

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE A.D. 2024**

**CLAIM No. 61 of 2024**

**BETWEEN:**

**ELIZABETH MARTINEZ**

Claimant/Respondent

and

**[1] DR. DARWIN PECH**

First Defendant/Applicant

**[2] DR. GUERRA GONZALEZ**

Second Defendant

**[3] KARL HEUSNER MEMORIAL HOSPITAL AUTHORITY**

Third Defendant/Applicant

**[4] ATTORNEY GENERAL OF BELIZE**

Fourth Defendant

**Appearances:**

Mr. Lynden Jones for the claimant/respondent

Mrs. Magalie Perdomo for the first and third defendants/applicants

No appearance for the second and fourth defendants

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2025: March 4<sup>th</sup>

April 29<sup>th</sup>  
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**RULING**

*Civil Practice and Procedure – Strike Out Application – Medical Negligence Claim – Hysterectomy and Salpingectomy Performed Without Consent – Malpractice Allegations – Pleadings Allegedly Defective – Failure to Identify/Particularise Claim Against Each Defendant – Failure to Particularise Claim for Special Damages – Medical Reports Not Attached to Claim – Defendants Allege Abuse of Process and No Reasonable Grounds for*

*Bringing or Defending the Claim – Failure to Comply with the Rules – Rules 26.3(1)(a)&(b) and 8.10 of the Senior Courts (Civil Procedure) Rules, 2025 – Limitation Defence – Whether the Applicants are Entitled to the Protection of the Public Authorities Protection Act*

- [1] **ALEXANDER, J.:** This is a claim for medical negligence, where the first and third defendants/applicants (together “the applicants” or “defendants”) made an early move to strike out, as against them, the claim form and statement of claim (“the claim”) filed on 8<sup>th</sup> February 2024.
- [2] The grounds for the application are that the claim is outside the limitation period, abuse of process, it discloses no grounds for bringing or defending a claim against the first and second (sic) defendants and it is prolix and/or not in compliance with the rules, particularly with the requirements of Part 8.10 of the Senior Courts (Civil Procedure Rules) 2025 (“SCCPR”).
- [3] I do not agree with the applicants that the claim discloses that there is no reasonable ground for bringing it. I also find that there is a clear and discernible cause of action raised in medical negligence, where the facts as pleaded, and the answer as provided, show a factual dispute concerning the conduct of the defendants in providing health care services to the respondent. The respondent’s case is clear that neither her consent nor that of her husband was secured by the defendants, who negligently performed life altering medical procedures on her. The applicants say, however, that the procedures were done as an emergency to save the respondent’s life and that they had obtained consent before performing the surgery.
- [4] The parties’ case narratives diverge in material ways but there is no doubt that there is a claim in medical negligence to be answered on the pleadings. Also, there are several issues with how the claim was drafted and deficient particularisation of losses that, done properly, would have better enabled the defendants to answer the claim against them. In my view, however, these defects, by themselves and/or without more, are not fatal such as to attract a strike out order that early disposes of the matter. The first case management conference was fixed when the present application was filed. The Rules allow a court to make order(s) to correct errors in the

pleadings and for progress of the matter to trial. Unfortunately, the respondent has placed no application before me with respect to the failings in her claim and more critically, this claim is subject to limitation.

[5] I am not satisfied, as argued by the respondent's counsel, Mr. Jones, that the filing of a notice of intention to sue within the statutory timeframe, but not the claim itself, serves by itself to extend the limitation period. Despite this mammoth hurdle affecting timelines, the respondent proceeded as if time limits did not exist for the filing of her claim.

[6] I grant the strike out application and dismiss the claim.

### **Brief Procedural History**

[7] I note, strangely, that the second defendant did not file an acknowledgement of service in these proceedings and there was no affidavit of service filed by the respondent, verifying that this defendant was served. Despite this, the applicants also seek an order to strike out the claim as against the second defendant. The legal basis for this eludes me and, initially and perhaps erroneously, I assumed that the references to the second defendant in the application and attached draft order were in error. This is so as counsel for the applicants, Mrs. Perdomo, is not on record for the second defendant. Also, there is no evidence of service on this second defendant or of his participation in these proceedings.

[8] I am unaware of the source of Mrs. Perdomo's instructions or if she has the authority to make any application on behalf of the second defendant or why she has not put herself on record as representing the second defendant. In any event, if the second defendant was not served, and there is nothing on record that says he was, then the Rules must be allowed to guide the process. This is a claim that was filed on 8<sup>th</sup> February 2024 against the second defendant among others, and, as of the date of this decision (or of the application, 25<sup>th</sup> November 2024), there was no application placed before the court to extend the life for *service* of the claim on the second

defendant, as required by SCCPR 8.14. Indeed, SCCPR 8.13 laid down the general rule that a claim must be served within six months of issue, or a claimant must apply to extend this period of service or face the consequences of such failure. The strike out application on behalf of, or incorporating the second defendant, must be viewed in the context of the Rules.

- [9] I note, however, that the applicants maintain their application to have the matter struck out against them as well as the second defendant, despite their defence that the second defendant has never been, past or present, an employee of the third defendant.

### **The Claim**

- [10] The claim is grounded in medical negligence arising from an incident at the Labour and Delivery Unit of the Karl Heusner Memorial Hospital (“KMH”) on 4<sup>th</sup> October 2022. The incident relates to the alleged negligent and erroneous performance of a hysterectomy and salpingectomy (i.e. fallopian tube excision, one or both) on the respondent, without consent. The claim consists of several factual inaccuracies or variances as to dates, names and occurrences, with the applicants averring through the Chief Executive Officer of the third defendant (Ms. Chandra Nisbet Cansino), who filed an affidavit on 25<sup>th</sup> November 2024, that the respondent actually arrived at KMH on 2<sup>nd</sup> October 2022 at around 11:35 a.m.

- [11] The respondent filed her claim, No. 61 of 2024, on 8<sup>th</sup> February 2024 where she alleges that she arrived at the KMH on 4<sup>th</sup> October 2022 around 7:45 a.m. and gave birth to her son, around 12:30 p.m. via caesarean section (C-section). On that morning, she was accompanied by her husband to KMH, but he was not allowed into the delivery room. Around 1:15 p.m., her husband saw his newborn son and around 1:45 p.m. medical personnel sought “a request bucket” from him (i.e. medical container), which he provided around 2:30 p.m.

- [12] All other inquiries by her husband about the respondent's condition and/or for updates were deflected with responses indicating that the doctor will speak to him shortly. It was not until sometime around 3:00 p.m. that he received an update on the respondent's condition, informing him that a C-section was performed. In her statement of claim, the respondent claims that, save the C-section, the applicants did not get consent for any additional surgeries from her husband or her, as at the material time she was sedated.
- [13] The respondent claims, further, that it was only around 3:00 p.m. when her husband inquired about the purpose for their request for the "bucket" that he was told that the defendants had removed her womb. She was not provided with an explanation for the conduct of the procedures. She alleges that there was malpractice in the removal of her womb and fallopian tube(s) without consent, and she claims damages arising from the negligent performance of these medical procedures.

### **Amended Defence**

- [14] By amended defence filed on 20<sup>th</sup> November 2024, the applicants raised the defence of limitation. They say that the claim was commenced more than one year and four months after the date of surgery and treatment, or from the date when the cause of action accrued. The instant claim is statute barred and should be struck out for non-compliance with the Limitation Act Chapter 170 R.E. 2020.
- [15] In further answer, the applicants averred that the first and third defendants are exempt from personal liability under s.17 of the Karl Heusner Memorial Hospital Act Chapter 38, sub-paragraph 2 ("KMH Act"). There is no allegation of bad faith against the first defendant. He is protected against personal liability under the KMH Act. There is no dispute that the first defendant was, on the said date (4<sup>th</sup> October 2022) when the cause of action accrued, acting in the execution of his public duty. He was an employee/Medical Officer II in the Public Service and seconded to KMH pursuant to the Public Service Regulations 2014. The Public Authorities Protection Act Chapter 31 R.E. 2020 provides guidance on a public authority acting bona fide in the execution

of his duty. He says in the defence that he acted in good faith in the course of execution of his duties with the third defendant.

[16] By amended defence, therefore, the applicants maintained that the respondent arrived at the KMH on 2<sup>nd</sup> October 2022 at around 11:35 a.m., and not on 4<sup>th</sup> October 2022 around 7:45 a.m. as claimed. The COVID protocols at the time did not allow the respondent's husband to accompany her into the birthing area. Seemingly, the applicants are making a case for long labour to justify the emergency medical procedures and ideally these issues should be ventilated at trial, where evidence would be called to resolve them.

[17] Another factual dispute highlighted in the defence relates to the second defendant, whom the applicants averred is not, and never was, a physician, past or present, at the KMH. However, in the affidavit of Ms. Christina Turton, Legal Manager, filed in response to the present application, the medical record card of the respondent is exhibited, which does have inserted thereon a Dr. Gonzalez, as one of the maternal discharging physicians, along with Dr. Pech and another doctor. Only evidence at a trial could usefully resolve these issues.

[18] The applicants did not deny performing the surgery, which they say was completed at 2:09 p.m. The surgery (subtotal hysterectomy) was an emergency, life preserving operation to prevent the respondent from bleeding to death because of massive bleeding from failed attempts to ligate the uterine artery. It was during surgery also that a "tear from the impacted fetal head" was observed, leading to the massive bleed-out. I note, however, that the defence states that the surgery was only done after the respondent was advised of all risks and her "informed" consent obtained for both the C-section and bilateral tubal ligation (which includes salpingectomy), before she was sedated. The defence also states that the husband was fully informed after the surgery around 3:00 p.m. when the first defendant had completed his post operative care plan and documented his trans-operative findings. It was then that the first defendant was able to personally speak to the respondent's husband and to

explain the reason for the container to transport the specimen for a histopathology test. The respondent was informed on the following day, which is after the surgery.

[19] In their defence, the applicants deny breaching their duties in their diagnosis, treatment and securing of consent from the respondent and her husband. They assert that they used proper care and reasonable skill in treating with the respondent's case to prevent complications and to preserve her life. There was no malpractice and/or the respondent did not suffer pain from the incident. Pain being subjective, it was unclear, without evidence from the respondent, how the applicants could so conclude.

### **Reply**

[20] In reply to the defence, the respondent admits that she was in prolonged labour and pain and only gave consent for the C-section but not the bilateral tubal ligation, since at that point she was in surgery and sedated so could not make a well thought out, life changing decision. In any event, the "tear from the impacted fetal head" was only observed during surgery, therefore, the respondent was physically unable to consent to her womb being removed and such consent was, at no time, sought from her husband.

### **Issues**

[21] I have limited the relevant issues arising for determination on the application as:

- i. Primarily, whether the court has the jurisdiction to deal with the matter or it is statute barred and must be dismissed?
- ii. Whether the claim is an abuse of process?
- iii. Whether the claim discloses no reasonable grounds for bringing or defending it?
- iv. Whether there is a failure to comply with the rules?

## Legal Framework

[22] I now set out the relevant statutes and rules governing the current discussion below.

First, the Limitation Act s.27 provides a limitation of actions against public authorities.

Section 27 reads:

“27.- (1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, **unless it is commenced before the expiration of one year from the date on which the cause of action accrued,**

Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.

(2) This section shall not apply to any action to which the Public Authorities Protection Act, Cap. 31 does not apply, or to any criminal proceeding.” [My Emphasis]

[23] The Public Authorities Protection Act Chapter 31 R.E. 2020, sections 2 and 3 provide respectively a definition of a “public authority”, and the need to serve a notice of intention to sue and the timeframe for so doing. It also stipulates that this notice of intention to sue must clearly state the cause of action. These sections read:

“2. In this Act, “public authority” **includes every person filling any public position in Belize**, as well as police officers, whether temporarily or permanently employed, and whether there is or is not attached thereto any salary or remuneration.

3.-(1) No writ shall be sued out against, nor a copy of any process be served upon any public authority for anything done in the exercise of his office, **until one month after notice in writing has been delivered to him, or left at his usual place of abode** by the party who intends to sue out such writ or process, or by his attorney or agent, in which **notice shall be clearly and explicitly contain the cause of the action ...**” [My Emphasis].

[24] The Karl Heusner Memorial Hospital Authority Act Chapter 38 R.E. 2020, s.17(2) reads:

“17(2) The Chief Executive Officer, the Medical Chief of Staff, the Director of Nursing or any other officer, employee or agent of the Authority **shall not be personally liable for any acts or omission of the Authority, or of the Board, or of any Governor, or officer, employee or other agent of the Authority, if the act or omission is made in good faith in the course of the operations of the Authority, or the Board, or during the course of his normal employment under the Authority.** [My Emphasis].

[25] SCCPR 26 and 8.10 provide:

“26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -

- (a) that there has been a failure to comply with a Rule or practice direction or with an order or direction given by the court in the proceedings;
- (b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
- (c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
- (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.

8.10 (1) This Rule sets out additional requirements with which a claimant making a claim for personal injuries must comply.

- (2) The claimant’s date of birth or age must be stated in the claim form or statement of claim.
- (3) If the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the claim form a report from a medical practitioner on the personal injuries alleged in the claim.
- (4) Paragraph (3) does not restrict the right of the claimant to call other or additional medical evidence at the trial of the claim.

....

- (6) The claimant must include in, or attach to, the claim form or statement of claim a schedule of any special damages claimed.

## Discussion

### Whether the Court has the Jurisdiction to Deal with the Matter or it is Statute Barred and Must be Dismissed?

[26] The application at bar relies primarily on limitation and abuse of process. The applicants claim that the abuse is based on defective pleadings but also on the fact that the respondent knew that the claim did not meet the statutory timelines. Additional grounds include an inability to show reasonable grounds for bringing or defending the claim together with the failure to comply with certain rules of court, specifically related to personal injuries.

[27] It is trite that the court has the power to strike out a claim where there is a failure to comply with a rule, there is an abuse of process, or a statement of case discloses no reasonable grounds for bringing or defending it or it is prolix: see SCCPR 26.3 (1) (a), (b), (c) and (d). It is a power that allows the court to strike out weak cases to realise the overriding objective of the rules in managing the expenses associated with litigation and so to avoid the wastage of limited judicial resources and time.

[28] Where abuse of process exists or there are no reasonable grounds for bringing or defending a claim, this option to knock out weak cases is used to bring immediate halt to proceedings before the court. A strike out order provides an effective legal blockage of any matter proceeding beyond the stage of pleadings. It is not a final order, however, as it is not a determination on the merits of the claim and it does not prevent the party, whose matter is struck, from fixing its pleadings and re-filing its claim, once the limitation period has not expired. That is to say, the strike out procedure allows a party to remedy its default and return to court since there is no decision on the merits, upon consideration of the evidence: see **Dr. Martin Didier et al v Royal Caribbean Cruises Ltd.**<sup>1</sup> Because the substance of the claim is not explored, a court is duty bound to proceed unhurriedly and cautiously before granting

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<sup>1</sup> SLUHCVP2014/0024 ECS, Court of Appeal.

such a procedurally lethal order. Each case must be viewed on its own facts and in its own context.

[29] Critical here is what happens where the genesis issue is that of jurisdiction, based on the claim being filed outwith the statutory limitation period.

[30] The applicants in the present proceedings have raised the issue of limitations, as one of the reasons for getting the strike out order. They argue that the respondent was aware of the time limits for bringing her claim against the applicants. Instead of compliance, she relied on the fact that a notice of intention to sue was served within the limitation period.

[31] There is no disagreement that the court must have jurisdiction when exercising its strike out power and that limitation is a valid defence. The parties also do not disagree that the limitation period for actions against public authorities is as prescribed in s.27(1) of the Limitation Act. I have set out s.27(1) at my paragraph 22 above and it provides clearly that any action against a public authority, for neglect or default of duty, must commence before the expiration of one year from the date on which the cause of action accrued. A claim is only to be served upon a public authority **one month after notice in writing** has been delivered to him (or it) or left at his usual place of abode. It means that a notice of intention to sue pre-dates and/or is served before a claim.

[32] The Public Authorities Act defines a “public authority” as including “**every person filling any public position in Belize**, as well as police officers, whether temporarily or permanently employed, and whether there is or is not attached thereto any salary or remuneration.” [My Emphasis]. The applicants are, therefore, captured by this definition of public authority.

**(a) Notice of Intention to Sue**

[33] I next considered whether the notice of intention to sue served on 18<sup>th</sup> August 2023 was sufficient to preserve or extend the limitation period for filing suit. Ms. Christina Turton, who filed an affidavit in response to this application on 16<sup>th</sup> January 2025,

says that the notice sufficed to and effectively commenced the proceedings within the stipulated statutory timelines. She says, further, that the abuse of process is really on the part of the applicants who filed the application a mere three days before the case management conference, failing to give the respondent sufficient time to be served and to respond. I disagree with Ms. Turton's expressions or understanding of the notice and of what constitutes abuse of process, legally.

[34] A notice of intention to sue serves as a formal written notification that legal action may be taken against a proposed party, often with the qualification that if certain demands or steps are not met or taken then lawsuit would follow. It is a preliminary step in the legal process. It is not a claim, nor does it have the effect of extending the limitation period, as an order from the court does. Its primary purpose is to signal the serious consideration of pursuing legal action against a potential defendant whilst opening the gate for discussion on settlement of the dispute. It, however, carries certain implications, as failure to serve it impacts the filing or continuance of a claim before the court. In the present proceedings, a notice of intention to sue was served.

[35] I note the argument of Mr. Jones on the issue of the notice of intention, particularly that it was served within the stipulated limitation period and "thus initiating the procedures". I agree that the notice signalled to the defendants that legal action is intended to be taken against them and the nature of that action. Section 3(2) of the Public Authorities Act requires the cause of action and/or proposed claims to be specified in the notice and prevents the taking of any evidence outside of the cause of action stated in the notice.

[36] A notice of intention is the first step in the legal process that warns of impending action, but it is not the claim itself. It does not re-start the limitation period, nor does it save a claim filed several months outside of the statutory timelines.

***(b) Continuing Act, Neglect or Default***

[37] Mr. Jones also sought to leverage a few authorities, to make the point first that s.27 of the Limitation Act does not define the word "person" albeit the Interpretation Act

defines it to mean a “natural person” or a legal person or any public authority, and, secondly, that the act complained about was continuing. I do not find it necessary to address the first argument. Regarding the second argument on the continuing act, the first authority I address is **Placencia Land and Development Co. Ltd et al v R&B Construction Co. Ltd et al**<sup>2</sup> involving restrictive covenants, which were registered against certain properties where the court considered the facts and found that the act, neglect or default by the Registrar of Lands (failure to register the covenants as required under the Registered Land Act) is a continuing one that has not been remedied. It required a positive act by the Registrar that was not performed even at the date of the decision. This is not the case here. There is no act, neglect or default that is *continuing* by the defendants in the present proceedings, requiring a positive act to remedy it. The act complained about by the respondent (i.e. the negligent removal of her womb, without consent) commenced and ended on 4<sup>th</sup> October 2022. In the circumstances, I reject the argument that the act is continuing because the respondent is still adjusting to the life changing surgery and hormonal changes.

[38] Secondly, Mr. Jones references **Jasmine Anderson v Karim Michael**<sup>3</sup> involving cohabitational issues, where HHJ Hondora stated that a strike out remedy is a discretionary that must be exercised in the interest of justice and in furtherance of the overriding objective of the Rules. These cases do not assist the respondent. They are distinguishable and I do not think that either court, in those cases, was clarifying or making new law on strike out applications in this jurisdiction. Other cases supplied by Mr. Jones are not mentioned here because they provide no useful help to this court in resolving the present issue.

[39] Additionally, I note Mr. Jones’ submissions that in exercising my discretion, I must consider the respondent’s human rights, the nature of the instant claim, the injuries and trauma sustained, the age of the respondent (29 years) who was pregnant with

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<sup>2</sup> Claim No. 212 of 2017 involving restrictive covenants registered against certain proprietors.

<sup>3</sup> High Court Claim No. 320 of 2024.

her third child, and that the actions of the defendants have stymied the respondent's ability to extend her family. I see these submissions as an attempt by counsel to make and maintain the continuing act, neglect and default argument. Mr. Jones submits that because the surgical procedures were life altering, they would result in marital woes, early onset of menopause, depression and other mental health issues, However, none of these effects formed part of the pleaded case of the respondent nor was evidence of these provided in the affidavit in response. In any event, those are not the principles that would guide a court's refusal of a strike out order.

***(c) Public Authority and Limitation Bar***

- [40] In the present case, parties do not disagree that the applicants, as public authority, are subject to certain protections. That being the case, I find relevant the Belizean case of **Deon Woodye et al v The Attorney General et al**<sup>4</sup> involving a public hospital, which was held to be entitled to the protection of s.27 of the Limitation Act, after providing negligent medical care to an infant. There are certain similarities of facts between **Deon Woodye** and the case at bar, including deficient pleadings.
- [41] The court in **Deon Woodye** relied on a dicta of Lord Tucker from **Griffiths v Smith**<sup>5</sup> that once the act complained of was in substance done in the course of exercising for the benefit of the public an authority or power given to it as a public authority, and not being a mere incidental power, then the defendant would benefit from the s.27 protection.
- [42] In **Deon Woodye**, as in the case at bar, the acts were done by the 3<sup>rd</sup> defendant (a public hospital) in the direct execution of their public duty and for the very object for which they were created, so the defendants were entitled to the protection under s.27. That claim was struck out. The question also arose in **Deon Woodye** as to whether the limitation period could be extended, and it was held that it could not. I will quote liberally from the ruling in **Deon Woodye**, from paragraphs 31 to 35, as it provides guidance on the approach in these matters.

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<sup>4</sup> Claim No. 35 of 2020, Supreme Court of Belize.

<sup>5</sup> (1940) UKHL J1212-2.

“31. The public duty of providing medical services to the public is correlative to the public right which the Claimants have in common with all other members of the public to access the services of the public Hospital. The duty owed to the Claimants did not arise solely from a private bargain or an employer employee relationship but it is directly correlated to the public duty owed by the 3<sup>rd</sup> defendant to all its patients.

32. The Claimants main argument in opposition to the strike out application is that pursuant to the overriding objective of the CPR and human rights that this is a case in which I should extend the time for the filing of the claim. The CPR does not give that jurisdiction to a Court to extend a statutory limitation period for the filing of the claim. Further, the authorities used by the Claimant’s Attorney-at-Law on the UK Limitation Act is not applicable as Belize does not have a provision like that of the UK and Trinidad and Tobago for extension of time of the limitation period.

33. I am therefore satisfied that **the act complained of by the Claimants was an act done in the direct execution of the duties of the Defendants and therefore would be entitled to protection pursuant to section 27 of the Limitation Act.**

34. in the circumstances and for the reasons outlined in the foregoing, I agree with the Defendants that the case as filed by the Claimants is statute barred pursuant to section 27 and 28 of the Limitation Act.

35. I would also like to say that the pleadings of the Claimants are woefully inadequate to sustain a claim in negligence. The Claimants claim sets out no particulars of negligence or medical facts upon which the contention is based. There was not even a pleaded case of *res ipsa loquitor*. There are no pleadings as [to] the various defendants and the basis of them being sued. The pleadings in relation to damages are also inadequate. As a result, the claim was also liable to be struck out as even if true, it did not disclose a legally recognizable claim.” [My Emphasis].

[43] In my judgment, the claim at bar is not initiated by serving the notice of intention to sue within the statutory limitation period. A claim is instituted by filing in the court office the original and a copy of the claim form and/or the statement of claim or where any Rule or practice direction so requires, an affidavit or other document: see SCCPR 8.1-(1). The respondent was required to file her claim within the one-year limitation. She did not file a claim until 08<sup>th</sup> February 2024 with respect to a cause of action that accrued on 4<sup>th</sup> October 2022. The applicants are shielded by limitation.

[44] The notice of intention to sue does not satisfy the statutory requirement to bring the claim within one-year as mandated by the Limitation Act. The claim is struck out.

**Abuse of Process, No Reasonable Cause for Bringing the Claim and Non-Compliance with Rules**

[45] Having concluded that the Limitation Act bars all claims brought against a public authority (which includes persons performing public duties) unless these claims are brought within one year from the date on which the cause of action accrues, I do not find it necessary to examine in any great detail the issues of abuse of process, no reasonable cause for bringing or defending the claim or errors in the pleading of the claim. The applicants say that the claim was woefully pleaded and without any specificity as to the alleged negligence, malpractice, breaches of duty and damages. The court is asked to strike out the claim on this basis also. The respondent has provided no response to the argument about deficiency of pleadings and failure to comply with the Rules. I do not find it necessary to say anything more about the pleadings.

[46] I note *only*, and specifically for the purpose of highlighting and giving quiet guidance on the practice, that it is not proper to make an application to amend pleadings by way of submissions. The matter is at the case management conference stage and a formal application is required to amend pleadings, not submissions.

[47] I agree, as argued by Mrs. Perdomo, counsel for the applicants, that the applicants acted in direct execution of their public duties and are afforded the protection under s.27 of the Limitation Act. The claim was filed after the expiry of the relevant statutory timelines. The bringing of a claim outwith the timelines, on the basis that a notice of intention was filed in time, preserving the limitation, is not condoned.

[48] In the circumstances of my findings above, I will strike out the claim.

## **Disposition**

[49] In the premises, I make the following orders.

1. The claim is struck out as against the first and third defendants.
2. Parties are to bear their own costs.

**Martha Lynette Alexander**

High Court Judge