

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2019/0307A

IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES

IN THE MATTER OF THE ELECTION FOR THE SALYBIA CONSTITUENCY DISTRICT
HELD ON THE 6TH DAY OF DECEMBER 2019

IN THE MATTER OF THE NOMINATION FOR THE SALYBIA CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019

IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT

BETWEEN:

ANNETTE SANFORD

Petitioner

and

- [1] COZIER FREDERICK
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER
- [3] KATHLEEN AUGUSTE, RETURNING OFFICER
- [4] HELIUS AUGUSTE, REGISTERING OFFICER
- [5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION
- [6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION
- [7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION
- [8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION
- [9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION
- [10] DOMINICA BROADCASTING CORPORATION
- [11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)
- [12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
- [13] THE COMMISSIONER OF POLICE, DANIEL CARBON

Respondents

CLAIM NO. DOMHCV2019/0307B

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE ROSEAU SOUTH CONSTITUENCY
DISTRICT HELD ON THE 6TH DAY OF DECEMBER 2019**

**IN THE MATTER OF THE NOMINATION FOR THE ROSEAU SOUTH CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

DARIA EUGINE

Petitioner

and

- [1] CHAKIRA LOCKHEART HYPOLYTE**
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER**
- [3] ANNA WARNER, RETURNING OFFICER**
- [4] LINDA DAFOE, REGISTERING OFFICER**
- [5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION**
- [6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION**
- [7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION**
- [8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION**
- [9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION**
- [10] DOMINICA BROADCASTING CORPORATION**
- [11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)**
- [12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA**
- [13] THE COMMISSIONER OF POLICE, DANIEL CARBON**

Respondents

CLAIM NO. DOMHCV2019/0307C

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE CASTLE BRUCE HELD ON
THE 6TH DAY OF DECEMBER 2019**

**IN THE MATTER OF THE NOMINATION FOR THE CASTLE BRUCE CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

ERNIE LAWRENCE JNO FINN
Petitioner

and

- [1] OCTAVIA ALFRED
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER
- [3] CLEVE EDWARDS, RETURNING OFFICER
- [4] CLEVE EDWARDS, REGISTERING OFFICER
- [5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION
- [6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION
- [7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION
- [8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION
- [9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION
- [10] DOMINICA BROADCASTING CORPORATION
- [11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)
- [12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
- [13] THE COMMISSIONER OF POLICE, DANIEL CARBON

Respondents

CLAIM NO. DOMHCV2019/0307D

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE WESLEY CONSTITUENCY DISTRICT
HELD ON THE 6TH DAY OF DECEMBER 2019**

**IN THE MATTER OF THE NOMINATION FOR THE WESLEY CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

EZEKIEL BAZIL

Petitioner

and

- [1] FIDEL NEIL GRANT**
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER**
- [3] DIANNE WILLIAMS, RETURNING OFFICER**
- [4] ANNIE BRUNO, REGISTERING OFFICER**
- [5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION**
- [6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION**
- [7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION**
- [8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION**
- [9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION**
- [10] DOMINICA BROADCASTING CORPORATION**
- [11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)**
- [12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA**
- [13] THE COMMISSIONER OF POLICE, DANIEL CARBON**

Respondents

CLAIM NO. DOMHCV2019/0307E

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES
IN THE MATTER OF THE ELECTION FOR THE MAHAUT CONSTITUENCY DISTRICT
HELD ON THE 6TH DAY OF DECEMBER, 2019
IN THE MATTER OF THE NOMINATION FOR THE MAHAUT CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019
IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

FELIX THOMAS

Petitioner

and

**[1] RAYBURN BLACKMORE
[2] IAN ANTHONY, CHIEF ELECTIONS OFFICER
[3] STEPHEN C. JOSEPH, RETURNING OFFICER
[4] LINDA BELLOT, REGISTERING OFFICER
[5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION
[6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION
[7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION
[8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION
[9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION
[10] DOMINICA BROADCASTING CORPORATION
[11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)
[12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
[13] THE COMMISSIONER OF POLICE, DANIEL CARBON**

Respondents

CLAIM NO. DOMHCV2019/0307F

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE LA PLAINE CONSTITUENCY
DISTRICT HELD ON THE 6TH DAY OF DECEMBER, 2019**

**IN THE MATTER OF THE NOMINATION FOR THE LA PLAINE CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

FRANCISCA JOSEPH
Petitioner

and

- [1] KENT EDWARDS**
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER**
- [3] BERTHA WARRINGTON, RETURNING OFFICER**
- [4] BERTHA WARRINGTON, REGISTERING OFFICER**
- [5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION**
- [6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION**
- [7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION**
- [8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION**
- [9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION**
- [10] DOMINICA BROADCASTING CORPORATION**
- [11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)**
- [12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA**
- [13] THE COMMISSIONER OF POLICE, DANIEL CARBON**
- [14] GEM ELOI, PRESIDING OFFICER**

Respondents

CLAIM NO. DOMHCV2019/0307G

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE ROSEAU CENTRAL CONSTITUENCY
DISTRICT HELD ON THE 6TH DAY OF DECEMBER 2019**

**IN THE MATTER OF THE NOMINATION FOR THE ROSEAU CENTRAL
CONSTITUENCY DISTRICT HELD ON 19TH NOVEMBER 2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

- [1] GLENROY CUFFY**
- [2] DWAYNE OSWALD GEORGE**
- [3] ATHERLEY ROBIN**

Petitioners

and

- [1] MELISSA SKERRIT**
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER**
- [3] JOSEPHINE LEWIS, RETURNING OFFICER**
- [4] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION**
- [5] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION**
- [6] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION**
- [7] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION**
- [8] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION**
- [9] DOMINICA BROADCASTING CORPORATION**
- [10] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)**
- [11] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA**
- [12] THE COMMISSIONER OF POLICE, DANIEL CARBON**

Respondents

CLAIM NO. DOMHCV2019/0307H

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE ST. JOSEPH CONSTITUENCY
DISTRICT HELD ON THE 6TH DAY OF DECEMBER, 2019**

**IN THE MATTER OF THE NOMINATION FOR THE ST. JOSEPH CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

[1] MONELL WILLIAMS JNO BAPTISTE

Petitioner

and

[1] ADIS KING

[2] IAN ANTHONY, CHIEF ELECTIONS OFFICER

[3] ANTHONY JOSEPH, RETURNING OFFICER

[4] CYNTHIA SERRANT, REGISTERING OFFICER

[5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION

[6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION

[7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION

[8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION

[9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION

[10] DOMINICA BROADCASTING CORPORATION

[11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)

[12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA

[13] THE COMMISSIONER OF POLICE, DANIEL CARBON

Respondents

CLAIM NO. DOMHCV2019/03071

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE MORNE JAUNE/RIVIERE CYRIQUE
GRAND/FOND DISTRICT HELD ON THE 6TH DAY OF DECEMBER 2019**

**IN THE MATTER OF THE NOMINATION FOR THE MORNE JAUNE/RIVIERE
CYRIQUE/GRAND FOND CONSTITUENCY DISTRICT HELD ON 19TH NOVEMBER
2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

PHARO CUFFY

Petitioner

and

- [1] GRETA BERNADETTE ROBERTS
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER
- [3] SHIRLINE PRESCOTT, RETURNING OFFICER
- [4] GWENETH ANSLEM, REGISTERING OFFICER
- [5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION
- [6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION
- [7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION
- [8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION
- [9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION
- [10] DOMINICA BROADCASTING CORPORATION
- [11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)
- [12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
- [13] THE COMMISSIONER OF POLICE, DANIEL CARBON

Respondents

CLAIM NO. DOMHCV2019/0307J

**IN THE MATTER OF A PETITION FILED PURSUANT TO THE PROVISIONS OF THE
HOUSE OF ASSEMBLY ELECTIONS ACT AND HOUSE OF ASSEMBLY (ELECTION
PETITION) RULES**

**IN THE MATTER OF THE ELECTION FOR THE ROSEAU VALLEY DISTRICT
HELD ON THE 6TH DAY OF DECEMBER 2019**

**IN THE MATTER OF THE NOMINATION FOR THE ROSEAU VALLEY CONSTITUENCY
DISTRICT HELD ON 19TH NOVEMBER 2019**

**IN THE MATTER OF THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA
AND REGISTRATION OF ELECTORS ACT**

BETWEEN:

RONALD CHARLES

Petitioner

And

- [1] IRVIN MCINTYRE**
- [2] IAN ANTHONY, CHIEF ELECTIONS OFFICER**
- [3] MERRIL MATTHEW, RETURNING OFFICER**
- [4] COLBERT PINNARD, REGISTERING OFFICER**
- [5] GERALD BURTON, CHAIRMAN OF THE ELECTORAL COMMISSION**
- [6] HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION**
- [7] WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION**
- [8] KONDWANI WILLIAMS, MEMBER OF THE ELECTORAL COMMISSION**
- [9] ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION**
- [10] DOMINICA BROADCASTING CORPORATION**
- [11] ROOSEVELT SKERRIT (PRIME MINISTER AND MINISTER OF FINANCE)**
- [12] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA**
- [13] THE COMMISSIONER OF POLICE, DANIEL CARBON**

Respondents

Appearances:

Mr. Anthony Astaphan, SC with him, Mr. Lennox Lawrence, and Mrs. Jodie Luke
for the 1st Respondents

Mrs. Heather Felix-Evans for the 2nd, 3rd, 4th, 5th, 8th, 9th Respondents

Mr. Levi A. Peter with him, Mrs. Nadira Lando for the 11th, 12th, 13th Respondents

Mr. Stephen Isidore for the 10th Respondent
Ms. Zahidha I. James for the Petitioners

2020: July 7, 17, 31
:August 10, 12, 13,
19, 20, 24
October 14

JUDGMENT

- [1] **GLASGOW, J.:** This is the ruling in respect of several applications to strike out 10 election petitions filed on 30th December, 2019 challenging the process and outcome of the 6th December, 2019 general elections held in the Commonwealth of Dominica ("*Dominica*"). The results of the general elections were officially declared on 20th December, 2019 by Mr. Ian Anthony, the Chief Elections Officer. The official results returned the incumbent party, the Dominica Labour Party ("DLP") with a majority of 18 seats as opposed to the United Workers Party ("UWP") which received 3 seats. The DLP was declared the winner and as such formed the new government.

Background

The Election Petitions

- [2] A number of United Workers Party ("*UWP*") candidates who were unsuccessful in the general election and a number of voters challenged the results of the elections in 10 constituencies. The results of the constituencies of Salybia; Roseau South; Castle Bruce; Wesley; Mahaut; La Plaine; Roseau Central; St. Joseph; Morne Jaune/Riviere Cyrique/Grand Fond and Roseau Valley are being questioned.
- [3] In summary, the petitions pray that the court finds that the successful candidates against whom the petitions are filed ("the respondents/candidates") were not duly returned and thus their elections were void. The election petitions ask that the

opposing candidates who were not successful, be declared duly returned or elected. The petitioners also seek declarations that their constitutional rights have been infringed and request compensation in damages and costs. The petitions raise several issues of electoral breaches and election offences and one of the petitions addresses the issue of disqualification of one Member of Parliament based on her alleged allegiance to a foreign power or state.

Salybia Petition – 307A

- [4] The results of the Salybia constituency are being challenged in the first petition. Annette Sanford and Cozier Frederick both contested that constituency. On 7th December, 2019 Cozier Frederick was declared the winner. The returning officer, Kathleen Auguste, declared that Cozier Frederick received 1065 votes and Annette Sanford received 803 votes. The final vote count provided by the electoral office shows Cozier Frederick received 1081 votes in contrast to Annette Sanford who received 816 votes. The final results reveal a margin of 265 votes in favour of Cozier Frederick.
- [5] Ms. Sanford alleges that several election offences and breaches of electoral laws plague the results of the election of Mr Frederick. Ms. Sanford asserts that:
- (1) The incorrect nomination date was published in the official gazette;
 - (2) The polling clerks, returning officer and Chief Elections Officer failed to use the revised annual list and the supplementary registers as the register of electors;
 - (3) The purported register of electors used by the presiding officer and poll clerks on polling day was different from the register of electors which was printed and handed to Ms. Sandiford;
 - (4) The Chief Elections Officer permitted 116 persons to be registered as electors in the Salybia constituency which was kept a secret and not disclosed to the public until publication of the supplementary register of electors;

- (5) The policy of the electoral office not to disclose the names of the persons who applied for registration, even upon request, until publication in the supplemental register is unlawful and is contrary to section 34(3) of the Registration of Electors Regulations ("Registration Regulations");
- (6) The refusal of the Chief Elections Officer and electoral staff to disclose the names of newly registered persons to the public made it impossible for intended objectors to file objections within 5 days after the President's writs were issued. Ms. Sanford states the policy is therefore unlawful.
- (7) The election was plagued by treating, an election offence;
- (8) Mr. Frederick and DLP financed their campaign using monies obtained through the sale of passports under the CBI programme;
- (9) The 11th Respondent Prime Minister Roosevelt Skerrit, Anthony Haiden and Ali Monfared used monies obtained from the proceeds of crime or corruption to finance the DLP's campaign;
- (10) Dominica Broadcasting Corporation ("DBC" and "DBS") radio denied equal access to the state media;
- (11) There was the use of intimidation and brutality against persons;
- (12) Ms. Sanford's legitimate expectation that the Electoral Commission ("the Commission") would remove the names of ineligible voters and issue voter ID cards were breached by the Commission;
- (13) The presiding and returning officers unlawfully rejected several ballot papers.

[6] Ms. Sanford therefore says that Cozier Frederick was not duly returned and that the election was void.

Roseau South Petition - 307B

[7] The results of the constituency of Roseau South are being challenged in the second petition. Joshua Francis and Chekira Lockhart-Hypolite were named as candidates for the said constituency. On 7th December, 2019, Mrs. Chekira

Lockhart-Hypolite was returned as the successful candidate having amassed a total of 2214 votes as opposed to Mr. Joshua Francis who received 1915 votes. Mrs. Lockhart-Hypolite enjoyed a margin of 299 votes over her opponent Mr. Francis.

[8] The petitioner, Daria Eugene, states that she is a person who had a right to vote and voted in the 6th December, 2019 election. She states that there were several electoral offences and breaches of electoral laws. Ms. Eugene states that the election was void because:

- (1) The incorrect nomination date was published in the official gazette;
- (2) Objections were filed against the names of a number of individuals published in the preliminary and quarterly registers, but there was no hearing to determine these objections;
- (3) The polling clerks, returning officer and Chief Elections Officer failed to use the revised annual list and the supplementary register as the register of electors on polling day;
- (4) The purported register of electors used by the presiding officer and poll clerks on polling day was different from the register of electors which was printed and handed to the petitioner;
- (5) The Chief Elections Officer permitted 334 persons to be registered as electors in the Roseau South constituency which was kept a secret and not disclosed to the public until publication of the supplementary register of electors;
- (6) The policy of the electoral office not to disclose the names of the persons who applied for registration to the public, even upon request, until publication in the supplemental register is unlawful and contrary to section 34(3) of the Registration Regulations;
- (7) The refusal of the Chief Elections Officer and electoral staff to disclose the names of newly registered persons to the public made it impossible for intended objectors to file objections within 5 days after the President's writs were issued.

- (8) There was unlawful treating of voters;
- (9) The offence of bribery was committed;
- (10) Mrs. Lockhart – Hypolite and the DLP corruptly financed their campaign using monies obtained through the sale of passports under the CBI programme;
- (11) The 11th Respondent Prime Minister Roosevelt Skerrit, Anthony Haiden and Ali Monfared used monies obtained from the proceeds of crime or corruption to finance the DLP's campaign;
- (12) DBS radio breached the right to equal access to state media;
- (13) Voters were intimidated and brutalised;
- (14) The Commission breached a legitimate expectation that the names of illegible voters would be removed from the registers and that voter ID cards would be issued;
- (15) The presiding and returning officers unlawfully rejected several ballot papers.

Castle Bruce Petition – 307C

[9] The third petition concerns the constituency of Castle Bruce where the margin of victory was quite small. In that constituency, the petitioner, Ernie Lawrence Jno-Finn stood as the candidate for the UWP and Octavia Alfred stood for the DLP. On 7th December, 2019, Octavia Alfred was declared the winner amassing a total of 842 votes in contrast to Ernie Lawrence Jno-Finn who received 808 votes. The margin of victory for Octavia Alfred was 34 votes.

[10] Ms. Jno-Finn states that Octavia Alfred was not duly elected and that the election was void. She pleads that:

- (1) Objections were filed against the inclusion of names of a number of individuals published in the preliminary and quarterly registers but there was no hearing to determine these objections;

- (2) The polling clerks, returning officer and Chief Elections Officer failed to use the revised annual list and the supplementary register as the register of electors on polling day;
- (3) The purported register of electors used by the presiding officer and poll clerks on polling day was different from the register of electors which was printed and handed to the petitioner;
- (4) The Chief Elections Officer permitted 53 persons to be registered as electors in the Castle Bruce constituency which was kept a secret and not disclosed to the public until publication of the supplementary register of electors;
- (5) The policy of the Electoral Office not to disclose the names of the persons who applied for registration to the public, even upon request, until publication in the supplemental register is unlawful and contrary to section 34(3) of the Registration Regulations;
- (6) The refusal of the Chief Elections Officer and electoral staff to disclose the names of newly registered persons to the public made it impossible for intended objectors to file objections within 5 days after the writ was issued;
- (7) Voters were illegally treated by entertainment and payment of transportation to influence them to vote;
- (8) Bribery was committed by Mrs. Lockhart-Hypolite or her agents;
- (9) Mrs. Lockhart-Hypolite and the DLP corruptly financed their campaign using monies obtained through the sale of passports under the CBI programme;
- (10) The 11th Respondent Prime Minister Roosevelt Skerrit, Anthony Haiden and Ali Monfared used monies obtained from the proceeds of crime or corruption to finance the DLP's campaign;
- (11) DBS radio breached the right to equal access to the state media;
- (12) Individuals (voters) were intimidated and brutalised;

- (13) Ms. Jno Finn's legitimate expectation that the names of ineligible voters would be removed by the Commission and that voter ID cards would be issued before the election were breached by the Commission.
- (14) The presiding officer and returning officer unlawfully and wilfully rejected several ballot papers.

Wesley Petition – 307D

- [11] The fourth petition concerns the Wesley constituency. In the December 2019 elections, the petitioner, Ezekiel Bazil and Fidel Niel Grant were candidates contesting the elections held in the constituency of Wesley. The returning officer reported that Fidel Niel Grant received 854 votes and Ezekiel Bazil received 756 votes. The final results from the electoral office revealed that Fidel Niel Grant received 4 more votes bringing his total to 859 and Ezekiel Bazil received 3 more votes totalling 759 votes. There was a margin of 100 votes in favour of Mr. Grant. Therefore, Fidel Grant was declared the winner of the Wesley seat. The Wesley petition contains similar allegations to the Castle Bruce petition 307C, save and except, there is no allegations of the use of different lists between the electoral staff and the petitioner; bribery and the issue of the publishing of incorrect nomination day were not pleaded in the Wesley petition. Mr. Bazil, states that Mr. Grant was not duly elected and that the election was void as a result of breaches of electoral laws and election offences.

Mahaut Petition – 307E

- [12] The fifth petition relates to the Mahaut constituency where Felix Thomas and Rayburn Blackmoore contested the elections. The returning officer declared preliminarily that Mr. Blackmoore amassed a total of 2157 votes as opposed to Mr. Thomas' total of 1843 votes. The final count from the electoral office increased the tally of votes for both candidates. Mr. Thomas' total votes increased to 1865 votes and Mr. Blackmoore's votes increased to 2191 votes. As a result, Mr.

Blackmoore was declared the winner. The allegations in this petition are also similar to the Castle Bruce petition 307C, save and except no allegation of bribery was raised in the Mahaut petition.

La Plaine Petition - 307F

- [13] The result of the election in the constituency of La Plaine is the subject of the sixth petition. In this constituency, the petitioner, Francisca Joseph and Kent Edwards stood as candidates. On 7th December 2019, the returning officer returned Mr. Edwards as being duly elected. The official results show that Mr. Edwards received 742 votes and Ms. Joseph received 665 votes. Ms. Joseph now challenges these results by way of an election petition and says that the election was void with respect to several breaches of electoral laws and election offences.
- [14] The allegations contained in this petition are also similar to the allegations made in the Castle Bruce petition, except that no allegation of bribery was raised on this petition. In paragraphs 27 to 29 of the petition, Ms. Joseph exhibits the names of 488 persons registered as electors and who are also identified as allegedly unqualified to be registered by virtue of the fact that they were either deceased or resided outside of Dominica for more than 5 consecutive years. These persons were allowed to vote in spite of the objections. Ms. Joseph states that her agents objected to Vina George and Arnelle George voting on the basis that they had already voted in the election. However, she claims that polling officials allowed both individuals to vote upon taking an oath despite the objection. Ms. Joseph pleads that a blind and physically incapacitated person, John Frank Stedman was allegedly prevented from voting despite specifically requesting the assistance of Anthony Attidore, a Justice of the Peace.

Roseau Central Petition - 307G

- [15] The seventh petition challenges the results of the elections in the constituency of Roseau Central. The petitioners, Glenroy Cuffy, Dane Oswald George and Atherley Robin each state that they were voters and in relation to Mr. Cuffy, he states that he was the UWP candidate for that constituency. Mr. Cuffy contested the polls against Melissa Skerrit, the candidate for the victorious DLP. After the election, the returning officer returned Mrs. Skerrit as the winner of that election. Mr. Cuffy received 866 votes and Mrs. Skerrit received 1056 votes. The final count issued from the electoral office increased total votes received by Mrs. Skerrit by 7 to 1063 votes in contrast to Mr. Cuffy whose total increased by 4 votes to 870 votes. The petitioners state that Mrs. Skerrit was not duly elected and that the election was void.
- [16] Again the allegations in this petition are similar to the Castle Bruce petition, except that there is no allegation of bribery on this petition. The petitioners allege that on 14th November, 2019 Atherley Robin and Onika Moulon both filed objections against the inclusion of a total of 9 names included on the supplemental register. The petitioners allege that several persons falsely and fraudulently claimed the right to vote and Mr. Cuffy's agents at the polling station objected to those persons.
- [17] The complaints on that petition also include the assertions that –
- (1) The polling clerk and the presiding officer allowed 2 persons to vote in the constituency ,even though their names were not on the register of electors used by the polling clerks and agents;
 - (2) Mrs. Skerrit and her agents allowed an LCD billboard to advertise political propaganda on polling day;
 - (3) Mrs. Skerrit is a Canadian Citizen and by virtue of her travelling on a Canadian passport, she is under the acknowledgment of allegiance, obedience and adherence to a foreign power or state.

St. Joseph Petition – 307H

[18] The eighth petition concerns the constituency of St. Joseph where Adis King and Monell Williams Jno Baptiste were the named candidates. The results of the election were reported by the returning officer, Anthony Joseph, who stated that Ms. King received 1324 votes and Ms. Williams Jno Baptiste received 877 votes. Ms. King was declared the winner of that election. Mrs. Williams Jno Baptiste challenges these results and states that Ms. King was not duly elected and that the election was void due to various election offences and breaches of electoral laws.

[19] Mrs. Williams Jno Baptiste's petition is similar to the Salybia petition 307A. She cited the publishing of the incorrect nomination date in the official gazette, the issue of objections to names in the preliminary list and the issue of the list of electors used by polling clerks on election day. Further, she alleges illegal voting by one individual, Kevin King whose registration was objected to on the basis that he did not reside in the constituency. Notwithstanding the objection, Kevin King, who is the son of Adis King, was allowed to vote in the St. Joseph constituency.

Morne Jaune/Riviere Cyrique/Grand Fond Petition – 307I

[20] The ninth petition challenges the results of the Morne Jaune/Riviere Cyrique/Grand Fond constituency. The petitioner, Pharo Cuffy was presented as the candidate for the UWP and Gretta Roberts was presented as the candidate for the DLP. On 7th December, 2019, the returning officer, Shirlene Prescott returned Ms. Roberts as the winner of that contest. Ms. Roberts received 601 votes and Mr. Cuffy received 541 votes. Mr. Cuffy disputes these results and avers that Ms. Roberts was not duly elected. His petition declares that the election was void as result of several breaches of electoral laws and election offences. The allegations

contained in the petition are again similar to the Casile Bruce petition, save that no allegation of bribery was pleaded on this petition.

Roseau Valley Petition - 307J

- [21] The tenth petition centres on the constituency of Roseau Valley where the petitioner, Ronald Charles contested the elections as the candidate for the UWP. Irvin Mc Intyre contested the elections as the candidate for the DLP. On 7th December, 2019, the returning officer reported that Irvin Mc Intyre received 1135 votes and Ronald Charles received 777 votes. However, the results declared by the electoral office show a reduction of the votes cast for both candidates. The results state that Mr. Mc Intyre received 1118 votes and Mr. Charles 768 votes. Mr. Charles is dissatisfied with the results. He challenges them by way of election petition citing several allegations of breach and electoral offences. Mr. Charles states that Mr. Mc Intyre was not duly elected. The allegations in the petition are similar to that of the Roseau South petition, save that no allegation of bribery was pleaded on this petition.

Summary of the common allegations or complaints on the petitions

- [22] The petitions present common allegations to the effect that:
- (1) The incorrect nomination date was published in the official gazette and by reason of this error in the publication, many persons believed that nomination day was on the Wednesday during the week of the 17th November 2019, which was in fact Wednesday 20th November, 2019.
 - (2) Objections were filed against the names of a number of individuals published in the preliminary and quarterly registers, but there was no hearing to determine the objections;

- (3) The polling clerks, returning officer and Chief Elections Officer failed to use the revised annual list and the supplementary register as the register of electors for the polls;
- (4) The purported register of electors used by the presiding officer and poll clerks on polling day was different from the register of electors which was printed and handed to the petitioners;
- (5) The Chief Elections Officer permitted certain individuals to be registered as electors which was kept a secret and not disclosed to the public until publication of the supplementary register of electors;
- (6) The policy of the Electoral Office not to disclose the names of the persons who applied for registration to the public, even upon request, until publication in the supplemental register is unlawful and contrary to section 34(3) of the Registration Regulations;
- (7) The refusal of the Chief Elections Officer and electoral staff to disclose the names of newly registered person to the public made it impossible for intended objectors to file objections within 5 days after the writ was issued.;
- (8) There was corrupt treating of voters to free food, travel and entertainment by way of concerts by regional and international artists for the purpose of corruptly influencing them not to vote for the UWP candidates at the election;
- (9) There was importation of thousands of voters who reside abroad to travel to Dominica with the aim of corruptly influencing them to vote for the DLP;

- (10) The respondents/candidates and the DLP corruptly financed their campaign using monies obtained through the sale of passports under the CBI programme;
- (11) The 11th respondent Prime Minister Roosevelt Skerrit, Anthony Haiden and Ali Monfared used monies obtained from the proceeds of crime to finance the DLP's campaign;
- (12) The petitioners' constitutional rights to freedom of expression and protection from discrimination were breached by the Dominica Broadcasting Corporation ("DBS" and "DBC"), a statutory corporation;
- (13) Intimidation, police brutality, victimisation and discrimination were inflicted on individuals, UWP supporters and opposition members. These illegal acts were authorised by the 11th Respondent, Prime Minister Roosevelt Skerrit and the 13th Respondent, the Commissioner of Police through members of the police force and the Regional Security System (RSS);
- (14) The petitioners had a legitimate expectation that the names of ineligible voters would be removed by the Commission and that voter ID cards would be issued before the election;
- (15) The presiding officer and returning officers unlawfully and willfully rejected several ballot papers.

Summary of the divergent allegations or complaints in the petitions

- [23] The petitions in relation to the elections in the constituencies of Roseau South, Castle Bruce, La Plaine, St. Joseph and Roseau Central contain allegations which were not included on the other petitions:

Roseau South Petition (Bribery)

- (1) On the Roseau South petition, Ms. Eugene pleads that on 6th December 2019, she witnessed several persons entering the constituency office of Ms. Lockhart- Hypolite, located on Victoria Street after they completed voting and leaving with envelopes of cash. Ms. Eugene states that she witnessed these persons counting the money in the envelopes outside Mrs. Lockhart-Hypolite's constituency office. She asserts that the monies were paid as a bribe to electors for voting for Mrs. Lockhart- Hypolite.

Castle Bruce Petition (Bribery)

- (2) On the Castle Bruce petition, Ms. Jno. Finn alleges that –
 - (a) On 5th December 2019, Ms. Alfred's agent, Yvette Laurent paid \$200.00 to Jefferson Common, an elector in the constituency of Castle Bruce, at Tranto in Castle Bruce as a bribe for him to vote for Ms. Alfred in the general election. Ms. Jno Finn explains that Yvette Laurent is the mother of Roosevelt Skerrit's first son and is a member, agent and operative of the DLP. Ms. Jno. Finn further states that Yvette Laurent at all materials times acted as Ms. Alfred's agent. Ms. Jno Finn cites another incident where Yvette Laurent handed a bottle with some rum in it to Jefferson Common.
 - (b) On 5th December, 2019, John Laudat received \$20.00 from Mrs. Alfred's agent, Glen Darroux as a bribe for him to vote for Mrs. Alfred. The incident is said to have occurred in Tranto in Castle Bruce. John Laudat was an elector in the Castle Bruce constituency. Glen Darroux is purportedly a supporter of the DLP and has campaigned for Mrs. Alfred. Mr. Darroux allegedly told John Laudat to remember him tomorrow when he handed the \$20.00 to him.

- (c) Glen Darroux and Yvette Laurent bribed several other persons in the Castle Bruce constituency by giving them money to vote for Mrs. Alfred.

La Plaine Petition (Objections and voting irregularities)

- [24] At paragraph 27 of the petition, the petitioner, Ms. Francisca Joseph alleges that:
- (1) 488 persons were registered as electors on elections day. These persons were identified as unqualified to be registered by virtue of the fact that they were either deceased or resided outside of Dominica for more than 5 consecutive years;
 - (2) Ms. Joseph's agents objected to Vina George and Arnelle George voting on the basis that they had already voted in the election. However, both individuals were allowed to vote upon taking an oath despite the objection;
 - (3) A blind and physically incapacitated person, John Frank Stedman was unlawfully prevented from voting despite requesting the assistance of Anthony Attidore, Justice of the Peace;
 - (4) On polling day Ms. Joseph's agents objected to Nathalie Joseph and Dagma Henderson voting on the basis that they were corruptly treated with a ticket to travel to Dominica to vote for the DLP.

Roseau Central Petition (Objections and voting irregularities)

- [25] The petitioners complain that:
- (1) On 14th November 2019, Atherley Robin filed objections against the inclusion of 4 names in the supplemental register;
 - (2) On 14th November 2019, Onika Moulon objected to the inclusion of 5 names on the supplemental register;
Several persons falsely and fraudulently claimed the right the vote and the agents at the polling station objected to those persons;

- (3) Linda George and Diane Hypolite were allowed by the poll clerk and the presiding officer to vote in the constituency despite the fact that their names were not on the register of electors used by the polling clerks and agents;
- (4) Mrs. Skerit and her agents allowed an LCD billboard to advertise political propaganda on polling day with slogans, such as "it is safer with Labour" with an "X" by a shoe. They state that this billboard was within 100 yards of the Windsor Park stadium polling station which unduly influenced hundreds of voters to vote for Mrs. Skerit and gave her an unfair advantage rendering her return undue, null and void;
- (5) Mrs. Skerit is a citizen of Canada and a holder of a Canadian passport. The petitioners allege that Mrs. Skerit travelled using her Canadian passport on 25th January, 2019; 27th March, 2019 and 1st April, 2019. The petitioners state that Mrs. Skerit is under the acknowledgment of allegiance, obedience and adherence to a foreign power or state namely Canada by virtue of her act of travelling using her Canadian passport. She is therefore disqualified from being elected to Parliament.

Applications to strike out the petitions

Summary of the grounds for the applications to strike out

[26] Counsel for the respondents (the applicants on the strike out applications) presented a useful compendium of the grounds for the strike out applications. The grounds of the applications are:

- (1) The petitions, or paragraphs thereof disclose no cause of action and/ or are abuses of the process of the court;
- (2) There was no service on the 5th and 9th respondents and therefore as against them the petitions are a nullity;
- (3) The 2nd to 4th, 5th to 9th and 11 to 13th respondents were improperly joined. The Commission ought to have been joined. Alternatively, there is no cause of action pleaded against these respondents.

- (4) The petitioners have not pleaded any basis, or any sufficient basis, in fact or law for the setting aside of the election;
- (5) Having regard to the House of Assembly (Elections) Act Chap 2:01 ("the Elections Act") and/ or the Registration Of Electors Act Chap 2:03 ("the Registration Act") or the Registration of Electors Regulations ("the Registration Regulations") and common law, there are no properly pleaded grounds, or sufficient material facts and particulars, capable of showing a viable or properly pleaded cause of action showing :
 - (a) The commission by the respondents and/ or their alleged authorized agents of the corrupt practices of bribery and treating prescribed by sections 55 and 56 of the Elections Act, or
 - (b) Any alleged irregularities under or breaches of the respective legislation or common law in relation to the conduct of the election or the counts, and certainly none which show that the election was a travesty or sham, or that the result was affected thereby;
 - (c) Consequently, no reasonable cause of action of an undue result or election is disclosed in the petitions.
- (6) The allegations against the 10th 11th, 12th and 13th respondents disclose no corrupt practice, or breach of the election law, and therefore no basis for setting aside the election.
- (7) The petitioners have in relation to the non-election allegations against the 11th and 13th respondents failed to plead any violation of their constitutional rights. More importantly, there is no pleading that these allegations rendered the election a sham or affected the result of the election.

The Submissions

Summary of the respondents' submissions

- [27] Most of the submissions by the various respondents are similar and can be summarised.

Guiding principles

- [28] Counsel presented the following submissions on the guiding principles on an application to strike out an elections petition:
- (1) That the respondents are entitled to invoke the inherent jurisdiction of the court, and apply to strike out the petitions on the ground that they fail to disclose a cause of action and/or on the ground they constitute in whole or in part an abuse of the process of the court.
 - (2) Section 33(2)(a) and (b) of the Constitution and sections 4(1) and (2) and 7 of the Registration Act are unambiguous. They protect the right of every person registered on the date of election to vote and that this right is entrenched by the provisions of section 33 of the Constitution. They cite **Ezechiel Joseph v Alvina Reynolds**¹ where Rawlins JA accepted the judgment of Davis CJ in **Ribeiro v Simmonds**² to the effect that: *"I do not think that the intention of the law is that an election should be won or lost on technicalities in Court, but rather that the wish of the people, expressed through the ballot box, should prevail."*³
 - (3) The pleadings must point to the substantive irregularities or breaches that show or disclose that the return or election does not reflect the wishes of the people, that is, the election was a sham or that the result was affected.

¹ SLUHCVP2012/0014 at paragraph 37

² SKBHCVP1979/0002

³ Ribeiro v Simmonds SKBHCVP1979/0002 at page 6

- (4) Counsel also cite **Ronald Green v Peter St. Jean**⁴ where Michel JA stated: *"while the filing of an election petition is the right of every election candidate, those seeking elective office should be careful not to transport their electoral contests from the political platforms to the law courts unless there is a good basis for challenging the outcome of an election"*.
- (5) Further, they argue, that in support of the applicants' claim of an abuse of the process of the court, they are entitled to rely on affidavit evidence to show, summarily, the true facts and circumstances concerning the allegations made in relation to the error of the Chief Elections Officer and nomination day, and the objections including the dates when filed and whether the alleged objections were filed before or after the issue of the President's writs.
- (6) Consequently, the High Court is obliged to exercise its inherent jurisdiction and strike out the petitions once it accepts the respondents' (applicants') case that the petitioners' election petitions were not *"perfected"*, within 21 days, that is to say, the petitions do not disclose relevant or proper grounds, and/or sufficient material facts and particulars, capable of showing or establishing that the election of the respondents in the 2019 general elections was as a result of an undue return or undue elections.

Perfection of the petition

[29] On the issue of the perfection of the petitions, counsel submit that –

- (1) The election jurisdiction of the High Court is a special one and the provisions of the Elections Act are mandatory and must be strictly complied with by the petitioners.

⁴ DOMHCVAP2012/0001 at paragraphs 50

- (2) In this regard, the respondents (applicants) rely on **Emlyn Smith v Christopher and Supervisor of Elections**⁵ where Rawlins J, as he then was, said that an election petition must be perfected with material facts and particulars within the time limited for instituting proceedings⁶.

Tests for setting aside an election

- [30] Counsel submit that the court will set aside an election where there is an undue return or undue election of a member of the House of Assembly (section 65 of the Elections Act). Statute does not define these terms but the common law offers guidance. **Radix v Gairy**⁷ is presented as the leading authority on this issue.
- [31] Under the common law, the first limb is substantial non-compliance. Counsel referred the Court to the judgment of Rawlins CJ in **Quinn Leandro** at paragraphs 151 to 158 where the Court ruled that the evidence must show that the alleged non-compliance was such that "...the election was a sham or travesty". The second limb of the common law test is satisfied on proof that breaches of the relevant law affected the result of the election.

Proper parties

- [32] On the issue of whether the respondents are proper parties to the petitions, the respondents (applicants) argue that:
- (1) The 5th and 9th respondents were not served and therefore, they ought to be struck out as parties to the petitions.

⁵ BVIHCV2003/0097 at paragraph 44

⁶ They also present *Ferdinand Frampton and Ors v Pinard* DOMHCV2005/0149; *Dean Jonas and Ors. v Jacqui Quinn Leandro* ANUHCV2009/0141 and *Loftus Durand and Ors. v The President and Ors.* DOMHCVAP2019/0006

⁷ (1978) 25 WIR 553 at 556(g), *Williams v Giraudy* [1978] 25 WIR 529 at page 534(h) to (i), 540(g) to (i), *Artherton v Fergus* [1988] LRC (Const) 115 at page 124(d) to 125(a), *Russell Randolph et al v AG* (1995) 50 WIR 127 at 142(d), *Dean Jonas v Quinn Leandro*, *Bharat v Deyalsingh*, Claim CV 2015-03107 at paragraphs 155 to 185 and *Lauron Baptiste v Davis* Claim No. 202 of 2015 at paragraphs 142 to 163

- (2) The 2nd, 3rd, 5th to 9th and 11th to 13th respondents are all public officials or officers and/or persons appointed to statutory or constitutional offices or posts to perform public duties as elections officers, members of the Commission, Prime Minister, Attorney General and Chief of Police.
- (3) They are all paid from public funds and are joined in their official capacities including the 5th to 9th respondents who are joined as members of the Commission.
- (4) A person cannot be sued in his or her official capacity on an election petition⁸.
- (5) A person or body may only be joined as a party to an election petition if he or she has committed a corrupt act or elections offence and/or contravened a provision of the Elections Act and/or Registration Act or Registration Regulations which rendered the 2019 election a sham or affected its result. However, Counsel submit that the petitions include no such grounds or allegations against 2nd, 3rd, 5th to 9th and 11th to 13th respondents.
- (6) The 12th respondent was purportedly joined in his official capacity under the State Proceedings Act because of an allegation that the petitioners' constitutional rights were contravened by DBS. Counsel submits that the allegations against the Attorney General constitute a naked abuse of the process of the Court in view of the ruling in **Loftus Durand v The President and Others**⁹.

⁸ Frampton v Pinard DOMHCV2005/0149 at paragraphs 47 to 53

⁹ DOMHCVAP 2019/0006

Joinder of the Electoral Commission

[33] Counsel argue that:

- (1) The petitioners erred in failing to join the Commission. Counsel states that specific allegations were made against the Commission and not its individual members¹⁰.
- (2) Accordingly, the respondents who are joined as members of the Commission ought to be struck out for the additional reason that the proper party is the Commission.
- (3) Alternatively, and in any event, none of the members of the Commission or even the Commission itself has constitutional or statutory authority to cleanse the register or implement voters ID cards in the manner alleged by the petitioners or at all. Therefore, even assuming that the Commission made representations as alleged, no legitimate expectation claim could have arisen. This is since the representations were made at large and not to any specific persons or group. The representations were also made in any event in excess of the Commission's jurisdiction as the law-making power for voter registration and elections is vested in the Parliament.
- (4) The issue of the cleansing of the electors' lists and the issuance of voter ID cards (electoral reform) is not a proper subject of an election petition.
- (5) There are no allegations of wrongdoing, corrupt practice and/or an election offence or a contravention of the **Elections Act** and relevant election legislation against the 2 to 4th, 5th to 9th and 11th to 13th respondents in the petitions.

¹⁰ Davis v PSC (1984) 33 WIR 112 at 116 and Ferdinand Frampton v Pinard are presented as authority for this submission.

- (6) The Commission is a creature of the Constitution which exercised its duties and functions as a corporate body.
- (7) The respondents (applicants) accept that Blenman J in **Dean Jonas v Quinn-Leandro and Others**¹¹ ruled that the Electoral Commission in Antigua and Barbuda could not be joined. However, they submit this case could be distinguished in that Blenman J relied on **Ferdinand Frampton v Ian Pinard et al**¹² which did not concern an application to strike out the Electoral Commission as a party. Therefore, the respondents (applicants) submit that the court should not follow the ruling in **Dean Jonas**.

Bribery

[34] With respect to the allegations of bribery, counsel submit that:-

- (1) There is no allegation of any corrupt or conditional agreement between the DLP or its agents and any specific and named elector.
- (2) There is no pleaded allegation that the DLP acted as agents for the respondents/candidates or with their consent nor is there any allegation that the respondents/candidates and/or their agents entered into any conditional or corrupt agreement with any identified supporter or provided or paid for any transportation for any supporters in order to induce that supporter to vote for them.
- (3) Rawlins J in **Ferdinand Frampton** and Thomas J in **John Abraham v Kelvar Darroux**¹³ expressed the view that an allegation of a corrupt practice must comply with the terms of section 55 of the **Elections Act**. The fullest of relevant grounds and particulars are required. There must be no vagueness, omissions, subjectivity or conjecture in any pleading of

¹¹ ANUHCv2009/0141

¹² DOMHCV2005/0149

¹³ DOMHCV2010/0003 at paras 41 to 58

a corrupt practice. The pleadings must, additionally, be perfected within the prescribed period of 21 days.

- (4) The petitioners were required to plead and show that the respondents/candidates committed the offence of bribery, either by themselves or through any other person on their behalf. Counsel states that there is no such pleaded case on the petitions. Further, Counsel submit that an essential ingredient of the offence of bribery is that there must be a conditional agreement¹⁴ or bargain between an elector allegedly bribed and the candidate or their authorised agent.
 - (5) The petitioners were required to plead relevant grounds, material facts and particulars of a conditional agreement or bargain. Counsel submits that the cornerstone of this agreement or bargain is that it had to be made conditionally "in order to induce an elector to vote". That means that the agreement must have an operating and controlling influence over the elector in that if the elector did not vote as agreed, no transportation or money for transportation would be paid.
 - (6) The petitioners were required to plead that the alleged bribery was committed by the authorised agent. Therefore, unless it is pleaded that the person who allegedly committed the offence is and was the authorised agent, and was acting within the scope of the agency, there is no case to answer.
-
- (7) In relation to paragraph 33 of the Roseau South petition, counsel states that the allegation is incurably bad and hopeless as it does not plead the ground or particulars of the bargain or conditional agreement of the bribe. There is no allegation or particulars as to who may have paid the money

¹⁴ Halsbury's Laws of England Vol. 15, para 770

or that it was paid by the 1st Respondent or her authorised agents. The "several persons" are not identified.

- (8) Similarly, in the Castle Bruce petition the allegations at paragraphs 33 to 35 of the petition are incurably bad and hopeless. The allegations are not pleaded with precision. There are no pleaded facts surrounding the alleged payments or agency or pleadings of any conditional agreement or bargain by the 1st Respondent or her authorised agents. The allegations are pleaded in general terms.
- (9) The allegation at paragraph 33 of the Castle Bruce petition that Yvette Laurent is the mother of the political leader's son and a member of, agent and operative of the DLP is irrelevant. Further, the allegations in paragraphs 33 and 34 that Yvette Laurent and Glen Darroux "*acted at all material times as the 1st respondent's agents*" is wholly insufficient.

Treating and importation of voters

[35] In relation to the allegations under importation of voters and treating, counsel states that:

- (1) The paragraphs on treating are wholly irrelevant, scandalous, vexatious and an abuse of process of the court.
- (2) Counsel refers the Court to the judgment in **Darroux** and submits that the offence of treating requires particulars which show that the respondents/candidates or their authorised agents used or executed the entertainment to corruptly influence specific and identified electors to vote for them or to refrain from voting at the election.

- (3) No elector who was corruptly influenced by the respondents/candidates or their agents has been named or identified. Therefore, the allegations do not disclose a cause of action or case of treating.
- (4) At paragraph 31 of the La Plaine petition the allegation is to the effect that there were objections to one Joseph and one Henderson voting on the basis that they were corruptly treated with a ticket to travel to Dominica to vote for the DLP. However, there is no pleading that those 2 persons were treated by the 1st Respondent and his authorised agents.

Incorrect nomination date

- [36] Regarding the wrong date for the nomination of candidates, counsel posits that there was no error in the date on the President's writs which were published in the Gazette. The Chief Elections Officer made an error in his notice and this was in fact remedied.
- [37] In any event, counsel continues, the petitioners do not plead that they were unaware of the date of the election or denied the right to vote on elections day. There are no pleaded materials or facts which show any material breach or if there was a breach, that it rendered the elections a sham or affected its results.
- [38] Further, counsel explains that all of the political parties and their candidates duly presented themselves and were nominated without incident.

Objections

- [39] With respect to the issue of objections and the use of the registers, counsel submit that:
 - (1) Section 16 of the **Electors Act** conferred no right of objection and imposed no obligation on the Chief Elections Officer to hear or continue to

hear any pre-writ objections. The reliance on section 16 is misconceived. There are no pleaded grounds or facts to show a material breach or a breach that affected the result of the election.

- (2) In relation to the allegation of the use of different lists on election day, the allegation is devoid of particulars and is incurably bad. There are no allegations that the lists used by agents of the UWP were not accurate or credible or that duly registered electors were disenfranchised.
- (3) Regarding the Chief Elections Officers' refusal to disclose the names of duly registered voters, there is no authority for him to disclose names of persons registered prior to publication of the registers. Counsel supports his submission by referring the court to Registration Regulations 23 and 24.
- (4) As to the allegation of objections being filed, the petitioners have failed to join the registering officer for Roseau Central. That omission is fatal to these allegations.
- (5) The issuance of the President's writs triggered the Chief Elections Officer's statutory obligation under section 16 of the **Registration Act** to immediately begin preparing the supplementary register for the election.

Intimidation and Police Brutality

-
- [40] Regarding allegations of intimidation of persons and police brutality, counsel submit that the allegations are completely irrelevant, misconceived and scandalous. Counsel states that in any event, the results show that the UWP candidates for Salisbury and Marigot won their seats in the election.

Allegations against the Commission

[41] Counsel made the following points in relation to the allegations against the Commission:

- (1) The Commission functions as a corporate body. The allegations are wholly vague, irrelevant, an abuse of process and do not disclose a cause of action against the Commission.
- (2) The petitioners have no basis for a legitimate expectation as the Constitution vests exclusive powers in the Parliament to make election laws or regulations.

Allegations against the Electoral Officers

- (1) The petitioners did not join the presiding officers who conducted the preliminary counts. This omission is fatal to their claim.
 - (2) The petitioners have not pleaded or particularised any specific irregularities or misconduct on the part of the presiding officer at the final count.
 - (3) In any event, counsel states that there is no claim for a recount or scrutiny and the effect of this is that there can be no challenge to the counts, no recount, no setting aside of votes and no order for inspection.
-

Allegations against DBS

[42] In respect of the 10th Respondent, it is contended that:

- (1) The inclusion of the allegations in the petition against the 10th Respondent, DBS is an abuse of process of the court because the same or similar allegations were made in the application for leave to apply for judicial review against DBS in **Loftus Durand**. These complaints were remitted to the High Court by the Court of Appeal for the hearing of the application for judicial review on its merit. The identical allegations ought not to be litigated twice in 2 different matters in the same court.
- (2) DBS is a statutory corporation governed by a Board of Directors and not a department of Government controlled by Ministers or public servants. It is a body corporate governed by the **Dominica Broadcasting Act** and a Board of Directors. There are no pleaded material facts or particulars concerning any decision, act or conduct by the respondents/candidates, their agents, or any executive member of the DLP as their agent. There is no allegation that DBS acted on the directions of the DLP or its agents or the respondents/candidates or their agents. In any event, even if the allegations are true, there is no pleading that they affected the conduct or result of the election.
- (3) The allegations in the impugned paragraphs are wholly irrelevant, scandalous, and vexatious and constitute an abuse of process of the Court. In any event, they do not disclose any facts that can amount to a breach of the petitioners' fundamental and constitutional rights or any basis for setting aside an election under sections 55, 56 or any other provisions of the Elections Act.

Petitioners' Submissions

What must the Court consider on an application to strike out?

[43] Counsel for petitioners, *vis.* James submits that a striking out application is a draconian measure and should be used sparingly and only in the most obvious cases. Ms. James submits as follows:

- (1) The burden is a high one and the applicants must satisfy the court that the petitions are bound to fail and not that they might fail.
- (2) The most scantily pleaded petition will not be struck out once it can be shown that there exists basic information pleaded to establish a cause of action.
- (3) Evidence of matters alleged in the petitions are not required when considering an application to strike out. What is required is that the right parties are joined and that a cause of action has been pleaded.
- (4) The petitions are clear, unambiguous, have joined the right parties and show a cause of action for each alleged act. Therefore, counsel submits that the applications to strike out the petitions should be dismissed and the petitioners should be heard at trial.
- (5) Counsel relies on **Raila Amolo Odinga and others v Dr. Ekuru Aukot and Ors Presidential Petition No.1 of 2017**¹⁵ and **Morgan v Simpson**¹⁶.

Respondents' failure to state the jurisdiction of their application

[44] In relation to the issue of the jurisdiction of the court to hear an application to strike out an election petition, Ms. James submits that:

- (1) The applicants make no reference to any specific legislation upon which they make their applications. Counsel states that the failure to state the provision under which one moves the Court has been described as fatal to an application. **Otho Blackett et al v Curtis Alexander et al**¹⁷ is presented as authority for the view that the provisions under which an application is brought should be plainly stated on its face.¹⁸

¹⁵ Presidential Petition No. 1 of 2017 (Kenya)

¹⁶ [1975] QB 151

¹⁷ Barbados High Court Civil Suit No.578 of 2008.

¹⁸ Choo Loi Poi et al v Donald Frederick GDAHCV2008/0556.

- (2) The Elections Act nor its Petition Rules make provision for strike out applications. However, Counsel states that Civil Procedure Rules 2000 ("CPR") 26 and 28 do make provisions for the same.
- (3) Even though the cases of **Ezechiel Joseph, Ethlyn Smith and Others v Eileene and Others** and **Frampton** refer to the court's inherent jurisdiction to strike out petitions or to dismiss them, the language in these cases and the cases of **Quinn Leandro, Lindsay Fitz-Patrick Grant v Glenroy and Others**¹⁹ on the court's jurisdiction to strike out petitions mirrors the language of the CPR. See also **Citco Global Custody NV v Y2K Finance Inc**²⁰. The court is urged to conclude that *"the stipulations for a perfectly perfected petition...is only part of the story."*²¹
- (4) Counsel submits that the cases of **Ferdinand Frampton** at paragraph 13 and **Ali Bashir and another**²² suggest that –
- (a) The power to strike out should be exercised sparingly and only in the most obvious of circumstances;
 - (b) The Court is not invited to consider the applications on a question of evidence, instead the test is applied only to the face of the pleadings or petitions;
 - (c) The Court is generally unwilling to strike out petitions for imperfect compliance. The court may allow particulars where pleadings are deficient.

[45] With respect to the joinder of the respondents, Ms. James submits that:

- (1) Paragraph 21 of the Registration Regulations states that a returning officer is deemed to be joined in a petition once their conduct is being questioned. Paragraph 110 of **Ezechiel Joseph** is cited in support of her argument. Also **Lindsay Fitz-Patrick** at paragraph 36 where the Court stated that the

¹⁹ SKBHCV2010/0026

²⁰ NEVHC VAP2008/022

²¹ Paragraph 64 of the petitioners' submissions

²² [2012] EWHC 3007 QB

petitioner was obliged to join the registration, presiding and returning officers as serious allegations were made against them.

- (2) The petitions pleaded expressly and impliedly that the Chief Elections Officer, registration, presiding and returning officers failed in their duties as mandated by the various provisions of the Registration Act together with its Regulations, the Elections Act and the Constitution.
- (3) These allegations are in relation to their failure to properly gazette the nomination day, failure to deal with objections in accordance with the laws and failing in their duty in relation to the conduct of elections.

Joinder of the Commission

[46] In relation to the joinder of members of the Commission, Ms. James submits that:

- (1) Where an election has not been conducted in compliance with the subsisting election laws, these will be sure grounds to vitiate an election result and cites the authority of **Mark Brantley v Hensley Daniel et al.**²³
- (2) In **Mark Brantley** the petitioner joined the electoral officers in their individual names and their offices.
- (3) The petitioners were entitled to be guided by the common law in respect of joining parties. See paragraphs 47 to 48 of **Ferdinand Frampton**.
- (4) The Chief Elections Officer and registering officers are properly added to the petitions as being sued in their personal capacities for breaches of their statutory duties.
- (5) Nowhere in the Constitution is the Commission defined as a corporate body and there is no legislation that defines the Commission as a corporate body and thereby allowing it to be joined as such.
- (6) The members of the Commission may be joined in their individual capacities or both individual and official capacity.

²³ NEVHCV2011/0130

Joinder of the Attorney General to the petition

- [47] With respect to the joinder of the Attorney General, Ms. James states that the Attorney General is routinely added to election petitions. Counsel states that the respondents in **Ferdinand Frampton** were unsuccessful in the allegations against DBS because they failed to add the Attorney General. She states that the petitions have raised allegations against DBS and therefore, joining the Attorney General is crucially required. Moreover, Counsel contends that the claim that the State Proceedings Act does not apply to the election petition jurisdiction of the High Court is false.

Was the Prime Minister properly joined

- [48] Ms. James then turns to the question of whether Mr. Roosevelt Skerrit, the Prime Minister was properly joined as a Respondent. Ms. James states that in **Mark Brantley** it was accepted that the Premier was properly joined being the person responsible for advising officials for fixing the general elections and the date for nomination. Counsel states this is accepted practice and cites the authority of **Antoine Defoe et al v Roosevelt Skerrit et al**²⁴ in support of this argument. Moreover, she states that the 11th Respondent as Prime Minister is essential because he was responsible for calling the elections, approving the finance of the Commission, he is the Minister for Broadcasting in relation to the DBS allegations and he is implicated in allegations against him of undue influence and intimidation of the petitioners.

Was the Commissioner of Police properly joined?

- [49] In relation to the joinder of the Commissioner of Police as the 13th Respondent, Counsel submits that by virtue of the State Proceedings Act, the Commissioner can be added since he is a servant of the State. Further, there are allegations

²⁴ DOMHCVAP2018/0004

against him for abuse of his duty and failure to carry out his duties in accordance with the Constitution. Therefore, Counsel concludes that the Commissioner of Police is a proper party.

Response on the lack of particulars in the pleadings

[50] Ms. James submits that:

- (1) The allegations that the petitions are vague and disclose no cause of action are false.
- (2) The pleadings are lengthy in detail, inclusive of specific dates, incidents and laws which show that the elections in those constituencies were unsafe. She states that there is enough information for the respondents to be aware of the case that they are tasked with defending.
- (3) The respondents are seeking to have the matter determined without trial and without giving the petitioners the opportunity to tender evidence.

Nomination date

[51] Counsel submits that there was an error in publishing the nomination date which was a breach of electoral laws, thereby rendering the election result unsafe. She states that the error in procedure as pleaded reasonably caused confusion. Common sense dictates that this error could have reasonably deprived persons who wanted to be nominated from doing so. The fact that at least one person has claimed that he was denied the right to be nominated due to the error must be reasonably and logically assumed to have occurred in other constituencies and/or nationwide whether those individuals present themselves on a petition or not. Counsel relies on the authorities of **Haverfordwest Case**, **Davies v Lord Kensington**²⁵ and **Mayo Case**²⁶.

²⁵ (1874) LR9 CP 72

²⁶ (1874) 2 O'M&H 191

Objections

- [52] In relation to the allegations of objections filed and ignored, Ms. James states that:
- (1) The allegations have been meticulously pleaded and demonstrate a definite cause of action. Ms. James states that the authorities instruct that a failure to deal with objections in accordance with the relevant laws will void an election.
 - (2) In **Mark Brantley** the arbitrary handling of objections, modified registration list on Election Day and generally failing to deal with objections in accordance with electoral laws were deemed sufficient to set aside the election result.
 - (3) The petitioners deserve the right to review the electoral office's records produced by the applicants and/or bring their own evidence with respect to the allegations at trial.
 - (4) **Hariprashad-Charles J** in **Lindsay Fitz-Patrick** refused to strike out allegations on the basis that the facts were disputed and the respondent's own particulars were insufficient.

Advertisement on polling day

- [53] On the issue of advertisement by Mrs. Skerit and her agents, Counsel states that this is an explicit election offence under section 54 of the **Elections Act**. Counsel states that the pleadings provide Mrs. Skerit with sufficient information to enter a defence to the averments.

Lack of Access to DBS

- [54] With respect to the allegations of lack of access to DBS, Ms. James states that the respondents' claim that the petitioners did not make any complaint that their constitutional rights were affected, is demonstrably false. Ms. James submits that the petitioners have pleaded: "*in the premises, the Petitioner's constitutional right*

to freedom of expression and protection from discrimination have been breached”²⁷. She states that the alleged discrimination from DBS prevented the UWP from campaigning on equal terms and relies on **Ferdinand Frampton** to support her views. Lastly, she states that lack of access to state radio where proven can vitiate an entire election and that the claim is properly pleaded and not bound to fail. **Mark Brantley** is presented as an instance where the court found the petitioner’s right to freedom of expression was violated.

Legitimate Expectation in relation to electoral reform

- [55] Ms. James argues that the people of Dominica had a legitimate expectation that electoral reforms would become a reality, inclusive of voter ID cards. Counsel states that the “*uncleansed*” voters list and lack of voter ID cards left the elections vulnerable and the results unsafe. She states that this contravened the provisions of the **Registration Act** and relies on the case of **Abu Ramdan and Others v The Attorney General et al**²⁸.

Disqualification of Mrs. Skerrit

- [56] Ms. James states that the petitions plead specifically that Mrs Skerrit has pledged allegiance to a foreign power by virtue of holding a foreign passport. Counsel explains that Mrs. Skerrit entered this allegiance by her own act. Therefore, this is sufficient material to give her an unmistakeable indication of the case that she is being asked to answer. Counsel refers the Court to the recent Court of Appeal judgment of **The Attorney General of Saint Christopher and Nevis v Dr. Denzil Douglas**²⁹ and states that the mere act of seeking and obtaining a passport of a foreign country disqualifies a candidate. Ms. James states that there is no requirement to plead foreign law in any greater detail than is already set out in the petition. Counsel notes that Mrs. Skerrit does not deny possession of a Canadian

²⁷ Paragraph 259 of the petitioners’ submission filed on 2nd July 2020

²⁸ No. J1/14/2016

²⁹ SKBHCVAP2019/0007

passport and therefore this amounts to an admission that the petitioner has a viable cause of action.

Intimidation and Police Brutality

- [57] Under the heading of intimidation and police brutality, Ms. James expounds that:
- (1) Intimidation is prohibited as the election offence of "*undue influence*" at section 57 of the **Elections Act**.
 - (2) The heading under this part of the petitions is mislabelled and should have been pleaded as "Undue Influence: Intimidation". Counsel relies on **Andrew Erlam and Others v Mohammed Lutfur Rahman and Others**³⁰.
 - (3) The Court ought to address this ground on its merits despite the error in heading the same.
 - (4) The worst intimidation was propagated by government agencies, officials and persons commanded by them.
 - (5) This is an evident establishment of agency between the respondents and the intimidation acts pleaded.

Treating

- [58] The submissions continue that in relation to the allegations of treating, the act of treating is an election offence prohibited by section 56 of the **Elections Act**. Counsel refers the Court to the elements of treating as defined in **Schofields Electoral Law**³¹. Counsel also refers to dicta from **Andrew Erlam**³² where the English Courts established the standard of proof required for proving corrupt or illegal practices. Ms. James states that all of the alleged offences of treating occurred during the period from the announcement of the elections to the day before polling day and were provided to influence voters to vote for the

³⁰ [2015] EWHC 1215 (QB). See also Ali Bashir [2012] EWHC 3007 (QB)

³¹ Second Edition 1996 at para14:03

³² [2015] EWHC 1215 (QB) at para 33

respondents/candidates. Ms. James concludes by submitting that the allegation of treating all falls within the criteria that was laid down in **Lindsay Fitz-Patrick**.³³

Importation of voters

[59] Regarding allegations of importation of voters, Ms. James submits that:

- (1) The heading ought to have been styled "*Treating: Importation of Voters*". However, despite the error, the facts set out undoubtedly identify the grounds for successfully pleading the offence.
- (2) The previous submissions with regard to incorrectly labelled pleadings are applicable.
- (3) The Respondents' admission in their strike out applications that they provided transportation to their supporters and only their supporters, is an admission of wrongdoing.
- (4) There is no distinction between supporter and electors as the DLP's supporters were in fact electors.
- (5) The petitioners should be afforded the opportunity to show by way of evidence, the manifests in their possession which detail the individuals who travelled and how their travel was financed by the DLP.
- (6) The Registrations Regulations allow for amendments to petitions and for further particulars and that the 21-day time frame and stipulation is onerous on the Petitioners. See **Andrew Erlam**³⁴ and **Ali v Bashir**³⁵ which dealt with the difficulties faced by lay persons when preparing petitions.
- (7) In conclusion, the allegations under the heading of importation of voters amount to an election offence and the allegations are properly pleaded and should not be struck out.

³³ SKBHCV2010/0026 at paragraph 85 to 87

³⁴ [2015] EWHC 1215 (QB) paragraph 664 et seq

³⁵ [2012] EWHC 3007 paragraph 27 et seq

Bribery

[60] In relation to the allegations of bribery, Ms. James states that:

- (1) Bribery is an election offence under section 56 of the **Elections Act**.
- (2) The allegations specify the date of the bribery, names of persons who made and offered the bribe and the value of the bribe.
- (3) It is specifically pleaded that the person who made the bribe was an agent of the respondents/candidates.
- (4) The Petitioners have conformed to the criteria set out in **Lindsay Fitz-Patrick**³⁶ in relation to allegations of bribery.
- (5) The agency requirement has been met in all of the petitions in relation to all respondents/candidates.
- (6) Further, the case law show that a candidate, in an election, is liable for the acts of his agents. **Andrew Erlam**³⁷ and **Ali v Bashir**³⁸ are presented as authorities for this proposition.

[61] Counsel concludes that this is indisputably a case that can only be decided at trial and that the petitions, if proven at the substantive hearing, will show that the petitioners are likely to succeed on their claim. The petitioners maintain that the elections were a sham and that the results should be set aside. The petitioners deserve to be heard at trial on their supporting evidence.

Discussion

Principles applicable to strike out an election petition

[62] The court will, as part of its mandate to manage cases, advert to its inherent jurisdiction³⁹ to strike out an election petition ("petition(s)") where appropriate. The

³⁶ SKBHCV2010/0026 at paragraphs 80 to 83

³⁷ [2015] EWHC 1215 (QB) at paragraphs 55, 56

³⁸ [2013] EWHC 2572(QB) at paragraph 76

³⁹ Ethlyn Smith v Christopher and Supervisor of Elections BVIHCV2003/0097 at para. 21

basis for striking out a petition or parts of it is quite settled in our law and has been stated and restated in a number of cases. In this regard, it is quite simply (or shortly) that the court will strike out a petition where the petitioner fails to plead a sufficient case for the respondent to answer. In **Dean Jonas v Jacqui Quinn – Leandro et al**⁴⁰, Blenman J (as she then was) stated the principle thusly:

“It is the law that a petition or a pleading would be struck out if it discloses no reasonable cause of action. The Court in deciding whether to strike out a petition or parts thereof is mindful of the fact that it should be slow to drive persons from the seat of justice except in cases in which the pleaded claim has **no prospect of success or is bound to fail.**” [Bold emphasis mine]

[63] Rawlins J (as he then was) in **Ferdinand Frampton**⁴¹ opined that:

“It is trite principle that a party who institutes a case must plead a cause of action that is known to or created by the law under which the case is brought. The originating process must disclose sufficient material facts to render the claim viable and permit the defendant, or, as in these cases, respondents, to know the cases which they must meet. **The court will strike out a case which discloses no reasonable cause of action, or those parts of it, which are immaterial, vague or abusive of the process of the court. The power to strike out pleadings at a preliminary stage will however be exercised very sparingly and only in the clearest circumstances. A court will err in favour of having cases tried on their merits.**” [Bold emphasis mine].

[64] Properly pleaded petitions are accordingly a pre-requisite or as it is said, what is required are pleadings that are “precise, specific and unambiguous”. Rawlins J in **Ferdinand Frampton**⁴² observed that:

⁴⁰ ANUHCV2009/0141 at para. 96

⁴¹ DOMHCV 2005/0148 at para. 12

⁴² DOMHCV 2005/0149 at para.62

"There is now a general principle of practice in civil proceedings, which is also applicable to election petitions, that a person who institutes an action should plead sufficient material facts to create a cause of action. A respondent must know what is the case against which he or she must defend. Evidence need not be pleaded because that will come from the affidavits, and cross-examination thereon or by oral evidence. Evidence might be given at the trial."

[65] In **Dean Jonas**, Blenman J quoted the following from **Charan Lal Sahu v Giana Zail Singh and another**⁴³:

"In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice... The importance of a specific pleading in these matters can be appreciated only if it is realized that the absence of a specific plea puts the respondent at a great disadvantage. He must know what case he has to meet. He cannot be kept guessing whether the petitioner means what he says... They (the petitioners) cannot be allowed to keep their options open until the trial and adduce such evidence as seems convenient and comes handy. That is the importance of precision in pleadings particularly in election petitions."

Strictures of time

[66] The learning informs that the strictures of properly pleaded petitions mandate that, not only must a sufficient case to answer be pleaded, but it is imperative that the same is pleaded and presented within the statutory time limits. Section 68(1) of the Elections Act prescribes that:

"A petition shall be presented within twenty-one days after the return made by the returning officer of the member to whose election the petition relates, unless it concerns an allegation of corrupt practices upon the making of the return of election and specifically alleges a payment of money or other reward

⁴³ 1984 SCR (2) 6

to have been made by any member, or on his account, or with his privity, since the time of the return, in pursuance or in furtherance of the corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of the payment;"

- [67] Petitions must therefore be perfected in the sense that they must contain a sufficiently pleaded cause of action **and** be filed within this statutory period. No extensions of time to do so are permissible. The court will err on the side of permitting a case to proceed once it contains sufficient facts demonstrating a cause of action. As was said in **Lonrho PLC v Fayed**⁴⁴, the court's role is limited to scrutinising the statement of claim (in this case the petitions). Evidence for or against the facts set out therein is inadmissible unless the court finds in exceptional instances that the pleadings amount to an abuse of its process. The court is to accept the assertions made on the pleadings as true and is only to strike out those claims that, even if true, are bound to fail. ***"It tests the particulars which have been given to see whether they support it, and it examines the averments to see whether the plaintiff can prove his case or assess its prospects of success."***⁴⁵ [Bold emphasis mine]

No power to permit amendments

- [68] Equally, it has been pronounced that the court's jurisdiction to hear the elections petition does not extend to permitting the petitioner to alter or amend the case after the period permitted for its presentation except where statute specifically enacts a power to allow amendments.⁴⁶ Again, there is a plethora of cases from our jurisdiction that aid in distilling the learning underpinning what is referred to in many of the cases as the mandatory provisions in this regard. Fairly recently her

⁴⁴ [1991] 4 ALL ER 961 at

⁴⁵ *Lonrho v Fayed* (No.2) [1991] 4 ALL ER 961 at 965

⁴⁶ *Rawlins J in Ferdinand Frampton DOMHCV 2005/0149* at paragraph 14

Ladyship Dame Janice Pereira CJ in **Loftus Durand et al v The President et al**⁴⁷

explained the principle thusly:

“... the procedure for invoking the court’s jurisdiction is mandatory. As Rawlins CJ in *Ezechieel Joseph v Alvina Reynolds* stated:

“In keeping with the strict approach, our courts have generally insisted that the provisions in elections legislation must be strictly complied with ... Our election courts have consistently stated that they have little or no discretion to waive non-compliance with the applicable statutory requirements. Accordingly, the consistent result is that failure to comply is fatal to the petition rendering it a nullity, unless the court finds that the failure goes to form. The jurisprudence in our courts states that time and other electoral proceedings statutory requirements are conditions precedent to instituting a proper electoral challenge, which are mandatory and peremptory.”

The procedure for the filing of an election petition includes that under sections 66 to 68 of the **House of Assembly (Election) Act**, which provide that a petition ought to be filed no later than 21 or 28 days after the conduct of an election or the payment of monies as a form of corrupt practice, respectively. Accordingly, and in keeping with the reasoning of Rawlins CJ in *Ezechieel Joseph*, an election petition, and therefore a complaint of an undue election or election return or question as to the validity of an election, is itself only valid and properly before the court if filed within 21 or 28 days as the case may be.”

[69] Rawlins, J in **Ferdinand Frampton** commented at paragraph 14 that:

“The general principles state that time limits set in elections legislation are conditions precedent, mandatory and peremptory. They must be strictly followed. A petitioner must file and perfect the petition within the time limited in the legislation for the presentation of the petition. The petitioner must enter security for costs in the manner and within the time prescribed. A petition must be served within the prescribed time. **An elections court has no power to extend time, or to permit amendment of process, after the time limited for filing and perfecting the process has expired, unless these powers are expressly conferred in the elections legislation.**” [bold emphasis mine]

[70] His Lordship also stated the following at paragraph 28 of **Ferdinand Frampton**:

“In Dominica, an election petition must be presented within 21 days after the return and, in my view, it must be perfected within that time. The petitions in these cases do not specifically allege the payment of money or

⁴⁷ DOMHCVAP2019/006 at paragraph 30 to 31

other reward since the time of the return. They should have been presented and perfected within 21 days of the return. Within this period, allegations should have been clarified, to the extent that this was necessary in the pleadings, and all proper and necessary parties joined. This is because specified times are mandatory and the pleading and procedural process must be completed with dispatch, in order to facilitate the urgent trial of election challenges."

- [71] And in **Quinn Leandro v Jonas**⁴⁸ his Lordship had this to say at paragraphs 31 and 32 on the matter:

"Unless statute otherwise provides, an election petition, **and any amendments thereto**, must be perfected within the time limited for filing the petition. The rationale is that it would otherwise defeat the underlying virtue of the mandatory nature of elections legislation, which is intended to ensure that the validity of the election of a member of the legislature is dealt with expeditiously, in the public interest. Voters need to know who their lawfully elected representatives are as soon as possible after an election." [Bold emphasis mine].

- [72] In Dominica, **Rule 12 of the House of Assembly (Elections Petition) Rules** ("the Petition Rules") provides for the instances in which an elections petition may be amended.

"A petition which has been presented questioning a return or election other than on an allegation of a corrupt practice may, for the purpose of questioning the return or election on an allegation of a corrupt practice, be amended with the leave of the Court."

- [73] Quite evidently, while rule 12 permits amendments, the rule does not give leave to the petitioner to pursue any or all amendments as he or she wishes. In fact, parliament has limited the instances in which the court may grant permission to a petitioner to amend a petition to situations where the petitioner wishes to amend the petition to include allegations of a corrupt practice. I would add that it would be incumbent on the petitioner in Dominica to bring any such request for permission to amend within the time limit that a petition ought to be perfected and presented. Any other interpretation as to when an application to amend can be brought would permit and in all likelihood produce a result that permits circumnavigation around

⁴⁸ See also Lauron Baptiste SVGHCV2015/0202

the prescription that election petitions ought to be presented within the statutorily delimited period of 21 or 28 days as the case may be⁴⁹.

Particulars

[74] Rule 4 of the Petitions Rules makes provision for a judge to order particulars of a pleading or pleadings on an elections petition. The rule reads –

- “4. (1) Evidence shall not be stated in the petition, but the judge may, on application, order such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual trial, in the same way as in ordinary proceedings in the Court, and on terms as to costs and otherwise as may be ordered.
- (2) Where an allegation is made against a person or persons for the commission of an election offence under the **Act**, the particulars which may be requested shall include:
- (a) The names of all the persons in the petition against whom the alleged election offence was committed;
 - (b) The name, address, telephone number and occupation on the register of the person or persons who are alleged to have committed the election offence; and
 - (c) The time when and the place or places where each offence is alleged to have been committed and the amount and nature.
- (3) In any case in which the judge orders that particulars of any allegation made in a petition be delivered to the respondent, he or she may fix the time within which the particulars shall be delivered and may also order that the petitioner, at the trial of the petition, may be precluded from going

⁴⁹ Rawlins J's comments in Ethlyn Smith **Smith v Christopher and Supervisor of Elections** BVIHCV2003/0097 at paragraph 25 are somewhat fitting

into any case in respect of which the particulars have not been duly delivered, unless it is otherwise ordered.”

- [75] The petitioners submit that the rule gives the court the jurisdiction to order particulars in the instances where the pleadings appear deficient. The statement is an overly broad interpretation of rule 4. Firstly, there must be an application asking the court to order the delivery of particulars. Secondly, the applicant seeking an order for the provision of particulars may only seek the sort of particulars delineated at rule 4(2). The rule does not permit the court to allow a case to be presented where one is not pleaded on the petition in the manner required both in case law and at statute.

What then must be pleaded?

- [76] The net result of what is sought by petitioners to an elections petition is a finding that the return on an election or an election ought to be set aside. The bases on which they can ask the court to so act are plentifully set out in statute and the case law. In Dominica, section 65 of the Elections Act permits a petitioner to present “*a petition complaining of an undue return or undue election of a member of the House of Assembly...*” The learning extrapolated from the cases and recited in the preceding paragraphs indicates that the court will not blithely shut out a petitioner from seeking redress. However, the court will not recoil from striking out a petition or pleadings on a petition that, at a basic level, fail to recite just about enough facts to raise a viable complaint with some chance of success that there was in fact an undue return or undue elections. It then begs the question what is an undue return or undue election. In the absence of a statutory definition of this term, the case law guides the court as to what must be proven to show an undue return or election.

- [77] In **Ferdinand Frampton** at paragraph 19, Rawlins J offered the guidance that-
“... [u]nder the electoral laws of Dominica, a court may void an election where it finds that there was “an undue election” or “an undue return”.

These terms are not defined. However, the tests ... were succinctly captured by Sir Maurice Davis, CJ, in **Radix v Gairy** (1978) 25 WIR 553, at page 556G and by Liverpool J.A. in **Russell (Randolph) and Others v Attorney General of St. Vincent and the Grenadines** (1995) 50 WIR 127, at page 142d. In summary, they stated that an Order could be made for a fresh election, upon proof of an election offence committed by a candidate, or upon proof of some irregularity during the conduct of the election, which affects the results, or if the circumstances leading up to and surrounding the conduct of the poll were not substantially in accordance with the electoral laws, or where the election process was fraught with such irregularities that it does not reflect the collective will of the electorate.” [Bold emphasis mine]

- [78] The guidance⁵⁰ on the basis on which a court will set aside an elections result emerges from older cases of which **Woodward v Sarsons**⁵¹ is among the principal authorities. In that case, Lord Coleridge CJ ruled that:

“We are of opinion that the true statement is that an election is to be declared void by the common law applicable to parliamentary elections, if it was so conducted that the tribunal which is asked to avoid it is satisfied, as matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws.”⁵²

- [79] Regarding the 1st basis, his Lordship expressed the view that:

“As to the first, the tribunal should be so satisfied, i. e. that there was no real electing by the constituency at all, if it were proved to its satisfaction that the constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as, by polling stations being demolished, or not opened, or by other of the means of voting according to law not being supplied or supplied with such errors as to render the voting by means of them void, or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think the same result should follow if, by reason of any such or similar mishaps, the tribunal, without being able to say that a majority had been prevented, should be satisfied

⁵⁰ See also *Arthurton v Fergus et al* [1998] LRC 115, *Williams v Giraudy* [1978] 25 WIR 529, *Bharrat v Deyalsingh et al* Claim no. CV 2015-03107, *Lauron Baptiste v Davis et al* Claim Nos SVGHCV 2015/202 - 203

⁵¹ (1875) LR 10 CP 733

⁵² *Woodward v Simpson* (1875) LR 10 CP 733 at page 743

that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred. But, if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think that the existence of such mishaps would not entitle the tribunal to declare the election void by the common law of Parliament."⁵³

[80] Regarding the 2nd basis, he opined that-

"As to the second, i.e. that the election was not really conducted under the subsisting election laws at all, we think, though there was an election in the sense of there having been a selection by the will of the constituency, that the question must in like manner be, **whether the departure from the prescribed method of election is so great that the tribunal is satisfied, as matter of fact, that the election was not an election under the existing law. It is not enough to say that great mistakes were made in carrying out the election under those laws: it is necessary to be able to say that, either wilfully or erroneously, the election was not carried out under those laws, but under some other method.**"⁵⁴[Bold emphasis added]"

[81] **Morgan v Simpson**⁵⁵ is considered the leading contemporary authority on the question. Denning LJ proposed the following⁵⁶:

- (1) If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected or not. That is shown by the Hackney case, 2 O'M. & H. 77, where two out of 19 polling stations were closed all day and 5,000 voters were unable to vote.
- (2) If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls - provided that it did not affect the result of the election. That is shown by the Islington case, 17 T.L.R. 210, where 14 ballot papers were issued after 8 p.m.

⁵³ Woodward v Simpson (1875) LR 10 CP 733 at page 743

⁵⁴ Woodward v Simpson (1875) LR 10 CP 733 at page 744

⁵⁵ [1975] QB 151

⁵⁶ Morgan v Simpson [1975] QB 151 at page 164

- (3) But, even though the election was conducted substantially in accordance with the law as to elections, nevertheless if there was a breach of the rules or a mistake at the polls - and it did affect the result - then the election is vitiated. That is shown by **Gunn v. Sharpe [1974] Q.B. 808**, where the mistake in not stamping 102 ballot papers did affect the result."

[82] Stephenson LJ puts the principle this way:

"Any breach of the local elections rules which affects the result of an election is by itself enough to compel the tribunal to declare the election void. It is not also necessary that the election should be conducted not substantially in accordance with the law as to local elections.

For an election to be conducted substantially in accordance with that law there must be a real election by ballot and no such substantial departure from the procedure laid down by Parliament as to make the ordinary man condemn the election as a sham or a travesty of an election by ballot. Instances of such a substantial departure would be allowing voters to vote for a person who was not in fact a candidate or refusing to accept a qualified candidate on some illegal ground or disfranchising a substantial proportion of qualified voters..."⁵⁷

[83] Substantial non-compliance was discussed this way in **Quinn-Leandro-**

"The decided cases show that an election court will not invalidate an election on the ground that there was substantial non-compliance with electoral law if the breach of elections procedure stipulated by law is trivial. There must be such a substantial departure from elections procedure stipulated by law that would cause an ordinary person to condemn the election as a sham or travesty. A considerable departure is required. Accordingly, an election court would usually only invalidate an election on this ground if the judge is really satisfied that the breach is serious. The rationale is that the return of a member of the legislature by the electorate should only be invalidated in a clear case where the court has serious doubt that the election was a manifestation of the wishes of the electorate."⁵⁸

⁵⁷ Morgan v Simpson [1975] QB 151 at page 164

⁵⁸ ANUHCVP2010/018 at paragraph 128

The impact on the pleadings

[84] What then is the impact on the pleadings in this case? Have they met the requirements of law on pleadings in elections petitions? Should all of the petitions be struck out or be struck out in part as claimed by the applicants? Or, as forcefully maintained by the petitioner, are the pleadings adequate and sufficient in material facts to both disclose causes of action and put the respondents on notice as to precise nature of the claim which they are called to answer? I propose to approach these questions from 2 angles:

- (1) Whether the petitioners have brought suit against the correct respondents ("the parties question"); and
- (2) Whether the claim against any or all of the respondents is properly laid out ("the pleadings question").

The Parties Question

[85] The respondents (applicants) complain about whether some of them have been properly served. I indicated at the first hearing I will consider those applications about service after the strike out applications.

[86] A summary of the applications on the parties question is the complaint that the persons named individually on the petitions as –

- (1) Ian Anthony, Chief Elections Officer;
- (2) Returning officers. For instance on the petition 307G, this respondent is cited as Josephine Lewis, Returning Officer. The returning officers named on the other petitions are similarly styled;
- (3) Registering officers. For instance on the petition 307A, this respondent is cited as Helius Auguiste, Returning Officer. The returning officers named on the other petitions are similarly styled;
- (4) The individual members of the Electoral Commission ("the Commission"). They are cited as:

- a) Gerald Burton, Chairman of the Electoral Commission
- b) Hilary Shillingford, Member of the Electoral Commission;
- c) Wayne James, Member of the Electoral Commission,
- d) Kondwani Williams, Member of the Electoral Commission
- e) Alick Lawrence, Member of the Electoral Commission;
- (5) The Dominica Broadcasting Corporation;
- (6) The Prime Minister (named as Roosevelt Skerit, Prime Minister;
- (7) The Attorney General; and
- (8) The Commissioner of Police (named as the Commissioner of Police, Daniel Carbon)

are improperly joined in the petitions. The respondents (applicants) have made additional complaints regarding whether the petitioners have properly pleaded a case to answer by each of these persons. I will address that question later in this judgment if I find that any or all of these parties should remain.

[87] The respondents (applicants) explain that:

- 1) The Chief Elections Officer, registering officers, returning officers and the members of the Commission are improperly joined on the petitions in their official capacity. They are all public officers who cannot be sued in their official capacities;
- 2) The members of the Commission should not be named individually on the petition. The Commission is the proper party to be named;
- 3) The Prime Minister, the Attorney General and the Commissioner of Police are public officers who cannot be sued in their official capacities.

[88] The respondents' (applicants') arguments against joining these parties is, in essence, that it is not proper form to join a person or a government minister in their official capacity on an elections petition. They argue that these parties serve public offices and/or are persons appointed to constitutional posts to conduct public duties. The respondents (applicants) add that these persons are all paid

from the public purse. In respect of the 5th to 9th respondents, the respondents (applicants) make specific complaint about joining them by name and not joining the Commission. The respondents (applicants) say that the Commission is a creature of the Constitution that exercises its roles and functions as a corporate body. The Commission is enjoined to carry out those roles and functions "*judiciously*".

[89] The respondents (applicants) present the propositions of law extracted from **Ferdinand Frampton, Davis v the PSC⁵⁹, Harry v Thom⁶⁰, the Commissioner of the Independent Commission of Investigations v Police Federation⁶¹ and Kent Garment Factory Limited v the Attorney General⁶²** in support of their contentions.

[90] The petitioners maintain the opposite perspective. They contend in their submissions that they have properly joined all the parties on the petition. In respect of the Chief Elections Officer, the registering officer and the returning officer, the petitioners' response is that these are necessary parties when a petitioner alleges that an election is unsafe. **Ezechiel Joseph and Lindsay Fitz-Patrick Grant** are presented as the authority for the view that the returning officer is deemed to be joined once a complaint is made about his or her conduct. The petitioners' case in answer is that they have made a number of allegations regarding breaches of the electoral laws and breaches of duties committed by the Chief Elections Officer, registering officer and returning officers. No court should find that these office holders are not to be brought on a petition to answer for their conduct. The petitioners argue that the **State Proceedings Act** and the common law allow for joining servants and agents of the State to elections petitions since "*they were appointed by the state, perform public duties and are paid by the public*"

⁵⁹ (1984) 33 WIR 112

⁶⁰ (1967) 10 WIR 348

⁶¹ [2020] UKPC 11

⁶² (1991) 46 WIR 177

purse... it is a well-established principle that if public servants of the state act unlawfully they may be sued in their personal but not in their official capacity.”⁶³

- [91] The petitioners refer to the **Mark Brantley** decision and make the point that the petitioners in that case sued the respondents both in their individual names and in their offices.

The Electoral Commission

- [92] Regarding the joinder of the Commission, the petitioners' response is that section 56(3) of the Constitution creates the Commission. They argue that section 56(3) does not define the Commission as a body corporate and that it is not so defined elsewhere in statute. Therefore, the petitioners are not required to join the Commission as a party to the petition. Rather, it is proper to join the individual members. The members of the Commission are servants or agents of the State. They are joined in the same manner as the Chief Elections Officer, registering and returning officers. To that end, the petitioners' case is that the directions in **Ferdinand Frampton** that election officials should be joined in their individual as opposed to official offices are apposite. The petitioners also rely on the manner in which electoral officials were joined in the **Mark Brantley** case to argue that electoral officials in that case were joined in their individual capacities by referring to their official titles along with their names. The petitioners say that the members of the Commission violated the electoral laws in a number of ways which are recited on the pleadings and that they should be called on to answer for those breaches.

The Attorney General

- [93] The petitioners argue that the Attorney General is also a necessary party since allegations have been made regarding the conduct of a state entity, DBS. They

⁶³ Ferdinand Frampton DOMHCV2005/0149 at paras. 16-17

plead in aid, the court's view in **Lindsay Grant** regarding the joinder of the Attorney General. The failure to join the Attorney General in the case of **Ferdinand Frampton** where the petitioners in that case raised allegations against DBS is also cited. The Attorney General is said to be an employee of the State and as such the State Proceedings Act requires that he must be joined. **Mark Brantley** is also cited.

The Prime Minister and the Commissioner of Police

- [94] The Prime Minister and Commissioner of Police are said to be necessary parties since they are servants of the State. The petitioners point out that the Prime Minister is responsible for setting the date for the general elections and the date for nominations. They explain that he approves the finance of the Commission, has direct control over DBS's board and is implicated on the pleadings in acts of abuse/undue influence and intimidation that render the elections results unsafe. The petitioners repeat the submission that **Ferdinand Frampton** and **Mark Brantley** permit them to sue the Prime Minister individually for his conduct. The pleadings similarly implicate the Commissioner of Police for acts of abuse of his posts and/or omissions to perform his duties. He must therefore answer for his alleged conduct.

My views on the parties issue.

Are the Chief Elections Officer, Registering officer and returning officers properly joined?

-
- [95] I disagree with the petitioners' argument that the foregoing individuals can be sued in their individual names and/or their name and office. The reference to the statement in **Ferdinand Frampton** at paragraph 47 was an obiter reference. The court's ruling on the issue is found at paragraphs 52 to 53 of the judgment –

“there is no doubt that the Chief Elections Officer and the Returning Officer are servants or officials of the State because they were appointed

by the State, perform public duties and are paid from the public purse. As such, they have no capacities that are amenable to suit. They may be sued in their personal capacities or in their own names for any alleged acts or omissions in carrying out their duties under the electoral statutes. They cannot be sued in their official capacities.

I therefore agree with the submission that learned Counsel for the respondents made, that by joining the 2nd and 3rd respondents in their official offices or capacities means that they were misjoined in the petitions. They are therefore now removed as respondents. Consequentially, those allegations which the petitions contain in relation to them are hereby struck out"

[96] The instructions and finding in **Ferdinand Frampton** are with respect to the same electoral laws of Dominica that are before this court. In this regard, I will follow the reasoning of Rawlins J in **Ferdinand Frampton** regarding the issue of joinder of the Chief Elections Officer, the registering officer and the returning officer to elections petitions in Dominica. The petitioner must join them in their personal capacities. The petitioners have not only joined these respondents by their names but they have also stated their offices. Is this approach fatal to the petitions? I think not. While the burden is on the petitioners to be precise and unambiguous in their pleadings, the prescription for precision and clarity obliges the petitioner to plead, at the least, sufficient material to show a cause of action and for the respondents to know the case that they must answer. Otherwise, there is no proscription against drafting that may, among other things, turn out to be superfluous so long as pleadings do not condescend to material that is prolix, scandalous, vexatious or abusive of the court's process.

[97] I find the inclusion of the title of the offices to be superfluous and unnecessary. To be pellucid on this issue, I do not find the additions of the title of the office holders to be fatal to the pleadings since the petitioners have plainly pleaded the names of the individuals whose action they seek to impugn. However, I would advise that future petitioners discontinue this style of drafting elections petition in Dominica. The name of the individual electoral officer is adequate.

Is the Commission properly joined?

[98] There are 2 bases on which the joinder of the members of the Commission is confronted:

- (1) The 5th to 9th respondents who are members of the Commission are joined in their official capacity when they ought to be joined in their personal capacity; and
- (2) In any event, it is the Commission and not its individual members who ought to be joined.

[99] In respect of the first contention, I apply my finding regarding the Chief Elections Officer, the registering officer and the returning officer to these officers. They are all public officials who had to be joined in their personal instead of their official capacity as stated in **Ferdinand Frampton**. I have found that the petitioners did join them as individuals in spite of their infelicitous and superfluous drafting. Nevertheless, the applicants contend that the Commission must be joined and not the individual members. This leads to the second contention.

[100] I must confess that the respondents' (applicants') arguments along the lines of the cases of **Davis** and of **the Independent Commission** appear to be quite attractive. For one thing, the courts in both those cases were reviewing questions regarding commissions that bear remarkable similarity in their appointment and powers to the appointment and powers of the Commission outlined at section 56 of the Dominica Constitution. However, with no intent to diminish or disrespect the scholarship and clarity of advocacy of counsel for the respondents' (applicants), I decline to adopt the reasoning in those two authorities. I decline for no greater reason than the fact that the joinder of these sorts of parties to election petitions in our courts and in Dominica in particular has been the subject of undisturbed judicial pronouncements for some time now. The respondents (applicants) have not presented me with good reason(s) to depart from them or to ignore their precedential or persuasive influence as such.

[101] In this regard, I refer, in particular, to the ruling of Blenman J when she struck out the Electoral Commission as a party to the petition in **Dean Jonas**. It is a little beyond noteworthy that our Court of Appeal did not disturb her Ladyship's ruling on this point when the case was under its review. The undisturbed ruling of Her Ladyship was to the effect that⁶⁴:

"The law is clear in order to be sued a person must have legal personality. The Court accepts the submission of learned Senior Counsel Mr. Martineau that the Electoral Commission cannot be sued in so far as it has no legal personality. The Court is therefore unable to accept the arguments urged by learned Queens Counsel Mr. Guthrie in so far as he advocated that the Petitioners are entitled to bring an action against the Commission because the Commission has been given responsibilities by the Legislature. Indeed, if there are alleged breaches by the Commissioners, they ought to be named individually. In this regard I find the judgment of Rawlins J in **Frampton v Pinard** *ibid* to be very enlightening and adopt the pronouncements made there in. The Electoral Commission is therefore struck since it has no capacity that is amenable to suit. This ruling is applicable to all of the petitions in which the Electoral Commission is named."

Is the Attorney General properly joined?

[102] With respect to the Attorney General, the respondents (applicants) contend that the **State Proceedings Act**, Chapter 7:80 of the laws of Dominica do not apply to the elections jurisdiction of the court. The petitioners have pleaded that DBS is a state entity controlled by the Government and that its resources were utilised in a manner that breached their constitutional rights. These averments outline state action that may be unconstitutional. In this regard, see the finding of Her Ladyship Dame Janice Pereira CJ in **Loftus Durand** at paragraph 35 where she concluded that "*The relief against the DBC, though presented within the application for leave, was not by way of judicial review and was purely constitutional in nature.*" The Attorney General is a necessary party in those circumstances. That the Attorney General is a necessary party where allegations of a breach of constitutional rights were made against DBS was the precise finding of the court in **Ferdinand**

⁶⁴ *Dean Jonas v Quinn – Leandro ANUHCv 2009/0141* at para. 100

Frampton at paragraph 35. The comment made by his Lordship at paragraph 4 of **Ferdinand Frampton** is significant:

"The petitioners further seek declarations that they, as well as the UWP, were denied access to the Dominica Broadcasting Corporation during the campaign and that this rendered the results of the elections unfair. **The Corporation is owned and operated by the Government of Dominica.** However, they did not join the directors or the management of the Corporation, the Attorney General or anyone against whom a declaration could be made in the petitions." [Bold emphasis mine]

[103] Thereafter at paragraph 35 his Lordship concluded that:

"... in order to obtain the declarations concerning the alleged misuse of DBS, the Attorney General is an essential respondent because the declarations will be against the State for the infringement of a constitutional right. The petitioners did not join him. I earlier dismissed their applications to join him at this stage of the proceedings. Consequentially, the paragraphs in their petitions, which allege abuse of the media are struck out."

The Prime Minister, Commissioner of Police and DBS

[104] I find that the respondents' (applicants') argument that the Prime Minister and the Commissioner of Police should be joined in their personal capacity is sound. Nonetheless, for the reasons that I have stated above, I agree with the petitioners that they have been joined them in their personal capacity. I repeat the comments regarding the inclusion of official titles. Again, later on in this judgment I will assess the averments regarding their alleged conduct to determine whether they meet the threshold to permit the petitions to proceed or whether the court must strike them out. Regarding DBS, I have found that the Attorney General is the proper party to be joined in cases of allegations of the breach of constitutional rights. I remove DBC as a party.

The pleadings question

[105] The petitioners have presented a multiplicity of laments about the process and outcomes of the elections. The common complaints centre on:

- (1) Errors made by the Chief Elections Officer in publishing the date for nomination of candidates;
- (2) The failure/refusal by the Chief Elections Officer to deal with objections made further to his publication of a deadline for claims and objections⁶⁵;
- (3) The use of the preliminary register of electors along with the supplementary register as the register for polling day as opposed to the statutorily mandated revised annual list together with the supplementary register;
- (4) Giving the UWP candidates a different register of electors from the register given to polling agents, registering officers and the DLP;
- (5) The Chief Elections Officer failed to give the UWP the names of newly registered electors in spite of repeated requests made to him by the UWP to produce the same;
- (6) Following the issuance of the President's writs, the petitioners were not allowed to object to the names of newly registered voters;
- (7) Bribery and/or treating by the DLP when it transported electors to Dominica to vote and also treated electors with concerts and other entertainment;
- (8) The use of monies obtained corruptly from the Citizenship By Investments ("CBI") Scheme to fund the DLP elections campaign and to treat and transport its supporters;
- (9) Intimidation and assault of UWP supporters instigated, initiated and implemented by the Prime Minister and the Commissioner of Police.
- (10) Various failures by the Electoral Commission including the failure to ensure the cleansing of the various electoral registers and the issuing of voter ID cards;

⁶⁵ Not included in claim no. DOMHCV 307A Salibya

- (11) Breach of the petitioners' constitutional rights by the DBC;
- (12) Irregularities committed by electoral officials on polling day and the count.

[106] The complaints that are not common to all of the petitions are as follows:

- (1) The petitioner on Petition 307B (Daria Eugene) alleges that she observed several persons entering the 1st respondent's Chekira Lockhart-Hypolite's office after voting and then leaving with envelopes of cash. Ms. Eugene says that she saw these persons counting the money outside of Mrs. Lockhart-Hypolite's office. This money, she claims, was paid a bribe to the persons who received payment to vote for Mrs. Lockhart-Hypolite;
- (2) The petitioner on petition 307C (Ernie Lawrence Jno Finn) alleges acts of bribery by her opponent, the respondent (Octavia Alfred);
- (3) The petitioner on Petition 307F (Francisca Joseph) attaches a schedule to her petition that states 488 persons who, she claims, were not qualified to vote but whose names appeared on the register of voters used on polling day. These persons were allowed to vote;
- (4) Ms. Joseph pleads that her agents objected to voting by 2 named persons on the grounds that they had previously voted. She claims that these objections were ignored by electoral officials and the persons were allowed to vote a second time after taking an oath;
- (5) Ms. Joseph further complains that a blind person requested assistance to vote. He asked electoral officials to make the services of a Justice of the Peace (JP) available to him. The blind person did not vote because a JP was not provided;
- (6) Ms. Joseph also pleads that her agents objected to voting by 2 persons (named as one Joseph and another named Henderson). The objection was due to an allegation that these 2 individuals were corruptly treated with a ticket to travel to Dominica to vote for the DLP;
- (7) A petitioner on petition 307G (Glenroy Cuffy) pleads attempts at fraudulent voting and a number of objections made thereto;

- (8) Mr. Cuffy also complains of voting by 2 persons whose names did not appear on the register of voters;
- (9) Mr. Cuffy alleges that Mrs. Skerrit and her agents permitted the erection of a political billboard outside of a polling station between the hours of 12:00 am to 7:30 am;
- (10) Mr. Cuffy pleads that Mrs. Skerrit was disqualified to stand as a candidate because of her alleged allegiance to a foreign state or power;
- (11) The petitioner on petition 307H (Monell Williams Jno Baptiste) alleges that electoral officials allowed a voter to cast his ballot on polling day despite objections. Mrs. Jno Baptiste says that she objected to the voting because the voter did not reside in the constituency.

Nominations date error

[107] On 6th November 2019, the President of the Commonwealth of Dominica issued his proclamation by writs setting the date for general elections and the date for the nomination of candidates to stand at the polls. The President issued his writs pursuant to section 12 of the **Elections Act**. Once the President has issued his writs, the Chief Elections Officer is required to take certain steps including informing the public by publishing a notice in the Official Gazette of the time and place fixed for the nomination of candidates. The Chief Elections Officer must publish the notice in the Gazette at least 10 days before the date set for nominations. Section 13 of the Elections Act stipulates the same. The petitions state that *"on the 7th of November 2019 the Chief Elections Officer published a notice in the Dominica Official Gazette which stated that "The date fixed to receive the nomination of candidates is Wednesday the 19th of November 2019... This was an erroneous publication."*⁶⁶ The Chief Elections Officer did thereafter publish an erratum in the gazette of 18th November 2019. The applicants do not dispute that the corrected notice was issued less than 10 days before 19 November 2019.

⁶⁶ See paragraph 14 of Petition No. 2019/307F

[108] The petitioners who complain of this issue⁶⁷ plead that:

- (1) *As a result of the erroneous publication, many persons including the 2nd and 3rd Petitioners⁶⁸ believed that nomination day was on the Wednesday during the week of the 17th of November 2019, which was in fact Wednesday 20th November 2019.*
- (2) *On Wednesday 20th November 2019 the 2nd Petitioner, 3rd Petitioner and five other sponsors attended the Electoral Commission office in order to nominate the 2nd Petitioner as an independent candidate to contest the general elections. The Chief Elections Officer refused to accept the nomination of the 2nd Petitioner and informed the individuals present that nomination day was actually held on Tuesday 19th November 2019⁶⁹.*
- (3) *The receipt of nominations by returning officers on a date which was not published in the Official Gazette (Tuesday 19th November 2019) at least ten days prior by the Chief Elections Officer is unlawful, ultra vires, null and void. This breach of the electoral laws deprived the 2nd, 3rd Petitioners and several other persons of their constitutional right to vote. It rendered the return of the 1st Respondent as null and void.*

[109] The respondents (applicants) ask that the pleadings on this question be struck out since they have failed to show that:

- (1) The petitioner's constitutional right to vote was violated;
- (2) The petitioners were unaware of the date to vote or denied their right to vote;
- (3) There was a material breach of the **Elections Act** or that if there was a breach, how that breach rendered the elections a sham or affected the result of the elections; and

⁶⁷ These complaints are set out on all but petitions Nos. 307B (Roseau South) and 307D (Wesley)

⁶⁸ The words "including the 2nd and 3rd Petitioners" appear on 307G (Roseau Central) and not on the other pleadings that recite the nominations day issue.

⁶⁹ This entire pleading only appears on 307G (Roseau Central)

- (4) The directions in section 13 of the **Elections Act** are merely directory and not mandatory.

[110] The petitioners argue the contrary. They point out that that the erroneous publication was fatal to the elections for the fact that:

- (1) Proper procedure was not followed and as such persons who may have been nominated as third party candidates could not find their way on to the ballot potentially tainting the final count;⁷⁰
- (2) At least one person asserted that he was denied the right to be nominated due to the error. This assertion could be extended to all the constituencies where it could be logically assumed that the error affected other individuals who wished to be nominated whether or not those persons presented themselves on a petition to assert the same;⁷¹
- (3) There ought to be no stipulation that a petitioner must prove that persons were so affected or the exact number of votes or voters who were disenfranchised. The petitioner is only required to plead "*the reasonable likelihood of the same and/or that it would have affected the election result*";⁷²
- (4) There ought to have been an extension of the time for the nominations due to this error so as not to deprive persons of the chance to present themselves as candidates;
- (5) Third party candidates can significantly affect the result of an election;

⁷⁰ Petitioners submissions filed on 2nd July 2020 at paragraph 221

⁷¹ Ibid at paragraph 225

⁷² Ibid at paragraph 226

- (6) The petitioners ask the court for the opportunity to present evidence at trial that the elections result in past years was affected by third party candidates;
- (7) The petitioners intend to present precedent that the court has set aside an election due to errors in the nominations process.

Are the pleadings adequate on the nominations process?

[111] I disagree with the petitioners on this issue. The circumstances in which a court will set aside an election are set out above. At the very least, the petitioners were required to plead facts to demonstrate the effect that the error had or may have had on the conduct of the elections or its results. The mere assertion that the error deprived persons of their constitutional rights to vote is not sufficient pleading in my view. Who are these persons for instance? Was it 2 or 200? In some instances, respondents won their seats by over 200 votes. Would a court set aside an election in such cases if there is no perceptible effect on the results? Certainly not as was explained in **Morgan v Simpson** and as further expounded by our court in **Quinn-Leandro**. In **Arthurton v Fergus**⁷³, the unsuccessful candidates sought to have the elections overturned on the grounds that there was tampering with the ballot papers. The petitioners claimed that the candidates' names were not in alphabetical order as required by Constitution and Elections Ordinance. In dismissing a summons for a scrutiny of the ballot papers and an inspection and counting by the court, Redhead J ruled, inter alia,

"... it must be shown that because the names on the ballot papers were not in alphabetical order the voters were deprived of exercising their choice and voted for a candidate not of their choice or there was a real likelihood that this was so.⁷⁴

⁷³ (1988) LRC (Const) 115

⁷⁴ *Arthurton v Fergus* (1988) LRC (Const) 115 at paragraph 10, page 8

...it is not every irregularity which would avoid an election. It must be an irregularity which affects the result of the election. The authorities are replete with examples of irregularities which by themselves do not avoid an election unless it is shown that because of the irregularity the result would have been different.”⁷⁵

[112] This is precisely the point in this instance. There is no pleading to show how this irregularity affected or may have affected the result of the elections. The petitioners state that the election is null and void due to this error. How this is so is not set out in any form or fashion on the pleadings. Evidence is not required at this stage but the respondents would need to know in what manner the results were rendered unsafe or void as asserted by the petitioners.

[113] A semblance of a complaint is set out on 307G where at paragraph 15 the petitioners state that the second and third petitioners attended at the Commission on Wednesday 20th November 2019 to be nominated but were turned away by the Chief Elections Officer who informed them that nominations took place on Tuesday 19th November 2019. While I can see the seedling of a viable complaint, this is not sufficient in my view. The pleading must go on to show how this is either an elections offence or irregularity, that it affected or may have affected the outcome of the elections or was such a departure from the proper conduct of the elections that there was in essence no electing at all. This pleading falls far short of the requirement. In short, did this departure affect one vote awarded to the winner? Did this departure render the outcome a sham or travesty? If so, the petitioners have failed to set it out on the pleadings.

[114] All the allegations regarding nominations day are therefore struck out⁷⁶.

⁷⁵ Artherton v Fergus (1988) LRC (Const) 115 at page 123

⁷⁶ Paras 12-15 of 307A; paras 12-15 of 307C; paras 12-15 of 307E; paras 13-16 of 307F; paras 12-16 of 307G; paras 13-16 of 307H; paras 12-15 of 307I; para 12-15 of 307J

Objections complaints

[115] **The Registration Act** and the Registration Regulations outline the process of populating the various electoral registers and/or lists and making adjustments thereto. In particular, the regulations make provisions for making and resolving claims and objections regarding the various registers. A compendium of the relevant legislative processes indicates –

- (1) Section 11 of the **Registration Act** instructs the Chief Registering Officer (who is also the Chief Elections Officer) to prepare a preliminary register of voters which he must publish no later than 30th September of each year;
 - (2) Section 13 of the Registration Act provides for the determination of claims and objections to the various registers. The registering officers are to hear claims and objections in accordance with the regulations. The registering officers must refer disallowed claims to the Chief Elections Officer from whose decision an appeal may be made to the Commission;
 - (3) The Chief Registering Officer must publish a revised annual list no later than 30th November of each year. That list will consist of the adjustments made to the preliminary register as a consequence of adjustments made in accordance with section 7 of the **Registration Act** or after the determination of claims and objections made pursuant to section 13 of that Act; (See section 15);
-
- (4) The Chief Registering officer is to, within 7 days after the issue of the President's writs for elections cause a supplementary list to be published which is to include –

- (a) The names of all persons who are on the revised annual list published in accordance with section 28; and
 - (b) The names of all persons registered since the issuance of the last quarterly list up to the date of the writs but exclude all persons removed from the list as a result of objections made within 5 days after the issuance of the writs; (See section 16);
- (5) Section 17 provides that the revised annual list and the supplementary registers published in accordance with sections 15 and 16 shall be used as the official register for the purposes of any election;
- (6) Section 28 provides for continuous registration. The Chief Elections Officer is to publish a list quarterly list in this regard;
- (7) Regulations 32 to 37 set out the procedure for the making and resolution of claims and objections;
- (8) Regulation 32 mandates that at the time of publishing the preliminary register, the Chief Elections Officer must publish a notice inviting persons to make objections to the inclusion of any names on the list. The notice is to specify the manner in which and the date by which claims or objections may be made. The date for the receipt of claims and objections must not be earlier than 7 days after the date of the publication of the preliminary list;
-
- (9) The form in which claims or objections can be made is stipulated and late claims or objections can be refused (Regulations 33 and 34);
- (10) Regulation 35 sets out the process for the hearing of the objections;
- (11) The Chief Elections Officer must make the necessary changes to a list after the determination of claims and objections;

- (12) The register of electors is closed to amendments after the issuance of the writs for holding elections (Regulation 40).

[116] The petitioners allege that the Chief Elections Officer issued a notice declaring 19 November 2019 as the last date for the submission of claims and objections to the preliminary register. They plead that some 1544 objections were made to various names on the preliminary and quarterly register on or before 19th November 2019. For instance, on 307G Mr. Cuffy alleges that 404 objections were made to names during the period from January 2019 to 18th November 2019. The complaint is that all the registering officers and the Chief Elections Officer failed to hear and determine the objections in accordance with the **Registration Act** and Registration Regulations. They allege that the registers used for the general elections included all of the names to which objections were made.

[117] The respondents (applicants) challenge these pleadings on a number of grounds:

- (1) The petitioners have not identified the "*various persons*" who objected to the registers. There is no indication of any objections made by the petitioners;
- (2) There is no indication that the objections made by the "*various persons*" were valid or were submitted within the time prescribed by law;
- (3) There is no indication as to when the alleged objections were submitted. The applicants have submitted affidavit evidence and charts to show that the allegations are not borne out by the records of the Commission;
- (4) There is no allegation of bad faith or improper motive on the part of the Chief Election Officers or registering officers;
- (5) The allegations are based on a flawed interpretation of sections 16 to 17 of the **Registration Act** and regulations 38 to 40 of the Registration Regulations. In particular, the respondents (applicants) point out that there was no power residing in the Chief Elections Officer or registering officers to hear and determine objections after the issue of the President's writs.

My Thoughts

[118] The petitioners plead that 1544 objections were made before 19th November 2019. They have specified the numbers by constituency.⁷⁷ For instance, in Roseau Central (petition 307G) they assert that 404 objections were made between January 2019 to 18th November 2019. This pleading and those similar to it do not identify the various persons to whom they made objections. The pleading with respect to the 404 names or indeed none of the other objections mentioned on the other petitions state when those objections were made, the grounds for making the same or how the objections were made. This sort of pleading would assist the respondent to know the merits of the case being pleaded. It would assist the court to determine whether the pleading is a viable one. Instructively, it is noted that the pleadings make no distinction between objections made before the date for the publication of the preliminary register in accordance with regulation 32 or thereafter. If the petitioners wish to plead a breach of Regulation 32, then this latter distinction is imperative.

[119] The respondents (applicants) have filed evidence of numbers produced from the office of the Chief Registering Officer. They claim that the numbers contradict the allegations raised on the petitions and as such prove that they are patently wrong and an abuse of the court's process. I refrain from going down that road into a discourse on the factual disputes. A number of authorities have instructed against the practice of conducting a mini trial on a strike out application⁷⁸. What does concern me is the patent lack of specificity or precision on the pleadings in the manner I have stated above. In particular, the petitioners are required to plead sufficient material to demonstrate how the breach of the law on the determination

⁷⁷ The numbers in the other petitions are as follows – 47 persons in 307B; 242 persons in 307C; 52 persons in 307E; 14 persons in 307F; 404 persons in 307G; 201 persons in 307H; 12 persons in 307I; 230 persons in 307J

⁷⁸ See *Wenlock v Maloney* [1965] 2 All ER 871 and *Spencer v AG* (1993) 3 LRC 1

of claims and objections was of such a nature that it affected or may have affected the results. The pleadings do not meet this standard.

[120] The respondents (applicants) also claim that the numbers show a distinction between the number of objections filed before the President's writs were issued on 6th November 2019 and those filed thereafter. Even though the petitioners say 1544 objections were filed before 19th November 2019, the numbers produced by the applicants show that no objections were filed in Morne Jaune, Wesley, Roseau North, Roseau South, Mahaut, St. Joseph, La Plaine and Cottage between 1st January 2019 and 6th November 2019. There was 1 objection filed in Castle Bruce, 2 in Salisbury and 37 in Roseau Central during that time. Following the issuance of the President's writs on 6th November 2019, 960 objections were filed by 18th November 2019. 155 objections were filed between 19th and 20th November 2019. The respondents (applicants) submit that 1115 objections were filed after the writs were issued on 6th November 2019. These submissions centre around the interpretation to be given to section 16 (b) of the **Elections Act** which reads:

The Chief Registering Officer shall, within seven days after the issue of the writs for the holding of elections, cause to be published a supplementary register which shall include the following:

- (a) the names of all persons which appear in the revised quarterly list published in accordance with section 28;
- (b) **the names of all persons who have been registered since the publication of the last quarterly list up to and including the date of the issue of the writs for inclusion in the quarterly publication, but shall exclude such names as have been removed from the register as a result of any objection made within five days after the issue of the said writs.**[Bold emphasis mine].'

[121] The two sides maintain different postures on whether the subsection allows for objections to be filed after the President's writs have been issued. The respondents (applicants) take the view that there can be no right to object after the President has issued his writs. The petitioners respond that section 16(b) requires no clarification or judicial interpreting; the Chief Registration Officer⁷⁹ is obligated to prepare the supplementary register by, among other things, excluding all names that have been removed as a result of any objection made within 5 days after the issue of the writs. I again refuse to enter the dispute on these matters. The court's scrutiny is to ensure that a properly pleaded case is set out on the petitions. Arguments about issues and varying interpretations of the provision in question are hardly suitable at this juncture. To entertain the varying disputes would, in my view, enter the realm of the sort of discourse that is expressly frowned on in the authorities. See for instance **Citco Global Custody NV v Y2K Finance Inc**⁸⁰ where Edwards JA observed that:

"Among the governing principles stated in Blackstone's Civil Practice 2009 the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated."

[122] Although Her Ladyship's observations were concerned with the strike out of pleadings pursuant to the CPR, I believe her observations are apposite in cases where the court is exercising its inherent jurisdiction to strike out a petition or pleadings on a petition.

[123] If I am to understand the petitioners to be saying that their case reveals a breach of the duty imposed on the Chief Registration Officer by section 16(b), then it was incumbent on them to plead, at the least, the names of the persons, the date of objections and the nature of the objections made after 6th November 2019 to

⁷⁹ The Chief Elections Officer serves as the Chief Registration Officer. See section 10 of the Registration Act

⁸⁰ NVAP 2008/0022 at paragraph 14.

demonstrate the breach of duty. This pleading would have also assisted the court to determine whether the pleading had any chance of exposing a breach that affected the results of the elections.

[124] The closest the petitioners have come to the necessary pleading is for instance, the assertion in Roseau Central that 51 persons who were objected to prior to 19th November 2019 were allowed to vote. A schedule of the 51 names are attached to the petition. This pleading even if true cannot suffice to show that the election result may have been affected or was in fact affected and must be set aside. The election was won by over 200 votes in that constituency. The pleading will not succeed to show that the results may have been or was affected.

[125] The pleading that other persons to whom objections were made may have voted is speculative, imprecise and lacking any material particulars of their names, when objections were made to their registration, how the objections were made and the nature of those objections. For these additional reasons the pleadings are struck as vague, non-specific or lacking the particularity required in these types of cases.

[126] The additional common complaints about the registers are:

- (1) The electoral office published a notice on 26th November 2020 indicating that the preliminary and supplemental registers as published will constitute the final lists for general elections for 6th December 2019. The petitioners say that the electoral officials were mandated to use the revised annual list and the supplementary registers for the general elections. The use of the wrong list renders the elections null and void;
- (2) The register of electors used by the polling agents and registering officers on elections day was different from the registers given to the petitioners;
- (3) The names of a number of persons were added to the supplementary register but not disclosed to members of the public until 14th November

2019 when the supplementary register was published. The petitioners have listed the names of a number of such persons in schedules to some of the petitions⁸¹. For instance, they have stated 68 names in the second schedule to the Roseau Central petition⁸². The petitioners claim that the policy to “*keep the names a secret*” is a violation of rule 34(2) of the Registration Regulations. That rule they say, requires that claims must be made available for inspection at the offices of the registering officers until the determination of the claims;

- (4) The policy, they continue, makes it is impossible for members of the public to object to the newly registered persons within 5 days after the President’s writs are issued. Thus the supplementary register was void, unsafe and null.

[127] The respondents (applicants) argue that these additional complaints about the registers should be struck out as well.

The Section 17 question

[128] In respect of the use of the preliminary and supplementary registers as opposed to the revised annual list and the supplementary registers for the elections, the respondents (applicants) suggest that these pleadings are incurably bad and devoid of particulars. The respondents (applicants) point out that the petitioners have failed to plead the differences between the documents required by section 17 of the Registration Act to be used at the polls and those actually used on polling day. They have also failed to show how the registers were inaccurate or lacked credibility or how duly registered voters were disenfranchised or whether or how

⁸¹ The numbers in the other petitions are as follows – 116 persons in 307A; 334 persons in 307B; 57 persons in 307C; 72 persons in 307D; 312 persons in 307E; 42 persons in 307F; 81 persons in 307H; 27 persons in 307I; 42 persons in 307J

⁸² At paragraph 24 of Roseau Central petition – 307G

unqualified voters were included on the registers and allowed to vote in the elections. The petitioners were obliged to plead a breach of the electoral laws and if there was indeed a breach how the same affected the outcome of the elections.

[129] The respondents (applicants) are right about most of their submissions. My only point of departure is my view that electoral officials were enjoined to follow the law. Section 17 of the **Registration Act** states, that the revised annual list and the supplementary register shall constitute the register of electors for the respective polling districts and shall be used as the register for any election. If the pleadings are taken as correct then the use of the preliminary and supplementary registers at the 6th December 2019 elections, was a patent non-compliance with section 17 of the **Registration Act**. There may be valid reasons for the noncompliance (and the respondents (applicants) have been at pains to take the Court into the weeds on this issue). The parties engaged in an illuminating and spirited discourse on the approach the court ought to take with regards to whether or not electoral officials acted properly. I am not unduly troubled by that disputation unless the respondents (applicants) can show me that the pleadings should be removed as a blatant abuse of the court's process. I do not think that they are abusive. Rather, I think that the pleadings are inadequate.

[130] The true concern, in my view and frankly the difficulty that confronts the pleadings is the manifest lack of any reference to whether this purported breach of section 17 of the **Registration Act** had any impact on the elections and if so, in what manner did it impact the results. Questions that arise and should have been addressed on the pleadings are whether the breach amounted to an elections offence or irregularity and if so, whether and how it affected the results at the polls. If the alleged breach did not amount to an elections offence or irregularity, the question which arises is whether or not it was such a substantial departure from the norms or dictates of the electoral laws sufficient for the court to set aside the election as being one that was not an election at all or that what transpired was a travesty or sham.

[131] In my view, for instance, if there was no or no material difference between the registers required by section 17 of the **Registration Act** and the register actually used on the elections day what would be the point of setting aside the exercise of the voter's franchise? In such cases, it remains for the petitioners to demonstrate on the pleadings the differences between the registers and the impact on the results sufficient to form a credible basis for setting aside the elections. In short, the mere pleading of a breach of electoral laws by elections officials without more is not adequate. The paragraphs in support of these allegations on all the petitions are therefore struck out⁸³.

Use of different registers on polling day

[132] The foregoing reasoning applies to the allegations that different registers were used by the registering officers and the polling agents on polling day from the registers published by the electoral office. I strike out those pleadings as well⁸⁴.

Failure to disclose the names of newly registered electors

[133] With respect to the complaints that electoral officials kept the names of newly registered persons a secret and that this violated Rules 21 and 32(3) of the Registration Regulations, I fail to see how these pleadings stand any prospects of succeeding. For one thing, there is no provision in any of the elections laws of Dominica that obligates elections official to disclose the names of newly registered individuals to the public by any other means than the methods stated in the Registration Act and the Registration Regulations. Regulation 21 is not obscure in its stipulation that the Chief Elections Officer is to publish the various registers and make copies in the specified manner. There is no allegation that the Chief

⁸³ Para 17 of 307A; para 17 of 307B; para 21 of 307C; para 15 of 307D; para 21 of 307E; para 22 of 307F; para 22 of 307G; para 24 of 307H; para 21 of 307I; para 21 of 307J

⁸⁴ Para 18 of 307A; para 18 of 307B; para 22 of 307C; para 22 of 307E; para 23 of 307F; para 23 of 307G; para 25 of 307H; para 22 of 307I; para 22 of 307J

Elections Officer failed, refused or omitted to follow this process of informing the public of the names of registered persons. Regulation 22 sets out how the public is to be informed of and given copies of revisions to the registers. There is no pleading to say that the Chief Elections Officer failed, omitted or refused to follow this process of informing the public of the names of persons who were registered on the revised registers. The Chief Elections Officer can supply members of the public with copies of any part or parts of the registers on paying a fee (Regulation 24). If this was the issue, the petitioners have certainly not said so on their pleadings. Therefore, the assertion that the electoral officials did not disclose the names of the newly registered persons is bound to fail and all of them are struck out as failing to disclose any elections offence or breach of the elections law or any cause of action.⁸⁵

Treating

[134] The petitioners' complaint under this pleading is that the DLP, along with the respondents/candidates and their agents committed the electoral offence of treating. The offence was allegedly committed when these persons "*corruptly provided and paid for entertainment to thousands of electors in the Commonwealth of Dominica and within the ... constituency for the purpose of corruptly influencing those electors to vote for ... and to refrain from voting for the Petitioner at the election*".⁸⁶ The purported treating was conducted by the DLP, the respondents/candidates and their agents when –

- (1) Over 200 electors were feted with free transportation, food, drinks, entertainment and accommodation at a rally in Antigua for the purpose of corruptly influencing them to vote for the preferred DLP candidate;

⁸⁵ Para 19 of 307A; para 19 of 307B; para 23 of 307C; para 16 of 307D; para 23 of 307E; para 24 of 307F; para 24 of 307G; para 26 of 307H; para 23 of 307I; para 23 of 307J

⁸⁶ Para 22 of 307A; para 22 of 307B; para 26 of 307C; para 19 of 307D; para 26 of 307E; para 30 of 307F; para 33 of 307G; para 29 of 307H; para 26 of 307I; para 27 of 307J

- (2) international reggae artist Taurus Riley provided entertainment to *"thousands of electors on the 9th of November 2019 at the launching of..."* Mrs. Skerit as the DLP's candidate for the Roseau Central constituency,
- (3) International reggae artiste Popcaan provided entertainment at a youth rally in Bath Estate on 17th November 2019. Thousands of voters attended this show. The voters were told to vote for the DLP and were accordingly corruptly treated and influenced to vote for the DLP;
- (4) Gospel artiste Donnie McClurkin provided "free" entertainment to voters in the Castle Bruce constituency on 24th November 2019. This free entertainment is said to have been provided to corruptly lure persons to attend or listen via radio or internet. They were thus corruptly lured in order to vote for the DLP's candidates;
- (5) A concert was held on 30th November 2019 at which gospel artiste Yolanda Adams performed. Thousands of voters are said to have been corruptly influenced and told to vote for DLP.

[135] Section 56 of **the Elections Act** describes treating as an elections offence:

The following persons shall be deemed guilty of treating within the meaning of this **Act**:

1. Every person who corruptly, by himself or by any other person, either before, during, or after an election, directly or indirectly, gives, or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, or provision to or for any person, for the purpose of corruptly influencing that person, or any other person, to vote or to refrain from voting at the election, or on account of that person or any other person having voted or refrained from voting at the election;

1. Every voter who corruptly accepts or takes any such food, drink, entertainment, or provision.

[136] The respondents (applicants) contend that the pleadings are incurably bad and fail to disclose the offence of treating because –

- (1) The events in question were open to the public and any one could attend;
- (2) There are no –
 - (a) particulars of any conduct or interaction between the respondent/candidates and/or their agents and any elector or otherwise;
 - (b) acts or conduct of the respondents/candidates or their authorised agents that show they corruptly influenced or sought to corruptly influence any elector to vote or refrain from voting;
 - (c) names of electors corruptly influenced;
 - (d) names of any of the “thousands of electors”;
 - (e) names of any of the persons who attended the shows, listened, or watched via radio, Facebook or television and was corruptly influenced.

[137] How does the law address concerns about treating? What are the requisites of proper pleadings of this elections offence? In **Darroux**, Thomas J (quoting from **The Powers, Duties and Liabilities of an Election Agent and Returning Officer**) explained the onus that falls on a petitioner:

“Where the petition charges specific bribery, treating and undue influence, the petitioner has been ordered to deliver particulars of the names and the last known or present street address, and number (if any) on the register of the agents of the respondent who bribed, treated, or unduly influenced, and of the persons who were bribed, treated or unduly influenced, also, of the dates when, and the places where, each act of bribery, treating or undue influence took place, also the nature, character and description of each act of bribery, treating or undue influence; and also by which agent, and to which person, each bribe or treat was given, promised or offered, and by which agent, and upon which person, each act of undue influence was exercised or attempted to be exercised”⁸⁷

⁸⁷ Abraham v Darroux DOMHCV2010/0003 at para 50

[138] Thomas J suggests, and indeed most of the authorities in our court that deal with these issues opine, that the level of the specificity mandated for these types of pleadings underscores the fact that charges of criminality have been raised by the petitioners. As such his Lordship intimated (and I agree) that *"despite the rule that the Court must exercise its draconian power very sparingly, that must be taken and applied in context. The context here is the criminal law with the implications and standard of proof."*⁸⁸ These sorts of offences are described as corrupt practices⁸⁹ and as explained in **Agarwal v Ghandi**⁹⁰:

"Allegations of corrupt practice are in the nature of criminal charges. It is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the petition cannot proceed for want of cause of action. The emphasis of the law is to avoid a fishing expedition and a roving inquiry. It is therefore necessary for the Court to scrutinize the pleadings relating to a corrupt practice in a strict manner."

[139] In **Ferdinand Frampton**⁹¹ Rawlins J elaborated thusly on the matter-

"It is my view that the ancient principle that fraud must be specifically pleaded is also applicable to the pleading of allegations of bribery and treating in election petitions. They are all allegations of dishonest conduct. A petitioner must plead some particulars, either in the petition or in the affidavit in support, to enable the court, and particularly the respondents, to know what acts are complained of. The respondents would otherwise be severely prejudiced in their defence."

[140] On the most generous of views taken about the viability of the pleadings on treating in this case, none of them possesses the sort of particulars or facts required of a pleading of a corrupt practice as expounded in the above-cited cases. For instance, the respondents will be hard pressed to answer whether a single attendee at any of the impugned events was corruptly influenced to vote for a respondent/candidate. To do so, I conclude, the petitions ought to have identified whether or how those attendees were influenced by an identified

⁸⁸ *Abraham v Darroux* DOMHCV 2010/0003 at para. 47

⁸⁹ See the definition of corrupt practices in section 2 of the House of Assembly (Elections Petition) Rules 2014

⁹⁰ [1987] Supp. SCC 93

⁹¹ DOMHCV2005/0149 at para. 76

candidate or by an identified agent or agents of the candidate and whether and for whom these persons were influenced to vote. I find that all the allegations regarding treating fail in that they lack necessary and material particulars. They do not disclose a cause of action.

[141] The petitioners have adopted the posture that mass gatherings of the sort put on by the DLP (and ostensibly endorsed by the challenged respondents/candidates) must have influenced persons to vote for their candidates. This may or may not be the case. But this is not an inference that can be drawn without material and specific facts pleaded as to the conduct prohibited by the law. For one thing, I do not see anything in the law against a political party engaging in the type of electioneering that involves large concerts and public entertainment. To arrive at that view may mean that all political parties must hold political campaigns without entertainers in attendance. This may mean the end of political campaigns as we know them. On the contrary, I find that there must be evidence beyond the usual canvassing for votes on behalf of oneself or by an agent on behalf of the candidate; there must be conduct that indicates some explicit corrupt intent to influence the vote of a person(s) before it crosses the restriction contemplated by section 56.

[142] The foregoing is entirely why section 56 outlaws conduct that is "corrupt". It is not enough for the petitioners to plead conduct that some may decry as extravagant or creating an "*unfair advantage*" as the petitioners have lamented elsewhere on the pleadings. Rather, it is for the petitioner to plead material that unambiguously shows conduct that is "*corrupt*". As Thomas J put it in **Darroux**⁹² in reference to the very section 56, "*the giving of food and drink is an everyday occurrence, the section uses the word 'corruptly' in order to single out the conduct aimed at.*" I would join this sentiment and humbly append my opinion that the same logic applies to the provision of entertainment.

⁹²Abraham v Darroux DOMHCV2010/0003 at para. 66

importation of voters

[143] The petitioners point out at paragraphs 307 and 308 of their written submissions filed on 2nd July 2020 that this section of their pleadings was mislabelled. The complete title should read "***Treating: Importation of Voters***". The petitioners are indicating in their submissions that they wish to expose the elections offence of treating proscribed by section 56 of the **Elections Act**. The respondents (applicants') reply is that the petitioners cannot amend their pleadings at this point. I agree that the petitioners cannot amend their pleadings at this stage. Nonetheless, the absence of an indicative title does not preclude the court from examining the pleadings to see if they make out a cause of action as contended or any at all.

[144] The paragraphs on importation of voters claim that:

- (1) The DLP spent hundreds of thousands of dollars to transport electors to Dominica in a bid to influence them to vote for the respondents/candidates. DLP operatives and agents Vince Henderson and Loreen Bannis along with Owen Prosper are named as persons who procured travel for supporters of the DLP to vote at the elections. DLP and its candidates are said to have obtained an unfair advantage by this conduct;
- (2) The DLP transported several thousand electors to Dominica on 4th and 5th December 2019 for the purpose of voting. They were all dressed in red and chanting DLP slogans;
- (3) The respondents/candidates and the DLP used monies obtained through corruption, through the sale of passports and the proceeds of crime to fund its 2019 general election campaign including the treating of electors with free entertainment and the importation only of electors who support the DLP;
- (4) After the paragraph alluding to the use of corrupt money, the petitioners set out a number of paragraphs that in expansive and graphic detail,

outline supposed acts of corruption. The petitioners accuse the Prime Minister of corruption through a sale of land transaction with one Anthony Haiden. The corrupt dealings were allegedly concluded via Mercury Properties Development Inc., a company controlled by Anthony Haiden. The petitioners rely on the contents of a story published by international news organisation, Al Jazeera regarding the sale of Dominican diplomatic passports to fund the DLP's elections campaign.

- (5) The pleadings go on to detail a story of corruption among the Prime Minister, one Ali Monfared and one Emmanuel Nathan to use monies that were allegedly the proceeds of crime to fund the DLP elections campaign including money paid for billboards, manifesto and entertainment. Some of the allegations stem back to the year 2014.

[145] The pleadings under the heading "*Importation of voters*" can be subdivided into 2 parts – (1) those dealing with actual transportation; and (2) those dealing with the funding of the campaign by alleged corruption or corrupt funds.

[146] I fear that I must disagree with the petitioners on the sufficiency of the pleadings as plentiful as they appear. In respect of subhead (1) I strike those out because they suffer from the same lack of particulars and other deficiencies that plague the pleadings under the heading "*treating*" which I dealt with above. In addition, I observe that in Dominica there is no offence against transporting one's supporters. I would say that as long as there is no corrupt bargain or a patent case of influencing the vote of a person, I cannot see how the conduct can amount to the offence of treating as claimed by the petitioners or any other corrupt practice prohibited by the legislation.

[147] But the petitioners strenuously maintain in their submissions that their pleadings refer to electors and not merely supporters of the DLP. The DLP transported thousands of electors to Dominica to vote for the specified respondents/candidates of the DLP. Again, these pleadings fail to say who were the persons transported.

More particularly, there is no distinction between electors who would have voted for DLP's candidates in any event, and electors who voted for them due to the influence of an arrangement to vote in exchange for free transportation. Is one to assume that all these persons were swayed to vote by reason of transportation? Did they in fact vote? If they did, who did they vote for? How many voted? How many voted as part of the alleged transport for votes scheme? What was the nature of that bargain? Was the bargain concluded by the respondents/candidates with the persons transported or on their behalf by agents? Where are the pleadings that DLP or any one for that fact acted as agent for the respondents/candidates in any such transaction and what were the terms of that agency? Were the persons transported to receive free transport in order to vote? Or, were they to pay for their own transportation and be reimbursed after?

[148] I do not believe, as asserted by the petitioners that the respondents should wait until trial to ascertain the number of persons and their identity to interrogate whether they were in fact transported or whether if they were transported, there was any corrupt bargain for votes and the nature of that bargain. Again, it cannot be overemphasised that the petitioners' case must be stated on their pleadings with enough material to demonstrate that there is a case to answer. I cannot see that the applicants have a case to answer on this part of the petitions with respect to transportation.

[149] With respect to subhead 2 of the section titled "*Importation of voters*", I am hard pressed to see how these pleadings are viable. The allegations suggest impropriety with respect to the manner in which the DLP funded its elections campaign in 2019. If this is indeed the suggestion by the petitioners then the cause of action is even more elusive. There is no pleading that any electoral law or procedure in Dominica has been breached or that there was any departure or substantial departure from the electoral laws or procedure. What is more telling is the fact that the allegations are levelled mainly at the Prime Minister, Emmanuel Nathan, Ali Monfared, Anthony Haiden and Mercury Properties Development Inc.

There are no pleadings to show that any of the respondents/ candidates was involved implicitly or expressly in any of the conduct stated under this subhead. Were the Prime Minister and alleged cohorts acting as the agents of the respondents/candidates? If so, what are the pleaded facts to show the basis on which the petitioners are saying that these persons acted as agents for the respondents/candidates? The petitioners have failed to put any of this sort of material on the petitions and as such all the allegations⁹³ under this head are struck out for failing to disclose any cause of action and/or lack of particulars. The petitioners may have a legitimate lament about the funding of election campaigns in Dominica. Nonetheless, they have not pleaded sufficient material to show a case to answer regarding those laments.

Lack of access to DBS

[150] In **Joseph Parry v Mark Brantley**⁹⁴, our Court of Appeal upheld the learned trial judge's finding to the effect that:

"during the pre-election period, the state-owned and financed radio station on its daily, "Nevis News Cast," carried only news items and reports about the political events of the ruling NRP. The Permanent Secretary in Mr. Parry's Ministry testified as to the policy of the Department to cover only the events of the ruling party. Not one of the opposition CCM's political events was given exposure."

[151] The trial judge found as a fact that the petitioner's:-

"right to freedom of expression and his right not to be treated in a discriminatory manner by reason of his political opinion guaranteed under sections 12 and 15 of the Constitution of Saint Christopher and Nevis had been contravened by the failure of the Nevis Island Administration's radio station on its nightly Nevis News Cast to cover any of the political events organised by Mr. Brantley's political party during the campaign leading up to the election of 11th July 2011."⁹⁵

⁹³ Paras 23-34 of 307A petition; paras 23-34 of 307B petition; paras 27-38 307C petition; paras 20-31 of 307D petition; paras 27-38 of 307E petition; paras 31-43 of 307F petition; paras 34-45 of 307G petition; paras 30-41 of 307H petition; paras 27-38 of 307I petition; paras 28-39 of 307J petition.

⁹⁴ SKNHCVAP 2012/0003

⁹⁵ Joseph Parry v Mark Brantley SKNHCVAP 2012/0003 at para 86

[152] In **Ferdinand Frampton**, Rawlins J, after having earlier pronounced that DBS is state owned and operated⁹⁶, explained that:

“A State-owned and operated broadcasting media is not the preserve of the political party which forms the government. It is a service that is dedicated to the use and benefit of the people of the State. It should promote and enhance the constitutional guarantee of freedom of expression, which includes the right to communicate and receive ideas freely.”

[153] These principles underscore the logic that in our constitutional democracies the electoral process and more importantly the intrinsic elemental right to vote are imbued with a pedigree of constitutional values. Our courts have therefore been consistent in finding that the laws, rules and regulations governing the electoral process must be interpreted and applied so as to promote enfranchisement and guard against disenfranchisement. It is my view that all aspects of the state machinery that are engaged in the electoral process in whatever shape, form or fashion are charged with the responsibility to perform their roles in ways that promote and do not derogate from these constitutional norms and values. The freedom of expression may very well be engaged. The right must be respected and must not be contravened.

[154] In this case, the petitioners claim that DBS is part of the state media machinery⁹⁷. They list a number of programmes covered by DBS which were all DLP events. They list a number of UWP events that DBS did not cover. The petitioners claim that DBS's failure to cover their events breached their constitutional right to freedom of speech and protection from discrimination. They say that DBS' approach gave the DLP an unfair advantage.

[155] The respondents (applicants) filed affidavit evidence in which they strenuously urge this court to find that DBS is not owned and controlled by the State. The respondents (applicants) say that the court has the jurisdiction to entertain the evidence in this regard since the pleadings amount to an abuse of the court's

⁹⁶ Ferdinand Frampton DOMHCV2005/0149 at para 34

⁹⁷ See for instance petition no. 307F at para. 45 et seq

process. The learning in **Lonrho**⁹⁸ is particularly helpful on the approach that the court must utilise if it is to strike out a case or pleadings on grounds of abuse of the court's process. Their Lordships in that case advised that:

"Where, however, the application is made under Ord 18, r 19(1)(b) or (c) or **the inherent jurisdiction of the court** on the ground that the claim is 'vexatious' or an abuse of the process of the court, evidence is admissible to show that this is the case. **But the test is a high one. A plaintiff is entitled to pursue a claim in these courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the court, it must be allowed to proceed to trial.**" [Bold and underline emphases mine].

[156] The respondents (applicants) have not demonstrated that the pleadings that DBS is a state entity are bound to fail or are patently objectionable. What they have succeeded in showing is the divergence of opinions between them and the petitioners about the facts and the conclusion that the court must draw from these facts. In view of all that I have stated previously on the court's approach to striking out petitions, I will not enter into a discourse on this disputation at this stage. Those quarrels are better suited to a trial of the petitions. Rather, I will follow the persuasive finding of Rawlins J in **Ferdinand Frampton**⁹⁹ that DBS is state owned and controlled.

[157] The applicants state further that there is no pleading that the petitioners applied for equal time on the airwaves. It must be recalled that our Court of Appeal rejected the very argument in the **Joseph Parry** decision when it ruled that:

"It is not a requirement for an opposition political party in a general election campaign to request the government-owned media to cover their political events to an equal extent as they cover the governing party's campaigning. When they give unfair coverage to the governing party's campaign events in their programming the likely explanation is political bias or, more insidiously, fear of victimisation if they do not show political bias in favour of the ruling party. There was a burden on Mr. Parry, as there is on the leader of any political party in power, in Nevis as he instructs the Governor-General to dissolve the Assembly and to call

⁹⁸ [1991] 4 All ER 961 at page 965

⁹⁹ DOMHCV2005/0149 at para.4

elections, to ensure that the government-owned media execute or perform their important constitutional role in an election campaign of giving equal time to all major political parties, thus giving sustenance to the democratic process.”¹⁰⁰

[158] The applicants also complain that there are no allegations that the respondents/candidates or their agents or the executive of the DLP took any act or decisions or gave any directions to the management of DBS to take the impugned action. I fear that I must agree with the respondents (applicants) on this point. The learning as extrapolated from **Ferdinand Frampton** and **Joseph Parry** inform that the petitioners may plead and prove a deliberate and calculated breach by a state entity in collusion with or at the instance of the candidates and/or their agents of a fundamental right that affects the constitutional right to vote in a free and fair election. The trial judge in **Mark Brantley** found this as a fact and the Court of Appeal later upheld that finding.

[159] In this case, there is not even the suggestion that there was involvement by or the knowledge, collusion or act of any of the candidates or their agents in relation to the impugned conduct of DBS. In addition and more importantly, the petitioners are enjoined to plead and prove that the acts or misdeeds of any sort affected or may have affected the results of the elections or rendered the same a sham or a travesty in the sense that it can be condemned as no election at all. The Court of Appeal in **Joseph Parry** expressed the view at paragraph 90 that the conduct in the case was of such a nature that *“the election was not substantially in accordance with the law and that the irregularities affected the result”*. I strike out the pleadings on all the petitions¹⁰¹ regarding this issue.

¹⁰⁰ SKBHCVP2012/003 at paragraph 88

¹⁰¹ Paras 35-40 of 307A petition; Paras 35-40 of 307B petition; paras 39-44 of 307C petition; paras 32-37 of 307D petition; paras 39-44 of 307E petition; paras 44-49 of 307F petition; paras 46-51 of 307G petition; paras 42-47 of 307H petition; paras 39-44 of 307I petition; paras 40-45 of 307J petition.

Intimidation and police brutality

[160] The constitutional principles that I found to be applicable to the complaints about the breaches of the freedom of expression apply equally to the complaints of breaches of the constitutional protection against inhumane treatment, torture or degrading treatment and to the right to one's liberty relative to an elections process (see sections 3 and 5 of the Dominica Constitution). In this regard, it is now quite trite to assert that the petitioners are indeed endowed with the right to claim constitutional redress if these rights are breached in a way that derogates from or diminishes the exercise of their franchise to choose their parliamentary representatives and does in fact affect the results of the elections.

[161] Additionally, the breaches set out under this head amount to conduct forbidden by the Elections Act. Section 57 of the **Act** reads:

"Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person, in order to induce or compel that person to vote or refrain from voting or on account of that person having voted or refrained from voting at any election, or who by abduction, duress, or any fraudulent contrivance, impedes or prevents the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon any elector either to give or refrain from giving his vote at any election, is guilty of undue influence within the meaning of this Act."

[162] The section only criminalises conduct that is designed and/or orchestrated to induce or compel a person(s) to vote or to refrain from voting in an election. In other words the conduct must be shown to have an effect on how a person(s) vote or do(es) not vote. In that context, the learning suggests that general rioting or violence does not constitute the offence. It is the undue influence on the voter that amounts to the corrupt practice. In this regard, it is not necessary that the threat is carried out or that the person does not have the power to execute the threat or

even intends to carry it out. It is sufficient that it is a serious enough threat to influence a voter one way or the other or not at all¹⁰².

[163] The petitioners submit that their case falls squarely under this section and claim once more that this part of the pleadings are mislabelled. The respondents (applicants') response is that the heading of this section of the petitions does not refer to undue influence or section 57. Indeed, the petitioners do not reference the section anywhere in these paragraphs. The respondents (applicants) submit that the court should not permit the petitioners to amend their pleadings to add the reference to the section. Notwithstanding the petitioners' failure to reference the section, I think that they have pleaded sufficient facts for the court and the applicants to apprehend that the cause of action lies in undue influence pursuant to section 57 of the **Elections Act**.

[164] In addressing the complaints under this head, I was tempted to deal with each one individually. After reviewing the multiple paragraphs I have concluded that there is a common theme and common defects. Accordingly, a recital seriatim was not necessary. The crux of the allegations is that the police, the Prime Minister and political operatives of the DLP engaged in acts of threats, intimidation, brutality and harassment that breached the constitutional protections guaranteed to the petitioners and by extension amounted to an electoral offence. The petitioners are obligated to plead sufficient material to reveal conduct that was designed and/orchestrated to improperly influence an elector to vote or refrain from voting one way or other or at all. I do not find that there is any material on the pleadings that the conduct recited on the petitions meets that standard. Indeed, the common law and statute do not prescribe a rule against influence. Halsbury Laws of England¹⁰³ explains the concept with a few useful examples:

"The law cannot strike at the existence of influence; it cannot take away from a man who has property, or who can give employment, the influence he has over those whom he can benefit. A landlord is therefore entitled to use influence with his tenants if he does so legitimately. He has a perfect

¹⁰² Halsbury's Laws of England, Volume 38(A) para. 724

¹⁰³ Supra, note 104 at para. 725

right to choose a tenant who agrees with him in politics rather than one who does not. A suggestion to a tenant to vote for a particular candidate and a request that, if the voter could not do so, he should stay at home and not vote against that candidate, has been held not to exceed the bounds of legitimate influence; but the threat of eviction of a tenant, who then votes under the influence of that threat, is undue influence.

If an employer dismisses an employee, he may be called upon to prove that he has good grounds for the dismissal apart from political grounds, and if the dismissal were for political reasons it would amount to undue influence.

Where workmen for political purposes ill-treated certain of their fellow workmen and expelled them from a common place of employment, they were guilty of undue influence.

It has been laid down that to withdraw, or to threaten to withdraw, one's custom in order to induce a voter to vote or to abstain from voting amounts to undue influence. On the other hand, it has been said that it is open to a man to say that he chooses to deal with another, not in accordance with the merits of the commodities he sells, but according to his politics on one side or the other. A letter written by a lady withdrawing her custom from a voter, who occasionally looked after puppies for her, on the ground of his political views, has been stated to be not sufficient to justify a criminal charge of undue influence. It appears that the loss, or threat of loss, must be so serious that a judge could direct a jury in a criminal court to find the individual guilty of the statutory offence. A promise to take no proceedings on a bill of sale if a voter voted as required might amount to undue influence."

[165] The pleadings under this level, serious charges about the conduct of the named individuals. Nonetheless, in my assessment those pleadings do not meet the standard required to show undue influence on any person to vote or refrain from voting one way or the other or at all. I strike out these pleadings for failing to disclose a cause of action¹⁰⁴.

Electoral Commission

¹⁰⁴ Paras 41-55 of 307A petition; paras 41-55 of 307B petition; paras 45-59 of 307C petition; paras 38-52; paras 45-59 of 307E petition; paras 50-64 of the 307F petition; paras 52-66 of 307G petition; paras 48-62 of the 307H petition; paras 45-59 of 307I petition; paras 46-60 of the 307J petition.

[166] The petitioners complain that the Commission engendered a legitimate expectation in the electorate of Dominica that it would embark on a process of electoral reforms. The cleansing of the electoral registers/lists and the introduction of voter identification cards were among the reforms that the Commission is said to have promised the electorate. The petitioners submit that, further to that promise, the Commission announced the commencement of a process of voter verification to improve voter registration. The Commission scheduled the process to be conducted over 6 weeks with a completion date of 1st July 2018. The petitioners also plead that the Commission obtained an identification card management system, but it never utilised it since it had not previously made efforts to cleanse the registers of persons who should not be registered.

[167] The petitioners also challenge the actions of the Government of Dominica under this section of the petitions. The claim is that the Government reneged on several promises of electoral reform. The Government's retreat from its promises led to *"widespread voter personation, fraud and the voting by ineligible electors."*¹⁰⁵

[168] The Government's misdeeds under this head includes the tabling of bills with provisions to amend the laws on the elections offences of bribery and treating to immunise DLP elected officials from pending criminal charges. The bills also introduced provisions to *"sanitise" the voters'* lists and to introduce voter identification cards. The Government withdrew the bills after much public protests against the clauses that sought to protect DLP officials from pending criminal charges. In September 2018, the Government introduced further bills addressing electoral reforms including voter identification cards. The Government withdrew these bills without reason. No further efforts at reform have followed notwithstanding the call from local and international organisations for electoral reforms.

¹⁰⁵ See for instance para. 63 of the Mahaut petition (307E)

- [169] The Government is accused of making a false statement on 19th November 2019 implying that it *"spent Six Million One Hundred and Thirty Thousand and Three Hundred Eastern Caribbean Dollars on electoral reform which included an expenditure of EC\$319,961.45 to employ additional staff required for the confirmation exercise and issuing of ID cards"*¹⁰⁶. The members of the Commission were informed that a voter confirmation process could not take place because the Government did not disburse the money budgeted for the exercise.
- [170] The petitioners also claim that they held out hopes for another attempt at electoral reform when the Prime Minister announced the scheduling of a sitting of the House of Assembly on 18th November 2019. However, the sitting did not take place because of the President's proclamation on 6th November 2019 of the date for elections. The Prime Minister breached the legitimate expectation of the voters of Dominica that electoral reform would take place when he gave advice to the President to announce the date for elections.
- [171] The Commission and Chief Elections Officer also breached the legitimate expectation of the electorate by failing to verify the voters' list and by failing to issue voters' identification cards. The petitioners lament that *"the presence of the names of thousands of deceased electors and electors who have resided overseas for more than five years in the register of electors, along with the absence of voter identification cards caused the election process to be unfair and vulnerable to fraudulent manipulation by double voting and personation."*¹⁰⁷

My thoughts

- [172] I would start off this part of the discourse with the assertion that the petitioners have not said on their pleadings which law in Dominica obligates the Commission to undertake electoral reforms and in particular cleansing the list of voters or

¹⁰⁶ Para 65 of 307A; para 65 of 307B; para 69 of 307C; para 62 of 307D; para 69 of 307E; para 74 of 307F; para 76 of 307G; para 72 of 307H; para 69 of 307I; para 70 of 307J

¹⁰⁷ For example, at paragraph 74 of the Mahaut petition (307E).

mandating the use of voter identification without the necessary legislated instruments. It seems that it ought to be beyond trite that the Commission cannot engender an expectation in the public in respect of a power that it does not possess¹⁰⁸.

[173] The power to make laws including laws regarding the elections process and registration of electors to vote resides in Parliament (section 41 of the Constitution). Where Parliament intends to make laws including regulations regarding the registration of electors, section 51 of the Constitution mandates that the bill or regulations must be sent to the Commission and the Chief Elections Officer for their comments. The Commission has no authority to embark on a process of legislative reforms to address the issues highlighted by the petitioners. The petitioners have failed to plead sufficient material to show that a legitimate expectation could have arisen. For these reasons alone all the pleadings under the heading Electoral Commission should be removed.

[174] I would go on to add that even if the Commission could have acted in the manner proposed, the pleadings are incurably inadequate. In this regard, the pleadings do not set out any an electoral offence(s) or irregularity(ies) that affected or may have affected the results of the elections or that by the actions in question the elections were not substantially conducted in accordance with the laws of Dominica or even if they were conducted substantially in accordance with the law, that the results were affected and ought to be set aside. A mere assertion that *"the presence of the names of thousands of deceased electors and electors who have resided overseas for more than five years in the register of electors, along with the absence of voter identification cards caused the election process to be unfair and vulnerable to fraudulent manipulation by double voting and personation"*¹⁰⁹ is inadequate to meet the required standard.

¹⁰⁸ See Fletcher v AG SLUHCVP 2009/0012

¹⁰⁹ Para 70 of 307A; para 70 of 307B; para 74 of 307C; para 67 of 307D; para 74 of 307E; para 79 of 307F; para 81 of 307G; para 77 of 307H; para 74 of 307I; para 75 of 307J

[175] The actions of the Chief Elections Officer and the Government are also under scrutiny under this head. I have struck out all the pleadings labelled "Electoral Commission". However, for clarity I emphasise that these allegations are also struck out. There is no material that shows that any of the actions of the Government and/or the Chief Elections Officer amounted to an elections offence or irregularity or which, if any law was breached or was conduct that affected or may have affected the results of the elections or that the elections were not conducted substantially in accordance with the electoral laws or that even if conducted substantially in accordance with the laws, the results were affected. Even if the results were affected, there is no material to inform the respondents or the court in what manner or to what extent the results were affected.

Electoral Officers

[176] Under this head, the petitioners plead that the presiding and returning officers "*willfully and unlawfully*" rejected ballots that were lawfully cast for the petitioners. They also claim that these officers "*willfully and unlawfully*" counted ballots as being cast for the respondents/candidates which they knew were not cast for those persons. These assertions concern various post voting procedures and impute infractions of the electoral laws for which criminal penalties are specified. In particular, sections 39, 41, 43 and 51 of the **Elections Act** are engaged.

[177] Section 39 specifies the procedure for the presiding officer to immediately count the ballots after the polls close. This count must be conducted in the presence of the poll clerks, the candidates or their agents. If the candidates or any of their agents are absent, the presiding officer may conduct the count in the presence of such of the candidates that are present and if none of the candidates are present, then in the presence of two electors. Among the steps to be taken to complete the count, the presiding officer must take account of every objection made by a candidate, their agents or an elector to any ballot paper found in the ballot box and make a decision thereon. The objector can appeal a decision of the presiding

officer to the returning officer or question the return or election on a petition.
(Section 39(6) of the **Elections Act**.

[178] The returning officer conducts another count after the preliminary count done by the presiding officer. Section 41 of the **Elections Act** refers to the process as the final count and it sets out a detailed process for arriving at the prescribed outcome. Of relevance to this discourse is section 41(4) which makes the provisions of section 39(6) applicable to section 41(4). In that regard, the returning officer has to make note of and consider the objections made by the candidates, their agents or an elector. In this instance, if the objector is dissatisfied with the decision of the returning officer, they may question the return or election on an elections petition. Section 43 of the **Elections Act** then obligates the returning officer to make declarations of the final count of votes.

[179] Section 51 of the Elections Act penalizes any breach of these provisions. Section 51 (a),(e) and (f) are relevant:

“Every officer who -

- (a) Makes in any record, return or other document which he is required to keep or make under this Act, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true;
 - (e) Willfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe is validly cast for any candidate in accordance with the provisions of this Act; or
 - (f) Willfully counts any ballot paper as being cast for any candidate which he knows or has reasonable cause to believe was not validly cast for such candidate is, on conviction of indictment, liable to imprisonment for two years.”
-

[180] I fear that the pleadings on this issue are not very helpful. For one thing, there is nothing stated in them to suggest the basis on which the electoral officials in question are said to have willfully rejected or miscounted votes. In other words, the sections on post elections processes reveal a number of steps that the presiding officer, in the case of the first count, and the returning officer, in the case

of the final count, must take in carrying out their section 39 and 42 duties respectively. The sections permit the candidates or their agents to make objections to any irregularities in the conduct of the count or to the counting of any ballot for any number of reasons. There is no pleading as to the specific irregularities or breaches for which the petitioners wish to question the conduct of the electoral officials and by extension the returns or elections. The respondents will be hard pressed to know what are the missteps or misdeed that led to the rejection or miscounting of the votes. Did the petitioners or their agents object at the time? Were the objections recorded and addressed by the presiding or returning officers?

[181] More tellingly and indeed fatal to the pleadings is the fact that the petitioners have not said what number or the names of the electors who may have been impacted by the impugned conduct of the electoral officials. It behooved the candidates or their agents to make note of the names of the persons to whom they objected and the number of votes to which they objected. The pleadings fail to disclose how many ballots were rejected or how many were accepted even though the petitioners made objections to them being counted.

[182] At this stage in our discourse, it hardly bears repeating that the court will not set aside the result of an election due to irregularities in the process unless it can be shown that the results were affected by the irregularity or that it can be said that there was undoubtedly no election at all. The applicants make the further point (and I agree with them) that there can be no scrutiny or recount of the allegedly miscounted ballots in the absence of particulars for scrutiny. In any event, the petitioners have not asked for scrutiny or recount of the miscounted ballots. In **Ribeiro**¹¹⁰, our Court of Appeal observed that:

“Quite apart however, from this latter submission, and irrespective of whatever merit it may possess, this Court (Davis C.J., St. Bernard J.A., and Berridge J.A. (Ag.)) has already decided in the election petition appeal of **Williams v Giraudy, No. 6 of 1977**, St. Lucia, that the trial

¹¹⁰ SKBHC VAP1979/002 at page 5

Judge was entitled to refuse a request for scrutiny of all the votes cast on both sides where there were no proper particulars for scrutiny before him, and that scrutiny is not an automatic exercise in every petition, but rather is giving final decision on specific votes isolated at the final count."

- [183] I strike out those pleadings on the grounds that they do not disclose a cause of action and/or lack the requisite specificity and particulars.

Divergent complaints

Bribery

- [184] The petitioner on petition 307B (Roseau South)(Daria Eugene) alleges that several persons were seen entering the 1st respondent Chekira Lockhart - Hypolite's office after they had voted. Those persons left *"the office with envelopes of cash."*¹¹¹ Ms. Eugene complains that she saw *"these persons counting the money in the said envelopes outside the 1st respondent's constituency office."*¹¹² Ms. Eugene concludes that *"the said monies were paid as a bribe to electors for voting..."*¹¹³ for Mrs. Lockhart-Hypolite.

- [185] The petitioner in 307C (Castle Bruce) (Ernie Lawrence Jno Finn) complains of bribery by the 1st respondent (Octavia Alfred) or her agents. Paragraphs 33 to 35 of the petition reads:

"33. On the 5th of December 2019 the 1st Respondent through her agent Yvette Laurent paid EC\$200.00 to Jefferson Common, an elector in the Castle Bruce constituency, at Tranto in Castle Bruce as a bribe for him to vote for the 1st Respondent in the general election. Yvette Laurent is the mother of Dominica Labour Party leader Roosevelt Skerri's first son and is a member, agent and operative of the Dominica Labour Party. She acted at all material times as the 1st Respondent's agent. She also handed a bottle with some rum in it to Jefferson Common.

34. On the 5th of December 2019 John Laudat was handed \$20.00 by an agent of the 1st Respondent known as Glen Darroux as a bribe for him to vote for the 1st Respondent. This occurred in Tranto in Castle Bruce and

¹¹¹ 307B Roseau South petition at para 33, lines 3-4

¹¹² Ibid at lines 4-6

¹¹³ Supra note 113 at lines 6-7

John Laudat is an elector in the Castle Bruce constituency. Glen Darroux, who is a supporter of the Dominica Labour Party and campaigned for the 1st respondent acted as her agent at all material times. He told John Laudat to remember him tomorrow (polling day) when he handed the \$20.00 to him.

35. Glen Darroux and Yvette Laurent bribed several other persons in the Castle Bruce constituency by giving them money to vote for the 1st Respondent."

[186] Halsbury Laws of England explains the offence of bribery in this manner:

"A person is guilty of a corrupt practice if he is guilty of bribery at an election. A person is guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf:

- (1) Gives any money or procures any office to or for any voter, or to or for any other person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting; or
- (2) Corruptly does any such act, as mentioned in head (1) above, on account of any voter having voted or refrained from voting; or
- (3) Makes any such gift or procurement, as mentioned in heads (1) and (2) above, to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter,

or if upon or in consequence of any such gift or procurement, as mentioned in heads (1) to (3) above, he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter."¹¹⁴

[187] The discourse on what the petitioner must plead to prove treating applies with equal force to pleadings about bribery affecting an election. In **Quinn Leandro**¹¹⁵, Rawlins CJ emphasized the fact that the petitioner must plead the issue of dishonest or corrupt conduct with a level of precision that may not be required for pleadings alleging irregularities. His Lordship observed that:

¹¹⁴ Halsbury's Laws of England (2013) vol. 38A, para 709.

¹¹⁵ ANUHCVP2010/019 at para. 56

"On present principles, any allegation approaching dishonesty in any civil case, electoral or otherwise, must be clearly and specifically pleaded with a level of precision that is not required in pleading a mere irregularity."

[188] The point was also highlighted in **Ferdinand Frampton**:

"It is my view that the ancient principle that fraud must be specifically pleaded is also applicable to the pleading of allegations of bribery and treating in election petitions. They are all allegations of dishonest conduct. A petitioner must plead some particulars, either in the petition or in the affidavit in support, to enable the court, and particularly the respondents, to know what acts are complained of. The respondents would otherwise be severely prejudiced in their defence."¹¹⁶

[189] In **Lindsay Grant**¹¹⁷, Her Ladyship Hariprashad-Charles approached the question in this manner :

"In my considered opinion, paragraph 25 of the petition is defective in that the petitioner has failed to plead material facts of or in relation to (a) the alleged bribery; (b) names of the alleged agents; (c) the alleged acts of bribery committed by the 1st respondent and persons allegedly bribed by the 1st respondent; (d) the alleged acts of bribery committed by the alleged agents of the 1st respondent and persons allegedly bribed by the alleged agent of the 1st respondent; (e) the alleged corrupt bargain or arrangement made including the dates, place, time, and manner and alleged parties; (f) the alleged inducement, and that (g) the persons were allegedly bribed to vote for the 1st respondent or against the petitioner..."

[190] Halsbury's Laws of England offers the following commentary on proving bribery:

"Due proof of a single act of bribery by or with the knowledge and consent of the candidate or by his agents, however insignificant that act may be, is sufficient to invalidate the election. The judges are not at liberty to weigh its importance, nor can they allow any excuse, whatever the circumstances may be, such as they can allow in certain conditions in cases of treating or undue influence by agents. **For this reason, clear and unequivocal proof is required before a case of bribery will be held to have been established;** and suspicion is not sufficient. The confession of the person alleged to have been bribed is not conclusive. **A corrupt motive must in all cases be strictly proved. For this purpose, a corrupt motive in the mind of the person bribed alone is not enough; the question is as to the intention of the person who bribes him.**

¹¹⁶ DOMHCV2005/0149 at para 76

¹¹⁷ SKBHCV2010/0026 at para. 83

Where the evidence as to bribery consists merely of offers or proposals to bribe, stronger evidence will be required than in the case of a successful bribe because of the greater likelihood of there having been some misunderstanding. A general conversation as to a candidate's wealth and liberality is not evidence of an offer to bribe. General evidence may, however, be given to show what the character of particular acts has presumably been."¹¹⁸ (Bold emphasis mine)

[191] Bribery is an elections offence. Section 55 of the **Elections Act** provides:

55. The following persons shall be deemed guilty of bribery within the meaning of this **Act**:

- a) "Every person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any other person in order to induce any elector to vote or refrain from voting, or corruptly does any such act as mentioned above on account of any elector having voted or refrained from voting at any election;
- b) Every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any elector, or to or for any person on behalf of any elector, or to or for any other person in order to induce such elector to vote or refrain from voting, or corruptly does any such act as mentioned above on account of any elector having voted or refrained from voting at any election;
- c) Every person who, directly or indirectly, by himself or by any other person on his behalf, makes such a gift, loan, offer, promise, procurement, or agreement as mentioned above to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person as an elected member of the House of Assembly, or the vote of any elector at any election;
- d) Every person who, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures or engages, promises or endeavours to procure the return of any person as an elected member of the House of Assembly or the vote of any elector at an election;
- e) Every person who advances or pays, or causes to be paid any money to or to the use of any other person, with the intent that the money, or any

¹¹⁸ Halsbury's Laws of England: Elections and Referendums (2013) vol. 38A, para 720

part thereof, shall be expended in bribery at any election, or who knowingly pays or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

- f) Every elector who, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any such election;
- g) Every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any such election."

Roseau South allegation of Bribery

[192] The Petitioner in the Roseau South petition at paragraph 33 alleges as follows:

"On the 6th of December 2019 the Petitioner witnessed several persons entering the constituency office of the 1st Respondent located on Victoria Street after they had voting [sic] and leaving the office with envelopes of cash. The 1st Petitioner witnessed these persons counting the money in the said envelopes outside of the 1st Respondent's constituency office. The said monies were paid as a bribe to electors for voting for the 1st Respondent."

[193] I strike out this pleading because it does not meet the standard required to plead the cause of action of bribery or any electoral offence for that matter. The paragraph is deficient in that it fails to:

- (1) Reveal the names of the "*several persons*" that were allegedly bribed;
- (2) The nature, character or description of each act of inducement or bribery, including the amount of money each person received;
- (3) Reveal the person (s) be it candidate or agent(s) of the candidate who offered or paid the bribe. The acts must be tied to the respondent/candidate whose election is being challenged.

[194] The respondents must set about assuming the necessary details regarding the claims of bribery. They, and the court, must draw an adverse inference that the persons coming out of Mrs. Lockhart Hypolite's office with envelopes of cash were in fact bribed. Indeed, the paragraph makes that bold conclusion based on vague premises.

Castle Bruce allegations of bribery

[195] I have recited the pleadings on bribery on this petition above¹¹⁹. I find that these allegations come close to the sort of pleading that is required to prove bribery. The pleadings fail nonetheless because they lack any details to show that the payments in question were in furtherance of an act of bribery. The only material fact that is pleaded in paragraph 33 of the petition is that Yvette Laurent gave \$200.00 to Jefferson Common at Tranto in Castle Bruce. A conclusion is thereafter stated that the payment was a bribe. This is not sufficient. The nature of the corrupt bargain must be indicated. Halsbury above offers the advice that the level of specificity demanded in cases of alleged bribery may, for instance, obviate misunderstanding about the purpose of a payment. In other words, the pleading must outline the prohibited conduct with clarity and it must not be merely presumed from language suggesting activities that may be colourable or questionable.

[196] The allegation that Ms. Laurent handed a bottle with some rum in it to Jefferson Common is outlandish and lacks any basis for even drawing an inference that the elections offence of bribery was contemplated or at worst committed by Mrs. Alfred or her agent. I would add, in agreement with the respondents (applicants), that there is no material in the paragraph that indicates that Ms. Laurent was the agent of or acted on the instructions of Mrs. Alfred. Again, it is not sufficient to plead material from which an adverse inference is to be speculated or assumed.

¹¹⁹ See paragraph 142 above

[197] It must always be recalled that on elections petitions, the court will be cautious that it does not set about upending the will of the electorate. This is not its mandate on an elections petition. The converse is the position. The exercise in these cases is to ensure that the will of the electorate has in fact been duly reflected. The court will therefore insist that those who invoke its jurisdiction to complain that the will of the voters has not been reflected present pleadings that plainly indicate that this is indeed the case. The court will not allow pleadings to proceed that are merely speculative or from which the respondents or the court are to make assumptions as to the cause of action or the effects on the exercise of voters' franchise. On these bases, I strike out paragraph 33 of the petition in its entirety.

[198] The allegations in paragraph 34 of the petition also suffer the same fate. I am of the view that the only material fact that has been pleaded by Ms Jno Finn are that John Laudat received \$20.00 from Glen Darroux, an agent of Ms. Alfred. The remainder of the pleadings asks the respondents to draw inferences and to speculate that the alleged act was a bribe. The allegations do not disclose the nature and character of alleged bribe. The only particular recited is the amount of money that was received by Mr. Laudat. There are no particulars to indicate that the money was allegedly paid to induce a person to vote or refrain from voting for Mrs. Alfred or voting at all. The conclusive assertion that it was a bribe to vote for Mrs. Alfred is not adequate. The paragraph also suffers from a lack of detail regarding the basis for claiming that Glen Darroux acted as agent for Mrs. Alfred at the material time. Therefore, I strike out paragraph 34 of the petition.

[199] The allegations of bribery in paragraph 35 of the petition are nothing more than bald statements. The paragraph is patently devoid of material facts or particulars to establish the offence of bribery. There are no particulars of names of electors or persons who were induced, dates and times of each act of bribery, the nature and description of each act of bribery. Therefore, I strike out paragraph 35 of the petition in its entirety.

Complaints of voting irregularities and objections in the La Plaine constituency (307F)

[200] At paragraph 27 of the La Plaine petition, Ms Francisca Joseph (Ms. Joseph) exhibits the names of 488 persons who were registered as electors on elections day and were allowed to vote. Ms. Joseph pleads that these persons were unqualified to be registered because they were either deceased or resided outside of Dominica for more than 5 consecutive years. The petitioners do not plead that they objected to the registration of these persons before elections day. Our jurisprudence emphasises that the electoral registers are conclusive as to the qualification of the persons names thereon to vote at the polls.¹²⁰ Electoral officials cannot turn them away from voting¹²¹. The law is that, except in limited instances, petitioners are not permitted to go to the polls on a list and then thereafter complain about it on an elections petition.

[201] In **Radix v Gairy**, Davis CJ expressed his views on the matter –

In my view, the election of a candidate can be avoided only upon proof of an election offence committed by the candidate, or upon proof of some irregularity during the conduct of the election which affects the results, or that the election was conducted so badly that it was not substantially in accordance with the law as to elections.

“The validity of the list is a separate question and surely the time to raise the issue of the electors' list is sometime before it is proclaimed by the Governor-General. When it is so proclaimed, it becomes conclusive as to the persons who are entitled to vote at the next election or by-election as the case may be. In the absence of any authority on the point—none has been cited to the court, and I have been unable to find any—I cannot accept that the legal position is that a candidate who enters the contest on an existing list of electors may be allowed to accept the list as a valid

¹²⁰ Radix v Gairy (1978) 25 WIR 553 at page 556 at para H

¹²¹ Radix v Gairy (1978) 25 WIR 553 at page 556 at para H; see Ferdinand Frampton DOMHCV 2005/0149 at para.44 quoted below

list if he wins, but would be allowed to argue that the list is invalid when he loses”¹²² [Bold emphasis mine]

[202] In **Ferdinand Frampton**, the court disagreed that petitioners can, without more, question acts or omissions in the registration process on an elections petition. The court expressed the view that:

“Where there is a legislative regime, which provides a detailed procedure for registration and for the hearing of claims and objections in relation to the electoral Register, the procedures set out in the legislation must mean something. Candidates and political parties are expected to be ever vigilant. By acting in accordance with the procedures which the regime provides, they would assist elections officials to provide an accurate Register of the persons who are entitled to vote according to law. The **Registration of Voters Act**, Cap.2:03 and the Registration of Voters Regulations made there under provide such a procedure in Dominica.

In Dominica, once the final Register is settled and Proclaimed, electoral officials are not permitted to deny a ballot to any person who presents himself or herself at the poll and whose name appears on that Register. If there is an objection at the poll to an elector who is registered on the final Register, section 39 of the **Elections Act** provides a method by which the Presiding Officer must register the objection and decide on questions that arise thereon. The official is still obliged to permit the elector to vote. Such objection, or the decision made thereon could no doubt be brought to court if there is a disputed election. However, the petitions do not contain any complaints that are related to this”

[203] The foregoing is precisely the point. Once the registers are finalised, there ought to be very little complaint thereafter about the process of finalising the registers. Indeed Rawlins J alluded to such limited circumstances in **Ferdinand Frampton**¹²³ where he highlighted the sort of irregularity that may be raised on an elections petition about the conduct of elector officials in finalising the registers for elections. A graphic recent example of the sort of action that may be impugned occurred in **Mark Brantley** where the court found deliberate and flagrant violations of the process to hear and determine objections including steps calculated to

¹²² Radix v Gairy (1978) 25 WIR 553 at page 556 at para H. See also Drew v Hall at pages 106 to 107 to see how the court in Bermuda addressed this issue in the same manner. Also see how John J dealt with this issue in Lauron Baptise v Davis at paras 44 et seq.

¹²³ Ferdinand Frampton DOMHCV 2005/0149 at para. 41 to 43

undermine the right of objectors to be heard. The court also found certain elector officials carried out their functions with obvious bias. There is no such allegation of any bad faith or a wanton disregard for the process or of voters' right. There is a patent lack of any material that would oblige a court to investigate the populating of the registers used on polling day.

[204] Further, compounding the foregoing difficulties confronting the pleading is the fact that on elections day, the candidates or their agents could ask that an elector take certain steps including taking an oath¹²⁴. There is no pleading that they did so and/or that the electoral officials failed in their duty to administer an oath. When the process of voting is concluded, the candidates and/or their agents are permitted to object at the counts¹²⁵. The petitioners do not plead that that they objected at the counts and/or that electoral officials refused or omitted to record or determine their objections.

[205] In a word, the pleading does not expose what if any electoral offence, irregularity or other misstep may have occurred and the manner in which or extent to which the irregularity, offence or misstep or may have affected the results of the elections. There is plainly no cause of action apparent or otherwise. The paragraph is therefore struck out.

[206] In paragraph 28 Ms. Joseph alleges that her agents objected to Vina George and Arnelle George voting on the basis that they had already voted in the election. However, she alleges both individuals were still allowed to vote upon taking an oath despite the objection. In paragraph 29, there was also an allegation that a blind and physically incapacitated person, John Frank Stedman was unlawfully prevented from voting despite him specifically requesting the assistance of Anthony Attidore, Justice of the Peace. I strike out both pleadings on the basis of the reasoning above and also because, even if true and the court hearing the petition awards the votes to Ms. Joseph, the election results will not be affected or

¹²⁴ See for instance sections 35 and 37(2) of the Elections Act

¹²⁵ Section 39 of the Elections Act

overturned. In other words, the pleadings do not expose electoral offences, irregularities or departures that affected the results of the elections or render it such that the ordinary man will condemn the process as a sham or no electing at all.

- [207] At paragraph 31 Ms. Joseph alleges that on polling day her agents objected to Nathalie Joseph and Dagma Henderson voting on the basis that they were corruptly treated with a ticket to travel to Dominica to vote for the DLP. These pleadings are struck out as there is no material included of any of the requisites of the offence of treating as discussed above. In any event, electoral officials had no choice but to allow duly registered voters to cast their ballots. There is no pleading as to what law permitted polling officials to refuse a ballot to an elector where Ms. Joseph or her agents objected to voting on the grounds of treating. Further, even if this offence was properly pleaded, the petition does not establish how the irregularity or offence in question would have affected the result of the election in that constituency or rendered the same a sham. The pleading is therefore struck out.

Roseau Central Petition

Objections and voting irregularities

- [208] The petitioners allege that on 14th November 2019, Atherley Robin filed objections against the inclusion of 4 names in the supplemental register. The petitioners also allege that on 14th November 2019, Onika Moulon objected to the inclusion of 5 names on the supplemental register. Further, the petitioners allege that several persons falsely and fraudulently claimed the right the vote and the agents at the polling station objected to those persons.

- [209] The claim that Onika Moulon and Artherley Robin objected to 9 persons, even if true and those 9 votes are awarded to Mr. Cuffy, does not amount to the type of

departure sufficient to overturn the results at the poll in favour of Mrs. Skerrit. Those pleadings cannot survive and are accordingly struck out.

[210] At paragraph 29 of the Roseau Central petition, the petitioners plead that:

"On polling day several persons falsely and fraudulently presented themselves to the polling clerks claiming to be named in the Register of Electors and claiming a right to vote. The agents present at the polling station objected to the persons who voted on the names listed in the Third Schedule (and to other persons voting as recorded in the poll book) on the basis of inter alia (i) personation; (ii) elector not residing in the constituency; (iii) elector not qualified for registration; and (iv) elector not being physically impaired but requesting assistance from a third person while voting."

[211] I repeat the point made above that on elections day the registers are conclusive of the right of the persons registered thereon to vote. Electoral officials were obligated to allow these persons to vote. Again, the petitioners or their agents may have required that the voters take an oath. There is no such pleading. Objections could have been made at the various counts. The petitioners have not alluded to any actions being taken at the counts. More importantly and almost repetitively at this point, the pleadings fail to include particulars that may assist to identify whether the claimed breaches or irregularities affected or may have affected the outcome of the elections. For instance, other than a list of names, there is no information as the basis on which the objections were made to any of the listed names. By way of example, are the respondents to await trial to find out and verify which of the listed names resided outside of the constituency? How are the respondents to answer the accuracy or not of the bland assertions without the necessary details?

[212] In paragraph 30 of their petition, the petitioners claim that Linda George and Diane Hypolite were allowed by the poll clerk and the presiding officer to vote in the constituency despite the fact that their names were not on the register of electors used by the polling clerks and agents. I will also strike out this paragraph for the reasons stated above. Additionally, even if true and the votes of Linda George

and Diane Hyppolite are awarded to Mr. Cuffy, the pleadings have little chance of succeeding in setting aside the election of Mrs. Skerrit.

Billboard Advertisement

[213] The petitioners charge in paragraphs 31 to 32 of their petition that Mrs. Skerrit and her agents allowed an LCD billboard to advertise political propaganda on polling day with slogans, such as "it is safer with Labour" with an "X" by a shoe. They state that this billboard was within 100 yards of the Windsor Park stadium polling station which unduly influenced hundreds of voters to vote for her and gave her an unfair advantage rendering her return undue, null and void.

[214] With respect, I cannot see how this pleading passes muster. Sections 25 and 54 of the **Elections Act** are relevant here. The taking of the poll at an election in Dominica shall take place between the hours of seven o'clock in the morning and five o'clock in the afternoon of the same day (section 25). During the hours that the polls are open, it is an offence to seek to influence a voter to vote for a candidate or to ascertain for whom a person intends to vote or has voted. The Act prohibits a person from engaging in this conduct on any public road or place within 100 yards of any building in which polling is taking place (section 54).

[215] If the allegation is true (and I am to assume for the purposes of a striking out discourse that it is true) then Mrs. Skerrit's billboard should have been taken down by seven o'clock of the morning of the 6th December 2019. If true, the period within which the billboard remained there constitutes an offence under section 54 of the Act. Again, the petitioners plead, without more, that the commission of the offence renders her return null and void. But how is this case?

[216] I have deliberately set out in extensive form the law on what constitutes the basis on which a court ought to set aside an election. It is not simply the assertion that an elections offence has been committed. **Radix v Gairy, Morgan v Simpson,**

Frampton and the line of authorities recited above all instruct that the petitioners were enjoined to show whether and how the alleged infraction affected the results or rendered the same undue or unsafe or a sham or travesty or any of the multitude of descriptions of outcomes that would impel a court to set aside an election result.

[217] There is no such information available here. For instance, the petitioners contend that "*hundreds of persons*" were unduly influenced. One would assume that they did not make this assertion lightly but rather they proposed it on their petition following some of their own diligent scrutiny or research. Yet they have not identified one person on the petition who was influenced by the billboard. It begs the question, how many persons were influenced? One hundred? Or was it 200 or 300? Mrs. Skerrit won by over 200 votes. Even if the allegation is true, on what basis can it be said that the results were indeed affected by the infraction?

[218] I am of the view that this sort of pleading was necessary. I am careful in arriving at this conclusion. Careful because I am mindful that the petitioners are entitled to bring evidence to substantiate their contentions. But I cannot agree that the respondents will know the case that they have to answer if there is not at least some factual basis set out on the pleadings to show not only a breach of the law but how that breach affected the elections result.

Disqualification of Melissa Skerrit as a Member of Parliament

[219] In paragraph 82, Messrs. Cuffy, George and Robin allege that Mrs. Skerrit is a citizen of Canada and a holder of a Canadian passport. The petition recites the 25th January, 2019; 27th March, 2019 and 1st April, 2019 as dates on which Mrs. Skerrit travelled on her Canadian passport. Mrs. Skerrit's is said to be, by her act of travelling using her Canadian passport, under the acknowledgment of

allegiance, obedience and adherence to a foreign power or state namely Canada and therefore, disqualified from being elected to Parliament.

[220] The respondents (applicants') rejoinder is that this pleading should be struck out because the petitioners failed to plead the foreign law and the material facts allegedly committed by Mrs. Skerrit. The petitioners answer the respondents' (applicants') charge by saying that they were not obligated to plead the foreign law. They say that the pleadings are adequate since they allege that Mrs. Skerrit holds a Canadian passport and that she travelled on the passport in 2019. The petitioners say that the respondents (applicants) know the case that they have to answer.

[221] The law in Dominica on this issue should be uncontroversial by now. On that score, section 32(1)(a) of the Constitution of Dominica reads:

"A person shall not be qualified to be elected or appointed as a Representative or

Senator (hereinafter in this section referred to as a member) if he—

a. is by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;"

[222] The question of whether a claimant (petitioner) ought to plead and prove foreign law on a question arising as to the qualification of a member pursuant to this very section of the Dominica Constitution has also been definitively pronounced upon by our Court of Appeal. In **Ronald Green et al v Saint Jean and Skerrit**¹²⁶, her Ladyship Dame Janice Pereira wrote for the majority that:

"In this case, the burden was therefore on the appellants, after pleading the provision above which, on the authorities accepted by this court, brings into play foreign law, to have brought the necessary evidence before the court to prove that under the law of France that the voluntary act done by the respondents (here the alleged possession of French passports particularly where it was accepted that mere possession of a French passport may not have been on the basis of the voluntary act of the possessor) was an act which amounted to an acknowledgement of

¹²⁶ DOMHCVAP2012/0001

allegiance, obedience or adherence to the state of France. This was not done. The appellants were aware of the many authorities which support this finding but **chose not to plead and produce evidence which would prove the principles of foreign law which would disqualify the respondents under section 32(1)(a)**. Further, they were alive to this issue during other interlocutory hearings in the case. **Having failed to specifically plead and prove the disqualifying factors** they are unable to now rely on the fall back presumption which in my view simply cannot suffice in the face of a constitutional provision to which high regard must be given in view of the impact it may have on the democratic process in an election."¹²⁷ (Bold emphasis mine)

[223] It cannot be seriously disputed that the petitioners' assertion that Mrs. Skerit is under an acknowledgment of allegiance, obedience or adherence to the state of Canada alludes to questions of foreign law. The petitioners failed to plead the foreign law. They submit that they do not need to do so. Our Court of Appeal in the Dominican case of **Ronald Green** cited above says quite the opposite. I am obliged to follow the Court of Appeal in **Ronald Green**. Accordingly, the defective paragraph 82 does not meet the required test to set out a cause of action and is struck out. I would add for completeness that the **Denzil Douglas** decision relied on by the petitioners is not helpful because the question of a foreign law was not under review. In this case, the petitioners raise issues of foreign law. They must plead and prove the same.

St. Joseph Petition (307H)

[224] Paragraphs 20 and 21 of this petition alleges that Kevin King was allowed to vote despite the fact that he did not reside in the constituency. Objection was made to his voting but this was ignored. Kevin King is said to be the son of Adis King who was declared the winning candidate of the St. Joseph elections. The pleading fails and is struck out because:

- (1) There is no detail as to when the objection was taken;
- (2) The list is conclusive as to the persons registered thereon and electoral officials could not refuse to permit Mr. King a ballot to vote;

¹²⁷ DOMHCVAP2012/0001 at paragraph 41

- (3) It does not demonstrate that the conduct of electoral officials amounted to an elections offence or irregularity that affected the outcome of the elections or rendered the same a sham or travesty.

Outcome

- [225] Even though I find that all the respondents (except DBS) were properly joined, the pleadings against all of them are inadequate or insufficient. In my reasons above, I have set out how they fail for failing to disclose a cause of action, lack of necessary details and/ or specificity. I have therefore struck out all the pleadings. A ruling on the applications and arguments about service of the petitions is therefore pointless.

Costs

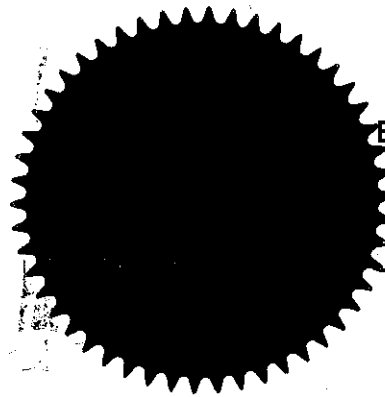
- [226] In relation to costs, the courts are usually hesitant to award costs on election petitions. However, I find good reason to depart from this general principle on these applications to strike out the petitions. A cursory reading of the petitions discloses that the petitioners have repeated most of the contentions verbatim on all 10 petitions. The petitioners could have easily placed these averments on 1 or at the most 2 petitions. The costs and expense of responding to 10 petitions was, in my view, unnecessarily and somewhat unmindfully imposed on the respondents (applicants). They were constrained to file applications to strike out 10 different petitions in circumstances where a majority of the complaints could have been subsumed under a single or at the most two (2) petitions. I award the sum of \$5000.00 as costs to the applicants.

Conclusion

- [227] For reasons stated above, I order as follows:

- (1) All ten of the petitions are hereby struck out for the reasons set out in this judgment;
- (2) The respondents (applicants) are awarded costs in the sum of \$5000.00.

Raulston L. A. Glasgow
High Court Judge



By the Court

R. L. A. Glasgow
Registrar