurisdiction of this Honourable Court for granting an extension of time to comply with the Orders made at the first hearing; and
  - b. An Order for relief of sanction and extension of the time to the 1<sup>st</sup> day of July 2021 for the Applicants/Claimants to file the converted Claim.
29. In addition, the Claimants rely on Rules 27.8(3) and (4) of the *Rules* in the grounds of Application. The latter Rules are the appropriate Rules in cases where a party varies a date which the Court has fixed without the agreement of the other party. As a result, the Court is satisfied that the Defendants had adequate notice of the grounds of Application and were in a position to respond to it, which they did.
30. Finally, the Claim is still in its infancy. No trial dates have been set. The delay in filing the Fixed Date Claim Form was only one day, and as such there is no prejudice to the Defendants in relieving the Claimants from sanctions. Given all of the circumstances, it is in the interest of the administration of justice to grant the relief sought. Refusing to do so

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<sup>5</sup> Claim No. 142 of 2018.

would result in the Claim being dismissed, which would be disproportionate given the nature of the breach.

31. The Court is satisfied that the requirements in Rules 26.8 and 27.8 have been met. The Claimants are relieved from any sanctions for having filed the Fixed Date Claim Form late. The time for filing the Fixed Date Claim Form is extended to July 1, 2021.

*Second and Third Applications*

32. The Court is asked to relieve the Claimants from sanctions and to extend the time for the Claimants to serve the Fixed Date Claim Form. Upon consideration of the *Rules* and of the submissions of the parties, the Court finds that the Claimants were not in breach of the *Rules* for serving the Fixed Date Claim Form when they did. As such, there are no sanctions from which the Claimants should be relieved from.
33. The outcome of these Applications turns on the meaning of a single word, “issued”. Under Rule 8.11,<sup>6</sup> “after the claim form has been issued it may be served on the defendant in accordance with Part 5 (Service of Claim Form) or Part 7 (Service out of the jurisdiction)”. According to Rule 8.12, “the general rule is that a claim form must be served within six months after the date when the claim was issued”. Therefore, a claimant has 6 months to serve a claim form on a defendant, and the clock starts when the claim form is “issued”.
34. When is a fixed date claim form “issued”? The present matter has uncovered an apparent inconsistency in the *Rules*. The inconsistency relates to whether a fixed date claim form is considered “issued” *before* or *after* being affixed with a date, time, and place for the first hearing of the claim.
35. Rule 2.4 of the *Rules* defines a fixed date claim form as a form “upon which there is stated a date, time and place for the first hearing of the claim”:

2.4 In these Rules –

[...]

“fixed date claim form” is a claim form in Form 2 upon which there is stated a date, time and place for the first hearing of the claim;

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<sup>6</sup> Part 8 of the *Rules* apply to both “regular” claim forms and fixed date claim forms. Where the words “claim form” are used in Part 8, the Rule applies to fixed date claim forms as well, unless specific provisions are made in the *Rules*.

36. It appears from Rule 2.4 that a fixed date claim form only becomes one when a date, time and place for the first hearing of the claim is affixed to it. The date, time and place for the first hearing of a claim is affixed by the “court”, as stated in Rule 27.2:

27.2 (1) When a fixed date claim form is issued the court must fix a date for the first hearing of the claim.

37. In practice, the date, time and place for the first hearing of a fixed date claim is affixed by the judge who is assigned to the particular claim. This may occur several days or weeks after the fixed date claim form is filed with the Court’s Registry.

38. Rule 27.2 provides that the court fixes a date for the first hearing of the claim “when a fixed date claim form is issued”. On its face, this Rule can be interpreted as stating that it is only once a fixed date claim form has been issued that the court fixes a date for the first hearing (i.e. that the fixed date claim form is “issued” *before* the date, time and place of the hearing is affixed to it). However, this interpretation is inconsistent with Rule 2.4, which defines a fixed date claim form as a claim form “upon which there is stated a date, time and place for the first hearing of the claim”. This interpretation is also irreconcilable with Rule 3.9, which states that the court must seal a claim form (defined as including a fixed date claim form) “on issue”:

3.9 (1) The court must seal the following documents on issue –

(a) the claim form

39. A fixed date claim form is only sealed by the court once a date, time and place for the first hearing is affixed to it. Sealed copies of the fixed date claim form are not returned to counsel until the court has completed that step. Counsel is therefore unable to serve a physical copy of the fixed date claim form until it is issued by the court. The fixed date claim form is issued when the court seals the fixed date claim form, which can only be done once the court has fixed a date, time and place for the first hearing.
40. Defendants’ Counsel suggests that the Claimants should have served their Fixed Date Claim Form at any time during the 6 month period following the filing of the Fixed Date Claim Form on the Apex e-filing system, regardless of whether a date, time and place had been affixed on the Form by the court. The Defendants argue that the Claimants would then have been in compliance with the *Rules*, and would simply have to advise the Defendants when the court had set a date, time and place for the first hearing. The Defendants also suggest that the Claimants should have requested an extension from the court to serve the Fixed Date Claim Form when it became clear that the Fixed Date Claim Form would not be returned to Counsel before the 6 month time period for service had elapsed.

41. The Court disagrees with this suggestion. The *Rules* make a distinction between the “filing” of documents and the “issuance” of documents. These terms have different meanings and should not be conflated. Before the court fixes a date, time and place for the first hearing and seals the fixed date claim form, the form is “filed” but not “issued”. Rules 8.11 and 8.12 are not yet engaged. As such, there was no obligation on the Claimants’ part to serve the unissued Fixed Date Claim Form on the Defendants before it was returned to them by the court.
42. For these reasons, this Court finds that the Claimants were not in breach of the *Rules* for serving the Fixed Date Claim Form when they did. The Claimants are under no threat of sanctions from which they should be relieved from, and no extension of time to serve the Fixed Date Claim Form is needed.

### **Costs**

43. While this decision ultimately favours the Claimants, one of the three Applications dealt with became necessary only by reason of the Claimants’ own failure to comply with the *Rules*. In these circumstances, it would be unfair to award costs against the Defendants. Each party will therefore bear their own costs.

### **IT IS HEREBY ORDERED**

- (1) With respect to the First Application, the Claimants are relieved from sanctions and the time for filing the Fixed Date Claim Form is extended to July 1<sup>st</sup>, 2021;
- (2) With respect to the Second and Third Applications, the Claimants are in compliance with the *Rules*. As such, there is no need to relieve the Claimants from sanctions and to extend the time for serving the Fixed Date Claim Form;
- (3) The Fixed Date Claim Form is deemed served on the Defendants as of the date of this decision;
- (4) The First Hearing of this Fixed Date Claim is set for Friday, October 7, 2022 at 10am;
- (5) Each party shall bear their own costs.

Dated July 28, 2022

Geneviève Chabot  
Justice of the Supreme Court