

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.DOMHCV2015/0166

BETWEEN:

[1] ROOSEVELT SKERRIT
[2] REGINALD AUSTRIE
[3] RAYBURN BLACKMORE
[4] CASSIUS DARROUX
[5] JUSTINA CHARLES
[6] KATHLEEN DANIEL
[7] KELVAR DARROUX
[8] IAN DOUGLAS
[9] JOHNSON DRIGO
[10] COLIN MCINTYRE
[11] ROSELYN PAUL
[12] IAN PINARD
[13] PETTER ST JEAN
[14] IVOR STEPHENSON

Claimants

and

[1] MR BERNARD PACQUETTE
[2] THE DISTRICT MAGISTRATE
[3] DIRECTOR OF PUBLIC PROSECUTIONS

Defendants

[1] ANTOINE DEFOE
[2] EDINGCOT ST. VALLE
[3] MERVIN JOHN BAPTISTE

Interveners

Before: The Hon. Madam Justice M E Birnie Stephenson

Appearances:

Mr Anthony Astaphan SC with Mr Lennox Lawrence for the Claimants

Mrs Tameka Hyacinth Burton for the Defendants

Miss Cara Shillingford for the Interveners

2017:

2018: April 18

JUDGMENT

[1] **STEPHENSON, J.:** Judicial Review which is regulated by Part 56 of CPR 2000 provides a means by which judicial control over administrative action is exercised. Judicial Review is available across a wide spectrum of matters where the function of the Court is to determine whether the process of the decision maker accorded with the notion of fairness and reasonableness. Lord Diplock in the *Locus Classicus* case of **Council of Civil Service Unions –v- Minister for the Civil Service**¹ provided a threefold classification for the grounds upon which administrative action is subject to Judicial Review.

[2] Lord Diplock set out three grounds:

- (i) Illegality
- (ii) Irrationality
- (iii) Procedural impropriety

[3] Judicial Review embraces a number of different grounds upon which a public body is subject to Judicial Review, including but not restricted to:

- (a) Exceeding jurisdiction
- (b) Failing to direct itself correctly

¹ [1985] AC 374, [1984] 3 A11 E R 935 (H.L)

- (c) Failing to fulfil a statutory duty
 - (d) Acting for an improper purpose
 - (e) Failing to take into account all relevant considerations or failing to disregard irrelevant consideration
 - (f) Excessively interfering with fundamental rights
- [4] The Principles of Public Law that are applicable to the instant case are, in the Court's view, well established by authorities cited by Counsel representing all the parties.

Background

- [5] General elections were held in Dominica on the 8th December 2014. It was conducted primarily between the Dominica Labour Party and the United Workers Party. The Claimants are all members of the Dominica Labour Party and were elected to represent their various constituencies in the House of Assembly of Dominica.
- [6] The Claimants seek various orders and remedies of Judicial Review under the provision of Part 56 of the Civil Procedure Rules 2000, in respect of criminal complaints and summons issued against them by the first named Defendant ('The Magistrate') on the 28th May 2015, in relation to the purported offences of treating which allegedly occurred prior to the general elections which took place on December 8th 2014.
- [7] The criminal complaints² were private criminal prosecutions brought by, Antoine Defoe, Eddington St Valle and Mervin John Baptiste ('The Intervenors').
- [8] The Applicants seek a number of declarations from the Court to quash and set aside the said criminal complaints.

²DOMMCR2015/0705.DOMMCR2015/0706 & DOMMCR 2015/0706 issued on the 28th May 2015.

[9] The Interveners were subsequently added to the proceedings, as they opposed the Claimants' application for Judicial Review. .

[10] Each of the parties relied on their filed written and oral submissions with authorities. It is proposed to review the submissions and rule on same.

General Principles of Law

[11] The proceedings of justices when sitting as a Magistrates' Court or when otherwise acting judicially, are subject to scrutiny by the High Court by means of Judicial Review³. Judicial Review is concerned with the process by which the Magistrates reached their decisions, and it is limited to considering whether the Magistrates have failed to exercise their jurisdiction properly or have made some error of law which appears on the face of the record⁴

[12] It is the legality of the process which is under review, not whether the decision was right or wrong⁵

[13] This case raises a constitutional issue of importance. That is, whether or not the Magistrate has the jurisdiction to hear and decide what is allegedly essentially in an election offence, even where the House of Assembly Elections Act ("the HOAEA") states that an offending party is liable to "summary conviction"⁶.

[14] The essence of the Claimants' case is that the Magistrate does not have the jurisdiction to hear such a complaint. It is contended that the complaints which seek to

³Halsbury's Laws of England/Magistrates (VOLUME 71)

⁴R v Inner London Justices, ex p Wandsworth London Borough Council [1983] RTR 425, sub nom R v South Western Justices and Hallcrest Garages Ltd, ex p Wandsworth London Borough Council 147 JP 212, DC.

⁵Chief Constable of the North Wales Police v Evans [1982] 3 All ER 141, [1982] 1 WLR 1155, HL.

⁶See Section 59 of the House of Assembly Act Chapter 2:01 of the Laws of Commonwealth of Dominica ("HOAE Act")

challenge the election must be brought by way of election petition which is subject to the 21 days time limit after the elections⁷, which time limit in the instant case, was long expired when the complaints were filed.

[15] At the heart of the Claimants' contention is that the penalty for the offence is removal from the House of Assembly ("HOA") of those persons who are already sworn in and conducting the business of Government, and the possible disqualification of those persons for seven years. The Claimants contend that this is a determination of the constitution of the HOA and that it is the contemplation of the framers of the legislation, by the HOAE Act, that this ought to be done in a timely manner as laid down in the many cases cited.

[16] The Claimants mounted the following three pronged attack on the complaints filed by the Interveners:

- (i) That the complaints for treating in the circumstances of this case can only properly be brought by way of election petition, that is, it was instituted after the election against the duly elected officials;
- (ii) That if the complaints can be brought in the Magistrates' Court, the complaints as prepared and filed are bad in law in that they are bad for duplicity, and that they do not disclose the offence of treating created by the HOAE Act;
- (iii) That the Learned Magistrate failed to properly exercise his judicial discretion and acted without or exceeded his jurisdiction when he:
 - a. Failed to properly consider the complaints or construe section 56 of the HOAE Act;
 - b. He failed to properly identify the nature of the precise offence of treating created by section 56 of the HOAE Act;

⁷See Section 68 (1) *ibid*

- c. Failed to consider the legal implications or consequences of the complaints filed well after the 21 days prescribed by law and other conditions prescribed by Section 68 (1) (a-c) of the HOAE Act;
- d. He decided to issue, and issued, the complaints in relation to the purported complaints made by the Interveners notwithstanding that the complaints disclosed no offence under section 56 of the HOAE Act and/or had been filed well after the 21 days prescribed by section 68 (1) (a) of the HOAE Act.

[18] These issues will be dealt with taking into consideration the HOAE Act, The Constitution of the Commonwealth of Dominica ('The Constitution') and the Magistrates' Code of Procedure Act ('The MCPA')⁸.

[19] It is the contention of the Claimants who seek to have the said charges struck out by way of Judicial Review that the charges are bad in law and statute barred.

[20] The Claimants also contend that the complaints are bad for the following reasons:

- (i) That the offence of treating under section 56 of the HOAE Act⁹ is not concerned with general entertainment and that the complaints do not on their face; disclose the offence of treating known or under section 5.
- (ii) The Claimants submit that the material facts and particulars which should be particularised in the complaints are not pleaded in their complaints and in the circumstances they are bad in law.

[21] The Claimants also contend that the particulars of the offence as stated on the face of the complaints, namely to influence the result of the Commonwealth of Dominica elections, "are vague and not known to law and also do not form part of the ingredients of the offence created by section 56 of the HOAE Act.

⁸Chapter 420 of the Laws of the Commonwealth of Dominica

⁹Op cit

[22] A person can be found guilty of the offence of treating if before, during or after an election, they directly or indirectly give or provide any food, drink, entertainment or provision to corruptly influence any voter to vote or refrain from voting. Treating requires a corrupt intent – it does not apply to ordinary hospitality.

[23] The Interveners contend that during the campaign season, the Claimants committed the offence of treating in Roseau when on the 28th November 2014 and on the 6th December 2014 at the Windsor Park Stadium, a team of candidates acting for and on behalf of the Dominica Labour Party, provided free concerts with Donnie McClurkin and Morgan Heritage respectively for the purpose of corruptly influencing the Dominican Electorate to vote for the candidates of the Dominica Labour Party.

[24] The offences as charged, are contrary to section 56 of the HOAE Act. Under section 56 of the HOAE Act, if convicted a person is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months. (emphasis mine)

[25] In addition to this penalty, if a person is convicted for this offence he will become incapable of being registered as an elector or voting at any election of a member of the HOA for a period of seven years after his conviction, further, he is also incapable of being elected as a member of the HOA for a period of seven years. In the event that he is elected prior to his conviction he is incapable of retaining his seat.

[26] I understand the Claimants to be saying that because there is the possibility, in the event of a conviction of the offence, for the removal of the elected person, it should not be in the form of a criminal complaint to be brought before the Magistrate but rather in the form of an election petition which should be brought within 21 days of the election. That the Constitution of the House of Assembly will be determined and can only be brought by way of election petition.

[27] The Claimants' case is that the statutory time limit as set out in the HOAE Act is strict, rigid and in order, to ensure that everything as it relates to elections is done in a timely manner. Learned Senior Counsel Anthony Astaphan submitted that it is required that

the trial of these petitions are brought in a timely manner because public interest requires it.

[28] Learned Senior Counsel also submitted that the authorities all say that the timeliness of election petitions are necessary as the electorate and the elected persons should know quickly whether they have been lawfully elected. It was submitted that it has been repeated in all the election petition matters, over and over again that *“the country needs to know who the elected representatives are with certainty. That challenges to elections should be mounted before the new legislature sits and begins its work as soon as possible thereafter, in order that the legislature might be definitively lawfully constituted.”*¹⁰

[29] Learned Senior Counsel Anthony Astaphan quoted the words of Justice Rawlings when he said:

*“It goes to the issue of legitimacy. Electoral Laws and their interpretation by the Courts are indeed to facilitate this.”*¹¹

[30] It has been submitted by the Claimants that these complaints ought not to be allowed to proceed prior to the determination of an election petition and in the circumstances of the case at bar no such election petition has been filed.

[31] It is also submitted on behalf of the Claimants that the right to bring these complaints must be read subject to the provision of section 68 of the HOAE Act.

[32] It was further stated that it was not and could not have been the intention of Parliament to provide expressly for a petition which could include a properly pleaded case of treating to be filed within 21 days, subject to other rules and conditions prescribed by the Act and at the same time allow any person to circumvent this time frame and file a criminal complaint after the 21 days time limit has expired.¹²

¹⁰ Per Hugh Rawlings J in *Ferdinand Frampton –v- Ian Pinard, The Returning Officer for the Soufriere Constituency & the Chief Elections Officer and others* DOMHCV2005/0149 at page 7

¹¹ Ibid

¹² See Page 5 of the Claimants submissions op cit at paragraph 7 (v)

[33] The Claimants contend that the complaints as filed by the Interveners are in fact an improper attempt to subvert the 21 day rule for the filing of election petitions.

[34] The Claimants contend that the complaints filed are statute barred and ought not to be allowed, and /or are an abuse of process and therefore bad in law. In the circumstances, the Respondent ought not to have signed same and in doing so he exceeded his jurisdiction.

[35] The Claimants drew to the Court's attention that the Interveners are known members and activists of the United Workers Party and also that after the election the head of that party stated publicly that the party would not file an election petition, but would instead be filing criminal complaints. The Claimants also submitted that no election petition was filed however the criminal complaints were filed.¹³

The Interveners' Case

[36] At the heart of the Interveners case is that this application for Judicial Review should be dismissed on the grounds that it is without merit. It is the Interveners' contention that the Claimants are unable to rely on any of the grounds for Judicial Review as stated in the case of **Council of Civil Service Unions and other –v- Minister for the Civil Service**¹⁴. Learned Counsel Miss Shillingford submitted that Lord Diplock provided a threefold classification for the grounds upon which administrative actions are subject to Judicial Review; he called the three grounds "*illegality, irrationality and procedural impropriety*".

[37] It was contended by Miss Shillingford that Lord Diplock, in his judgment which has been quoted and applied, in many cases of this nature went on to explain these three grounds as follows:

- (i) "By "illegality" as a ground for Judicial Review, I mean that the decision-maker must understand correctly the law that regulates his decision-

¹³ Paragraphs 21-23 of the Claimants submissions

¹⁴ Op cit

making power and must give effect to it. Whether he has or not is par excellence, a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

- (ii) By "irrationality" I mean what can now be succinctly referred to as "*Wednesbury* unreasonableness" (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges, by their training and experience, should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the Court's exercise of this role, resort, I think, is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] A.C. 14 of irrationality as a ground for a Court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by Judicial Review.
- (iii) I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice, or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to Judicial Review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all."¹⁵

¹⁵ [1985] AC 374 at pp411 -412

[38] Learned Counsel Miss Cara Shillingford also submitted that a review of the many authorities in this area of the law would reveal that the term “*illegality*” embraces a number of different grounds upon which a public body is subject to Judicial Review including but not restricted to:

- a. exceeding jurisdiction;
- b. failing to direct itself correctly in law (errors of law);
- c. failing to full fill a statutory duty;
- d. acting for an improper purpose;
- e. failing to take into account all relevant considerations or failing to disregard irrelevant considerations; and
- f. excessively interfering with fundamental rights.

[39] Miss Cara Shillingford on behalf of the Interveners quoted Professor Albert Fiadjoe when he said:

*“Because there is considerable overlap among the remedies, Lord Diplock has in recent time sought to rationalize the grounds for judicial review into three categories: ... Lord Diplock may be forgiven for not adding a fourth and most important category as far as the Caribbean States are concerned: unconstitutionality.”*¹⁶

[40] Counsel went on to submit that the Claimants’ are also not challenging the constitutionality of the HOAE Act in that they have not filed a constitutional motion praying that the act be declared null and void.

[41] Learned Counsel Miss Shillingford submitted that the function of the Court is to “interpret and apply the clear wording of the HOAE Act and the *MCPA*”.

¹⁶ Commonwealth Caribbean Public Law at page 27

[42] Miss Shillingford submitted that the task of the Court in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or the power upon the decision maker. It is Learned Counsel's submission that when the Court exercises this power of construction, it is enforcing the rule of law by requiring administrative bodies to act within the four corners of their powers and duties; further that the Courts are guardians of the Parliament's will seeking to ensure that the exercise of the power is in accordance with the scope and purpose of the Parliament's enactment.¹⁷

[43] Learned Counsel on behalf of the Interveners, submitted that the Claimants' contention is that the respondent failed to exercise his judicial discretion and/or acted in excess of his jurisdiction when he decided to issue and issued the purported summonses in relation to complaints which do not disclose any offence under section 56 of the HOAE Act, or at all is completely misguided and without merit.¹⁸

[44] Learned Counsel Miss Shillingford submitted that section 20 of the MCPA provides the authority to the respondent to issue summons to persons requiring that person to appear before the Magistrates' Court to answer a charge of a complaint.

[45] That the offence of treating is created by section 56 of the HOAE Act and section 59 of the said Act provides that any person found guilty of treating is liable to summary conviction, clearly making the offence of treating to be a summary offence. That treating being a summary offence meant that the complaints which were filed by the Interveners against the Claimants alleging that they committed the offence of treating fell squarely within the section 20(2) of the MCPA and that in the circumstances the first named Respondent had the jurisdiction to issue the summons.

Court's Considerations

¹⁷ See paragraph 11 of the submissions filed by Miss Cara Shillingford on behalf of the Interveners.

¹⁸ See paragraph 3 of page 4 of the Fixed Date Claim Form and paragraph 13 of the submissions filed by Miss Shillingford Op cit

[46] The Court has given purposeful consideration to all the submissions in the matter and to the very lucid and comprehensive helpful submissions of Learned Counsel on behalf of the parties in this matter. Reference will be made to those submissions which were considered necessary to explain the conclusions arrived at. It is to be noted that failure to make specific mention of any point of submission does not mean that it has been ignored or that there has been a failure to take it into account. Similarly, a good many issues of points have been raised by both Counsel, which in the Court's view is not necessary to discuss in order to resolve or to decide the main issue in the case at bar.

[47] This case raises a constitutional issue of importance. That is whether or not the Magistrate has the jurisdiction to hear and decide a case accusing duly elected and sworn in members of the House of Assembly of committing the election offence of treating. It is noted that the HOAE Act states that an offending party is liable to "summary conviction" for the offence of treating.

[48] Before this Court, the arguments advanced on behalf of the Claimants and the Interveners are in terms which were quite extensive. The point of law which is crucial to this case is whether or not the charges of the offence of treating can be properly brought before the Magistrate for the reason that when one looks at the penalty, if found guilty of such an offence, can operate to remove the Claimants from their duly elected positions in the Parliament, and in fact question their election to the HOA. This is to be considered against the back drop that the sole institution empowered to entertain questions about the election of a person to the Parliament is the High Court.¹⁹

[49] This Court also has to weigh this against the express provisions of the HOAE Act which says a person who is found guilty of treating under the provisions of the act is

¹⁹ See Section 40 of the Constitution

liable to summary conviction. It is well established, if not trite law, that a person who is liable to summary conviction is liable to be tried before the Magistrate.²⁰

[50] Having considered these arguments, the Court finds the arguments of the Learned Senior Counsel Astaphan very attractive and persuasive in comparison to those of learned Counsel, Miss Shillingford on behalf of the Interveners. The submissions on behalf of the Defendants were also taken into consideration.

[51] It can be considered that treating being a summary offence means that the complaints which were filed by the Interveners against the Claimants alleging that they have committed the said offence of treating, fall squarely within section 20(2) of the MCPA and that in the circumstances the first named Respondents clearly has the jurisdiction to issue the summons.

[52] However, the effect of the charges as brought by the Interveners is that they are in fact questioning and challenging the validity of the elections of the Claimants. It is established law that no parliamentary election and no return to Parliament may be questioned except by petition, complaining of an undue election or undue return.²¹

[53] At the heart of the Claimants' contention is that the penalty for the offence is removal from the Parliament by those persons who have already been sworn in and the disqualification of the convicted persons for seven years.

[54] The Claimants contend that this is in fact a determination of the Constitution of the Parliament and that it is the contemplation of the framers of the legislation that this ought to be done in a timely manner as laid down in the many cases.²²

[55] Section 65 of the HOA makes provision for a complaint to be made for an undue return or undue election of a member of the House of Assembly to be made by way of Election Petition.

²⁰ See Section 3(1) of the Interpretation and General Clauses Act Chapter 3:01

²¹ See Section 65 of HOAE Act Op cit

²² Section 68 (1) of HOAE Act, Ferdinand Frampton and others-Pinard and others DOMHCV2009/0149, Quinn Leandro and others-Jones and others (2010) 78 WIR 216, Michael R.C. Browne-Yvonne Francis-Gibson et al. Civic appeal No. 11 of 1984 (SVG)

[56] It is established law which has been repeatedly stated and applied in our courts that the jurisdiction to determine questions as to the validity of elections and appointments to the local legislature is a “peculiar and special jurisdiction”. A review of the authorities reveals that historically this jurisdiction was initially a constitutional jurisdiction which was vested in the Parliament and which was assigned to the judiciary by the Constitution or by legislation. In Dominica that assignment was by Section 40 of the Constitution.

[57] This electoral jurisdiction is not a jurisdiction to determine mere ordinary civil rights. It has been expected that when the local courts which are duly authorised by statute or the Constitution are called on to deal with Parliamentary questions those questions and issues are to be determined expeditiously, this is in order that the composition of the legislature may be established as speedily as possible.

[58] It has been held that the legislature must have envisioned that the Parliamentary questions would be determined either on their merits or purely on procedural grounds or without hearing evidence. In the Privy Council case of **Théberge –v- Laudry**²³ the court was considering, what was then, new legislation which was passed regarding elections²⁴. Lord Cairns said:

“These two Acts of Parliament, the Acts of 1872 and 1875, are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary civil rights; they are Acts creating an entirely new, and up to that time unknown, jurisdiction in a particular court of the Colony for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in that court, that very peculiar jurisdiction which, up to that time, had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be Members of

²³ (1876) 2 App Cas 102 per Lord Cairns LC

²⁴ The *Quebec Controverted Elections Act* of the year 1875. That Act repealed an Act of the *Quebec* Legislature of the 36th year of Her Majesty's reign, that is, in 1872, which was intituled "An Act to provide for the Decision of Controverted Elections by the Judges, and to make better Provision for the Prevention of Corrupt Practices at Elections." That Act of 1872 appears to have been the Act which, in *Quebec*, transferred to the Court the decision of controverted elections, which before that time was vested in or was retained in its own hands by the Legislative Assembly of the Province.

the Legislative Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive, and enable the Constitution of the Legislative Assembly to be distinctly and speedily known.”²⁵

[59] The peculiarity of the Court sitting in this jurisdiction is commonly referred to as sitting as Election Courts; this has been repeated by the Courts in our jurisdiction and it is noted that even though it has been with regard to the specific question of whether appeals lay with the privy council, the special nature of the Court’s jurisdiction has been discussed, established and reiterated.

[60] It has also been restated that there is a need for a speedy conclusion and determination of the Constitution of the HOA. In the case of **Arzu –v- Arthurs**²⁶ Lord Pearce in delivering the advice of the Privy Council said:

“...It is of great importance that there shall be a quick and final decision as to who shall be entitled to sit as the elected representative of the voters. The delay inseparable from appeals would create doubt and difficulties in administration ...”

[61] Section 65 of **the HOAE Act**²⁷ empowers a person to challenge the election of someone by petition. One of the grounds that an election may be set aside if found to have been committed, is the offence of Treating.

[62] Before this Court, the arguments advanced on behalf of the Claimants were quite widespread. The Claimants contend that the complaints filed by the Interveners against them alleging the election offence of treating are statute barred and bad in law.

²⁵Theberge Case op cit at page 106

²⁶ [1965]1 WLR 675 (PC) at page 679

²⁷ Enacted in 1952

[63] The Claimants contend that the complaints are bad in law because the allegations relate to election offences, allegedly committed by the Claimants and that the prosecution of election offences should be prosecuted pursuant to the provisions of the HOEA which is to be prosecuted by way of election petition before the High Court, and not as a complaint under the MCPA; therefore the proceedings are bad in law because they should be brought as an election petition and not a complaint before the Magistrate.

[64] The Claimants submit that the words “*law in relation to the particular case*” in section 68 MCPA²⁸ extends to and includes the HOAE Act. It was argued on behalf of the Claimants that the HOAE Act was enacted subsequent to the MCPA and is the later and dominant Act of Parliament²⁹.

[65] The jurisdiction of the Court regarding election matters is a very peculiar jurisdiction. This jurisdiction in the past was exercised by the legislative assembly as it was they who determined the status of those who claimed to be members of the Legislative Assembly.

[66] I ask myself the question, is it the intention of the legislature to create a summary jurisdiction to dictate the composition of the HOA. The peculiar nature of the jurisdiction demands that the question is to be answered in the negative.

[67] The Constitution is the supreme law of Dominica. This is enshrined in section 117 of the Constitution and stated in these terms:

“The constitution is the supreme law of Dominica and, subject to the provisions of this Constitution if any other law is inconsistent with this Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency be void.”

²⁸Section 68 of the Magistrates’ Code of Procedure Act (the MCPA) provides “*In all cases where no time is specially limited for making any charge in the Act or law relating to the particular case, the charge shall be made within six months from the time when the matter of the charge arose.*”

²⁹ The MCPA was enacted in 1892 and the HOAA 1952

[68] The High Courts are required to safeguard the supremacy of the Constitution.

[69] Chapter III of the Constitution makes provision regarding the Parliament in Dominica.

[70] Section 40 (1) of the Constitution provides for the determination of question of membership of the House of Assembly. This section confers jurisdiction solely on the High Court to deal with election matters. The High Court is to hear and determine any question whether any person has been validly elected as a member of the House of Assembly. This section has been interpreted to mean *“the means by which a question is determined whether a person is validly elected or not is by election petition”* Per Davis CJ in the Court of Appeal of Grenada and of the West Indies Associated States case of **William Bruce Williams –v- Emanuel Henry Giraudy and another**³⁰ at Page 535 paragraph f the court in this instance was interpreting the meaning of the words of S34(1) of the Constitution of St Lucia which is couched in similar language of the Dominica Constitution.

[71] It is noted that both the HOAE Act and MCPA were, what is considered as existing legislation at the time of the promulgation of the Constitution of Dominica and must therefore be interpreted subject to the provisions of the Constitution. These acts have to be construed in a manner that brings them into conformity with the Constitution which is a function of the High Court.

[72] In the Guyanese Case of **Attorney General –v- Ramlochan**³¹ it was held that unless there was a saving law clause in the Constitution, any existing law at the time of the promulgation of the Constitution which conflicts with a provision of the Constitution, constitutional provision takes precedence.

[73] Therefore in the case at bar, where the HOAE Act makes reference to “summary conviction” for the offence of treating which would mean the complaint is to be heard by the Magistrate, this is in conflict with section 40(1) of the Constitution which

³⁰ (1975) 22 WIR 532

³¹ (2014) 83 WIR 419

provides that any question regarding the election of a candidate to the HOA must be dealt with by the High Court and that this must be done by way of election petition which are subject to very strict rules of procedure, including and not restricted to the requirement that must be brought within 21 days of the election.

[74] Therefore in the case at bar, the attempt to charge the Claimants who are all duly elected and sworn in members of the Parliament with the election offence under the HOAE Act of treating must be dealt with by the High Court, and must be brought by way of election petition. Therefore the actions of the Interveners to seek to pursue summary prosecution of the Claimants cannot be sustained.

[75] The Interveners cannot in the circumstances of this case try to circumvent the requirements of the Constitution of Dominica and the HOAE Act by seeking to file complaints against the Claimants in the Magistrates' Court and charging them for the offence of treating. I am satisfied that the jurisdiction to question elections or the jurisdiction to question the Constitution of the House of Assembly lies solely in the High Court, and therefore the Learned Magistrate acted in excess of his jurisdiction when he signed the complaints, thus his actions are therefore liable to be quashed.

[76] A quashing order can be made to quash a decision which has already been made. In the case at bar, the decision which stands to be quashed is the decision of the Learned Magistrate to issue the complaints.

[77] It is the finding of this Court that the Magistrates' Court does not have the jurisdiction to hear election offences, on the grounds that pursuant to section 117 of the Constitution this jurisdiction is vested solely in the High Court, and in the circumstances of this case the complaints filed by the interveners numbered **DOMMCR2015/0705**, **DOMMCR2015/0706** and **DOMMCR2015/707** are nullities and I hereby make an order of Certiorari removing them to this High Court and quashing the said complaints.

[78] Pursuant to Part 56.13(6) of CPR 2000 I make no order as to costs.

[79] I gratefully acknowledge the help that I received from the arguments presented to me by Counsel for the parties before the Court. I do apologise for the length of time it took to finalise this judgment.

[80] As a post script this decision was essentially completed to be delivered in January 2018 but due to the unavailability of full court facilities to ensure the timely delivery and proper editing and presentation of this ruling, there was a delay in delivering this ruling and the Court apologises for this and for any errors which may appear herein. Though the Civil High Court is not ready I opted to go ahead and deliver the decision in chambers in the presence of Counsel solely as there was no space to accommodate the parties.

M E Birnie Stephenson
High Court Judge

[SEAL]

By the Court

Registrar