

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)
CLAIM No. DOMHCV2024/0082**

BETWEEN:

AB	1 st Claimant
DR. GEOFFREY LAFOND	2 nd Claimant

- and -

ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA Defendant

APPEARANCES:

Mrs Dawn Yearwood-Stewart with Ms Anika Gray and Ms Sasha Sukhram led by
Mr Rishi Dass SC, Counsel for the Claimants

Mr Jason Lawrence with Mrs Tameka Burton led by Dr. David Dorsett, Counsel
for the Defendant

Mrs. Gina Dyer-Munro with Mrs Zena Moore Dyer, Counsel for the Dominica
Association of Evangelical Association, Proposed Interested Party

Ms Joelle Harris with Mrs Noelize Knight-Didier, Counsel for the Roman Catholic
Bishop of the Diocese of Roseau, Proposed Interested Party

2025: February 3

March 11

RULING

*Constitutional Motion, Offences Against the Person Act, Application to be
added as interested parties*

FACTS

[1] **JAWARA-ALAMI, J.:** The Claimants herein filed this motion dated 26th April 2024 against the Attorney General of the Commonwealth of Dominica challenging the legality of sections 56 and 57 of the Offences Against The Person Act, Chapter 10:31 (hereinafter referred to as the ‘Act’) on the basis that it has a direct effect on public interest particularly women of reproductive age, medical practitioners and associated health care providers such as nurses and pharmacists whose rights are affected. The 1st Claimant who is a woman of reproductive age and the 2nd Claimant a medical doctor, claim that sections 56 and 57 of the Act impact their constitutional rights as these sections make it unlawful for a woman to terminate a pregnancy and for health care providers to perform abortion services. The Claimants therefore seek reliefs in a number of declarations namely, A declaration that sections 56 and 57 of the Offences Against the Person Act 1873, Chap. 10:31 contravene; the First-Named Claimant’s right to family life and privacy; right to freedom of conscience; right to protection against discrimination on the grounds of sex; right to protection from inhumane or degrading treatment enshrined in the various sections of the Constitution and a declaration that sections 56 and 57 of the Offences Against the Person Act 1873, Chap. 10:31 are unconstitutionally vague, contravene protection of the law guaranteed under section 1(a) of the Constitution of Commonwealth of Dominica and are accordingly null, void and of no effect.

[2] Subsequent to the filing of this claim, two Notices of Application to be added as Interested Parties were filed by the Dominica Association of Evangelical Churches (hereinafter referred to as DAEC) on 25th September 2024 and the Roman Catholic Bishop of the Diocese of Roseau (hereinafter referred to as Bishop of Roseau) on 26th September 2024. Their applications were supported by affidavit evidence and written briefs of arguments in which the applicants with identical claims, submit that the claim is one that deals with substantial public interest to all Dominicans being the first constitutional challenge of this nature in the country’s history and that it raises serious issues of public morality, public health and matters of grave public importance in which the association and its members have a profound interest. The Applicants also submit that the Constitution and the laws of Dominica are founded on Christian principles and the Christian way of life and in determining the matter the court must consider whether inter alia the impugned sections of the Act are reasonably required in the interests of public

morality and public health and are thus reasonably required in this society. They also claim that they received a letter dated 9th July 2024 from the Office of the Attorney General inviting them along with other religious bodies in the Commonwealth of Dominica to participate in these proceedings; thus they wish to be heard at the hearings of this claim in order to assist the Court freely and fearlessly presenting empirical research and other pertinent information in order to facilitate the just disposal of this claim.

[3] They further submit that they wish to adduce expert evidence, and submit that the Court should use its wide case management powers as per rule 26.1(1), (2), (Y) of the CPR (Revised Edition) 2023 to allow expert evidence which would assist in the just resolution of this matter.

[4] The Defendant, who is not opposed to the Applications filed by the DAEC and the Bishop of Roseau, submits that the importance of this case cannot be overstated since the challenge to the constitutionality of Dominica’s anti-abortion laws represents a pivotal moment in the legal, social and moral fabric of the nation, and that apart from being a landmark case for Dominica, it is a watershed moment in Commonwealth Caribbean jurisprudence, with potential ripple effects on constitutional interpretation, human rights and public policy across the region. Additionally, the Defendant submits that the constitutional issues raised in this matter engage fundamental questions of human rights, personal autonomy, the right to life and the role of religious and moral considerations in shaping public policy.

[5] The Defendant further submits that the DAEC and the Roman Catholic Church, who represent significant portions of the population, bring perspectives that are deeply rooted in the cultural and moral fabric of the society; that their involvement as interested parties is critical for the court to comprehensively address the multifaceted implications of the challenge. Referring to the cases of **Javin Kevn Vinc Johnson and the Attorney General of Saint Vincent and the Grenadines Javin Kevin**¹ and **OO v BK**² the Defendant submits that the churches can be invited to aid the court in grappling with complex statutory and constitutional issues as their

¹ SVGHCV2019/0110 at para [48]

² [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36

participation does not merely serve the litigants but enhances the legitimacy, depth and balance of the judicial process, contributing to an informed and reasoned judgment.

[6] The Claimants in opposing the application filed a Notice of Opposition to the DAEC's Application to be added as an Interested Party on 28th November 2024 with an Affidavit in Support, then on 18th December 2024 another Notice of Opposition to the Bishop of Roseau's application with an Affidavit in Support. The claim came on for hearing on 29th November 2024 and the Court ordered that the notice of opposition filed without an application for an extension of time cannot be considered for non-compliance with Rule 11.12(1) of the CPR (Revised Edition) 2023; the parties, including the proposed interested parties were ordered to file written submissions on the pending applications to be added to this claim.

[7] It is the Claimant's submission that the DAEC and the Bishop of Roseau have failed to show they have sufficient interest in the subject matter of the claim as required by Part 56.11(1) of the Civil Procedure Rules because "(a) their rights or the functions of their organisation will not be adversely affected by the outcome in the claim, (b) that religious opinions on abortions are irrelevant to the determination of the legal issues in the claim and (c) that the Attorney General will be able to adequately represent their interests and so they will suffer no prejudice if they are barred from joining the claim".

[8] The Claimants also submit that permitting the Churches to join will constitute a waste of the Court's resources, burden the Claimants' financially and be an affront to the overriding objective to deal with cases justly. However, the Claimants submit that if the Court does agree to exercise its discretion to permit the Churches to join as interested parties under rule 56.11(1) and (2) or 56.9(2)(a) and (b) of the CPR, it should limit the Churches participation to ensure (a) compliance with rule 56.11(1) and (2).

[9] Further, the Claimants submit that the claim is asking the Court to declare the abortion laws as unconstitutional (a legal argument) and not to make a pronouncement on the morality of

abortions, thus the Churches opinion/philosophy on the morality of abortions is irrelevant to the determination of the issues in the claim; their addition as interested parties will cause the Claimants financial burdened by having to deal with three (3) rather than one (1) well-resourced defendant.

Issues for Determination

[10] The issues arising before this Court for the just resolution of this matter are;

1. Whether the applicants herein have “sufficient interest” in the subject matter of the claim to participate;
2. Whether the interested parties should be granted leave to adduce evidence, call an expert witness and make legal submissions.

The Law and Discussions

[11] In considering the issue arising for determination the court is enjoined to resolve the claim in the interests of justice and in accordance with the overriding objective of the Civil Procedure Rules (Rules 1.1). This will include, for example, considerations as to the speed and economy of the proceedings.

[12] It is settled that the Civil Procedure Rules 2023 have made provision for situations such as this one for parties to be joined in claim upon application or Suo moto by the court under CPR 19. The CPR also provides for the joinder of interested parties in administrative proceedings such as this case instant under CPR 56 as follows;

1. Rule 56.11(1) (2) of CPR 2023 is of relevance and it provides that;

“56.11 (1) At the hearing of the application the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form.

(2) Such a person or body must make submissions by way of a written brief unless the judge orders otherwise.”

1. By virtue of CPR 56.1(2) a party with sufficient interest includes –

“(a)...

(b)...

(c) *Anybody or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;*

(d) *Anybody or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application*

(e)

(f) ”

1. Based on the foregoing provision it is apparent that the parties are required to demonstrate a direct and substantial interest in the matter to attain standing. This naturally means that the interveners do not have an automatic standing in this case unless they can show that their rights or interests are directly affected and can demonstrate a specific legal interest or direct impact.

What then have the parties shown to allow them standing in this case?

[14] The DAEC submits that it has sufficient interest in the subject matter of the claim because it represents “not only a significant proportion, but also a broad and diverse cross section of the Dominican population” to allow its participation as an interested party, and this claim is one of substantial public interest. The DAEC also submits that it is not a “busy body” which is defined as “someone who interferes in something with which he has no legitimate concern” and cites the case of **Javin Kevn Vinc Johnson and the Attorney General of Saint Vincent and the Grenadines**³. In that case Justice Henry J referenced *AXA v Advocate [2012 SC (UKSC) 122]* and accepted that “a person, who is purporting to act in public interest, can genuinely assert that the issue directly affects the section of the public that he seeks to represent” has sufficient interest to be added as a party. Justice Henry J also determined that the issues to be decided in that case involved a public morality element, which was of concern to the churches “having regard to their “stated concerns about the adverse consequences that a removal of the impugned provisions may have on the rights and freedoms generally

³ SVGHCV2019/0110 at para [48]

and on the society as a whole” and allowed the churches to be added as an interested party.

[15] The Bishop of Roseau makes the submission that both the Constitution and the majority of the laws of Dominica are founded upon Christian principles, values and beliefs that acknowledge the supremacy of God. The rights under sections 1(a), (b) and (c) are expressly stated as being “*subject to respect for the rights and freedoms of others and for the public interest.*”. the Bishop also cites Section 9(5) of the Constitution referring to the rights set out in that section which provides that “*Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required (a) in the interest of defence, public safety, public order, public morality or public health*”. And pursuant to subsection 13(4)(d) of the Constitution no law shall be considered discriminatory for the purposes of section 13(1) of the Constitution where the law is considered to be “reasonably justifiable in a democratic society.”

[16] The Claimants submit that sufficient interest is established where, inter alia, the Applicant shows it will be adversely affected by the outcome in the claim or the matter is of public interest and the applicant possess expertise in the subject matter and cites the case of **Re USA’s application in the Matter of Warner v Attorney General**⁴ and further submits that even if sufficient interest is established, the Court should have regard to the overriding objective and only permit the applicants to join as an interested party if they can make a useful contribution to the claim that will be different from the Attorney General and the Attorney General will be unable to represent their interests⁵. the Claimants submit that the proposed interested parties have not shown from their application that their interests or those of their members will be adversely affected, and, while the subject matter of the claim might be of public interest and the churches might have opinions on the morality of abortions, these do

⁴ [2017] 4 LRC at para [20]

⁵ Ibid

not constitute “adversely affected” since the applicants will not suffer detriment to their rights or their ability to carry out their organisational functions or mandate. Moreover, the Claimants submit that none of the orders sought by the Claimants will impact the ability of the Churches or their members to hold and profess their opposition to abortion.

[17] Having stated the various arguments on sufficient interest and standing, I now turn to the various cases in the commonwealth to assist in the determination of the issue before the court. **The Australian case of Levy v State of Victoria and Others**⁶ held that “a person who was not a party to pending litigation but who was likely to be affected by the operation of precedent deriving from High Court proceedings was entitled to apply for leave to intervene in order to avoid his legal interests being affected by judicial order without that person being given an opportunity to be heard. He had to further show, however, that the parties to the particular proceeding might not present fully the submissions on a particular issue, being submissions which the court should have to assist it to reach a correct determination. **The grant could be limited, if appropriate, to particular issues and subject to such conditions, as to costs or otherwise, as would do justice as between all parties**”. The learned Justices proceeded to state that “All that can be said is that an amicus will be heard when the court is of the opinion that it will be **significantly assisted** thereby, provided that any cost to the parties or any delay consequent on agreeing to hear the amicus is not disproportionate to the assistance that is expected.

[18] The question of standing was also considered in the case of **AXA General Insurance Company Ltd v Lord Advocate**⁷ which, referenced by one of the parties, wherein the court stated that, *It would not like to risk a definition of what constitutes standing in the public law context. But would hold that the **words 'directly affected'** which appear in RC 58.8(2) capture the essence of what is to be looked for. One must, of course, distinguish between the mere busybody, to whom Lord Fraser of Tullybelton*

⁶ [1997] 4 LRC 222

⁷ 2012 SC (UKSC) 22 at para [63]

*referred in Inland Revenue Commissioners v National Federation of Self-employed and Small Businesses Ltd (p 646), **and the interest of the person affected by or having a reasonable concern in the matter to which the application related.** The inclusion of the word 'directly' provides the necessary qualification to the word 'affected' to enable the court to draw that distinction. **A personal interest need not be shown if the individual is acting in the public interest and can genuinely say that the issue directly affects the section of the public that he seeks to represent.***

[19] From the foregoing authorities therefore for the court to exercise its discretion it must consider the following factors; and the applicants must show that;

- their interests as parties in the pending or threatened litigation were likely to be substantially affected by the judgment
- the applicants' intervention will significantly assist the court
- they have a reasonable concern in the matter to which the application is related.
- They act in the public interest and can genuinely say that the issue directly affects the section of the public that they seek to represent and they need not show personal interest.

[20] Having regard to the foregoing, what then have the parties put before this Honourable court to show that the judgement of this court is likely to substantially affect the interests of the parties?

[21] The parties have contended that the declaration being sought by the Claimants threaten the core beliefs and values of the majority of Dominican society and that any determination of this matter ought to properly consider Christian beliefs and values as it relates to the protection of life including the protection of the pre-born child, protection of the family as well as the effect that a decision in this matter may have on the Christian Community whose beliefs, values, lifestyle and family interests the Bishop represents.

[22] Both applicants by virtue of their function of being responsible for the guidance and the moral compass of their following, represent the views of its members which they argue constitute a large cross section of the Dominican population that hold Christian values, beliefs and principles that are contrary to abortion.

[23] Furthermore, it is glaringly clear that the Constitution of the commonwealth of Dominica places certain limitation on the exercise of fundamental rights and freedoms provided that the exercise of the right does not cause prejudice to **“the rights and freedoms of others or the public interest”**. In **Roe v Sheffield City Council**⁸ Sedley LJ: the importance of interventions by NGOs was highlighted by the court; that ***“The most apparent value of interventions is in public law cases, where aspects of the public interest in a legal issue of general importance may be represented by neither of the two parties before the court. Both NGOs and ministers may play a valuable role here”***.

[24] From the foregoing therefore, I will say that I am convinced that the applicants have shown they have the sufficient interest since the judgement of this court will directly affect the public at large including its following. Further, the leaning in this jurisdiction has been to allow the churches to intervene in cases such as this one, that may depart from the teachings of the religion and I am also minded to lean in that direction. Issue No1 is resolved in favour of the Applicants.

[25] Having said the foregoing, the grant to intervene cannot be unlimited. it has been held by a plethora of authorities, that third party intervention must be granted with conditions. In the case of **R v Department of Health, ex p Source Informatics Ltd**⁹ permission to intervene was granted on “stringent terms as to the length of oral argument and costs” As stated earlier, this application instant is considered in light

⁸ [2003] EWCA Civ 1 [2004] QB 653 at para [84]

⁹ [2001] QB 424 at para [11]

of the overriding objective, and, to enable the court to reach a just determination, consideration of costs and the expeditious dispensation of the case, are of paramount importance. This is the position of CPR Rule 56.11 which provides that “(1) *At the hearing of the application the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions; and, Such a person or body must make submissions by way of a written brief unless the judge orders otherwise.*”

[26] Given the foregoing, it is obvious from the submissions of the applicants that the submissions overlap and are predominantly on the same issues. In light of this, I will agree with the claimant’s submission that the proposed interested parties should be limited to filing one joint written submissions only in the course of this proceedings. This is to prevent the duplication of arguments that will prolong the process causing use of disproportionate amount of the court’s time and resources contrary to the overriding objective of the CPR. I consider that one way to achieve effectiveness and efficiency is to limit the submissions by asking that the interveners file one joint submission.

RESOLUTION OF ISSUE NO 2- whether the interested parties should be granted leave to adduce evidence, call an expert witness and make legal submissions

[26] With regards to this issue, CPR 56.3.10. is instructive on this and states in very clear terms that that, in such actions of administrative claims or judicial review, “**the application must be made on notice and supported by evidence on affidavit**”. Rule 56.8 also provides that “**any evidence filed in answer to a claim for an administrative order must be by affidavit but the provisions of Part 10 (defence) apply to such affidavit**”. Also in the case of **R (H) v Secretary of State for Health**¹⁰ it was held that “**judicial review court is not used to hearing oral evidence and**

¹⁰ [2005] UKHL 60 [2006] 1 AC 441 at para [31]

cross examination. It will therefore take some persuading that this is necessary” and in **R v Broadcasting Standards Commission, ex p British Broadcasting Corporation**¹¹ liberty permitted to intervene, but “confined by the Court to making written submissions”); It is apparent from the above authorities that the evidence permitted by the rules in proceedings such as this one, is limited to affidavit evidence only and I need not go any further on this point.

[27] In considering the question of expert evidence, in **R (Lynch) v General Dental Council**¹² Collins J, expounds on circumstances when the court will consider expert evidence in these words; *“fresh evidence involving expert evidence should in general not be admitted unless it falls within the Powis guidelines... To do this the court must understand the material which is put before; in a truly technical field, where the significance of a particular process is in issue expert evidence can be admitted to explain the process and its significance...its purpose is in reality to explain to the court matters which it needs to understand in order to reach a just conclusion”*). Guided by this authority therefore, I do not believe that the expert evidence that the applicants wish to call are necessary to the just determination of this claim. I say so because, the issues arising out of this matter on the side of the defence are not so technical that the court will require an expert to help it in reaching a decision. What is necessary is to allow the rules of natural justice to play out in this court and that is simply by allowing the applicants to be heard. Issue No2. Is therefore resolved against the applicants.

[28] In conclusion therefore, it is hereby ordered as follows;

1. The interested parties, the DAEC and the Bishop of Roseau are granted leave to intervene as Interested Parties in this suit;
2. The Interested Parties, the DAEC and the Bishop of Roseau, are granted leave to file one joint written submission during the course of the proceedings as directed by the Court;

¹¹ [2001] QB 885 at para [5]

¹² [2004] 1 All ER 1159 at para [22]

3. The DAEC and the Bishop of Roseau shall not adduce any evidence or call expert witnesses; and
4. No order as to costs.

[29] I thank Counsel for their well-researched submissions.

Justice Zainab Jawara-Alami
High Court Judge

BY THE COURT

REGISTRAR