

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO: DOMHCV: 2019/0130

BETWEEN:

[1] LOFTUS DURAND	-	First Claimant
[2] ARTHURTON MARTIN	-	Second Claimant
[3] JAMES DAISY	-	Third Claimant

V

[1] ATTORNEY-GENERAL OF THE COMMONWEALTH OF DOMINICA	-	First Defendant
[2] COMMISSIONER [CHIEF] OF POLICE	-	Second Defendant

APPEARANCES:

Ms Cara Shillingford for the Claimants

Ms Nadira Lando and Mr Jason Lawrence, State Counsel, for the Defendants

2024: June 24th, 25th,
October 4th,

JUDGMENT

1. **COLIN WILLIAMS J:** On Saturday the 15th of December 2018, the Concerned Citizens Movement,¹ CCM, staged a public meeting at Castle Street in Roseau, the Capital of the

¹ "The CCM is a public interest group whose aim is advocating for free and fair elections as well as good governance in the Commonwealth of Dominica" per Loftus Durand, former President of the CCM, paragraph 3 of his witness statement

Commonwealth of Dominica. The meeting was called to address electoral reform. The CCM had been engaged in several activities to advocate for free and fair elections and good governance. The CCM meeting was brought to an end sometime after 4.00 pm when members of the Riot Squad of the Commonwealth of Dominica Police Force, CDPF, intervened. The police officers ordered the crowd to disperse; tear gas canisters were deployed. The Claimants were participants in the meeting and they are seeking remedies from the State for the steps taken by the police.

2. This claim arose from the actions of the police, in particular the use of tear gas, to disperse those gathered at the meeting. The three Claimants, respectively Mr Loftus Durand, Mr Arturton Martin and Mr James Daisy, complain that they were affected by the tear gas. The Claimants jointly say:
 - i. that the conduct of the police was unlawful;
 - ii. they suffered injury and loss as a consequence of the action of the police; and
 - iii. they are entitled to damages as a result of the action by the police.
3. The Defendants are the Attorney-General of the Commonwealth of Dominica, and the Chief [also referred to as the Commissioner] of Police. While the Defendants do not dispute certain core facts recited by the Claimants, they denied any liability. The Defendants disagreed that the steps taken by the police were unreasonable or gave rise to any cause of action by the Claimants.
4. Prior to the CCM holding the public meeting, there was no communication between the organisers and the police with regard to the meeting.
5. The Claimants contend that no permission was required to hold a meeting.
6. The Defendants on the other hand are of the view that the failure of the meeting organisers to obtain permission from the Chief of Police to hold the meeting was a breach of the **Public Order Act**.²
7. The First Claimant, Mr Durand, stated that prior to Saturday the 15th of December 2018, he engaged in discussions with an individual for permission to hold the meeting on the landing on the sidewalk outside of the individual's premises.
8. The Claimants note that the advertisements publicising the meeting, which were aired on radio and published on social media, did not mention a specific location. The meeting was advertised to run from 10:00 am until 4:00 pm.
9. Early on Saturday the 15th of December 2018, several hours before the scheduled start of the meeting, the police placed several barriers at strategic locations on several roads in Roseau.

² Chapter 15:01 of the Revised Laws of the Commonwealth of Dominica

The police also placed temporary no entry signs on some roads. It was the intention of the police to prevent persons, including those attending the meeting, from getting close to specific State assets, such as the Electoral Commission office and the State House – where the country's President as well as the Prime Minister resided at the time.

10. The meeting commenced as advertised at 10:00 am. It was held at a location outside of the area barricaded by the police and other than where the CCM Chairman, (the First Claimant), originally intended for it to be held.
11. Several hundred persons attended the 15th of December 2018 meeting, which was held on Castle Street, a one-way street that runs North to South. The podium was set up in the road, not too far from a junction where traffic turns on to Castle Street.
12. The meeting went on without interruption from the police for several hours.
13. During the course of the afternoon, one of the speakers made reference to blocking the roads. Sometime thereafter, a group of about 15 to 20 police officers from the Riot Squad, dressed in camouflage uniform, wearing helmets and masks and carrying glass shields, were seen assembled in relatively close proximity to the meeting at the top of Church Street. Church Street runs East to West and intersects with Castle Street. Former Superintendent of Police, Richmond Valentine, approached those gathered at the meeting and with the use of a loud hailer (a megaphone) gave instructions commanding all persons assembled in the area to immediately disperse. This was followed by a written banner being displayed by a police officer stating "Disperse or we use CS gas" (teargas). Several canisters of teargas were subsequently discharged. The three Claimants say that they were injured as a consequence of the police action.
14. The Defendants say that the oral and written notifications to those gathered to disperse and of the police intent to use tear gas were given pursuant to the **Riot Act**.³

The Parties and the Claim

15. The First Claimant, Mr Loftus Durand, at the date of the meeting was the President of the CCM; he was the main organiser of the 15th of December 2018 meeting. The Second Claimant, Mr Atherton Martin, a former Minister of Agriculture in the Commonwealth of Dominica, was one of the speakers at the meeting. The Third Claimant, Mr James Daisy, a retiree with an interest in electoral reform, attended the meeting. The Claimants allege that the police acted unlawfully in bringing the meeting to an end; that the tear gas affected them adversely causing them injury and loss; and that they ought to be compensated for the effects of the police action. The Third Claimant, Mr Daisy said that apart from being personally affected by the tear gas, one of the tear gas canisters damaged his vehicle's windscreen.

³ Chapter 10:02 of the Revised Laws of the Commonwealth of Dominica

16. The First Defendant, the Attorney-General, was joined in this suit pursuant to the **State Proceedings Act**.⁴ The Second Defendant, the Chief of Police, was sued in his capacity as head of the CDPF.
17. On the 14th of June 2019, the Claimants' counsel filed a Claim Form with a Statement of Claim against the Defendants alleging:
- 1) Negligence;
 - 2) Assault and battery; and
 - 3) Aggravated trespass.
18. An amended Statement of Claim was subsequently filed by the Claimants on the 14th of January 2022. The Claimants alleged that:
- “(6) On the 15th day of December 2018, several members of the Commonwealth of Dominica Police Force acting as servants of (sic) agents of the 2nd [D]efendant and the State assaulted, battered and inflicted injury on the Claimants by throwing tear gas canisters into the crowd where the Claimants stood. The several police officers herein referred to were acting under directions given by the 2nd Defendant and other senior police officers.
- “(7) The tear gas emitted from canisters sent by the [D]efendants or their agents and other agents of the [S]tate caused the [C]laimants to suffer personal injuries including pain to their eyes, nose and throat.
- “(8) As a direct result of the actions of the said police officers, the Claimants inhaled and were exposed to tear gas causing them to suffer pain, coughing, shortness of breath....”⁵
19. The Second and Third Claimants visited an Ear, Nose and Throat specialist on the 21st of December 2018, that is, six days after the tear gas incident. The Claimants obtained medical reports which were annexed to their Claim.⁶
20. The Third Claimant who stated that the back wind screen of his vehicle was damaged by a tear gas canister, exhibited a receipt for “putting on back glass on van PB-280.”⁷
21. According to the Claimants, the police “actions were excessive, disproportionate, arbitrary, high handed and oppressive.”⁸

⁴ Chapter 7:80 of the Revised Laws of the Commonwealth of Dominica

⁵ Trial Bundle Volume 1, Tab 5, page 27

⁶ Pages 32, 33 and 34 of Trial Bundle Volume 1

⁷ Trial Bundle Volume 3, Tab 3, page 10

⁸ Paragraph 14 of the amended Statement of Claim, page 29

22. The Claimants sought:

- a) Damages, inclusive of exemplary and aggravated damages;
- b) Special damages;
- c) Costs;
- d) Interest;
- e) Any other relief which the Court considered just.⁹

23. At trial, the three Claimants, Mr Loftus Durand, Mr Arturton Martin and Mr James Daisy, testified on their own behalf.

24. Four witnesses testified for the Defendants:

- i. Chief of Police Daniel Carbon;
- ii. Retired Superintendent of Police Richmond Valentine (who testified utilizing the zoom electronic platform from the United States of America);
- iii. Inspector of Police Number 350 Anthony Lawrence; and
- iv. Woman Police Sergeant Number 393 Janie Augustine.

25. At the conclusion of the oral testimony in Court, the First and Second Claimant, as well as Inspector Lawrence and Sergeant Augustine, visited the various locations referred to in the evidence, for the witnesses to point out land marks that were mentioned during testimony.

Medical Report

26. Dr Irvin Pascal prepared Medical Reports on the 28th of March 2022 in relation to his December 2018 examinations of the Second and Third Claimants.

27. Dr Pascal said he examined the Second Claimant, Mr Martin, on the 21st of December 2018:

“He was diagnosed with ‘Rhino pharyngitis post exposure to chemical irritants.’

“He was advised that no intervention was necessary at that time. He was further advised that his symptoms should resolve spontaneously in two to three weeks and given an open review appointment should his symptoms persist or worsen.

“He has not been since reviewed.”¹⁰

28. In relation to the Third Claimant, Mr Daisy, Dr Pascal said that the Third Claimant presented a “history of dry cough after exposure to tear gas.”

“He was otherwise well and has no significant past medical illness. ENT and chest examination were normal except for inflamed inferior turbinate and conjunctivitis.

⁹ Paragraph 16 of the Amended Statement of Claim, page 29

¹⁰ Page 32, Trial Bundle Volume 1

He was treated with Chlorhexidine, Prednisolone and Omeprazole. At review on 4th January 2019 his cough had markedly improved as well as his other symptoms.”¹¹

29. Prior to the Third Claimant visiting Dr Pascal, the Claimant was seen by Consultant Ophthalmologist, Dr H.M. Shillingford-Ricketts, on the 19th of December 2018. According to Dr Shillingford-Ricketts’ medical report, the Third Claimant reported experiencing “foreign body sensation, burning and decrease vision in both eyes at the time the tear gas entered his eyes.”¹² The Ophthalmologist’s report stated:

“Eye examination revealed no physical change as a result of tear gas chemical injury in both eyes.

“No long term changes are expected in his eyes as a result of the tear gas encounter.

“However his complaints were consistent with a chemical injury to his eyes.”¹³

Chief’s order

30. The Second Defendant, Chief of Police Mr Carbon, acknowledged that he was the one who issued the instructions to those under his command, to use tear gas on Saturday, the 15th of December 2018, to disperse members of the public gathered at the meeting.
31. The Second Defendant was not present on the scene in Roseau at any time during the course of the meeting or at the time the tear gas was used. During the course of the day the Chief of Police received reports from a Senior Police Officer referred to as the Ground Commander, who was on the scene. The Chief of Police said that based on what he was told the Saturday afternoon, he approved the use of the tear gas to disperse those gathered at the meeting.
32. If the Second Defendant erred in directing the use of tear gas, if his decision can be impugned as being unreasonable and without justification, then the consequences of the police action may entitle the Claimants to recover damages from the First Defendant.

The issues

33. The Claimants stated that the issues to be addressed in this case¹⁴ were:

- 1) Was police permission needed to hold the meeting?

¹¹ Page 33, Trial Bundle Volume 1

¹² Trial Bundle Volume 3, Tab 14, page 21

¹³ Trial Bundle Volume 3, Tab 14, page 21

¹⁴ Submissions filed on the 30th of July 2024 (fourteen days after the date set for submission)

- 2) Whether the police prevented the Claimants and other attendees from accessing the site which was originally earmarked by CCM for the meeting?
- 3) Whether any police officer told the First Defendant and other persons that the CCM meeting should be held at the junction of Church Street and Castle Street?
- 4) Did the police have a duty to protect the meeting's attendees by controlling the flow of traffic at the junction?
- 5) Was the use of force by the police unlawful?
- 6) Was the Claimants' rights to protection of their rights to freedom of assembly and association and freedom of movement infringed?
- 7) What reliefs should be granted to the Claimants?

34. The Defendants submitted that the issues to be addressed¹⁵ were:

- 1) Whether the Claimant (sic) was assaulted by the servant and/or agents of the State?
- 2) Whether the servant and/or agents of the State damaged the property of the Claimants?
- 3) Whether the Defendants are liable to the Claimant for special damages in the amount claimed or for any damages at all?
- 4) Whether the Claimant (sic) is entitled to aggravated and exemplary damages?

35. Essentially, the matters in dispute between the parties are connected to the **Public Order Act** and the conduct of the police.

36. An appreciation and understanding of the **Public Order Act** ought to readily resolve the dispute between the parties. The case rested on answering two foundational matters:

- a) Were the Claimants obliged to notify the Chief of Police about their intention to hold a public meeting on Saturday, the 15th of December 2018, or whether what the CCM staged was an unlawful assembly?

¹⁵ Submissions filed on the 16th of July 2024

- b) Were the police justified in using tear gas on the 15th of December 2018 to disperse those gathered at Castle Street in Roseau?

Public Order Act

37. Dominica's **Public Order Act** has been in force since May 1954. Its purpose is "to make provision for the preservation of public order on the occasion of public processions and meetings and in public places."
38. Definition of the terms used in the **Act** are contained in the interpretation provision at section 2.
39. According to the **Act**, public place "means any highway... road, lane, footway... alley or passage...."
40. A public meeting "includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend...."
41. The CCM-organised meeting was held on the public road in Roseau. Persons in attendance were on the sidewalk and in the road. There was a general invitation which was publicised in the media inviting people to attend. What the CCM staged on the 15th of December 2018 was a public meeting; the meeting was being staged in a public place.
42. Section 3 of the **Act** is concerned with "processions prohibited without permits."¹⁶ The section states:

"It shall be unlawful for any public procession to take place unless a permit has been issued in respect thereof in accordance with this Act."

43. Was the public meeting that was organised by the CCM of the kind contemplated by the **Act** as requiring an application for a permit to be made to the Commissioner (Chief of Police) three days in advance of the meeting?¹⁷

"Where any person desires to organize any public procession he shall at least three days before the intended public procession, make application for a permit to the Commissioner."

44. An issue which separates the parties in this matter was whether the CCM was required to obtain written permission from the Commissioner prior to staging a public meeting in a public place. The Defendants contended that the meeting was illegal, as no permission was obtained to hold the meeting. On the other hand, the Claimants' position was that pursuant

¹⁶ The headnote to section 3

¹⁷ Section 4(1) of the Public Order Act

to section 3 of the **Act**, permission from the Second Defendant would have been required only if there was a 'public procession.' In the Claimants' view, the definition under the **Act** of public procession does not cover a public meeting.

45. The interpretation provision of the **Act** states that a public procession "means any march, demonstration or procession in a public place..."¹⁸ The section goes on to exempt eight circumstances in which "a march, demonstration or procession" does not apply to the definition of a public procession – which would require a permit from the police Chief.
46. The position of the Claimants was that no permit was applied for because in their view, none was required. Counsel for the Claimant, Ms Cara Shillingford, stated:

"The Claimants assert that permission is not needed under any Law of Dominica for persons to hold meetings in public places. It is submitted that persons meet regularly in public places for various reasons. Any law imposing a requirement to get permission to hold a meeting in public would create an absurd result. Such a law does not exist."¹⁹

47. Ms Shillingford was fortified in her view that the term "public procession" as it appeared in the **Act** did not include a public meeting,²⁰ because the offence provisions at sections 7 and 8 of the **Act** referred specifically to "any public meeting"²¹ or "any public meeting or in any public procession."²² Counsel was of the view that:

"The natural and ordinary meaning of the words (sic) 'meeting' is different from the word 'procession'. Procession requires some form of movement of persons. Circumstances where a group of similarly minded people meet and speeches are delivered on a podium, is more naturally and ordinarily defined as a 'meeting'."²³

48. Counsel for the Defendants, Ms Nadira Lando, noted that the **Public Order Act** stated that public procession "means any march, demonstration or procession in a public place..." Counsel for the Defendants referred to the meaning of the word "demonstration" which appears in the definition of 'public procession'. Counsel Lando relied on the **Oxford Dictionary and Thesaurus**²⁴ which defined demonstration as: "noun ...2 a public meeting or march protesting against something or expressing views on an issue."
49. As stated earlier, the **Public Order Act**, defines a public procession as being "any march, demonstration or procession in a public place." The types of processions which occur in a

¹⁸ Section 2

¹⁹ Paragraph 9 of Claimants' closing submissions.

²⁰ Paragraph 16 of Claimants' closing submissions.

²¹ Sections 7(1), 7(4) and 7(5)

²² Section 8(1) and 8(2)

²³ Paragraph 18 of Claimants' closing submissions.

²⁴ Oxford University Press, 2007 2nd Ed.,

public place that are subject to the **Public Order Act** and for which prior permission must first be obtained three days in advance from the Commissioner of Police may take any one of three forms:

- a march;
- a demonstration; or
- a procession.

50. The term 'demonstration' was not defined in the Act. The drafters of the law back in the 1950's saw no need to put any restrictive, or special or unique interpretation to the word 'demonstration.' Successive legislatures over the near seven decades of the **Public Order Act**, although amending the Act in 1973, 1976 and 1990, have seen no need to provide a different definition for the word 'demonstration.' Reliance has to therefore be placed on the plain English definition of the word 'demonstration' as meaning "a public meeting or march protesting against something or expressing views on an issue."²⁵
51. The Claimants in the course of cross examination resisted the description of their meeting as a protest meeting. An appreciation of the nature and essence of the meeting may be gleaned from the surrounding facts.
52. According to the Claimants, the stated purpose of the 15th of December 2018 meeting was for like-minded people to address electoral reform. The views on electoral reform included free and fair elections, and good governance. Included among the speakers at the meeting was at least one former Minister of Government, (the Second Claimant), as well as the Leader of the Opposition. It also emerged from the evidence that General Elections were imminent, which necessitated a discussion of the issue of electoral reform. The Third Claimant spoke of having a placard tied to his vehicle.
53. Notwithstanding the Claimants' characterisation of the meeting, and their decision not to accept the description of "protest meeting," the evidence showed that the gathering was a public meeting of persons expressing their views against the voter's list and other matters relating to the conduct of general elections. It was, therefore, a demonstration, (or public procession), falling within the meaning of the word 'demonstration,' which as stated earlier, is "a public meeting or march protesting against something or expressing views on an issue."
54. The 15th of December 2018 meeting being a demonstration, the organisers ought to have obtained a permit three days in advance from the Commissioner [Chief] of police as mandated by the **Public Order Act**. That was not done.
55. However, even though the CCM, by not applying for and receiving the requisite approval, went ahead and staged an unlawful public meeting, that did not automatically give the police

²⁵ Paragraph 48 above

the right to use force to disperse those gathered. The act of using tear gas has to be assessed in relation to other factors.

Unlawful assembly?

56. The evidence at trial was that as many as 400 to 500 people may have been in attendance at the peak of the meeting.
57. Unlawful assembly at common law is an offence.

“An unlawful assembly at common law is an assembly of three or more persons (a) for a purpose forbidden by law, such as that of committing a crime by open force; or (b) with intent to carry out any common purpose, lawful or unlawful, in such a manner as to endanger the public peace or to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace as a consequence of it.”²⁶

58. The learned authors of **Archbold** distinguish between (1) a riot, (2) a rout and (3) an unlawful assembly. They explain that:

“the first is a tumultuous meeting of persons who are guilty of actual violence; the second where the endeavor to commit an act which would make them rioters; and the last where they meet with an intention to make a riot, but neither carry their purpose into effect, nor make any endeavor towards it.”²⁷

59. It is apparent that even though a distinction is made between riot, rout and unlawful assembly, it is quite possible during the course of a gathering for the classification to change.
60. Dominica’s **Riot Act** criminalises an unlawful assembly after a proclamation in the name of the President for those gathered to disperse is read. That Act refers to “the number of twelve or more, being unlawfully and tumultuously assembled together to the disturbance of the public peace...”²⁸ An offence is committed if twelve or more persons “unlawfully, riotously and tumultuously remain or continue together for the space of one hour or more after the request or command made by the proclamation.”

Peaceful protest?

61. It is accepted by both sides that the meeting which got underway at 10:00 am proceeded peacefully for several hours without incident or alarm. The meeting was advertised to end at 4.00 pm. It was shortly after the person whom the Claimants say was the final speaker started to address the meeting that the police intervened.
62. Inspector of Police Anthony Lawrence, whose testimony was accepted as being true, said:

²⁶ Paragraph 3571 Archbold Criminal Pleading Evidence and Practice, 36th edition, Sweet and Maxwell

²⁷ Paragraph 3572

²⁸ Section 5

"I also notice a podium was placed on Church Street at the intersection of Church Street and Castle Street. The Podium was on the eastern section of Church Street at the said intersection in the area of the traffic sign. I do not know the individual(s) who placed the podium on the street."²⁹

"At some time during the day the podium was removed from the street and placed on the eastern side of Castle Street in the area of the Old Stone Bar and Grill.... the podium was relocated...."³⁰

63. Counsel for the Claimants in her submissions noted that the meeting "proceeded with no interference from the police until the Opposition Leader started to address the crowd."³¹
64. The Defendants for their part highlight what was said by the Second Claimant, Mr Martin, who spoke immediately preceding the Opposition Leader and the response of some of those who were assembled at the meeting to what the Second Claimant said, as being particularly relevant to what unfolded sometime after 4:00 pm.
65. According to the Witness Statement of Sergeant of Police number 39, Ms Janie Augustine Pierre of the Criminal Investigations Department, who was an Acting Inspector of Police at the time, at about 4.00 pm, she heard the Second Claimant say:

"Is there anybody here with a vehicle who is prepared to park across the road and block the road? Block the road! Park a vehicle across the road and block the road, otherwise go home, because you are wasting time. Block the road! Block the road! If the same thing you want you are guaranteed. And I am saying that loud enough for the police to hear. I, Artie Martin, I'm asking the people to block the road! Block the road! Block the road! Block the road! Block the road! Block the road!"³²

66. Sergeant Pierre's evidence was that:

"The crowd got agitated and started blocking the road by standing in the road and preventing the free flow of traffic. One young man went as far as removing the road traffic sign which was placed there by the police. Another went to lie on the road and was preventing the free flow of traffic. Thereafter individuals also lay in the road. The crowd came closer to the police barriers on Church Street."³³

67. Sergeant Pierre continued:

²⁹ Paragraph 7 of his witness statement

³⁰ Paragraph 8 of his witness statement

³¹ Paragraph 28 b. of the Claimant's submissions

³² Paragraph 8 of her Witness Statement

³³ Paragraph 9

“After the Second Claimant uttered the words above, the crowd became very agitated. Most individuals in the crowd became very disorderly. They were shouting and approached some of the police officers near the barrier and were shouting at them.... Some members of the crowd were so disorderly that others in the crowd approached them and told them to behave. When the crowd began to get agitated some in the crowd began to leave while the disorderly people in the crowd remained.”³⁴

68. Officer Pierre said that the crowd behaved even more disorderly and then she heard Superintendent Richmond Valentine read a proclamation calling on the crowd to stop blocking the road and disperse. “The crowd however remained and continued to act disorderly.”³⁵ Sergeant Pierre said that at about 4:30 pm, “I then saw the Riot Squad arrive on Church Street about thirty feet from the barrier.”³⁶
69. The Second Claimant acknowledged under cross examination that he did say the words attributed to him by Sergeant Pierre, urging persons to block the road. However, the Second Claimant stated that “Unfortunately, the people did not listen to me when I told them to block the road. Neither did the police.” The Second Claimant said: “I made a request; I did not give an order.” Later, the Second Claimant said that: “Nobody paid attention to my request. No vehicle. No blocking.”
70. It is noted that at present, the Second Claimant has challenges with his sight. There was no indication from the evidence as to whether that condition existed at the time of the meeting in 2018. Two things that emerged from the Second Claimant’s testimony were:
 - It fortified the accuracy of and reliance that could be placed on the testimony of Sergeant Pierre, who appeared to be a credible witness.
 - He testified that he arrived at the location around 10.00 am, which was the time that the meeting commenced, which raises a question concerning his testimony in his witness statement of being present when there was a conversation involving Inspector of Police Anthony Lawrence and the First Claimant that occurred on Saturday the 15th of December 2018. That conversation according to the other witnesses occurred much earlier in the morning.

³⁴ Paragraph 10

³⁵ Paragraph 11

³⁶ Paragraph 12

Riot Act

71. Superintendent Richmond Valentine testified that he went to within 10 feet of the crowd, which was the safest and nearest that he could have gone, and with the use of a loud hailer he commanded silence and said:

“His Excellency the President charges and commands all persons being assembled, immediately to disperse themselves and peaceably to depart to their homes or to their lawful business, upon the pains contained in the Riot Act. By command of the President.”³⁷

72. The proclamation was in the terms detailed in the **Riot Act**.³⁸
73. Superintendent Valentine said that persons remained and continued to be disorderly. The Riot Squad was ordered to move towards the junction of Castle Street and Church Street where persons were gathered. At this point a banner warning persons to “Disperse or we use CS gas” was displayed. He said: “When the crowd refused to move the Riot Squad discharged volleys of CS gas and only then did the violent crowd disperse.”³⁹

Vehicle damage

74. The Third Claimant, Mr James Daisy, presented a receipt for \$100.00 which he said he paid in relation to fixing the back windscreen of his vehicle.
75. The visit to the *locus* revealed that the Third Claimant, Mr Daisy, brazenly flouted the law on the 15th of December 2018. The location and direction in which the Third Claimant’s vehicle was parked showed that he failed to recognise the traffic sign and moreso, his vehicle was parked contrary to the flow of traffic.
76. The *locus* visit supported the testimony of Officer Lawrence who said:

“Sometime mid-morning the Third Claimant came... then left and returned later with his vehicle... drove illegally through a no entry sign and took a right turn on to Castle Street and travelled west on to Church Street. The Third Claimant drove illegally against the flow of traffic to Church Street. He then parked his vehicle with the front of the vehicle facing west, whereas vehicle could only drive from west to east on the said road.”⁴⁰

³⁷ Paragraph 11 of his witness statement

³⁸ At section 5

³⁹ Paragraph 12 of his witness statement

⁴⁰ Paragraph 9 of Anthony Lawrence witness statement

77. Even if the Third Claimant's allegation was to be believed, which it is not, that his vehicle's windscreen was damaged by a tear gas canister, Mr Daisy would have to bear substantial responsibility for having wrongfully and improperly parked his vehicle.

Ground Commander's report

78. Notwithstanding that the Claimants' conduct was tainted as being unlawful, in that the CCM proceeded to hold a public meeting without the requisite permission, liability could still be attached to the Defendants. This is because the Second Defendant was under a duty to act reasonably and justifiably.
79. The order given by Police Chief to use tear gas to disperse the crowd rested on two major pillars: what was said and done at the meeting and what was communicated to the Police Chief.
80. Counsel for the Claimant submitted that Inspector Lawrence admitted "he did not see anyone throw stone at the police... no civilian with a gun or cutlasses."⁴¹
81. Counsel Shillingford acknowledged that Inspector Lawrence did say: "A mob was approaching barriers on that day" but submitted that "the attendees respected the police and did not enter into the restricted area."⁴² Counsel also pointed out that while Sergeant Pierre in her witness statement about what transpired in the afternoon said that "some members of the crowd were so disorderly that others in the crowd approached them and told them to behave," in cross examination the officer also "admitted that the attendees did not pass the police barriers. She saw no attendee with weapons and saw no one hit the police."⁴³
82. Ms Shillingford submitted that the police could have asked the Master of Ceremony or the First Claimant to bring the meeting to an end. Counsel also submitted that the megaphone used by the police when reading the proclamation to the crowd to disperse would have been drowned-out by the sound system used at the meeting.
83. The three Claimants were all aware of the approaching Riot Squad. The First Claimant said that he interrupted the final speaker to bring the meeting to an end. The Second Claimant said that he saw them at the top of the hill. The Third Claimant said that he had started taking down the banner from off of his vehicle.
84. Based on the evidence, there was a perceptible deterioration in the conduct of persons, particularly when urged to block the roads. It is accepted that there was no assault or attack on any police officer. What was also apparent from the evidence was: Those gathered were

⁴¹ Paragraph 46 of Ms Shillingford's submissions

⁴² Paragraph 47

⁴³ Paragraph 48

urged to take the law into their own hands. It is accepted that people began to behave in an unruly fashion. It is accepted that the free flow of traffic was obstructed.

85. It is against the backdrop – of the meeting being staged without permission, the number of persons gathered, the inconveniences being experienced by the traveling public, the call to block the roads, the change in conduct of the crowd - that the Ground Commander, who was a senior police officer, communicated with the Chief of Police. Based on what the Ground Commander observed and perceived, he reported to the head of the CDPF and sought further instructions. The Second Defendant then issued the instruction to deploy the Riot Squad and for them to use tear gas. The cross examination of Chief Carbon did not expose his decision as resulting from some oblique motive, or being irrational, unreasonable or unjustified.
86. Ms Lando on behalf of the Respondents referred to what Lord Hughes said in **Robinson v Chief Constable of West Yorkshire Police**:⁴⁴

“Sometimes decisions may have to be made under extreme pressure; at other times they may remain very difficult notwithstanding time for analysis, and there may be a high level of risk that they turn out to be wrong. The question is always not whether, with hindsight, the decision was wrong, but whether in all the circumstances was reasonable.”⁴⁵

87. There is no basis for faulting the decision of Chief Carbon in the circumstances of this case. His decision cannot be said to be unreasonable, unjustifiable or excessive. As the Chief of Police, he has to be dependent on and rely on the information that was provided to him. The Divisional Commander communicated with the Chief. The police on the frontline would be aware of the resources at his disposal. The Commander had 15-20 Riot Squad officers. There was a gathering of 400-500 individuals. There was a call for those gathered to take certain action that could further disturb the peace and good order. Some of the persons gathered at the meeting reacted. There was no requirement for the officers to await an attack on their person before taking any necessary steps. For close to six hours the police allowed those assembled to carry on their meeting. However, it appears that the officers perceived that some incendiary language led to a response and it was deemed that certain steps were necessary in the interest of law and order.

Claimant's stated issues

88. The original issues as posed by the Claimant could therefore be answered in summary form this way:

- 1) Was police permission needed to hold the meeting?

⁴⁴ [2018] UKSC 4, [2018] 2 WLR 595

⁴⁵ At paragraph 122, page 635, letter A

- In the context of a protest meeting in a public place, being a demonstration, the meeting fell within the category of events identified in the **Public Order Act** of “processions prohibited without permits;” therefore the answer is yes, the CCM needed to have obtained police permission to hold the meeting.
- 2) Whether the police prevented the Claimants and other attendees from accessing the site which was originally earmarked by CCM for the meeting?
- There was no publicized venue for the meeting. Only the First Claimant knew of any dialogue with the owner of premises on Cross Street, (Mr Clement Fingol), to hold any meeting in front of the referenced building. None of the other Claimants, indeed, no other witness could properly speak to any site earmarked for the meeting; no precise venue was advertised ahead of the meeting. The police did what was expected of them, and took reasonable steps to protect State assets and manage security without being invasive and over-bearing in relation to those unlawfully gathered in the public space for a meeting.
- 3) Whether any police officer told the First Defendant and other persons that the CCM meeting should be held at the junction of Church Street and Castle Street?
- The First Claimant’s allegation that he was told by Inspector Lawrence was not believed. The Officer’s staunch denial is believed, knowing as well that Officer Lawrence had no such power or authority to direct the First Claimant with regard to a public meeting. The Officer never went to the area where the First Claimant eventually set up the podium; neither was this location within the line of sight of where the encounter occurred between the Officer and the First Claimant. In any event, the podium was not ultimately set up at the junction of Castle Street and Church Street as the First Claimant alleges he was instructed to do, but was on an area of Castle Street, away from the junction.
- 4) Did the police have a duty to protect the meeting’s attendees by controlling the flow of traffic at the junction?
- The police have a duty to protect, serve and secure all citizens and residents in the Commonwealth of Dominica. The police had a duty

to manage and control the use of the public road.⁴⁶ The residents participating in the meeting required the care and protection of the police just as the lawful users of the public roadway were entitled to the effective operations of the police to ensure unhindered passage. The attendees at the meeting were not entitled to any extra or special protection as compared to the citizenry of Dominica.

5) Was the use of force by the police unlawful?

- The use of force by the police would amount to unlawful force if it is excessive, or unreasonable, or not justified. The authorization given by the Chief of Police to use tear gas, followed communication he received from the ground commander. Based on the evidence adduced, there was a basis for the security forces to perceive a mood change in the attendees at the meeting after they were instructed to block the road. The police took steps to disperse the attendees of the meeting who were gathered in the public road providing notification prior to using tear gas. There was nothing to suggest that the police did more than was necessary to disperse an unlawful gathering that appeared to threaten the peace and security of the capital.

6) Was the Claimants' rights to protection of their rights to freedom of assembly and association and freedom of movement infringed?

- The **Public Order Act** was first enacted Act No 6 of 1954, when Dominica was still a colony. It was amended on two occasions prior to Dominica's independence⁴⁷ and once, post-independence.⁴⁸ The provisions of the law have not been struck down for being unconstitutional. The fundamental rights of people are always subject to the limitations of the law, the rights and freedoms of others, and the public interest.

7) What reliefs should be granted to the Claimants?

⁴⁶ The **Police Act**, Chapter 14:01 provides at section 12(1) (a), (b), (d), (e), (f), (n), that it shall be the duty of the Police Force to take lawful measures, inter alia, preserving the public peace, preventing crimes and offences, regulating processions and assemblies in public places, regulating traffic upon public thoroughfares and removing obstructions therefrom, preserving order and decorum at public meetings and protecting public property from loss or injury.

⁴⁷ Act No 18 of 1973, which addressed the interpretation (definition) provision at section 2; Act No 33 of 1976 which addressed the interpretation (definition) provision at section 2, amended section 6, and amended section 10.

⁴⁸ Act No 12 of 1990 amended the penalty provision in section 10

- In the absence of any breach of the Claimants' rights, they are not entitled to any relief.

Conclusion

89. The Claimants have failed to prove that they were entitled to any damages - whether exemplary or aggravated or special – or costs, interest, or any other relief. Their claim has failed entirely.
90. The Claimants, Mr Loftus Durand, Mr Arthurton Martin and Mr James Daisy, shall within twenty-one days each pay one-third of the Respondents' costs.

Colin Williams
High Court Judge

By The Court

Registrar