

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO: DOMHCV 2018/0032

BETWEEN:

SUPERINTENDENT CUFFY WILLIAMS	-	Claimant
V		
[1] SUPERINTENDENT DAVIDSON VALARIE	-	1 st Defendant
[2] COMMISSIONER OF POLICE	-	2 nd Defendant
[3] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA	-	3 rd Defendant

BEFORE: HONOURABLE MR JUSTICE COLIN WILLIAMS

APPEARANCES:

Ms Cara Shillingford and Ms Janae Jackson for the Claimant
Ms Pearlisa Morvan and Ms Andesse Thomas for the Defendant

2025: March 27th, 28th, 31st
April 16th

JUDGMENT

1. **WILLIAMS J:** This was a claim for:

- i. A declaration that the search of the Claimant's home conducted by the first defendant was unlawful and in breach of the Claimant's constitutional right.
- ii. Damages inclusive of exemplary and aggravated damages.
- iii. Interest.
- iv. Costs.
- v. Further and other relief.¹

¹ Fixed Date Claim Form, paragraph 8 at page 2 of Trial Bundle 1; also the Amended Statement of Claim paragraph 12 at page 10 of Trial Bundle 1; also the Claimant's Affidavit in Support of Constitutional Motion paragraph 9 at page 18 of Trial Bundle 1

2. In October 2017, the Claimant, Mr Cuffy Williams, resided at Bellevue Chopin. He was at the time a Superintendent of Police in the Commonwealth of Dominica Police Force, CDPF. (He has since retired from the CDPF after serving in the constabulary for more than four decades). He was at the time on vacation leave. On the 9th of October 2018, the Claimant's home at Bellevue Chopin was searched for stolen goods by officers of the CDFP. That search was spearheaded by the First Defendant, Mr Davidson Valarie, who was at that time the Deputy Commissioner of Police (Acting) in the CDPF. (At the time of trial in March 2025, Mr Valarie was the Commissioner of Police (Acting) of the CDPF.)
3. The Second Defendant named in the suit was the Commissioner of Police. At the time the proceedings was initiated, the holder of the Office was Mr Daniel Carbon. (He retired and was succeeded by the First Defendant in an Acting capacity from January 2024).
4. The Claimant stated in the Claim Form that the Third Defendant, the Attorney General of the Commonwealth of Dominica, was "being sued in his capacity as Attorney General... pursuant to the **State Proceedings Act**,² and in respect of torts committed by servants and/or agents of the State."³
5. The Claimant asserted that both the Commissioner of Police and the Attorney General of the Commonwealth of Dominica, (respectively the Second and Third Defendants), were "vicariously liable for the actions of the 1st Defendant."⁴

Procedural history

6. The Claimant filed a Fixed Date Claim Form on the 20th of February 2018,⁵ along with a Statement of Claim,⁶ and an affidavit titled "Affidavit in support of Constitutional Motion."⁷
7. On the 5th of April 2018 the Defendants filed a joint defence,⁸ along with an Affidavit on behalf of the First Defendant.⁹
8. On the 8th of May 2018, the Claimant filed an "Amended Statement of Claim."¹⁰ The Claimant also filed on the 8th of May 2018 an Affidavit in Reply¹¹ to the First Defendant, and a Reply to the Defence,¹²

² Chapter 7:80 of the Laws of the Commonwealth of Dominica, Revised Edition

³ Paragraph 2, Fixed Date Claim Form, page 2 of Trial Bundle No 1

⁴ Paragraph 3, Fixed Date Claim Form, page 2 of Trial Bundle No 1

⁵ Page 1 of Trial Bundle No 1

⁶ Page 12 of Trial Bundle No 1

⁷ Page 17 of Trial Bundle No 1

⁸ Page 23 of Trial Bundle No 1

⁹ Page 32 of Trial Bundle No 1

¹⁰ Page 7 of Trial Bundle No 1

¹¹ Page 38 of Trial Bundle No 1

¹² Page 41 of Trial Bundle No 1

9. The Claimant listed twenty-five issues to be determined at trial.¹³

10. The Defendants identified five issues to be determined at trial.¹⁴

11. Essentially, the issues may be effectively addressed as:

1) Was the Claimant's premises lawfully searched?

a. In what circumstances does **The Constitution of the Commonwealth of Dominica**¹⁵ permit searches of someone's premises?

b. Did the First Defendant operate within the parameters of the law in searching the Claimant's premises?

c. Was the First Defendant actuated by malice?

2) Is the Claimant entitled to any reliefs?

The trial

12. At trial, the Claimant testified on his own behalf and was cross examined by the Defendants' Counsel. The Claimant called four witnesses in support of his case. They too were cross examined. The Claimant and his witnesses all relied on the witness statements that they filed in this matter to stand as their evidence in chief. Leave was granted to the Claimant's witnesses under Part 29.9 (c) of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** to comment on the evidence contained in the First Defendant's witness statement.

13. The First Defendant testified on behalf of the Defendants. He sought and obtained leave under Part 29.9 (a) of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023**, to amplify the evidence he deposed in his witness statement.

14. Both parties filed closing submissions by the deadline of Tuesday the 9th of April 2025.¹⁶

Background

15. On Monday the 9th of October 2017, the First Defendant led a team of officers on a search of the Claimant's home at Bellevue Chopin. That search has given rise to these proceedings with the Claimant alleging that:

¹³ See pages 44 to 46 of Trial Bundle No 1

¹⁴ See pages 48 and 49 of Trial Bundle No 1

¹⁵ Chapter 1:01 of the Laws of the Commonwealth of Dominica, Revised Edition 2017

¹⁶ The Claimants on the 7th of April 2025 and the Defendants on the 8th of April 2025

- The First Defendant breached the Claimant's Constitutional rights.
 - The First Defendant had no reason to search his premises.
 - The First Defendant did not have a duly authorized search warrant.
 - The First Defendant was actuated by oblique motives.
16. Three weeks prior to the incident of Monday the 9th of October 2017, the Commonwealth of Dominica suffered from the impact of 'Hurricane Maria,' a severe Category 5 hurricane. There was significant property and infrastructural damage throughout the island as a result of the weather system. Bellevue Chopin where the Claimant lived experienced a loss of electricity and telephone service. Landslides blocked the roads, limiting access for an extended period.
 17. Law and order also were compromised. There was widespread looting. A state of emergency was declared.
 18. The Chinese Civil Engineering Construction Company, CCECC, was one of the enterprises that suffered the loss of property as a result of the post-hurricane looting. The CCECC at the time was undertaking a housing project in Bellevue Chopin for the resettlement of former Petite Savanne residents who were earlier displaced by a previous weather system – Tropical Storm Erica. The CCECC's containers were broken into and looted. Plywood, building implements, building material, and galvanize, were among items stolen from the CCECC by individuals.
 19. Two of the Claimant's witnesses, Mr Derrick James and Mr Michael Mitchel, both of whom resided at Bellevue Chopin, were employed by CCECC following the passage of Hurricane Maria as security officers. They witnessed persons looting the CCECC containers. They were unable to do anything about the situation.
 20. Both of the CCECC security officers, (Mr James and Mr Mitchel), saw the Claimant in the vicinity of the compound that was subjected to looting, but neither of them saw the Claimant stealing anything. According to Mr James, the Claimant "did not take anything from the compound. I saw when he left."¹⁷
 21. One day during the looting, Mr James saw the Claimant, who was in the public road. The Claimant questioned Mr James as to whether the looters had any right to take the CCECC goods. The Claimant advised Mr James to "check their faces [to] see who is stealing the Chinese Stuff."¹⁸
 22. Both Mr James and Mr Mitchel considered the Claimant to be "a well-respected man in the community of Bellevue... a no-nonsense person."¹⁹

¹⁷ Paragraph 16, Derrick James witness statement, page 51 of Trial Bundle No 3

¹⁸ Paragraph 15, witness statement of Derrick James, page 51 of Trial Bundle No 3

¹⁹ Paragraph 7, Michael Mitchel witness statement, page 70 of Trial Bundle No 3

23. Mr Mitchel, left Dominica on the 1st of October 2017. The other security officer, Mr James, remained on the job.
24. There was no police station in Bellevue Chopin. Mr James managed to get to Roseau on the 28th of September 2017 and he made a report at the Criminal Investigations Department, CID, of the CDPF regarding the theft of material from the CCECC site by some persons whom he named and others. The police told Mr James that when they come to Bellevue Chopin, they would contact him.
25. Early one morning, a team of police officers in two official CDPF vehicles turned up at Mr James' home. Mr James observed that one vehicle had goods appearing to be the property of the CCECC on it. Mr James went with the police officers to the Roseau Police Station to secure those items which the police already collected. He returned to Bellevue Chopin with the police officers and they visited the residences of several persons where Mr James identified items which appeared to belong to the CCECC.
26. According to the reports received by the CDPF high command, some police officers were involved in the looting of materials, equipment and tools belonging to the CCECC. A search was carried out at the residence of at least one police officer in Bellevue Chopin on Friday the 6th of October 2017 and items believed to be the property of CCECC were retrieved.

Search day

27. The week following the 6th of October 2017 search when apparent stolen items were retrieved from a police officer in Bellevue Chopin, there was a meeting at Police Headquarters.
28. On the morning of Monday the 9th of October 2017, a report was made to the First Defendant by the acting Superintendent of Police of the CID /CDPF who led the search in Bellevue Chopin the preceding Friday, regarding the Claimant. The Acting Superintendent told the First Defendant that he observed galvanize resembling those belonging to CCECC in the Claimant's yard.
29. Later that day, (Monday the 9th of October 2017), a team of police officers went to Bellevue Chopin to meet and collect Mr James. They informed him that they were going to search the homes of two police officers.
30. The First Defendant, who was the Claimant's direct supervisor and the only CDPF officer besides the Commissioner of Police who was senior in rank to the Claimant, then led a search party to the Claimant's home. The search party included the Acting Superintendent of Police in charge of the CID and an Inspector of Police.
31. The Claimant was not at home when the First Defendant and the team of CDPF officers arrived at the Claimant's residence in Bellevue Chopin. The search party awaited the Claimant's return.

32. When the Claimant returned home, he “noticed a large crowd of civilian onlookers had gathered outside of my home. There were several police officers on the main road outside of my house.”²⁰
33. The First Defendant informed the Claimant that he, (the First Defendant), had a search warrant to search for “galvanize, lumber, tiles, paint, construction tools and materials believed to have been stolen.”²¹ The First Defendant showed the Claimant the warrant and then read the warrant to the Claimant. The First Defendant did not hand the warrant over to the Claimant.
34. The First Defendant informed the Claimant that Mr James, the CCECC security officer, was assisting the police with the search.
35. Mr James did not identify anything at the Claimant’s home as belonging to the CCECC.

Protection from arbitrary search

36. The Claimant did not specify, nor detail, either in the Claim Form or the Amended Statement of Claim a specific constitutional provision that was infringed, and give particulars of the infringement.
37. The Claimant’s Affidavit in support of the claim was headed “*Affidavit in Support of Constitutional Motion*.”²² He stated in the penultimate paragraph of that Affidavit:

“I am seeking redress for *inter alia* the violation of my constitutional right to protection against arbitrary search and entry under section 7 of the **Constitution of the Commonwealth of Dominica** and pursuant to section 16 of the said **Constitution**.”²³

38. The provision of the **Constitution of the Commonwealth of Dominica** which guarantees the fundamental rights of protection from arbitrary search and entry²⁴ provides at section 7 that:

“(1) Except with his own consent, a person shall not be subjected to the search of his person or property or to the entry by others on his premises.

“(2) 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 –

²⁰ Paragraph 11 of the Claimant’s witness statement, page 4 of Bundle No 3

²¹ Detailed in the Search Warrant bearing the date 9th day of October 2017 and exhibited as ‘CW7’ to the Claimant’s witness statement at page 41 of Trial Bundle No 3

²² Page 17 of Trial Bundle No 1

²³ Paragraph 33, page 21 of Trial Bundle No 1

²⁴ Section 7

“(a) that is reasonably required in the interest of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources or the development or utilisation of any property for a purpose beneficial to the community.

“(b) that is reasonably required for the purpose of protecting the rights and freedoms of other persons;

“(c) that authorizes an officer or agent of the Government of Dominica, a local government authority, or a body corporate established by law for public purpose to enter the premises of anything thereon for the purpose of any tax, rate or due in order that is lawfully on those premises and that belongs to the Government, authority or body corporate, as the case may be; or

“(d) that authorizes, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

“and except so far as that provision or, as the case may be, anything done under the authority thereof is shown to be reasonably justifiable in a democratic society.”

39. The right is not absolute; it is subject to specified limitations. A property owner may also waive their right and consent to the search.

40. For present purposes, what arises for consideration are:

- a) Whether any applicable law governing a search is reasonably required in the public interest as outlined in section 7(2)(a) of the **Constitution**.
- b) Whether the Claimant consented to any search or entry of his property or any part of his property.
- c) Whether there was a lawful search of the Claimant's premises.

The search

41. According to the Claimant, about 11:00 am on the 9th of October 2017, he was in the area of Dominica known as Canefield when he received a telephone call from another police officer who lived in Bellevue Chopin.²⁵ That officer told the Claimant of his belief that a group of police officers were waiting to execute a search warrant at the Claimant's house.

²⁵ Paragraph 8, Claimant's witness statement, page 4 of Trial Bundle No 3

42. The Claimant said he got to his home at 1:20 p.m.;²⁶ that was almost two-and-a-half hours after the telephone call. The Claimant said that road blocks following the passage of Hurricane Maria delayed him.
43. The First Defendant said that after getting to the Claimant's house, he waited for about an hour and a half before the Claimant arrived.²⁷
44. The Claimant said that he inquired of the First Defendant why he was there. The Claimant said that the First Defendant stated that he had a search warrant and "quickly opened and closed his diary."²⁸
45. The Claimant was able to recognise that the document appeared to be a search warrant and that his name was on it. He did not notice any signature on the document. He requested a copy of the warrant, but the First Defendant did not oblige.
46. The First Defendant gave a more detailed account of what transpired. According to the First Defendant, when the Claimant arrived home, he [the Claimant] said to the First Defendant:
- "Val come, I know what you came to do. Come."²⁹
47. The First Defendant stated that he only had one copy of the search warrant and that he read the warrant to the Claimant, who then said:
- "That's alright man Val, come and search."
48. The First Defendant said that he informed the Claimant that Mr James, the security officer for CCECC was with him and the Claimant said that he had no problem with that.
49. At trial, the First Defendant reiterated what was contained in his witness statement about what the Claimant said to him.
50. The First Defendant's account sounded credible, particularly since the Claimant in his evidence said that he left Canefield to come to his house after he was told in a conversation on the telephone two and a half hours earlier that the police were waiting to execute a search warrant at his home. The presence of the CDPF officers at his home with a search warrant did not catch the Claimant unaware. He was not taken by surprise and had a long time to address his mind to what would take place.

²⁶ Paragraph 10, Claimant's witness statement, page 4 of Trial Bundle No 3

²⁷ Paragraph 12, First Defendant witness statement, page 82 of Trial Bundle No 3

²⁸ Paragraph 15 of his witness statement, page 5 of Trial Bundle No 3

²⁹ Paragraph 13, First Defendant's witness statement, page 82 of Trial Bundle 3

Unlawful entry?

51. The **Theft Act**³⁰ provides that:

“If it is made to appear by information on oath before a justice of the peace or a Magistrate that there is reasonable cause to believe that any person has in his custody or possession or on his premises any stolen goods, the justice of the peace or Magistrate may grant a warrant to search for and seize the same; but no warrant to search for stolen goods shall be addressed to a person other than a member of the police service except under the authority of an enactment expressly so providing.”³¹

52. The Claimant's Counsel drew to the First Defendant's attention that the search warrant was directed: “To each and all of the Peace Officers of the State.” The Claimant's Counsel questioned the First Defendant about the impropriety of the presence of the CCECC security officer, Mr James, being present inside the Claimant's house during the search. This, as Mr James was not a “Peace Officer of the State.”
53. The First Defendant said that it was not the first occasion that a civilian was taken to someone's house by the police in executing a search warrant so that the individual may identify any possible stolen property.
54. The explanation proffered at trial by the First Defendant as to why it was done seemed to be the application of what some may term ‘*the ways and means act.*’ In such a situation creative approaches are adopted to meet the exigencies of the situation.
55. Although no evidence was adduced as to what was the police best practice in executing search warrants, it is reasonable to believe that the proper procedure would be to seize and carry away any item that is found corresponding to the description contained in the search warrant. These items once stored in a secure environment could then be inspected by an identifying witness. That would require in this case that the police, in terms of the search of the Claimant's home, would have had to take away the sheets of galvanize that were in the Claimant's yard as well as the tiles that were in the downstairs apartment of the house, to Roseau, for the witness to identify them. And having taken them to Roseau and the witness at that stage informing them that those items were not CCECC's property, transport the items back to Bellevue Chopin in order to return them to the Claimant's home.
56. According to the First Defendant, in the post-hurricane environment the storage space at the Police Headquarters for suspected stolen goods was overwhelmed. Also, traversing the roads was challenging, given the number of landslides that had to be navigated.
57. That was the background in which the identifying witness was carried to the Claimant's premises.

³⁰ Chapter 10:33 of the Laws of the Commonwealth of Dominica, Revised Edition 2017

³¹ Section 27(1)

58. The search of the Claimant's premises was not the first time the CCECC security officer was taken to someone's house by the police to identify possible stolen goods. The Claimant's witness, Mr James, in his witness statement in explaining what transpired in the days preceding the search of the Claimant's house, said:

"The police officers went into the homes of various persons. I entered into the houses with them at the request of the police. The officers asked me if certain things belonged to the Chinese. I told them who had Chinese stuff."³²

59. Regarding the specific circumstances in which Mr James entered the Claimant's house, the First Defendant clearly stated that he informed the Claimant prior to the search that he intended to take such a course of action. The Claimant responded saying that he "had no problems with that."³³

60. Mr James pointed out that at the Claimant's premises, after he was asked by the First Defendant to accompany the CDPF on the search of the Claimant's house:

"Superintendent Cuffy Williams [the Claimant] held the dog for me to pass. We went inside."

61. The Claimant's action of restraining the dog to permit Mr James to accompany the police was an additional indication of his cooperation and the fact that he "had no problem" with Mr James entering on to the property and participating in the search.

62. It is apparent and accepted that the Claimant:

- 1) Was spoken to by the First Defendant about the civilian, Mr James, entering the Claimant's premises.
- 2) By his words and actions complied with the First Defendant's request regarding Mr James.
- 3) Who was a long-standing police officer of 40-years (and would know the practice and procedures of executing searches) did not object to Mr James's entry unto his premises as part of the CDPF's search team.

63. As the opening words of section 7(1) of the **Constitution** clearly state: "Except with his own consent..." A house owner is entitled to, if he or she wishes, consent to a search of their property by anyone.

³² Paragraph 26, Derrick James's witness statement, page 52 of Trial Bundle No 3

³³ Paragraph 13, First Defendant's witness statement, page 82 of Trial Bundle No 3

64. The time to refuse consent is at the time something is about to occur; and not to conjure up the absence of consent at a later stage. The Claimant was a 40-year police veteran; a Superintendent of Police; two steps away from the Commissioner's chair. He must have known what was permissible and what was not. Having previously said and done things to consent to Mr James' presence, or even if he acquiesced, his later allegation of absence of consent was not believed.

The search warrant

65. The Claimant acknowledged that the First Defendant did inform him at Bellevue Chopin on the 9th of October 2017 about having a search warrant. He accepts that prior to the commencement of the search he saw the First Defendant with a document that "appeared to be a search warrant with my name on it"³⁴ in the First Defendant's diary. The Claimant said however that he "did not notice any signature,"³⁵ neither was he given at the time a copy of the warrant.³⁶

66. The Claimant later obtained a copy of the warrant.³⁷ He said that:

- 1) He did not believe it to be the warrant that was shown to him³⁸ in October 2017.
- 2) He did not think it was a valid search warrant, as there was nothing to show it was signed in the presence of a Magistrate.³⁹
- 3) He did not observe any Justice of Peace stamp on the warrant and he believed that the rubber stamp issued by the Minister of Legal Affairs must be affixed to any document signed by a Justice of Peace.⁴⁰

67. The Defendants' response was that the First Defendant received information from a reliable informant; that report was in relation to the Claimant. Other police officers had received information regarding the Claimant. However, those reports to other police officers was not direct information as what was provided to him on the morning of Monday the 9th of October 2017. Based solely on the report from the reliable informant, who was also a senior police officer, the First Defendant swore to an information before the Commissioner of Police who issued the search warrant.

³⁴ Paragraph 15, Claimant's witness statement, page 5 of Trial Bundle No 3

³⁵ AS above

³⁶ As above

³⁷ Pursuant to a Court Order for disclosure dated the 9th of April 2018

³⁸ Paragraph 28, Claimant's witness statement, page 7 of Trial Bundle No 3

³⁹ As above

⁴⁰ Paragraph 29, Claimant's witness statement, page 7 of the Trial Bundle No 3

68. The First Defendant distinguished between what was said to other police officers and reported to him in a second-hand manner; and what was said directly to him by the Acting Superintendent in charge of the CID who told the First Defendant that he (the Acting Superintendent) actually saw suspected stolen items at the Claimant's premises.
69. The chain of circumstances which would ground the First Defendant's reasonable belief that the Claimant may have had stolen goods at his home and upon which a search warrant was justified were:
- a) There was looting of the CCECC storage containers in Bellevue Chopin following the passage of Hurricane Maria.
 - b) Reports were received that police officers were involved in the looting or storage of looted goods.
 - c) Searches were conducted of police officers premises in Bellevue Chopin and looted goods were retrieved, which confirmed the information that some police officers were linked to the looting.
 - d) The Claimant was a police officer who resided in Bellevue Chopin.
 - e) Other officers received information about the Claimant.
 - f) A senior police officer who executed search warrants in Bellevue Chopin and retrieved goods on the 6th of October 2017 reported directly to the First Defendant on the 9th of October 2017 that he saw galvanize believed to be property of another in the Claimant's yard.
70. Given the fact that the First Defendant knew of the theft of goods from CCECC and his belief that the Claimant had stolen goods from CCECC on his property, the First Defendant was entitled to apply for a search warrant. The search of the Claimant's house was not to establish who may have looted the CCECC premises, rather, it was to determine whether the CCECC property was on the premises.

Signing the search warrant

71. Dominica's **Police Act**⁴¹ states:

"The Commissioner and Deputy Commissioner shall be *ex officio* justices of the peace."⁴²

⁴¹ Chapter 14:01 of the Laws of the Commonwealth of Dominica

⁴² Section 15

72. Similarly, the **Magistrate's Code of Procedure Act**⁴³ states that:

"Every Magistrate shall be *ex officio* a Justice of Peace for the State."⁴⁴

73. On the day the Claimant's property was searched, the Commissioner of Police, as well as the First Claimant, and every Magistrate, were *ex officio* Justices of the Peace. They held that status by virtue of the respective offices they held. They would cease being *ex officio* Justices of the Peace once their tenure in office ends.

74. The appointment and removal of the substantive Justices of the Peace is governed by the **Magistrate's Code of Procedure Act**. That **Act** provides that:

"The President may by instrument under his hand appoint any fit and proper person to be a Justice of the Peace for the State, and may in like manner, for such cause as may appear to him sufficient, remove any Justice of Peace from his office."⁴⁵

75. When a Justice of the Peace signs or certifies a document, he affixes a stamp.

76. The **Justice of the Peace (Use of Stamp) Rules** is contained in the subsidiary legislation to the **Magistrate's Code of Procedure Act**.

77. The **Rules** provide that when a Justice of Peace is appointed, the Minister of Legal Affairs⁴⁶ issues that person with the appropriate stamp.⁴⁷ The stamp is to be used whenever the Justice of Peace:

- affixes his signature to any document he prepares in performance of his duties,⁴⁸ or
- is required under any law in Dominica to certify any document,⁴⁹ or
- is certifying documents required for official purposes in another State.⁵⁰

78. Although the Minister of Legal Affairs is required to provide the substantive appointees to the office of Justice of Peace with the specified rubber stamp, the legislation does not state that *ex officio* Justices of Peace must be similarly equipped.

⁴³ Chapter 4:20 of the Laws of the Commonwealth of Dominica, Revised Edition

⁴⁴ Section 6(1)

⁴⁵ Section 6(2)

⁴⁶ Rule 2

⁴⁷ Rule 3. It is described as being elliptical in shape, containing of the Coat of Arms of Dominica with the words 'Justice of Peace' at the top, and the words 'State of Dominica' below

⁴⁸ Rule 4(a)

⁴⁹ Rule 4(b)

⁵⁰ Rule 4(c)

79. With regard to the issuing of a search warrant, the **Magistrate's Code of Procedure Act** states:

"Where a Magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any larceny or other felony has been committed is in any place he may grant a warrant to search the place for the property. And if the property or any part thereof is found there to bring the property and the person in whose possession the property is found before the Magistrate granting the warrant or some other Magistrate."⁵¹

80. As noted earlier, the **Theft Act** authorizes either a "justice of the peace or a Magistrate [to] grant a warrant to search and seize" any stolen goods.⁵²
81. A Justice of Peace may perform similar functions to a Magistrate. The **Magistrate's Code of Procedure Act** in addressing the powers over 'charges and complaints anywhere in the State,' notes:

"The powers and authorities previously vested and exercised by Justices of the Peace under any Act shall continue and may be exercised by such Justices, save and except the investigation and adjudication of charges and complaints, which shall be investigated and adjudicated upon by a Magistrate only."⁵³

82. The statutory limitation on the scope of the functions of a Justice of Peace – whether substantive or *ex officio* – when compared to a Magistrate, is restricted only in relation to "the investigation and adjudication of charges and complaints."
83. The power vested in the Commissioner of Police and the Deputy Commissioner of Police by the **Police Act** as *ex officio* Justices of Peace and therefore authorizing them to sign a search warrant is not new.
84. Dominica's legislation reproduces in part the spirit and intent of the Common Law. The English **Larceny Act, 1916**, consolidated the statutory and common law offence of larceny. In addressing the issuing of search warrants, it stated:

"Any constable or peace officer may, if authorized in writing by a chief officer of police, enter any house, shop, warehouse, yard, or other premises, and search for and seize any property he believes to have been stolen, and, where any property is seized in pursuance of this section, the person on whose premises it was at the time of seizure or the person from whom it was taken shall, unless previously charged with receiving the same knowing it to have been stolen, be summoned before a court of summary jurisdiction to account for his possession of such property, and

⁵¹ Section 35

⁵² See paragraph 51 above

⁵³ Section 10(2)

such court shall make such order respecting the disposal of such property and may award any costs as the justice of the case may require.”⁵⁴

85. In October 2017, the Commissioner of Police, *pro tem*, Mr Daniel Carbon, was authorized and entitled to sign a search warrant, just as his English counterpart from more than a century ago had the power to do.
86. There was no dispute that, despite the economy of letters on the signature line of the search warrant, the person who signed the search warrant was Mr Carbon – the Second Defendant at the time of the filing of this suit. Below Mr Carbon’s signature, his rank was clearly inscribed, as “COP.” Directly under that, the warrant also bears the date of “9/10/2017.”
87. At trial, the Claimant’s counsel acknowledged that the search warrant exhibited in Trial Bundle No 3 as ‘CW8’⁵⁵ was not an accurate photocopy of the search warrant that was disclosed by the Defendants pursuant to the Court Order. The exhibited photocopy did not have the endorsement that is written on the back of the warrant. The First Defendant when shown a copy of the disclosed search warrant from the Claimant’s Counsel’s file, agreed that the true copy had his hand writing on the back of the warrant.
88. The words which appear on the back of the search warrant are:
- “This warrant was duly executed by me the undersigned on the premises of Cuffy Williams at Bellevue Chopin on Monday 9th October 2017. Nothing in the warrant was discovered.”
89. The First Defendant’s signature, as well as his rank as the Deputy Commissioner of Police (Acting), and the date “9/10/2017” are written on the back of the warrant.
90. The First Defendant, when he went to the Claimant’s premises, was in possession of a valid search warrant, issued by the Commissioner of Police who was an *ex officio* Justice of Peace. The First Defendant dutifully executed the warrant. Upon completion of the search, the First Defendant completed the necessary formalities by ‘backing the warrant.’

Theft Act

91. In the Commonwealth of Dominica, dishonesty offences are addressed in the **Theft Act**.⁵⁶
92. A person who is tried on indictment for the offence of theft is liable on conviction to a term of ten years imprisonment.⁵⁷

⁵⁴ Section 42(2)(a)

⁵⁵ Page 41 of Trial Bundle 3

⁵⁶ Chapter 10:33 of the Laws of the Commonwealth of Dominica, Revised Edition

⁵⁷ Section 9, Theft Act

93. A person who is tried on indictment for the offence of handling stolen goods is liable on conviction to a term of fourteen years imprisonment.⁵⁸

94. The law seemingly gives credence to the saying that: “the upholder is worse than the thief.”

95. The offence of handling stolen goods is described in the **Theft Act** as:

“A person handles stolen goods if (otherwise than in the course of stealing) knowing or believing them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes or assists in their retention, removal, or realization by or for the benefit of another person, or if he arranges to do so.”

96. The *actus reus* of the offence of handling stolen goods is the dishonest receiving or the dishonest retention of the stolen goods. The essence of the offence does not require the defendant to have been involved in the actual theft of the goods.

97. In considering the offences of theft and handling stolen goods as it relates to the CCECC property, a person who actually went to the location and appropriated the company’s property could be prosecuted for theft. Someone who was in possession of CCECC’s property but in relation to whom there was no evidence of stealing, may be prosecuted for handling stolen goods.

98. A person handles stolen goods if:

1. If goods are shown to be stolen goods. And
2. The defendant either -
 - a. received the property; or
 - b. undertook in the retention or removal or disposal or realization of the goods, whether by another person or for the benefit of another person; or
 - c. assisted in the retention, or removal, or disposal, or realization of the goods whether by another or for the benefit of another person.
And
3. He either -
 - a. knew the goods were stolen; or
 - b. believed that the goods were stolen. And

⁵⁸ Section 23(2), Theft Act

4. He was dishonest.

99. The search warrant related to handling stolen goods; it was not an allegation that the person whose premises were searched participated directly in looting or stealing the goods. The search warrant was, however, in relation to a property offence of dishonesty: that stolen goods were stored on the premises.

Malice

100. The Claimant was of the view that the First Defendant in executing the search warrant, was acting out of malice, spite or ill-will.

101. According to the Claimant, in 2016, he was tasked by the Commissioner of Police to do a particular investigation. At the time, the First Defendant, being an Assistant Superintendent of Police at the CID, was junior in rank to the Claimant. The Claimant said that in his report he concluded that the source of the problem emanated from the First Defendant's office at the CID. The Claimant said that he recommended that "Mr Valarie [the First Defendant] be made to answer to the relevant authority."⁵⁹

102. According to the Claimant, from the time of his 2016 investigation, the First Defendant "grew cold with me."⁶⁰ He went on to say: "I believe that he [the First Defendant] may have been motivated by a desire to tarnish my reputation so as to reduce my chances of being promoted to a higher rank. This was an attempt by Superintendent Valarie (sic) to eliminate his competition."⁶¹

103. The First Defendant denied having any ill-will, spite or malice against the Claimant.⁶² He noted that he had never seen any such report done by the Claimant. At trial he stated that he was not even interviewed in relation to what the Claimant referred to. The First Defendant noted further that he has not suffered any punishment or other consequences.

104. It is worthwhile to note what occurred in the year following the report the Claimant said he did, in which he said he made adverse findings against the First Defendant and recommended disciplinary measures.

- 1) No disciplinary action was taken against the First Defendant.
- 2) The First Defendant was first of all promoted to a rank equivalent to the Claimant.

⁵⁹ Paragraph 47, Claimant's witness statement, page 11 of Trial Bundle No 3

⁶⁰ Paragraph 48, Claimant's witness statement, page 11 of Trial Bundle No 3

⁶¹ Paragraph 49, Claimant's witness statement, page 11 of Trial Bundle No 3

⁶² Paragraph 17, First Defendant's witness statement, page 83 of Trial Bundle No 3

- 3) Then the First Defendant was promoted for a second time within a year to the second highest office in the CDPF, a rank that was senior to the Claimant's. (At the time of trial, the First Defendant was the Acting Commissioner of Police).
- 4) The Claimant's rank remained stationary throughout the period (while the First Defendant met and surpassed the Claimant).

105. The Claimant exhibited numerous certificates of training programmes that he attended and reports of his successful participation in other courses he attended as a police officer.

106. The evidence from the Claimant's witnesses, was that he was a highly respected man in the community.

107. The evidence also revealed that the Claimant:

- i. Had galvanize stacked in this yard. The 28 sheets of galvanize were the property of the witness Mr Camelice 'Metric' Letang of Pichelin. Mr Letang said his auto mechanic/body repair shop at Bellevue Chopin was damaged during the passage of the hurricane. He noticed that following the hurricane the galvanize sheets covering the shop were being stolen, so he removed the galvanize from his shop and with the assistance of someone who had a pickup, transported the galvanize to the Claimant's yard to be stored.
- ii. Had tiles stored on his premises. The tiles belonged to his son's fiancé, the witness Ms Kervel Thomas. The Claimant's son, along with the son's fiancé and the couple's child lived in an apartment downstairs the Claimant's house. Ms Thomas produced an invoice at the Claimant's request showing that she purchased the tiles in May 2017, several months before Hurricane Maria. She said that they were "in the process of completing the downstairs of Mr Williams' [the Claimant's] house so that we can reside there comfortably."⁶³

108. Reports that the Claimant had galvanize and building materials at his property were not entirely false. However, they were not galvanize nor tiles from CCECC.

Credibility

109. In evaluating the witnesses, having paid attention to their demeanour; and having scrutinized and evaluated their testimony for consistency, logic and in comparison with the evidence from other witnesses, the testimony of the First Defendant was preferred to that of the Claimant. Where there may have been conflicts in the evidence between the narrative of the Claimant

⁶³ Paragraph 3. Kervel Thomas' witness statement, page 63 of Trial Bundle No 3

and that of the First Defendant, the testimony of the First Defendant was accepted as being true.

110. During the First Defendant's lengthy cross-examination spread over two separate days, he maintained his composure. He was coherent and was convincing.

Any reliefs?

111. The Claimant did not prove that obtaining a search warrant as provided for in the Laws of the Commonwealth of Dominica was not reasonably required for the peace, good order and good governance of the country.

112. The Claimant did not prove that the First Defendant did not possess a legitimate search warrant duly signed by the Commissioner of Police, who was an *ex officio* justice of the peace.

113. The Claimant did not establish that the First Defendant was actuated by malice, or ill will, or any unlawful purpose.

114. The Claimant clearly did not have any cause of action.

115. The Claimant therefore is not entitled to any reliefs.

The Order

116. The claim against the Defendants is dismissed.

117. The Claimant, Mr Cuffy Williams must pay prescribed costs of Ten Thousand dollars to the Defendants within twenty-eight days of this order, that is, by Wednesday the 14th of May 2025.

An observation

118. In October 2017, the Claimant was on vacation leave from the CDPF. He was scheduled to return to work in January 2018.

119. Only two persons were senior in rank to the Claimant in the CDPF at that time: the First and Second Defendants.

120. Following the passage of Hurricane Maria, a state of emergency was declared.

121. In many countries, when there is a state of emergency, all leave for members of the security services is usually cancelled. Sometimes, even officers who are overseas are required to return home.

122. In the Claimant's case, it appears that he remained on leave.

123. Nothing concerning the case turns on the fact that Superintendent Williams was on leave during a state of emergency. But the contrast with what obtains in other places is noteworthy.

COLIN WILLIAMS
Judge

BY THE COURT

REGISTRAR