

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Public Law Division
2026/PUB/Con/Claim No. 00011

IN THE MATTER OF AN APPLICATION FOR CONSTITUTIONAL REDRESS PURSUANT TO ARTICLE 289
OF THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS

AND

IN THE MATTER OF ARTICLES 15, 17 AND 20 OF THE CONSTITUTION OF THE COMMONWEALTH OF
THE BAHAMAS

AND

IN THE MATTER OF PARTS 8, 11 AND 17 OF THE SUPREME COURT CIVIL PROCEDURE RULES, 2022

BETWEEN:

CARLOS LEWIS BUTLER

Applicant

AND

THE BAHAMAS DEPARTMENT OF CORRECTIONAL SERVICES (BDOCS)
COMMONWEALTH OF THE BAHAMAS

First Respondent

AND

THE ATTORNEY GENERAL AND MINISTER OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL AND MINISTRY OF LEGAL AFFAIRS
COMMONWEALTH OF THE BAHAMAS

Second Respondent

Before: The Hon. Mr. Justice Loren Klein
Appearances: Mr. Bjorn Ferguson for the Applicant
Mr. Donard Brown, with Ms. Janessa Murray and Mr. Ashton
Williams for the Respondents
Hearing Date: 3 June 2026
Ruling: 4 June 2026

RULING

Klein J.

Constitution—Alleged breach of Fundamental Rights—Articles 15, 17, and 20—Application remanded at BDOCs awaiting further criminal proceedings against him—Applicant shot multiple times by off-duty Police Officer in suspected armed robbery incident—Hospitalized at PMH and later transferred to BDOCs—Applicant suffering severe injuries to his spine and lower extremities as a result of shooting, leaving him wheel-chair bound, unable to move one leg and incontinent—Applicant detained in multiple-prisoner cell without bed or toilet facilities—Alleges continued detention without access to proper medical care and facilities a breach of Article 15, 17, and 20—Article

INTRODUCTION & BACKGROUND

1. This is a claim for urgent interim relief by an inmate on remand at the Bahamas Department of Correctional Services (“BDOCS”) seeking his release on the basis that his continued detention in a facility without proper medical care for the serious spinal and other injuries from which he suffers is a breach (among other rights) of the right not to be subjected to inhuman or degrading treatment protected at Article 17 of the Constitution.

2. As explained further, the claimant’s injuries were sustained in a recent police-involved shooting, which left him disabled and wheelchair bound. The gravamen of his claim is that the injuries, which have resulted in the loss of movement in one leg, complete incontinence (loss of bowel and bladder control) and exposure to the possibility of permanent paralysis and other possibly life-threatening conditions, cannot be properly cared for at BDOCS. He is completely dependent on other prisoners for his mobility and his basic hygiene. In fact, his condition may be described as a “complication of atrocities”, in that, in addition to the distressing medical issues, he is housed in a cell without any bathroom or running water—a condition referred to as “slopping out”—without any bedding, and which is shared with several other inmates.

3. The claim, which was commenced by Notice of Application filed 13 May 2026, supported by an affidavit filed the same day, and a Certificate of Urgency filed 19 May 2026, came before me on Tuesday, 2 June 2026, during my case management hearings. However, as no one from the Office of the Attorney General appeared, I adjourned the application to 11:00 a.m. on Wednesday, 3 June 2026.

Summary of Relevant Facts

4. The applicant is a 33-year old by the name of Carlos Lewis Butler. This is not his first entanglement with the law, and he puts his antecedents candidly before the Court. As he says (at para. 24) of his supporting affidavit:

“I am not making this Application in order to evade accountability for any wrongdoing that my properly be established against me in fair and lawful proceedings. I am making this Application because I am a human being, because I am seriously injured and medically vulnerable and because I genuinely fear that detention at BDOCS in my present condition would place my life and health at serious and foreseeable risk.”

5. His story begins in 2024, when he was arrested and charged with armed robbery and remanded to BDOCS, pending the determination of that matter. He was admitted to bail, but being unable to find a suitable surety to sign, he remained incarcerated for one and a half years. On the 15 April 2025, he was convicted of the offence of armed robbery, was ordered to pay \$800.00 in

compensation and placed on probation for 3 years. He executed a Probation Bond and Bond to Keep the Peace in this regard.

6. He was serving and (apparently up to that point) complying with the terms of that probation when he was shot, some five times, by an off-duty police officer on 24 April 2026, during the course of what is alleged to have been an armed robbery. He was taken to hospital (Princess Margaret) where he was hospitalized and treated for his injuries, and where he remained from 24 April to 8 May 2026, when he was discharged. He was also arrested on 24 April 2026 on armed robbery and firearms charges.

7. He appeared before the Magistrates' Court on 11 May 2026 and was formally charged, and remanded to BDOCS, with an adjourned date of 13 August 2026 to await the service of a Voluntary Bill of Indictment ("VBI").

8. This is how the applicant came to be remanded at BDOCS. I should state at the outset that it is common ground between counsel for the applicant and the respondents that the applicant was lawfully remanded and detained.

The substantive application

9. In the substantive application, the applicant seeks a number of declarations, mandatory injunctive relief, urgent interim relief and damages for constitutional breaches. The main heads of relief sought are as follows:

- (1) A declaration pursuant to art. 28 that the continued detention of the applicant in his present physical condition constitutes a violation of article 17(1) of the Constitution, which prohibits cruel, inhuman and degrading treatment or punishment;
- (2) A declaration pursuant to art. 28 that the continued detention of the applicant constitutes a breach of his right to life under Article 15 of the Constitution;
- (3) A mandatory injunction pursuant to CPR Rule 17.1 that the Respondent shall not detain the applicant at BDOCs until they can demonstrate to the satisfaction of the Court that the applicant has access proper medical care and facilities (which includes, wheel-chair access, proper bedding and sanitary facilities, trained nursing staff specialist medical chair, and compliance with the provisions of the "Bahamas Disability Act", insofar as they apply to the applicant;
- (4) Urgent interim relief in the form of an interim injunction restraining the respondents from detaining the applicant at BDOCS pending the hearing and determination of this application;
- (5) In the alternative, an order granting the applicant bail or house arrest with an electronic monitoring and any other conditions sufficient to ensure his attendance at trial;
- (6) An order directing that the respondents file and serve, within 14 days of the making of the order, or such other period as the Court deems appropriate, a detailed written report

- setting out the specific measures, facilities, personnel and protocols to accommodate the applicant’s disability at BDOCS; and
- (7) Constitutional redress, including damages for breach of constitutional rights in relation to articles 17 and 15.

DISCUSSION AND ANALYSIS

Relevant Law

10. Here, I will set out in summary the relevant law and legal principles that are engaged in this application.

11. The relevant constitutional provisions are Articles 17 and 28. Article 17 provides in material part that “*no person shall be subject to torture or to inhuman or degrading treatment or punishment*”. Article 28, called the “enforcement” provision, provides for any person who alleges that any of the provisions of articles 16 to 27 (inclusive) “*...has been, is being or is likely to be contravened in relation to him*”, to make an application for redress to the Supreme Court. The Supreme Court has original jurisdiction to hear such claims and may “*make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled.*”

12. There is a caveat to this article, however, which is that the Court “shall not exercise” its powers under that provision “*if it is satisfied that adequate means of redress are or have been available to the person concerned under any law.*”

13. Part 13 of the *Civil Procedure Rules 2022* (“CPR”) provide for the grant, *inter alia*, of interim remedies, which includes (relevantly) the ability to grant “an interim declaration” (17.1(a)), and “an interim injunction”.

14. As I pointed out in **Gabrielle Volpi v Delanson Services Ltd. et. al. and Delanson Services Limited v Matteo Volpi et. al.** (Consolidated Appeals 2020/APP/sts/00013, 202/app/STSA/00018), decision dated 22 May 2024, since the implementation of the CPR 2022, the Court has an express power to grant an interim declaration under 17.1(a). In this regard, it is important to note (as stated in that case) that Section 17 does not only contain procedural rules for the grant of such relief, but is also an empowering section which sets out the Court’s jurisdiction and power to grant interim remedies and reliefs—including interim declarations, which were not traditionally available at common law.

The test for interim relief

15. There was agreement between the parties that the test for the grant of interim injunctive relief generally follows the “*American Cyanamid*” formulation, which centres on the balance of

convenience/least risk of injustice approach (**American Cyanamid Ltd. v Ethicon** [1975] AC 1978). As the four-part stages of that test is normally set out, it requires: (i) that there is a serious question to be tried; (ii) the court to examine whether damages would be an adequate remedy; (iii) where the balance of convenience/risk of least injustice lies; and (iv) whether there are special factors such as the public interest to be considered, especially in public law matters.

16. In **National Commercial Bank of Jamaica Ltd. v Olint Corp. Ltd** [2009] UKC 16, the Privy Council deprecated a “box-ticking approach” to the grant of interlocutory relief and coined a convenient shorthand for the exercise of the interim relief discretion as follows: “*The basic principle is that the court should take whichever course of jurisdiction seems likely to cause the least irremediable prejudice to one party or another.*”

17. Although the parties did not specifically address me on principles related to the grant of interim injunctions, they accepted in principle that the usual **American Cyanamid** principles would also apply, subject to any particular requirements in respect of declarations. This approach is supported by recent case law on the point: see for example, **Muhammed & Ors., R (on the application of the Secretary of State for the Home Department)** [2013] EWHC 3157 (Admin) 17 October 2013), [18-20], and **The Secretary of State for Education v. National Union of Teachers** [2016] EWHC 812 (QB) [33-35].

18. In the latter case, which was an application by the Secretary of State for Education for an interim declaration that a proposed National Union of Teacher strike would be unlawful, Mr. Justice Kerr stated [at para. 33], “*I do not think the approach of the court should be any different in the present case merely because the Secretary of State has come to court for an interim declaration and not an interim injunction....*”.

19. Based on the case law, and the leading cases on the grant of declaratory relief, it seems that the synthesis of the application for an interim declaration are as follows:

- (i) There must be a real legal dispute and not an academic or advisory question;
- (ii) The declaration must serve a useful purpose;
- (iii) The court considers the justice to all the parties (the claimant, the respondent and any impact on third parties);
- (iv) The court considers the usual *American Cyanamid* factors, e.g., the balance of convenience/risk of injustice, the strength of the applicant’s case, and whether the order would effectively determine the dispute before trial.

20. It is also important to bear in mind that the court will not grant an interim declaration simply because the applicant can establish a legal right or formulate a legal question. The declaration has to serve a practical purpose, having regard to the rights of all of those affected (see **Financial Services v Rourke** [2002] CP Reg 14, per Neuberger J.).

Summary of the Parties’ Arguments

The Applicant's submissions

21. Mr. Ferguson advanced several main submissions in support of the application for interim relief. Firstly, he submitted that pursuant to Article 17, the State had a positive obligation to prevent the applicant from being subjected to conditions that amounted to inhuman or degrading treatment, part of which included an obligation to provide proper medical care to the applicant while in custody. In addition, he referred to the jurisprudence of the European Court of Human Rights interpreting article 3 of the European Convention on Human Rights (“ECHR”), which is in the same terms as article 17, and drew the Court’s attention to several cases where the European Court had found that prison conditions violated the right against degrading treatment in respect of inmates with certain medical conditions: see, for example, **Price v United Kingdom** (2002) 34 EHRR 53, **Vincent v. France** (2006) Application No. 6253/03.

22. In **Vincent**, the Court found that the detention of the claimant, being a disabled person in a wheelchair who could not move about and leave his cell on his own, was a violation of Article 3 and awarded damages against France. The Court took note, in particular (among other factors), of the fact that the applicant was completely reliant on the availability of other people for his mobility.

23. The applicant also referred to several international instruments which also impose specific requirements on States for the treatment of prisoners, and to which the Court may have regard to in interpreting and giving effect to human fundamental rights. These were as follows: the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”), adopted by the UN General Assembly Resolution A/RES/70/175 on 17 December 2015; and the UN Convention on the Rights of Persons with Disabilities (“CPRD”), to which the Bahamas is a signatory.

24. Article 14 of the CPRD requires that States Parties ensure that persons with disabilities who are deprived of their liberty on the basis of criminal proceedings shall be entitled, on an equal basis with others, to reasonable accommodation. Further, the CPRD Committee, in its Statement on Article 14, confirmed that the failure to provide reasonable accommodation to disabled detainees may itself constitute cruel, inhuman or degrading treatment within the meaning of international human rights law.

25. Second, he submitted that based on the legal jurisprudence, the continued or proposed detention of the applicant at BDOCS in his current condition constitutes or would constitute torture, cruel, inhuman and degrading treatment contrary to art. 17(1) of the Constitution and a direct threat to his right to life under Article 15.

26. Thirdly, it was submitted that the court has ample jurisdiction, both under article 28 and its inherent supervisory jurisdiction, to grant interim relief in the form of an injunction, bail or house arrest pending the full determination of these proceedings.

27. The fourth line of argument was addressed to the test for interim relief. He submitted that a serious question to be tried plainly exists. The documented conditions at BDOCS, the applicant's extensively documented medical needs and the clear provisions of article 17, together are said to raise a serious and substantial question of whether the applicant's detention at BDOCS constitutes a constitutional violation.

28. Further, it was submitted that damages are plainly an inadequate remedy for the harm threatened. The feared harms included deep-stage pressure sores, septic infection, respiratory failure and death, are not compensable in damages after death. The purpose of interim relief is precisely to prevent irreversible harm pending a full determination.

29. Finally, it was submitted that the balance of convenience/risk of least injustice overwhelmingly favours the applicant. In other words, the State's interest in pre-trial detention and the public interest in being protected from persons accused of crimes, could not override the constitutional imperative that no person should be subjected to inhuman or degrading treatment, especially when the applicant's condition renders him no flight risk and no threat to offending.

30. In oral submissions, Mr. Ferguson also confirmed that in addition to the request for an interim injunction, he would also in the alternative be seeking an interim declaration, if the Court were of the view that such relief might be more appropriate in the circumstances.

31. Mr. Ferguson also took me to some of the evidence assembled in support of the claim and the claim for interim relief. In particular, the applicant deposes at para. 25 of his affidavit that detention at BDOCs would cause the following foreseeable harm:

“(a) Severe and rapidly progressing pressure sores: without a proper medical mattress and regular repositioning, I will develop pressure ulcers within days. These will become infected. Given the documented infestation of the cells with rats, maggots and insects, infected open wound on my body are at severe risks of becoming septic. In the absence of running water and time diaper changes, which the documented conditions of BDOCS cannot provide, this outcome is not merely possible but virtually certain.

(b) Septic infection from incontinence-related wounds: without running water, clean diapers changed at appropriate intervals, and trained nursing care, I will suffer severe skin breakdown, wound infection and systemic sepsis arising from my incontinence. In the absence of running water and timey diaper changes, which the documented conditions of BDOCS cannot provide, this outcome is not merely possible but virtually certain.

(c) Respiratory complications: the documented absence of adequate ventilation, combined with the immobility of a paralyzed person, significantly increases the risk of pulmonary complications, including pneumonia.

(d) Psychological harm: Confinement in a cell infested with rodents and insects without the ability to move or protect myself, in conditions of extreme filth, without adequate sanitation for my

incontinence, and without the medical care I require, would cause me profound psychological suffering amount, I verily believe, to a form of torture.

(e) Inability to access any part of the facility: As a wheelchair-dependent person, I would be unable to access the prison's common areas, medical block, or any facility not equipped with wheelchair-accessible infrastructure, leaving me effectively imprisoned with a single, inadequate cell with no meaningful access to any support services.”

32. As alternatives to remand at BDOCS, the applicant proposed the following:

- (i) Released, coupled with conditions typically granted in respect of bail, such as the fitting of an EMD, reporting conditions or surrender of travel documents, which would ensure attendance at trial while allowing min to receive the medical care and support which is required by his condition; and
- (ii) In the alternative, if the Court determines that some form of institutional supervision is necessary, detention at a medical facility with appropriate disability care accommodation and nursing care.

The Respondent's submissions

33. As indicated, the AG's Office did not lodge any written submissions in response to the claim for interim relief. Mr. Brown commenced his oral submissions, which he prefaced with the observation that in making any submission opposing the claim, it should be clear that the respondents were not insensitive to the situation of the claimant. He also reminded the Court that there was no formal evidence from the respondents on the matters, and therefore the Court should treat the evidence as untested.

34. His main line of attack on the applicant's claim was that it was an abuse of process to reach to the constitutional provisions when the applicant had alternative relief available to him, and was therefore precluded by the terms of the provision to article 28(2) from advancing a constitutional claim. In this regard, he referred the Court to the lien of Privy Council authorities on the point, starting from **Harrikissoon v Attorney General of Trinidad & Tobago** [1980] AC 265, up to the most recent statement of the doctrine in **Farrington v The King** [2024] UKPC 34, a case on appeal from the Bahamas.

35. In **Farrington**, the Privy Council contrasted the provision to Art. 28(2) with the discretion under the Trinidad and Tobago Constitution to refuse relief where adequate alternative redress existed, highlighted the preclusive nature of the power under the Bahamian constitution. The Board said:

“80. In The Bahamas, the proviso to article 28(2) provides that where the court is satisfied that adequate means of redress are available elsewhere, it ‘shall not’ grant any relief under article 28(2). If there is any doubt as to the adequacy of the alternative means of redress, so that the court is not so satisfied, then the possibility of constitutional relief remains open. However, if the court is so satisfied, then the provision shuts out completely the grant of constitutional redress.”

36. Mr. Brown also accepted that the principles for the grant of interim relief were the regularly private law principles expressed in *American Cyanamid*, but making allowances for the public interest considerations, and that similar principles would apply in respect of a request for an interim declaration.

37. There was no dispute that there was a serious issue to be tried, on any standard, and I therefore pressed Mr. Brown on where the balance would lie if the Court came to consider that factor. To his credit, Mr. Brown accepted that he could not reasonably argue against the proposition that, in the circumstances of the case, the course that would create the least irremediable prejudice was in favour of the applicant. Even if released, the applicant could be subject to conditions that would ensure his availability and appearance for any trial or further criminal proceedings brought against him.

38. As indicated, that AG did not lodge any affidavit evidence, but Mr. Brown laid over with the Court a letter from Dr. Hasting Johnson, the Medical Officer at BDOCS, which speaks to the condition of the applicant based on an examination which is dated the very day of the hearing. This letter was not contained in any affidavit, but I accepted it *de bene esse*, and there was no objection from counsel opposite.

39. In that letter, Dr. Johnson confirmed that the applicant is “*confined to a wheelchair due to ...injuries which have left him severely handicapped*”. These include a fracture of the proximal right tibia, fractured spinal disc L4 & L5, and left foot drop. He made the following recommendations for repairs to the facilities for disabled inmates.

“I would again recommend the engagement of a structural engineer to facilitate appropriate bathroom and dormitory facilities for disabled inmates. These structural improvements should include but not be limited to the following:

- 35” wide door for access to the shower
- Handheld adjustable shower heads
- Reduced slip-tile (non-skid floor)
- Build-in bench or shower chair
- Toilets centred 18” from the side wall, tub and cabinets
- Grab bars for tub, shower and toilet
- Egg crate mattress
- Beds with monkey bars, etc.”

Court analysis and Conclusions

40. At the outset I should state that time constraints did not permit a fuller analysis of some of the arguments made and the issues which arise in this application.

41. In assessing the applicant's claim for interim relief, I also remind myself of the observation in *American Cyanamid* and subsequent cases that in considering a claim for injunctive or other interim relief, "...the court should not attempt to resolve critical questions of fact or difficult points of law on which the claim of either party may ultimately depend" (**Sukhoruchkin v van Bekestenin** [20114] EWVCA Civ 399, per Sir Terence Etherton). This caution, however, does not prevent the court from expressing its views on the relative strength or merits of the case. In **Guardian Association Group v Newspapers** (CA, 20 January 2000, unreported), Robert Walker LJ said that in giving effect to the Cyanamid principles, the court could give "*proper weight to any clear view which the court can form at the time of the application for interim relief (and without the need for a mini-trial or copious affidavit evidence) as to the likely outcome of the trial*".

42. I stress, however, that nothing I say here should be taken as purporting to express any concluded views on the substantive claim.

43. I accept that the Article 17 imposes a positive obligation on the State to protect the well-being of those deprived of liberty by providing necessary medical assistance and by ensuring that detention conditions respect human dignity. More significantly, it imposes an absolute prohibition on torture, inhuman or degrading treatment or punishment. As explained, it is the corresponding article to article 3 of the ECHR, which is the acknowledged template for article 17 of the Bahamian Constitution. The Privy Council has consistently stated that the jurisprudence on the ECHR may be referred to in interpreting the fundamental rights provisions (see **Matthew v Trinidad and Tobago** [2005] 1 AC 433), as well as certain international instruments to which the State may be party (**Neville Lewis v R** [2001] 2 AC 50).

44. In several cases the European Court has held that certain kinds of treatment may infringe Article 3 [art. 17] because of the effects on a prisoner's health, either mental or physical. By way of example, in addition to **Vincent v France** and **Price v United Kingdom** (which were cited and relied on by the applicant), see **Mouisel v France** (2004) 38 EHRR 34, and **Keenan v United Kingdom** (2001) 33 EHRR 38.

45. **Mouisel** was concerned with the question of whether the continued detention of an inmate with terminal cancer and who only had a few months to live, violated article 3. At paragraph 40, the Court said:

"Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Hurtado v Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79). The Court has also emphasized the right of all prisoners to conditions of detention which are compatible with human dignity, so as to ensure that the manner and the execution of the measures imposed do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention; in addition, besides the health of prisoners, their wellbeing has to be adequately secured given the practical demands of imprisonment...".

46. The Court elaborated on his reasons for finding a breach of article 3 as follows [45]:

“[T]he Court will examine whether the applicant’s continued detention gave rise to a situation which attained a sufficient level of severity to fall within the scope of Article 3 of the Convention. The Court observes that the applicant’s health was found to be giving more and more cause for concern and to be increasingly incompatible with detention. The report of 28 June 2000 referred to the difficulty of providing cancer treatment in prison and recommended transferring him to a specialist unit. It also mentioned the applicant’s psychological conditions, which had been aggravated by the stress of being ill and had affected his life expectancy and caused his health to decline. The letter of 20 November 2000 from the UCSA doctor to the applicant confirmed that his health was deteriorating and referred only to the possibility of a remission in the disease. All those factors show that the applicant’s illness was progressing and that the prison was scarcely equipped to deal with it, yet no special measures were taken by the prison authorities. Such measures could have included admitting the applicant to hospital or transferring him to any other institution where he could be monitored and kept under supervision, particularly at night.”

Conclusions on grant of interim relief

47. There was no push back from the OAG on any of the *American Cyanamid* criteria. It was not disputed that the applicant’s claims raised a serious question to be tried, that damages were not adequate and, as explained, Mr. Brown quite properly conceded that the balance of convenience/risk of injustice did not favour the State. The applicant was in far greater danger of suffering irreparable damage.

48. The evidence as to the claimant’s clinical condition was also undisputed, although I again state the caveat that this is only evidence from one side. This was summarized in the written submissions (at para. 7) as follows:

“The clinical consequences are severe. The Applicant: cannot move his left leg; is entirely wheelchair dependent and unable to walk, stand, transfer or reposition himself; is completely incontinent of the bladder and bowel; requires adult incontinence pads changed every two to four hours; requires a full-body TLSO brace; is at high risk of life-threatening pressure sores, septic infection, urinary tract infection, automatic dysreflexia, deep vein thrombosis and pneumonia; and requires specialist physiotherapy, neurosurgical follow-up, orthopedic follow-up and ongoing pain management.”

49. I also did not find any merit in the alternative remedy argument. I am not satisfied that adequate alternative remedies exist, so the proviso to art 28(2) is not engaged. In my view, an application for bail is not (and can never be) a remedy for a claim of breach of a fundamental right not to be treated in an inhuman or degrading manner. For example, in **Independent Publishing Company Ltd. v Attorney General of Trinidad and Tobago and another** [2005] 4 LRC 301, the Privy Council emphasized that the *Harrikisson* line of cases on constitutional abuse by bringing collateral claims was no answer to a claim by persons not making a parallel or collateral attack but seeking to vindicate and secure their fundamental rights under the constitution.

50. In any event, it must be appreciated that bail is not a means of legal redress for any claim, but a procedural right which allows a person to avoid or limit pre-trial detention, normally by entering and observing certain conditions. Furthermore, the grant of bail is subject to judicial discretion and the fulfilment of conditions which may be unattainable for an applicant, even if granted. The current case is an example, as it was indicated that the applicant was admitted to bail, but could not find a suitable surety, and therefore the grant of bail was illusory.

51. As indicated, I am not required to make any final findings of fact on an application for interim relief. But based on the court's preliminary view of the facts, which have not been disputed but instead corroborated in material respects by the Prison's own medical doctor—i.e., as to lack of accommodations and facilities for disabled inmates—I am at the very least satisfied that there is a seriously arguable case that would justify the grant of interim relief. In fact, if the substance of the allegations in respect of the applicant are taken at first blush, the conditions to which he has been subjected would be distressing even for an able-bodied prisoner, but it is clearly appalling and potentially injurious (or even fatal), for a person with the type of injuries sustained by the applicant.

52. As to the nature of the interim relief that would be appropriate, counsel for both parties accepted, after discussion with the Court, that it would not be appropriate or convenient to grant any injunctive relief, for the main reasons that: (i) the applicant was not unlawfully detained and article 17 does not lay down a general obligation to release detainees on health grounds; and (ii) it would not be appropriate to grant a mandatory injunction where the grant of an interim declaration would suffice to secure the rights of the applicant. However, it was also accepted that the Court was operating in the realm of constitutional relief, and had a wide plenitude of powers to craft any order or relief to give effect to fundamental rights, including the grant of injunctive relief.

53. In **Gairy v Attorney General of Grenada** [2001] UKPC 2001, in respect of a similar constitutional order similar to that in *The Bahamas*, the Privy Council said:

“19 (4) In the respectful view of the Board, that enlightened to the procedural implications of protecting fundamental rights must extend to the substance of the law also. In interpreting and applying the constitution of Grenada today, the protection of guaranteed rights is a primary objective, to which the traditional rules of the common law must so far as necessary yield. [...]

(5) In *M v Home Office*, above, the House of Lords defined the circumstances in which injunctive relief may be granted against ministers of the crown and the extent to which such orders may be enforced. The law stated was however that of the United Kingdom, a state with no entrenched constitution and that time no legal provisions for the enhanced protection of fundamental human rights. For reasons already given the situation in Grenada is categorially different. The reasoning in *M v Home Office* cannot be relied on today to deny the appellant the relief to which he is entitled under the constitution of Grenada.”

54. The option of a possible transfer or removal from BDOCS to any public hospital or other suitable place for medical treatment was also canvassed. Section 24 of the Correctional Services Act 2014 empowers the Commissioner of BDOCS to “...*cause any sick, diseased, or insane inmate to be removed from a correctional facility to any public hospital or other suitable place for medical treatment for so long as may be necessary.*”

55. I was not of the view that this would be a practical or proportionate solution to the problem, for the following reasons: (i) the applicant was discharged from hospital following treatment, which suggests that the hospital authorities consider that he is suitable for discharge; (ii) the Commissioner has the statutory power to authorize such a transfer, without the intervention of the Court, and the fact that this was not done as a special measure (especially in light of the Prison Doctor’s recommendations) is telling and leaves much to be desired; and (iii) it would be disproportionate to burden the Hospital with the possible long-term care of a person on remand, who may need to be guarded and restrained.

56. As to the latter concern, I also have in mind the observation of Elias J. in **R (Spinks) v Secretary of State for the Home Department** [2004] EWHC 2916 (Admin), where he said [at 54]:

“There is something rather Dickensian about clanking chains in hospital wards. Plainly, sometimes it is going to be necessary, and one understands the concern that the prison authorities have about the public reaction if a prisoner in those circumstances were to become violent, or if a violent prisoner were to abscond.”

CONCLUSION AND DISPOSITION OF CASE

57. In all the circumstances of this case, and having regard to the justice of the case and the relevant principles set out above, I will grant an interim declaration in the following terms:

The court declares, on an interim basis, that the continued detention of the applicant at the Bahamas Department of Correctional Services (BDOCS) at Fox Hill, as a person suffering from severe spinal and neurological injuries, significant mobility impairment, wheelchair dependence, and loss of bladder and bowel control, in circumstances where the prison cannot provide the medical facilities and treatment reasonable required by his condition, constitutes and/or would constitute inhuman or degrading treatment contrary to Article 17 of the Constitution.

58. Consequently, to give effect to this declaration, the Court orders and directs that, pending the hearing of the application’s claim for constitutional redress, or until further order, the applicant is to be released forthwith so that he may seek and receive proper medical treatment as an outpatient. The Attorney General and/or Director of Public Prosecution and/or Commissioner of BDOCS must take all necessary steps forthwith to secure the applicant’s release.

59. I would not have imposed any additional conditions on the applicant's release, but the applicant in his application, and as a demonstration of good faith that he had no intention of seeking to avoid appearing at any trial that might be set or facing any further criminal proceedings, voluntarily offered to accept any of the normal conditions for his release associated with the grant of bail. Not surprisingly, the AG supported the imposition of reasonable conditions, on the footing that the applicant's condition might improve.

60. In the circumstances, I further direct that his release shall have attached the following conditions: a \$5,000.00 bond, secured by 1 or more sureties; (ii) reporting to the nearest police station (East St. South Police Station) once every Friday at or before 6 p.m.; and (iii) the notification of his home address to the Criminal Registry. However, I wish to make it clear that release is to be effected forthwith, on the applicant's undertaking, through counsel, to enter into these conditions. In other words, this is not the grant of bail, but a specially crafted order under the Article 28 jurisdiction.

61. I have set a return date of 2 July 2026 for the hearing of the substantive claim, and will also give directions for the filing of evidence and submissions.

62. Mr. Ferguson claimed costs in the action, but as is the usual practice in applications for interlocutory or interim relief which succeed, I order that costs be in the case.

63. All that is left is for me to thank counsel for their helpful submissions at short notice and in particular to thank Mr. Brown and the legal representatives of the respondents for their candour in their conduct of this matter.



Klein J.

4 June 2026