COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
2022/CLE/gen/00850

BETWEEN

Common Law and Equity Division
IN THE MATTER OF the Criminal Justice (International Co-operation) Act, Chapter 105
AND
IN THE MATTER OF the Banks and Trust Companies Regulation Act, 2020 (No. 22 of 2020)
AND
IN THE MATTER OF a Request for Legal Assistance from The Public Prosecutor's Office of Osnabrück, Germany
AND
IN THE MATTER OF an Application by the Competent Authority of The Commonwealth of The Bahamas, i.e., the Attorney-General

THE ATTORNEY-GENERAL

Applicant

AND
TUBMANBURG LTD.

First Respondent

AND
NATHANIEL BOSFIELD

Second Respondent

Before: The Honourable Justice Darron D. Ellis

Appearances: Sean Moree KC with Erin Hill for the First Respondent
Damian Neville for the Applicant

Hearing Date: April 24, 2025

RULING

Jurisdiction to grant legal assistance-Foreign proceedings-Criminal investigations commenced in Germany-German Prosecutor seeking information in The Bahamas-Letter of Request for Legal Assistance-First Respondent commencing a Rule 34 application in opposition to the letters of request for legal assistance- Matters to consider when compelling a party to answer request for information- Whether existence of statutory regime excluding jurisdiction to make such order.

The Attorney-General applied for an ex parte order pursuant to the Criminal Justice (International Co-operation) Act concerning a letter of request for legal assistance in an ongoing criminal investigation involving the Respondents in Germany. The ex parte order was granted, and a third party was ordered to provide certain information to the Applicant with respect to the Respondents. The ex parte order was not complied with by the Respondents. The First Respondent commenced a number of applications, including an application to have the ex parte order set aside and a Rule 34 request for information application. At the hearing of the Rule 34 request for information application, the First Respondent contended that the information sought is necessary to support its application to set aside the ex parte order. The Applicant submitted that the proceedings before the Court are governed exclusively by the Criminal Justice (International Co-operation) Act statutory regime and not Rule 34 and, therefore the application should be denied.

HELD: In an oral ruling the Court ruled that the First Respondent's application under Rule 34 of the Civil Procedure Rules to compel the Applicant to answer request for information questions is dismissed with costs awarded to the Applicant. The Court finds that the Criminal Justice (International Co-operation) Act, Chapter 105 of the Statute Laws of The Bahamas, establishes a comprehensive and exclusive statutory regime for the obtaining of evidence in matters involving mutual legal assistance between sovereign states. Consequently, in proceedings grounded in a letter of request from a foreign competent authority, the Court lacks jurisdiction to compel disclosure of information through a civil procedural tool designed for ordinary domestic litigation, such as a Rule 34 application. In any event, even if the Court were to assume jurisdiction, the First Respondent had failed to meet the legal and evidential threshold required for the granting of such relief.

1. Upon a preliminary objection being raised by the Applicant to a Rule 34 request for information application by the First Respondent on the basis that the Criminal Justice International Co-operation Act exclusively governs matters involving request for legal assistance between sovereign states, does this Court possess jurisdiction to compel a party to answer such a request involving letters of request for legal assistance between countries? If the answer is yes, should the application be granted as prayed for by the First Respondent?: **Attorney-General of the Commonwealth of The Bahamas v Lucini** [2003] BHS J. No. 32; **Attorney-General of the Commonwealth of The Bahamas v**

Aguilar BHS J. No.152 **Tesco Stores Ltd. v Element & Others** UKEAT /0228/20; **West London Pipeline and Storage Ltd. and Another v Total UK Ltd. and Others** [2008] EWHC 1296 (Comm) referred to.

2. The Court is satisfied that a Rule 34 application is incompatible with matters involving letters of request for legal assistance, which are governed exclusively by the Criminal Justice (International Co-operation) Act and Part 69 of the Civil Procedure Rules. In any event, the 1st Respondent has not met the required threshold whereby this Court will compel the Applicant to answer the request for information questions: **Attorney-General of the Commonwealth of The Bahamas v Lucini** [2003] BHS J. No. 32; **Attorney-General of the Commonwealth of The Bahamas v Aguilar** BHS J. No.152; **Regina (Omar) v Secretary of State for Foreign and Commonwealth Affairs** [2014] QB 112, [2013] EWCA Civ 118, [2013] 1 All ER 161; **Tesco Stores Ltd. v Element & Others** UKEAT /0228/20; **West London Pipeline and Storage Ltd. and Another v Total UK Ltd. and Others** [2008] EWHC 1296 (Comm) relied upon.

Ellis J

Introduction and Background

[1.] The facts in this matter are, for the most part, undisputed. Where any apparent divergence arises, the Court's findings are derived from the affidavits and documentary evidence before it. The Court further observes that no affiants have been subjected to cross-examination. Consequently, greater weight is afforded to the contemporaneous documentary evidence submitted by the parties.

[2.] On May 31, 2022, an ex parte Originating Summons was filed by the Applicant, pursuant to the Criminal Justice (International Cooperation) Act, Chapter 105 (CJICA) and the Banks and Trust Companies Regulation Act, 2020, on behalf of the Public Prosecutor's Office of Osnabrück, Germany, pursuant to a letter of request for legal assistance (the Letter) in an ongoing investigation. The background to the Letter is set out in the Affidavit of Shanae Petty filed on May 31, 2022. Paragraph 5 of this affidavit provides as follows:

> "That the facts as revealed by the Letter of Request are as follows:
>
> a. For several years now, there have been persons in Germany and in other States, who have become victims of fraudulent Microsoft phone calls, by callers posing as employees of Microsoft Inc. (USA).

b. The complaint is that a pop-up window opens up on the victims' computer screen and prevents them from carrying out any work on the computer. The pop-up screen indicates that the computer is infected with viruses and at the same time, offers help to the victims by having them call a certain telephone number. When the unsuspecting victims dial the telephone number, they reach a call Centre answered by persons who are allegedly employees of Microsoft Inc. (USA). In many cases, during the discourse, the victims are convinced to download remotely a maintenance software called TeamViewer (www.teamviewer.com). As a result of the victims downloading the software onto their computer, the call Centre employees would gain access to the victims' computer whereby data would be arbitrarily changed on the unsuspecting victims' computer. Having surreptitiously changed the data on the victims' computers the alleged employees would then offer to assist with correcting the problem on payment of a fee. In numerous cases the victims have paid while in other cases the victims did not.

c. The genesis of the letter of request is as a result of the Public Prosecutor's Office of Osnabruck, Germany conducting an investigation into the misuse of Roland Wrobel's (born on 07/05/1996, resident of Johannes-Radke-Scrabe 89, 40959 Dusseldorf/Germany) personal information, by unknown persons, in order to rent 30 telephone numbers, which are being used as contact numbers in the Microsoft pop-up scheme. The telephone numbers that are being displayed in the pop-up window and which are used by the victims for assistance in correcting their computer issues are attached to a company named Twilio Inc. (USA). Based on information provided by Twilio Inc. (USA), they would assign the telephone numbers to the reseller Ryan Shank and his company, PhoneWagon. Mr. Shank and his company PhoneWagon, would in turn rent the telephone numbers out to the perpetrators, who operated their clandestine operation under Roland Wrobel's personal information. The company Twilio Inc. (USA) informed the Public Prosecutor's Office of Osnabruck that there had been numerous complaints and inquiries pertaining to all of the Wrobel-telephone numbers, which resulted in the telephone numbers being deactivated quickly. The rental period for which the telephone numbers were rented, is identical to the period of commission of the criminal offences which was from June 24, 2018 to December 4, 2018.

d. The Prosecutor listed 83 individual cases for the period of commission of the criminal offences from June 21, 2018 until July 31, 2018. The list of cases are in Annex 1 in the Letter of Request with the individual data:

- the date of commission of the criminal offence;
- the damage caused as a result of the payment obtained from the victims by criminal means;
- personal details on the victims; and
- the telephone number shown in the pop-up window and dialed by each victim (a total of 30).

e. The total cost or funds derived from the incidents listed at Annex 1 amounted to €31,803.14 which is more than BSS35,000.00 and which on an average is €383.00 and approximately BS$44.00 per offence despite the period of the commission of these criminal offences being quite short (5 ½ weeks). Based on the data which was still in the custody of Twilio Inc. (USA), and provided by them, the Prosecutors were able to identify more than 2,400 individual cases with damages of more than €125,000.00 which equates to more than BS140,000.00.

f. The telephone numbers dialed by the victims are voice-over-IP numbers, i.e., telephone numbers where the communication is made over the internet instead of traditional networks/satellites (so-called internet telephony), and the IP addresses are registered when communicating over the internet. Regarding the IP addresses of the perpetrators which were recorded when the Voice-over-IP telephone calls were made, the Prosecutor forwarded letters of request for international mutual legal assistance to India and Belarus last year as part of their investigation. Only India has responded.

g. The purpose of this letter of request is to identify the flow of monies in this matter. The investigative measures carried out thus far, by the Prosecutors have been very time-consuming as there were over 2,400 victims who had to be identified on the basis of their telephone numbers, from the traffic data of the company Twilio. The victims were then interviewed regarding their telephone communications with the perpetrators, and their payment methods. It was only after the analysis of the replies pertaining to the payment methods, was the actual investigation commenced.

h. The findings thus far regarding the flow of monies are as follows:

a) The monies from the victims went into the accounts of payment service providers

.....

(6) Identical accounts for payments on behalf of the company Tubmanburg Ltd. are submitted through three (3) target accounts:

(a) Account IBAN DE79 5123 0800 6502 2089 28 (Currency: Euro) through Kikwit Services Ltd.

(aa) In November 2017 to account No.503330045301 (currencies: Singapore dollar and US dollar) with OCBC Bank in Singapore.
(bb) in September 2020 to account No.5002478021000840 (currency: US dollar) with United International Bank NV in Curacao.
(cc) as well as three 3 other accounts in Cyprus and in the United Kingdom.

(b) Account IBAN DE96 5123 0800 6502 0482 81(Currency: Euro) through Shagarab Solutions Ltd. In October 2017, to account No.503330045301 (currencies: Singapore dollar and US dollar) with OCBC Bank in Singapore.

(c) IBAN DE86 5123 0800 6502 0482 67(Currency: Euro) through Tawliiq Trading Ltd.

(aa) in October 2014, to account No. 503330045301 (currencies: Singapore dollar and US dollar) with OCBC Bank of Singapore.
(bb) September 2020 to account No.5002478021000840 (currency: US dollar) with United International Bank NV in Curacao.

(7) In addition to the above accounts, payments were also made from the target account, into the account of Payoneer (EU) Ltd. at account No. 24563039 in the name of Nathaniel Bosfield, who is the Director of Tubmanburg Ltd., the holder of the accounts mentioned at (6).

c) On the analysis of the three target accounts of Kikiwit Services Ltd., Shagarab Solutions Ltd., and Tawliiq Trading Ltd., into which funds from other companies were deposited, the following was discovered:

(1) Account IBAN DE79 5123 0800 6502 2089 28 for Kikiwit Services Ltd.:

(a) Period analyzed: May 23, 2018 – February 2, 2021
(b) Incoming payments* US$6,711,464.31
(c) Outgoing payments*:
(aa) US$571,439.00 into the Payoneer (EU) Ltd. account No. 24563039 in the name of Nathaniel Bosfield.
(bb) US$5,872,903.09 into account No. 503330045301 with OCBC Bank in Singapore (account holder: Tubmanburg Ltd.).
(cc) US$155,171.40 into account No. 5002478021000840 with United International Bank NV in Curacao (account holder: Tubmanburg Ltd.).

(2) Account IBAN DE96 5123 0800 6502 0482 81 for Shagarab Solutions Ltd.:
(a) Period analyzed: March 16, 2018 – January 27, 2021
(b) Incoming payments* US$2,513,982.30
(c) Outgoing payments*:
(aa) US$55,386.52 into Payoneer (EU) Ltd. account No. 24563039 in the name of Nathaniel Bosfield.
(bb) US$1,881,236.76 into account No. 503330045301 with OCBC Bank in Singapore in the name of Tubmanburg Ltd.

(3) Account IBAN DE86 5123 0800 6502 0482 67 for Tawliiq Trading Ltd.:
(a) Period analyzed: August 2, 2018 – December 4, 2020
(b) Incoming payments* US$6,994,019.01
(c) Outgoing payments*:
(aa) US$1,144,501.56 US dollar into Payoneer (EU) Ltd. account No. 24563039 in the name of Nathaniel Bosfield.
(bb) US$5,659,132.51 US dollar into account No. 503330045301 with OCBC Bank in Singapore in the name of Tubmanburg Ltd.
(cc) US$168,321.94 US dollar into account No. 5002478021000840 with United International Bank NV in Curacao in the name of Tubmanburg Ltd.

I. During the periods investigated, a total of US$16,219,465.72 was received in the 3 target accounts, of which US$2,271,327.08 went into the Payoneer (EU) Ltd. account No. 24563039 held by Nathaniel Bosfield, Director of Tubmanburg Ltd., US$13,413,272.36 went into account No. 503330045301 with OCBC Bank in Singapore in the name of Tubmanburg Ltd., and US$323,493.34 went into account No. 500247802100840 held with United International Bank NV in Curacao in the name of Tubmanburg Ltd.

j. Once the Payoneer (EU) Ltd. account No. 24563039 held by Nathaniel Bosfield, the monies were in turn forwarded to dozens of accounts in 17 countries throughout the globe. As a result, an identification as to where the money ended up is usually impossible to trace as the only information that would be available would be the banks' name, the country and the currency. The account number or the account holder are never mentioned. There are a number of such cases, however, there is

one exception: There was on December 7, 2020 a transfer of US$500,000.00 into account No. 1011166 being with The Winterbotham Trust Company Ltd. in The Bahamas in the name of Tubmanburg Ltd.

k. In order to identify where the monies went, it is necessary to follow the payments at least up to the accounts where it is possible to clearly identify an account from the transfer.

l. This is the case with the following three accounts where payments were made into the respective accounts:

- Account No. 503330045301 (currency: US dollar) with OCBC Bank in Singapore and the account in the name of Tubmanburg Ltd.;
- Account No. 5002478021000840 (currency: US dollar) with United International Bank NV in Curacao in the name of Tubmanburg Ltd.;
- Account/fund No. 1011166 (currency: US dollar) with The Winterbotham Trust Company Ltd. in The Bahamas in the name of Tubmanburg Ltd."

[3.] The ex parte application was made by the Applicant to *Moree CJ* (as he then was) on June 14, 2022. The application was granted as prayed. Consequently, Winterbotham Trust Company Ltd. was directed by the Court to provide to the Applicant all authenticated and complete copies of documentation in relation to account number 1011166 in the name of the First Respondent and details of any other account(s) held for the benefit of the First Respondent and or the Second Respondent (the Ex Parte Order)

[4.] The Ex-Parte Order, however, was not complied with and instead, on June 29, 2022, the First Respondent entered a notice and memorandum of appearance, followed by the filing of a summons on July 1, 2022, seeking to discharge the Ex Parte Order. The summons was supported by an affidavit sworn by Adam Young, filed on January 9, 2023.

[5.] On February 13, 2023, Counsel for the First Respondent indicated at an inter partes hearing that there was a possible agreement between the Parties relative to the information and documentation the First Respondent was directed to provide. Accordingly, *Fraser SJ*, ordered that the hearing of the summons to set aside the Ex Parte Order be adjourned to allow the Parties to settle the matter before proceeding. Unfortunately, subsequent events led Prosecutor Jurgen Lewandrowski in Germany to believe that the negotiations were nothing more than a ruse meant to impede the progress of the action and the adherence to the terms of the Ex Parte Order.

[6.] On August 16, 2024, the Applicant made an application to strike out the First Respondent's summons to have the Ex Parte Order discharged, as it is frivolous, vexatious, and an abuse of the process of the Court or an order setting down the aforementioned summons to be heard. The Court declined to strike out the summons and ordered that the summons be heard on February 13, 2025.

[7.] On 10 October 2024, the First Respondent made an application pursuant to rule 30.3 of the CPR and the inherent jurisdiction of the Court that certain affidavits relied on by the Applicant be struck out on the grounds that the affidavits have been sworn by attorneys in the office of the Attorney-General with no direct knowledge of the matter and that by common law the attorneys are prohibited from swearing affidavits in support of applications in which their firm acts amongst other grounds. On January 17, 2025, the Court dismissed the application with costs to the First Respondent.

First Respondent's Request for Information Application

[8.] On January 30, 2025, the First Respondent sent a request for information letter to the Applicant, seeking responses to specific queries relevant to the defence and its application to have the Ex-Parte Order set aside. In summary, the request seeks answers to the following questions:

a. Whether there are any active criminal investigations in Germany against the First Respondent?

b. How the information being sought by the Applicant as outlined in the Letter of Request (reference number 153 AR 320/21) dated October 1, 2021, issued by the Public Prosecutor's Office in Osnabrück, Germany, and addressed to the Director of Legal Affairs at the Office of the Attorney-General of the Commonwealth of The Bahamas (the "Letter") would assist in a "preliminary investigation"?

c. Whether the alleged flow of funds (as outlined in the Letter) supports any inference of malfeasance on the part of the First Respondent?

[9.] The Applicant declined to provide the requested information by letter dated February 12, 2025, arguing that the application was inappropriate. The Applicant contends that letters of request for legal assistance are specialty proceedings governed by legislation and procedural rules, namely the CJICA and Rule 69 of the CPR. Therefore, the request for information application is without merit and bound to fail.

[10.] As a result, the First Respondent filed a Notice of Application on March 21, 2025, pursuant to Rule 34, seeking an order to compel the Applicant to provide the information. On April 24, 2025 in an oral ruling the Court dismissed the Rule 34 application with costs to the Applicant. I hereby provide written reasons for that oral ruling below.

The Issues

i. Does the statutory regime governing letters of request for legal assistance preclude a Rule 34 application by the First Respondent? If not;

ii. Has the First Respondent met the requisite legal threshold to justify an order compelling the Applicant to disclose the information requested in the letter dated January 30, 2025?

Issue 1

Does the statutory regime governing letters of request for legal assistance preclude a Rule 34 application by the First Respondent?

First Respondent's Submissions

[11.] Counsel for the First Respondent submits that the originating application indicates the Applicant relied on the CJICA when it obtained the Ex Parte Order. Counsel states that the statute regulates mutual legal assistance in criminal matters, including the provision of evidence and information. However, the specific CJICA provision invoked by the Applicant is not identified in the originating application or any of the supporting affidavits. Nor did the Applicant file skeleton arguments or serve the First Respondent with an attendance note of the hearing at which the order was granted.

[12.] Counsel further contends that the Applicant has refused to supply the information requested, asserting only that strict rules govern this specialized proceeding. No statutory provision of the CJICA or any supporting authority has been cited for that proposition.

[13.] Counsel submits that the Applicant appears to rely on **section 6** of the CJICA, which delineates when international co-operation may be sought. Section 6(2) requires either (a) that an offence has been committed, or (b) reasonable grounds to suspect an offence, or (c) that an investigation into an offence is under way. Section 6(4) directs that applications be made under Order 65 of the Rules of the Supreme Court 1978 ("RSC"), the predecessor to Part 69 of the Civil Procedure Rules ("CPR"), which likewise governs obtaining evidence for use abroad. Counsel contends that neither Order 65 nor Part 69 prohibits a respondent from seeking further information from an applicant.

[14.] Counsel for the First Respondent cites **Attorney-General of the Commonwealth of The Bahamas v Lucini** [2003] BHS J No 32, where *Hall CJ* (as he then was) stressed both the need for enhanced international cooperation and the limitation that such assistance must be anchored in an existing criminal investigation or proceedings consistent with section 6 of the CJICA. Counsel contends that His Lordship accepted the submissions that the CJICA "was not intended to permit fishing expeditions into the business affairs of entities within The Bahamas," paragraph 23:

> " ...the new regime created by the CJICA was not intended to permit fishing expeditions into the business affairs of entities within The Bahamas, a limitation which has always existed under the law as it existed prior to the coming into force of the CJICA, most clearly articulated by Gonsalves-Sabola CJ (Ag.) (as he then was) in Nissan Motor Corporation v Adesco, No 1603 of 1989. Indeed, Section 15 of the Banks and Trust Companies Regulation Article 2000, a component of the

basket of financial measures of which the CJICA is a part, preserves the principle of confidentiality."

[15.] Counsel submits that in the present case, no allegation of fraud has been made against the First Respondent. Requiring Winterbotham Trust Company Ltd. to disclose the information sought, would, therefore, constitute an impermissible fishing expedition. The requesting authorities themselves acknowledge under the confidentiality heading of their letter, that no investigation targets the First Respondent and no conviction has been secured. Absent such a foundation, it would be premature and inappropriate for Winterbotham to release the First Respondent's confidential records.

[16.] Counsel in concluding, adds, that it is thus unsurprising that the Applicant has declined to provide the requested information, as the answers would only underscore the First Respondent's submission that the statutory prerequisites for disclosure have not been met.

Applicant's Submissions

[17.] The Applicant contends that these proceedings are governed exclusively by the statutory regime established by the CJICA and the procedural rules in Rule 69 of the CPR. Rule 69, the Applicant maintains, is the sole procedural gateway through which the CJICA operates; no alternative mechanism may be used to compel the production of evidence or information located in or sought for use by a foreign sovereign. Any "incursion into another man's realm" can occur only pursuant to mutual-assistance arrangements between sovereign states that have been enacted into their domestic law.

[18.] Counsel adds that all statutory requirements have been complied with and that there is no requirement for an allegation of fraud to be made out before information is ordered to be disclosed via CJICA.

[19.] Counsel contends that the jurisdiction of the Bahamian courts to order persons within The Bahamas to give oral testimony or produce documents for use in foreign proceedings has always been and remains entirely statutory. That principle was established by Hall CJ in **Lucini *Supra***, which sets out how applications brought under the CJICA are to be determined. The learned Chief Justice wrote at para 39:

> ".....39 I need not traverse the case law developed before the CJICA came into effect. I need only look to the clear words of that Act itself to find the Order immune from challenge on this ground. While counsel for the respondents prays in aid views that I expressed a decade ago in R v Wallace Duncan Smith No. 45 of 1993, on an application made under the law as it then was, and it might appear from my conclusion in this case that I have abandoned those opinions, in fact I

> its peculiar responsibility when dealing with requests for international assistance cannot place itself in thrall to the Executive, it must take its lead from the Executive as to what the policy of The Bahamas is and cannot claim to evolve a policy incompatible with the statutory scheme and policy preferences of the other arms of Government...."

[20.] Counsel for the Applicant submits that, notwithstanding the routine relief sought in the notice of application and its manifest illegality on the face of the record, the Court should decline to grant the First Respondent any further indulgence. The First Respondent had previously contemplated cross-examining the German prosecutor but now appears to appreciate that such a step is impermissible in these specialized proceedings. A residual risk remains, however, that if the prosecutor were to answer written questions, he might thereby be deemed to have submitted to the Court's jurisdiction, potentially opening the door to an order for oral cross-examination.

[21.] Counsel argues that under **Part 33 of the English CPR** (mirrored in the Bahamian CPR) if a party wishes to rely on hearsay evidence without calling the maker of the statement, the opposing party may apply for permission to cross-examine that maker on the contents of the statement. The commentary recognizes the significance of this power:

> *"the main significance of these provisions is that they enable the party against whom the evidence is adduced to obtain the permission of the court to call the maker of the statement for cross-examination. This is a significant power because it enables a court on the application of a party,* ***to require evidence adduced by the other party to be properly tested rather than simply having to consider the weight to be attached to a written statement, particularly where the evidence in that statement is of importance in the trial.*** *" [emphasis added]*

[22.] Ironically, as will be demonstrated at the substantive hearing, resorting to that procedure would undermine, not advance the First Respondent's position. **Lucini Supra** makes it clear that a respondent in CJICA proceedings has **no right** to contest or address the evidence recited in the foreign letter of request.

[23.] Counsel contends that it bears repeating: the letter of request relates to a criminal investigation in Germany. Germany and The Bahamas are distinct sovereign states. Neither this Court nor the parties are entitled to probe the evidential references in that request. Indeed, the authorities confirm that the Court itself is precluded from doing so. Mutual legal assistance can be supplied only in the manner prescribed by the enabling legislation. Any suggestion that the German prosecutor must submit additional evidence or submit himself personally to a foreign jurisdiction exceeds what the relevant treaty and the CJICA contemplate.

[24.] In support counsel cited The **Attorney-General of the Commonwealth of The Bahamas v Aguilar** [2003] BHS J. No. 152, where the Court dismissed an application to vary a restraint order issued on the strength of a Spanish letter of request. The Court emphasized that specialized proceedings are not analogous to ordinary domestic litigation,

particularly regarding the admissibility and scrutiny of supporting evidence. The Court wrote at paragraph 7:

> *The legislative intent is that persons involved in those offences and those to whom they have made direct or indirect gifts should be deprived of the proceeds of criminal activity, whether those proceeds retain their character or have been changed through banking or other property transfers or arrangements. The scheme of the legislation is that restraint orders are made pending the outcome of the criminal proceedings and confiscation orders are made after the defendant has been convicted....*

[25.] In conclusion, denying the application, the Court went on to state the primary reason for its decision at paragraph 26:

> *I gave careful consideration to Mr. Gaskin's submission that it is the Spanish courts and not this court which must decide on the merits of Mr. Garcia's claim that their money is clean and untainted by the defendants' activities. He offered no jurisprudential principle or precedent to support this ingenuous proposition. The Act and clause 7 of the Third Schedule of the Order expressly gives this court jurisdiction.*

[26.] Counsel therefore submits that the Court should refuse the First Respondent's application for the production of further information. The procedural safeguards contained in the CJICA are intentionally rigid and must not be manipulated for **mala fide** purposes. The rules and restrictions found in the CJICA are lacking in a Rule 34 application.

Analysis and Disposition

[27.] This matter was initiated under the CJICA and the Banks and Trust Companies Regulation Act by a Memorandum dated 17 January 2022. The Memorandum enclosed a letter of request for legal assistance, transmitted by the Ministry of Foreign Affairs on behalf of the Embassy of the Federal Republic of Germany, in response to a request from the Public Prosecutor's Office of Osnabrück. Such letters of request are indispensable in the fight against transnational crime. They enable The Bahamas both to obtain evidence located abroad for domestic prosecutions and to supply evidence to foreign authorities for use in their proceedings, demonstrating the nation's ongoing commitment to effective international legal cooperation and the administration of justice.

[28.] The relevant section of the CJICA provides as follows:

> 6. (1) This section has effect where the Attorney General receives —
>
> (a) from a court or tribunal exercising criminal jurisdiction in a country outside The Bahamas or a prosecuting authority in such a country; or
>
> (b) from any other authority in such a country which appears to him to have the function of making requests of the kind to which this section applies, a request for assistance in obtaining evidence in The Bahamas in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country.

(2) If the Attorney-General is satisfied —

(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and

(b) that proceedings in respect of that offence have been instituted in that country or that an investigation into that offence is being carried on in that country, he may cause an application to be made ex parte to the Supreme Court by an originating summons for an order to give effect to the request.

3) A court to which an application is made pursuant to subsection (2) shall have jurisdiction to entertain the application and to make such order as it sees fit to give effect to the request.

(4) Subject to the provisions of this Act the procedure applicable to an application under the provisions of Order 65 of the Rules of the Supreme Court pertaining to the obtaining of evidence for use abroad and the mode of carrying out and enforcement of any order of the Supreme Court shall mutatis mutandis apply to an application pursuant to subsection (2).

[29.] Further, section 5 states as follows:

Mutual Provision of Evidence

(1) On an application made in accordance with subsection (2), a Judge or Stipendiary and Circuit Magistrate shall issue a letter ("a letter of request") requesting assistance in obtaining such evidence as is specified in the letter for use in the proceedings or investigation of an offence.

(2) An application under subsection (1) may be made by the Attorney-General or, if proceedings have been instituted, by the person charged in those proceedings.

(3) The Attorney-General may issue a letter of request if he is satisfied —

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated.

(4) Subject to subsection (5), a letter of request shall be sent to the Attorney-General for transmission either —

(a) to a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or

(b) to any authority recognised by the government of the country in question as the appropriate authority for receiving requests for assistance of the kind of which this section applies.

(5) In cases of urgency a letter of request may be sent directly to such a court or tribunal as is mentioned in subsection (4)(a).

(6) In this section "evidence" includes documents and other articles.

(7) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (4)(b) be used for any purpose

[30.] Part 69 of the CPR states:

69.1 Jurisdiction of Registrar to make order.

(1) Subject to paragraph (2), the power of the Supreme Court or a judge thereof under any Act to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by the Registrar.

(2) The Registrar may not make such an order if the matter in question is a criminal matter.

69.2 Application for order.

(1) Subject to paragraph (3) and rule 69.3, an application for an order under rule 69.1 may be made without notice by a person duly authorised to make the application on behalf of the court or tribunal in question and must be supported by affidavit.

(2) There must be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates or the production of any documents and, if that document is not in the English language, a translation thereof in that language.

(3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a court or tribunal, an application for a further order or directions in relation to the same matter must be made by interlocutory application.

69.3 Application by Attorney-General in certain cases.

Where a letter or request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained —

(a) is received by a Minister of the Government and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in The Bahamas of any party to the matter pending before the court or tribunal; or

(b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in The Bahamas for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such a party, the Registrar shall send the document to the Attorney-General and the Attorney- General may make an application for an order and take such other steps as may be necessary, to give effect to the request.

69.4 Person to take and manner of taking examination.

(1) Any order made in pursuance of this Part for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.

(2) Subject to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination shall be taken in manner provided by Part 33, and an order may be made under rule 33.12, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

....

69.6 Claim to privilege.

(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 6(1)(b) of the Evidence (Proceedings in Other Jurisdictions) Act (Ch. 66) is not supported or conceded as mentioned in subsection (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the court may do so, on the application without notice of the person who obtained the order under section 5 of the Evidence Proceedings in Other Jurisdictions) Act (Ch. 66).

[31.] Before the Court is an application by the First Respondent seeking an order under Rule 34 of the CPR to compel the Applicant to answer questions set out in a request for information. The First Respondent contends that the information sought is necessary to support its application to set aside the Ex Parte Order.

[32.] The relevant test for the Court to compel a party to answer questions under Rule 34 of the CPR is that such an order may only be granted if it is necessary to dispose fairly of the claim or to save costs.

[33.] However, proceedings under the CJICA and Rule 69 are governed by a separate and specific statutory framework. The CJICA and Rule 69 clearly outline a structured diplomatic mechanism for international legal assistance, particularly when dealing with requests for information or evidence between states.

[34.] It is settled law that where Parliament establishes a comprehensive statutory framework to deal with specific matters, general procedural tools such as a request for information application under Rule 34 should not ordinarily apply to circumvent that legislative scheme.

[35.] Having carefully considered the submissions of both parties, the Court finds that the application by the First Respondent under Rule 34 is premature, inappropriate, and legally impermissible in the circumstances. Parliament, by enacting the CJICA and Rule 69, established an exclusive statutory procedure for obtaining information and evidence between states in support of foreign criminal proceedings. To the Court's mind one of the

intents of Parliament in this regard was to prevent general civil discovery procedures from being invoked to disrupt diplomatic and prosecutorial discovery processes involving foreign states. The information sought by the First Respondent lies beyond the jurisdiction of this Court, as it pertains specifically to the foreign prosecutorial authority (in this case, the German Prosecutor). This Court has no jurisdiction or authority to compel such foreign authorities to divulge information through domestic civil discovery mechanisms, such as Rule 34.

[36.] The First Respondent's application would, through a civil procedure mechanism, improperly compel the Attorney General to question or scrutinize the criminal prosecutorial actions of a foreign sovereign state while that state is investigating a crime. This Court notes that in proceedings under CJICA, the Attorney-General acts solely as a central authority executing statutory obligations pursuant to treaty arrangements. The Attorney-General is not an adversarial party. Any attempt to compel the Attorney-General to adopt a role akin to interrogating a foreign prosecutor would be diplomatically and constitutionally improper.

[37.] The principle that general procedural discovery tools, such as Rule 34, cannot displace an exclusive statutory regime is reinforced by the judgment of the English Court of Appeal in **Regina (Omar) v Secretary of State for Foreign and Commonwealth Affairs [2014] QB 112**. In Omar, the Court of Appeal concluded that the existence of a comprehensive statutory framework for international criminal cooperation precluded the use of common law procedural remedies such as the Norwich Pharmacal jurisdiction.

[38.] In this case, the claimants were Ugandans arrested in Kenya on suspicion of having been involved in a bombing in Uganda, which had resulted in the deaths of 76 people. They were subsequently transferred to Uganda and charged there with murder and other offences in respect of the bombing. The claimants petitioned the Constitutional Court of Uganda, contending that their prosecution was an abuse of process and unconstitutional in that their rendition from Kenya had been illegal and that they had been tortured and ill-treated. They began judicial review proceedings in the United Kingdom for Norwich Pharmacal relief, seeking from the Foreign Secretary information and evidence in relation to their alleged rendition and ill-treatment, to be used in the Ugandan proceedings.

[39.] The Claimants sought a common law avenue for the disclosure of information because there was no statutory law between Uganda and the United Kingdom (unlike in this case, where such statue exists).The Divisional Court of the Queen's Bench Division dismissed the claims on the grounds that it had no jurisdiction to grant Norwich Pharmacal relief, holding that the only means by which evidence for use in foreign criminal proceedings might be obtained was pursuant to the Crime (International Co-operation) Act 2003 (CICA). The Claimants appealed.

[40.] The Court of appeal dismissed the appeal. It was held by the Court of Appeal that the regime set out in the CICA for the obtaining of evidence for use in foreign criminal proceedings differed from the Norwich Pharmacal remedy in that, by section 13 and paragraph 5 of Schedule 1 to the CICA, it accorded ministerial discretion along with

national security and Crown service considerations which the common law remedy did not. The Court opined that those differences were so substantial that Parliament was to be taken, in enacting the CICA, to have created an exclusive procedure, not a parallel one. Therefore, where the statutory regime was in play, the Norwich Pharmacal remedy did not run; and that, accordingly, since it was common ground that both the prosecution of the Claimants in Uganda and the petition to the Constitutional Court to which it had given rise were criminal proceedings for the purposes of the CICA, the Divisional Court had been correct in concluding that it had no jurisdiction to entertain a Norwich Pharmacal application.

[41.] *Maurice Kay J* (at paragraph 11) underscored the principle that once Parliament provides a statutory mechanism, the common law or procedural remedies are excluded by necessary implication:

> **11** "The judgment of the Divisional Court [2013] 1 All ER 161, paras 57-62 includes an historical survey of the development of the law from its judicial origins in the 19th century, particularly in the Court of Chancery, through the early statutory innovations (the Foreign Tribunals Evidence Act 1856 (19 & 20 Vict c 113), the Evidence by Commission Act 1859 (22 Vict c 20), the Extradition Acts 1870 (33 & 34 Vict c 52) and 1873 (36 & 37 Vict c 60)) up to the repeal of almost all of that legislation by the 1975 Act. Its conclusions appear in the following passages, at paras 63-64 and 66:
>
> > "63. Outside those statutes the courts had and have no jurisdiction to use their processes for the purpose of providing evidence for proceedings in foreign states …
> >
> > "64. … the power of the courts to use *Norwich Pharmacal* proceedings must, in our view, be developed within the confines of the existence of the statutory regime through which evidence in proceedings overseas must be obtained. *Norwich Pharmacal* proceedings are not ousted, but where proceedings, such as the present proceedings, are brought to obtain evidence, the court as a matter of principle ought to decline to make orders for the provision of evidence, as distinct from information, for use in overseas proceedings. It cannot permit the statutory regime, with [its] safeguards … to be circumvented …"
> >
> > "66. … the statutory regime is the only means by which evidence for use in foreign proceedings may be obtained and, save in *Binyam Mohamed (No 1)* and the *Aamer* case, where the point was not taken, *Norwich Pharmacal* proceedings have never been used to obtain evidence for use in proceedings. The jurisdiction of the court is confined to the statutory regime."….

12 It is apparent from para 63 of its judgment in the present case that the Divisional Court attached some importance to the fact that what the claimants are seeking here was expressly referred to as "evidence" rather than "information". I do not consider that anything turns on that taxonomy. I consider that the distinction is elusive or illusory or, to adopt the word of Mr James Eadie QC, "ephemeral". Today's information often ripens into tomorrow's evidence".

[42.] The learned Judge goes on to explain the statutory regime which is more extensive than this jurisdiction's statutory regime but generally the same. He adds:

> **"14 Chapter 2 of the 2003 Act (CICA) is headed "Mutual Provision of Evidence". Sections 7 to 12 are concerned with requests *from* the United Kingdom to a foreign state for assistance in obtaining evidence abroad for use in an investigation or proceedings in this country. A request may only be made by a domestic judicial authority. However, an application to the judicial authority for such a request to be made may come from the prosecuting authority or, once proceedings have been instituted, from the person charged: section 7(1)(3)."**

[43.] Section 5 of CJICA is generally the same. At paragraph 15 the Judge continues:

> **"15** Sections 13 to 19 are concerned with requests from overseas authorities for the obtaining of evidence in the United Kingdom. Three important features are present. *First*, a request has to be directed to "the territorial authority", who is the Secretary of State or, in Scotland, the Lord Advocate: section 28(9). He then has a discretion as to whether to arrange for the evidence to be obtained: section 13(1)(a)—"*may* … arrange" (emphasis added). When he so arranges he may nominate a court to receive the evidence: section 15. *Secondly*, the request for assistance can only be made by "a court exercising criminal jurisdiction, or a prosecuting authority, in a country outside the United Kingdom" or by a similar authority: section 13(2). It cannot be made directly by or on behalf of a defendant in the foreign criminal proceedings. He would need to persuade the foreign court or prosecuting authority to make a request in his interests. **Thirdly, proceedings in the nominated court are governed by Schedule 1, paragraph 5 of which includes the following provisions:**
>
> **"(4) A person cannot be compelled to give any evidence if his doing so would be prejudicial to the security of the United Kingdom.**
>
> **"(5) A certificate signed by or on behalf of the Secretary of State … to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact.**
>
> **"(6) A person cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.**

[44.] Section 6 of the CJICA is also generally the same. The Judge added:

> **"22 It is pertinent to relate the way in which the issue of statutory exclusivity has been viewed in relation to the 1975 Act in the context of civil litigation. In *In re Westinghouse Electric Corpn Uranium Contract Litigation MDL Docket***

(Nos 1 and 2) **[1978] AC 547, Lord Diplock began his speech with these words, at pp 632g-633a:**

"My Lords, the jurisdiction and powers of the High Court to make the orders that are the subject of this appeal are to be found in sections 1 and 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975, *and nowhere else* ... The jurisdiction of English courts to order persons within its jurisdiction to provide oral or documentary evidence in aid of proceedings in foreign courts has always been exclusively statutory." (Emphasis added.)

[45.] At paragraph 24, the judge adds:

> "Ultimately, we are concerned not with the 1975 Act (which is structurally different from the 2003 Act (CICA) but which also contains national security and Crown servant exceptions: sections 3(3) and 9(4)), but with the 2003 Act. The approach to interpretation when considering the relationship between a statutory remedy and a common law remedy has recently received attention in the Supreme Court in *R (Child Poverty Action Group) v Secretary of State for Work and Pensions* [2011] 2 AC 15, which does not appear to have been cited in the Divisional Court in the present case. The *Child Poverty Action Group* case was concerned with whether the Secretary of State could avail himself of a restitutionary remedy at common law to recover overpaid benefits or whether a purpose-built statutory remedy was exclusive. Dyson JSC's judgment contains statements of principle in a number of passages. The following, at paras 33-34, will suffice for present purposes:
>
> > "33. If the two remedies cover precisely the same ground and are inconsistent with each other, then the common law remedy will almost certainly have been excluded by necessary implication. To do otherwise would circumvent the intention of Parliament ...
> >
> > "34. The question is not whether there are *any* differences between the common law remedy and the statutory scheme. There may well be differences. The question is whether the differences are so substantial that they demonstrate that Parliament could not have intended the common law remedy to survive the introduction of the statutory scheme ... The question is whether, looked at as a whole, a common law remedy would be incompatible with the statutory scheme and therefore could not have been intended [to] co-exist with it."

[46.] Further, *Maurice Kay J* stressed at paragraph 25 that:

> *"Parliament could not have intended the common law remedy to survive the introduction of the statutory scheme... the statutory scheme accords ministerial discretion, national security, and Crown service a paramountcy which the common law remedy does not. To permit the common law remedy would subvert the carefully calibrated statutory scheme.* The statutory scheme accords ministerial discretion, national security and Crown service a paramountcy which the *Norwich Pharmacal* remedy does not. The statutory scheme enables the Secretary of State to retain a degree of control over sensitive information or evidence which the *Norwich Pharmacal* remedy would loosen or might deny. This leads me to the conclusion that Parliament did not and would not create a parallel procedure. It created an exclusive one in the area which it addressed.....

> **27** It follows from what I have said that, in my judgment, the Divisional Court was correct to conclude that it had no jurisdiction to entertain a *Norwich Pharmacal* application in the present case

[47.] Although **Omar Supra** involved a common-law remedy that clashed with statute, the underlying principle applies equally to Rule 34 and its coexistence with the CJICA regime. Our Parliament's intention to create an exclusive statutory scheme for international criminal assistance under the CJICA similarly excludes reliance upon general civil procedural rules outside of Rule 69. When considering a Rule 34 remedy alongside the CJICA and Rule 69 regime, specific points stand out as notable differences. The Court refers again to the fact that Rule 34 deals with civil matters, while the applicable regimes pertain to criminal proceedings. Rule 34 also lacks the discretion of the Attorney-General, as well as the national security and crown servant considerations and the confinement of requests to foreign courts and prosecuting authorities that are found in the CJICA. To grant the First Respondent's application and compel the Applicant to answer would bypass the principal requirements of the CJICA as highlighted in Omar Supra. The First Defendant cannot, as a matter of principle, be entitled to more favourable treatment under Rule 34 proceedings that have fewer restrictions and requirements than the CJICA and Rule 69. To borrow some of the words of *Maurice Kay J,* Parliament could not have intended that a Rule 34 application be applicable to request information in criminal proceedings between international parties in a matter involving letters of request for legal assistance via CJICA. This Court cannot permit the CJICA statutory regime with its safeguards to be circumvented by a Rule 34 application.

[48.] The Court notes that while Counsel for the First Respondent quotes para 23 of the submissions of Counsel from **Lucini Supra** to support their contention, Counsel fails to state that *Hall CJ* dismissed those submissions and ruled in favor of the Attorney-General's office.

[49.] In **Lucini Supra**, *Hall CJ* held that the CJICA created a structured statutory procedure immune from attempts to circumvent its provisions through general procedural or common-law avenues. This Court expressly aligns itself with Hall CJ's reasoning, noting particularly his comments in paragraphs 37-39, emphasizing the exclusivity and paramountcy of the statutory regime over general procedural rules. He stated:

> "37 I am of the view that -- without presuming to speak generally as to the extent to which the CJICA has permitted the widely cast net of inquiries as would have been proscribed as "fishing" under the earlier law, the decisions under that regime being legion -- in this case, the information which the OAG seeks to have obtained in The Bahamas on behalf of the prosecuting authorities in Argentina falls within the breadth of section 6.
>
> 38 The aphorism -- coined by the English novelist L P Hartley in the opening lines of his novel, The Go-Between: "The past is a foreign country; they do things differently there" -- aptly describes the revolution which has occurred in the legal regime of cross-border legal assistance in The Bahamas - and almost every country in the world since the international community became mobilised in efforts to combat money laundering and to pursue the gains made by those involved in the trafficking of proceeds from proscribed drugs and

other illegal activities. Moreover, during the pendency of this application, the terrorist attack which has moved into the popular lexicon as "the events of 9/11 ", have fortified the demands for global co-operation.

39 I need not traverse the case law developed before the CJICA came into effect. I need only look to the clear words of that Act itself to find the Order immune from challenge on this ground. While counsel for the respondents prays in aid views that I expressed a decade ago in R v Wallace Duncan Smith No. 45 of 1993, on an application made under the law as it then was, and it might appear from my conclusion in this case that I have abandoned those opinions, in fact I adhere to the basal reasoning of that decision that, while the Court in exercise of its peculiar responsibility when dealing with requests for international assistance cannot place itself in thrall to the Executive, it must take its lead from the Executive as to what the policy of The Bahamas is and cannot claim to evolve a policy incompatible with the statutory scheme and policy preferences of the other arms of Government."

[50.] I am guided by the dictum of *Hall CJ* in this regard. The Ex Parte Order is immune from the Rule 34 application of the First Respondent. Thus, consistent with established jurisprudence, the First Respondent's application under Rule 34 must fail.

[51.] Having resolved the preliminary issue in the Applicant's favor, an outcome which, of itself, is dispositive of the application, I shall nevertheless address the substantive grounds in the alternative, so that, if my conclusion on the preliminary point proves to be mistaken, it may be seen whether the relief would still have been granted.

Issue 2

Has the First Respondent met the requisite legal threshold to justify an order compelling the Applicant to disclose the information requested in the letter dated January 30, 2025?

First Respondent's Submissions

[52.] Counsel for the First Respondent submits that pursuant to Rule 34, a party may request further information or clarification regarding any matter in dispute within the proceedings. Should a party refuse to respond adequately to such a request, the requesting party may then seek an order from the Court compelling compliance.

[53.] The First Respondent contends that invoking Rule 34 is both appropriate and necessary to clarify the specific allegations against it and to determine whether the information requested is justified and essential for its defence. Counsel submits that the requested information is proportionate, readily ascertainable, and necessary to defend the action and to set aside the Ex Parte Order.

[54.] It is further submitted that providing the requested information would not impose any undue burden or disproportionate cost upon the Applicant. The Applicant should have

already considered and possessed this information prior to initiating these proceedings. The information requested can be easily produced via an affidavit, an obligation that is neither unduly onerous nor prejudicial to the Applicant.

[55.] The Applicant's refusal to supply the requested information obstructs justice and breaches the fundamental principle of equality of arms. This principle was affirmed in the case of **Tesco Stores Ltd v Element & Others** UKEAT/0228/20, where approximately 9,000 predominantly female store-based employees pursued equal pay claims, asserting equivalency to predominantly male employees in Tesco's distribution centers. In that case, the claimants sought disclosure of documents and information related to potential comparators.

[56.] Counsel for the First Respondent highlighted that Tesco resisted disclosure, labeling the request an impermissible "fishing expedition." However, both the Employment Tribunal (ET) and, subsequently, the Employment Appeal Tribunal (EAT) rejected Tesco's arguments. The EAT emphasized at paragraphs 17 and 20 of the judgment:

> "[17] It is, in my opinion, without doubt, that some of this information and/or documents are needed now. They are necessary for the litigation as the information should be supplied so that comparators can be identified, and we can move on to the next phases of this litigation. I do not accept that this is what is described by Mr Epstein as 'fishing'. Whilst I have not ordered all the documents and information requested by the claimants, that which I have is directly related to the claims brought."
>
> "[20] When considering the overriding objective, I accept entirely that part of my job is to ensure that the parties are on an equal footing. The claimants do not have access to this information. The respondent does have access to it and should be able to provide it, I would hope, relatively quickly."

[57.] Thus, the EAT held that withholding necessary disclosure unfairly disadvantages the opposing party and impedes justice.

[58.] Counsel for the First Respondent further underscores that the CPR and its associated practice directions confine requests for information to matters that are "reasonably necessary and proportionate" to understanding or preparing a case. This principle is particularly relevant here, given the absence of formal pleadings, thereby heightening the requirement for specificity and clarity in the Applicant's allegations.

[59.] Additionally, the overriding objective outlined in Rule 1.1 of the CPR mandates that the Court manages cases justly, expeditiously, and cost-effectively. Granting the requested information aligns precisely with these requirements by clarifying essential points, streamlining issues, and potentially reducing overall litigation costs.

[60.] Counsel for the First Respondent respectfully submits that this Honourable Court should grant the relief sought and compel the Applicant to provide the requested information. The First Respondent's request meets the necessity and proportionality standards set forth under Rule 34.2, ensuring fair and efficient conduct of these proceedings.

[61.] Finally, it is respectfully submitted that the Applicant's refusal to supply the information lacks proper legal justification. While the CJICA facilitates international assistance in criminal matters, it does not override the fundamental principles of procedural fairness enshrined in the CPR.

[62.] Therefore, the First Respondent seeks an order compelling the Applicant to furnish the requested information.

The Applicant's Submissions

[63.] Counsel for the Applicant submits that the First Respondent has failed to meet the criteria required under Rule 34 for compelling further information. Specifically, Counsel argues that the First Respondent's application is inappropriate and legally impermissible, as requests for information under Rule 34 are not applicable in criminal proceedings.

[64.] It is further submitted that the questions posed by the First Respondent in its application are neither necessary to dispose fairly of the claim nor to save costs. On the contrary, Counsel argues that these questions have the opposite effect, serving only to delay the proceedings and escalate costs unnecessarily.

[65.] Counsel further submits that the First Respondent's application amounts to a mere "fishing expedition" for information, intended not to clarify issues but rather to delay proceedings and explore speculative lines of inquiry.

[66.] Counsel for the Applicant argues that Rule 34 provides clear guidance that orders compelling further information must be grounded in necessity and proportionality and should never be granted merely to facilitate fishing expeditions.

[67.] Counsel refers to the Court **The Caribbean Civil Court Practice** (2011 Edition), at page 213, highlighting the established overarching principle that orders under Rule 34 should only be made when necessary to fairly dispose of the claim or to reduce litigation costs. The Court must specifically consider the likely benefit derived from providing the requested information.

[68.] Counsel cites the English Queen's Bench decision in **West London Pipeline and Storage Ltd and Another v Total UK Ltd and Others** [2008] EWHC 1296 (Comm). In that case, a request for additional information regarding insurance arrangements was denied despite being presented as relevant or necessary for efficient case management. Per *Irwin J* at paragraph 18:

> "19.....It seems to me that, setting aside any other point, disclosure of this kind should only be ordered where a claimant (or where the situation arises, any other party) can demonstrate that there is some real basis for concern that a realistic award in the case may not be satisfied. I do not intend to attempt any general statement of principle as to the limits of such an obligation, applicable across all cases. I am however certain that the exercise of any jurisdiction to order disclosure

of information such as this will be approached with caution. There must be some real basis for suggesting that the disclosure is necessary, in order to determine whether further litigation will be useful or simply a waste of time and money."

[69.] Counsel emphasizes this principle, noting that the present application fails to demonstrate a real basis or necessity for the requested information, further reinforcing the notion that it constitutes an improper fishing expedition.

[70.] Counsel for the Applicant submits that requests for further information must not be permitted where they constitute mere "fishing" attempts to uncover grounds or evidence not already known or pleaded. Counsel submits that the First Respondent's current application and supporting affidavit indicate such an impermissible purpose.

[71.] The affidavit relied upon by the First Respondent, specifically at paragraph 6, asserts that the information sought is essential for a defence at a forthcoming hearing. It fails to identify any genuine necessity or specificity of purpose. This failure indicates that the First Respondent's request is speculative, lacks genuine foundation, and is merely an attempt to bolster their grounds post-factor.

[72.] For the reasons stated, Counsel respectfully submits that this Court should dismiss the First Respondent's application, as it does not meet the mandatory requirements of Rule 34, lacks legal foundation in criminal proceedings, and serves only to delay the matter and increase unnecessary costs.

Analysis and Disposition

[73.] Before the Court there is an application by the First Respondent pursuant to Rule 34 of the CPR. The First Respondent is seeking an order to compel the Applicant to respond to a series of questions. The First Respondent argues that the requested information is necessary to effectively present its application to set aside the Ex Parte Order previously granted by this Court.

[74.] The fundamental principle governing requests for information under Rule 34 is clear: the Court may only grant such an order if it is necessary either to dispose fairly of the claim or to save costs. As stated in the **Caribbean Civil Court Practice** (3rd Edition, at page 272), when deciding whether to make such an order, the Court must consider the following:

(a) The likely benefit arising from the provision of the requested information;

(b) The likely cost involved in providing it; and

(c) Whether the financial resources of the responding party are sufficient to comply with such an order.

[75.] The purpose of Rule 34 is to narrow disputed issues, save litigation costs, and facilitate efficient and effective case management and preparation.

[76.] Notably, **The Caribbean Civil Court Practice** (2024) also highlights at page 272 that requests for information are typically only appropriate after pleadings have closed and discovery has concluded.

[77.] Having considered the submissions of counsel, I prefer those advanced by counsel for the Applicant. First and most importantly, the First Respondent has not satisfactorily demonstrated how granting this application would dispose of the case fairly or result in any costs savings.

[78.] Critically, this matter is still at an investigatory stage. No charges have been laid, and no pleadings have been filed. The First Respondent appears to seek information solely to determine whether a charge will eventually be laid. In such circumstances, this application appears premature and inappropriate.

[79.] The procedural history of this matter further underscores why the current application should be dismissed:

- The First Respondent initially filed a summons to set aside the Ex Parte Order on **July 1, 2022**. However, the supporting affidavit was not filed until approximately six months later, in **January 2023**.
- Little substantive progress occurred until the Applicant filed an application on **August 16, 2024**, seeking to strike out the Respondent's summons. Rather than advancing its summons promptly, the First Respondent responded by filing a separate notice on **October 10, 2024,** to strike out the Applicant's affidavits, an application this Court subsequently dismissed.
- It is now nearly three years since the Ex Parte Order was granted, and the First Respondent seeks to rely upon this request for information application to bolster arguments that could and should have been advanced much earlier.

[80.] This sequence of procedural events demonstrates that significant costs have already been incurred unnecessarily, and granting this request would only serve to compound these delays and expenses rather than mitigate them.

[81.] Rule 34 must not facilitate speculative "fishing expeditions." In support, I cite the English Queen's Bench decision in **West London Pipeline Supra.**

[82.] In the current matter, the affidavit in support of the application does little more than assert broadly that the requested information is essential without providing specific justification or establishing genuine necessity. The application thus resembles precisely the sort of speculative, unnecessary disclosure that is prohibited.

[83.] In conclusion, the Court is not persuaded that the First Respondent has satisfied the necessary criteria under Rule 34. This application, viewed holistically, fails to demonstrate necessity, proportionality, or appropriateness and would exacerbate delays and costs.

[84.] In the Court's considered view, granting this request would transform these preliminary proceedings into a premature mini trial, contrary to the overriding objective of the CPR, which is to deal with cases justly, expeditiously, and cost-effectively.

CONCLUSION

[85.] In conclusion, the Court finds that:

(a) It lacks jurisdiction to grant the First Respondent's request for information application because the exclusive statutory regime under the CJICA and Rule 69 governs the obtaining of evidence in international criminal cooperation matters.

(b) In any event, if the jurisdiction existed, the First Respondent has failed substantively to meet the threshold needed to compel the answers to the request for information application.

[86.] Accordingly, the First Respondent's request for information application is dismissed with costs to the Applicant.

Dated this 12th day of June 2025

Darron D. Ellis

Justice