

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CIVIL

CLAIM NO. DOMHCV2014/037

In the matter of an application for an Administration Order – Declaration

And

In the matter of the Integrity in Public Office Act No. 6 of 2003 Sections 16 and 22

And

In the matter of the Constitution of the Commonwealth of Dominica Chapter 1:01 Section 27

BETWEEN:-

THE INTEGRITY COMMISSION

Claimant

And

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Kevin Williams of Kevin William Chambers for the Claimant

Mr. Anthony W Astaphan SC instructed by Miss Marie-Therese Etienne of the Chambers
of the Attorney General for the Defendant

2015: May 11th
September 14th

DECISION

- [1] **STEPHENSON J.:** This is a matter of Statutory Interpretation. By fixed date claim form filed on the 3rd of December, 2014, The Integrity Commission (“the Commission”) seeks two declarations that:

- (i) Upon the true construction of Section 16 of the Integrity in Public Office Act¹ (“ IPO Act”) a person who ceases to be a person in public life during the income year in which a declaration is required to be filed is required to file such a declaration notwithstanding that the person holds office as President of the Commonwealth of Dominica (“The President”) and
- (ii) That upon the true construction of Section 22 of the said IPO Act is entitled to have the name of the person who is required to file a declaration and fails to so file notwithstanding the person hold the office as President of the Commonwealth of Dominica.

- [2] An affidavit of the secretary to the Commission Ms Helen Ambo was filed on the said 3rd December 2014 in support of the fixed date claim form setting out the Commission’s case. An affidavit in reply sworn to by Mr Steve Ferrol, Secretary to Cabinet, was filed by the defendant on the 6th February 2015. Each party filed a list of issues to be determined by the court on the 13th of March 2014 and they each filed skeleton arguments with authorities on the 8th May 2015 and 7th May 2015 respectively.
- [3] At the hearing both parties agreed to stand on their written submissions and I now proceed to rule on the matter.

Claimant’s case

- [4] The Commission was created by virtue of Section 4 of the **IPO Act**² for the purpose of receiving declarations on the financial affairs of persons holding specific positions in public life, for the purposes of establishing probity, integrity and accountability in public life and for related matters.
- [5] Pursuant to Section 14 of the **IPO Act** a person in public life is required to file a declaration with the Commission in a form specified by the Act and further, pursuant to section 16 of the **IPO Act** that declaration is required to be filed within three months of the end of the income year.

¹ Act number 6 of 2003 of the Laws of Dominica

² Op cit

- [6] Section 16 (2) of the **IPO Act** also provides that the duty to make the declaration continues for two years after the person in public life has ceased to be a person in public life “otherwise than by death”.
- [7] Section 22 of the Act makes provision for action to be taken if a person in public life fails to make the required declarations that is “... *the Commission shall publish the fact in the gazette and send a report to the Director of Public Prosecutions for further action.*”
- [8] The Honorable Charles A. Savarin was, prior to his demission from office a Minister of Government of Dominica. He demitted office on the 26th day of September 2013. On the 1st day of October 2013, the said Charles A Savarin was sworn in as the President of the Commonwealth of Dominica.
- [9] It is the claimant's contention that in accordance with Sections 16 (1) and 16 (3) of the **IPO Act** His Excellency Mr. Charles A Savarin, was obliged to file a declaration with the Commission within three months of the end of 2013 and that he has failed and or refused so to do in spite of the requests made by the secretary to the Commission for him to comply.
- [10] The affidavit of the secretary to the commission lays out the details of the attempts made by the commission to have His Excellency Mr. Savarin file his declaration and the responses to the said requests.
- [11] The secretary to the Commission further deposed that, no declaration having been filed by the 31st March 2014, the Commission sought, pursuant to the provisions of Section 22 of the act to publish the fact that there were no declarations received from listed individuals including, His Excellency Mr. Charles A Savarin and accordingly submitted the notice to be listed to the Secretary of Cabinet.
- [12] Miss Ambo deposed that on the 19th day of June 2014, she was advised by the Secretary to Cabinet that after consultation with the Attorney General he was unable to approve publication of

the notice which included the name of the President as this was contrary to section 27 of the Constitution of the Commonwealth of Dominica.³(the Constitution)

[13] Ms Ambo further deposed that the Commission responded to the Secretary to the Cabinet in a letter dated 24th June 2014, which letter was exhibited as Exhibit "H.A. 5".

[14] Thereafter, the Commission forwarded to the Government Printer, once again a notice requesting publication of the list of persons defaulting under the act including the name His Excellency Charles A Savarin and the Secretary to Cabinet returned the notice to the Commission under a cover letter stating that upon further consultation with the Attorney General they were of the view that;

*" ... A person who ceases to be a person in public life during the income year in which a declaration is required to be filed is not required to file such a declaration while the person holds office of the President of the Commonwealth of Dominica"*⁴

[15] The Attorney General and Secretary to the Cabinet informed the Commission that

*"The Commission is not entitled to have published in the gazette the name of a person who is required to file a declaration and fails to file the same which the person holds office as President of the Commonwealth of Dominica as such would be contrary to Section 27⁵ of the Constitution of Dominica and bring the office of the President into dispute"*⁶

³ Section 27 of the Constitution states:

⁴ Para 18 of the Affidavit of Helen Ambo filed on the 3 December 2014

⁵ Article 27 of the Constitution of the Commonwealth of Dominica

(1) Whilst any person holds office or is acting a President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity.

(2) Where the provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which any person has held office or acted as President shall not be taken into account in calculating any period of time described by that law which determines whether any such proceedings as are mentioned in subsection (1) of this section may be brought against that person

⁶ Para 19 Ibid

[16] Ms Ambo further deposed that the Commission is of the view that a true construction of sections 16 and 22 of the **IPO Act** makes it mandatory, and that, failure to file a declaration as is mandated by the **IPO Act** the Commission has a statutory obligation to publish that fact in that Gazette and send a report to the Director of Public Prosecutions.

[17] It is the Commission's contention as stated in Ms Ambo's affidavit that it has no statutory authority to institute criminal proceeding against anyone and as such section 27 of the Constitution does not relieve the Commission from complying with the its obligations under the **IPO Act**.

Defendant's case

[18] The defendant's responded by way of affidavit of Steve Ferrol, Secretary to Cabinet, and this affidavit was filed on the 6th February 2015.

[19] The defendant agrees with the claimant that there is an obligation for a public officer to make the required declaration and when this is not done, that the Commission is entitled to publish that failure in the Gazette and forward the list of defaulters to the Director of Public Prosecutions for further action.

[20] The defendant contends however, that The President is not required so to do during the currency of his office and takes issue with the claimant's interpretation of sections 16 and 22 of the IPO Act.

[21] The defendant contends that upon His Excellency the President of the Commonwealth of Dominica being sworn into office both at Common Law and by virtue of the Constitution His Excellency enjoys a special status, character and role which is similar to the British Monarch in Law and is to be regarded as above and beyond reproach. This status continues throughout his term of office.

[22] The defendant further contends that pursuant to section 58(1) of the Constitution, the executive authority of Dominica is vested in the President and further by virtue of section 27 (1) of the Constitution

"No criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be

instituted or continued in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity. ...”

[23] It is contended by the defendant that it is particularly significant that this section of the Constitution expressly recognizes the President’s special status and immunity from criminal or civil proceedings whether instituted prior to or during his tenure in office. It is also contended that no other person in Dominica enjoys such immunity.⁷

[24] The defendant further contends that Section 27 of the Constitution also recognizes that the “doctrine of Crown immunity is applicable to the President”. That in the circumstances that the President is not bound by Acts of Parliament unless referred to therein expressly or by necessary implication. It is contended that this is similar to that which is enjoyed by the British Monarch.

[25] The defendant also contends that the President enjoys the privileges, rights and powers formerly vested in the Governor by virtue of the provisions of the Existing Law (Adaptations) Act.⁸

[26] Mr. Ferrol further deposed that he has been advised by counsel and verily believes to be true, that Parliament could not have intended His Excellency the President, the Head of State, to be subjected to a requirement to file such a declaration and that in keeping with established practice if parliament intended the Head of State to be subject to the provisions of the IPO Act there would have been express provision in that regard.⁹

[27] The defendant also contends also that the President being above reproach cannot be subjected to the intrusions and scrutiny inherent in the IPO Act and accordingly he is not a person required to file the declarations under the said Act. Further, that if the claimant’s interpretation of the IPO Act were correct then those Sections of the IPO Act would provide for the initiation of criminal proceedings against the President which would be inconsistent with the provisions of Section 27 of the said Constitution and would therefore accordingly be void.

⁷ Paragraph 5 of the Affidavit of Steve Ferrol Secretary to Cabinet filed on the 6 February 2015.

⁸ Chapter 3:05 of the Revised Laws of Dominica 1990.

⁹ Para 7 of the Affidavit of Steve Ferrol Op cit

[28] The defendant further contends that the Commission is appointed by the President and if the claimant's interpretation of the IPO Act is to be accepted it would amount to an absurdity and would be incongruous in that the President would be reporting to himself and if per happenstance that there was to be inquiry into the said declaration, as is provided for by the IPO Act it would mean that the President would appoint a tribunal to inquire into himself.

[29] It is also the defendant's contention that the requirement to file the obligation by persons in public life is mandatory and failure to do so the Commission is entitled to take the action as laid down in the IPO Act, however, the defendant contends that the President is not required to file a declaration with the Commission as is required by the IPO Act or is the Commission entitled to publish any perceived failure by the President to make such declaration.

[30] The defendant states that at all material times the Commission never addressed His Excellency Mr. Charles A. Savarin in his personal capacity. It was drawn to the Court's attention that the correspondence which was exhibited at HA 1 of the claimant's affidavit was never addressed to Mr Savarin personally or sent to his personal residence. That it was at all material times addressed to the President's Secretary directed to the President in his official capacity at his Official address which is indicative, it is contended, that it was meant to address the President as President and not to him personally as a person in Public Life. The defendant contends that when a person assumes the office of President immediately following or within the relevant period of having been a person in public life, the application of those Sections is held in abeyance and is of no effect during the person's tenure as President.

[31] The defendant also contends that the Gazette is published by the Government of Dominica by the Government Printer which is authorized by or on behalf of the Government to print any written law or any other document with the Government as is provided for in the General Clauses Act.¹⁰ In those circumstances that it is the Government through the Secretary to Cabinet who determines the appropriateness or otherwise of what should be published in the Gazette and accordingly the Commission has no power or authority to determine what should be or should not be published in the Gazette.

¹⁰ Chapter 3:01 of the Revised Law of Dominica

[32] The defendant is asking this court to refuse the claimants application and instead make the following alternative declarations:

- (i) A declaration that upon proper construction of section 16(2) of the IPO Act a person who assumes the office of President of the Commonwealth of Dominica having been a person in public life during the immediately preceding relevant period, is not required to file a declaration in Form 2 whilst that person holds the office of President of the Commonwealth of Dominica.
- (ii) A declaration that upon proper construction of Section 22 of the IPO Act the Integrity Commission is not entitled nor is required to have published in the Gazette the name of a person who holds the Office of President of the Commonwealth of Dominica declaring that person has not filed a declaration in Form 2.

Arguments

[33] There is no argument between the parties in the case at bar that a person in public life is obliged to file a declaration by section 16(2) of the IPO Act and failing to do so the Commission is obliged to publish the defaulters and submit the said list to the Director of Public Prosecutions for further action as the Director of Public Prosecutions sees fit.

[33] There is also no argument that prior to his being sworn in as the President of the Commonwealth of Dominica, His Excellency Mr. Charles Savarin, was a person in public life and is required to file the declaration as is required. The issue is quite simply whether he ought to do so or whether he can be compelled to do so whilst he occupies the highest office in Dominica or, whether that obligations stands in abeyance whilst he is in office and which obligation returns when he demits his office as President.

[34] The defendant contends that failure on the part of any person in public life to make the declaration triggers an obligation on the part of the Commission to not only publish the list of defaulters including the defaulter's name in the Gazette, but also to submit the said list to the Director of Public Prosecutions which are conditions precedent to the institution of criminal proceedings against the defaulter and is an integral part of any prosecution under the Act. That to allow this course of action on

a list including the President's name would amount to possibly instituting criminal proceedings against the President which would amount to bring the office of president into disrepute.

[35] This is distinct from the submission made on behalf of the Commission where it is the Commission's contention that they are not authorized to institute criminal proceedings that is within the purview of the Director of Public Prosecution and that the publication of the list of defaulters including His Excellency Mr. Savarin's name and submission of the report with the list to the Director of Public Prosecutions is what is required of the Commission in obedience to provisions of the IPO Act.

[36] The defendant also contends that Section 27 of the Constitution protects the President from the institution or continuation of criminal proceedings during his term of office either in his official capacity or in his private capacity.

[37] The defendant also submits that part 2 of Section 27 of the Constitution states;

"Where provision is made by law limiting the time within which proceedings of any description may be brought against any person the period during which any person has held the office or acted as president shall not be taken in to account in calculating any period of time described by that law which determines whether any such proceedings as are mentioned in subsection (1) of this section may be brought against that person"

[38] The defendant therefore contends that the President is protected and or insulated from the institution of any criminal proceedings and that the time limited in the case at bar for the President to file his declaration as is required stands in abeyance in other words time stops on the day of his taking his oath and restarts on the day he demits office as the time that he has been in office is not to be taken into account. The defendant contends that the implications of Section 27 of the Constitution are obvious and clear.

[39] The defendant also contends that to publish the name of the President in the gazette will without a doubt bring the office of the president into public ridicule and disrepute which section 27 of the Constitution clearly and manifestly intends to prevent. Re: **The Prime Minister –v- Hector John**¹¹.

[40] The defendant further contends that the provisions of the IPO Act must therefore be read and construed subject to section 27 and when that is done one will come to the conclusion that the President is insulated from any attempt by the Commission to have him comply with or subject to the IPO Act. Further that the Secretary to Cabinet acted correctly and within the confines of the law when he refused to publish the list of defaulters which included the name of the President.

[41] The defendant contended that the Constitution is supreme and the provisions are to be construed purposively. That the structure of the Constitution is deeply rooted in the doctrine of separation of powers with the President as head of state and that all laws must be read subject to the express terms of the Constitution and the doctrine of separation of powers. This is trite law.

[42] The defendant therefore submitted that the interpretation which must be given to sections 16 and 22 of the IPO Act must therefore be read subject to and consistently with the provisions of the Constitution. Re: **The Attorney General of Grenada –v- The Grenada Bar Association**¹² and **Charles Savarin – v- John Williams**.¹³

[43] Submissions were made by both sides on the absolute immunity enjoyed by the President. It was the defendant's contention that the President based on the authorities submitted,¹⁴ is completely insulated from and exempted from any provisions of the IPO Act in any way, or at all, regardless of whether he was previously a public officer.

[44] On the other hand the claimant submits based on authorities cited¹⁵ that the prerogatives and immunities of the Crown exist only at common law and the Existing law (Adaptation) Act¹⁶ vests this

¹¹ Domhap2013/0006

¹² Civil Appeal 8 of 1999 (Grenada)

¹³ Civil Appeal no 3 of 1995 (Dominica)

¹⁴ Halsbury's Laws of England/Crown and Crown Proceedings Volume 29 (2014) Para 50 & Halsbury's Laws of England volume 29 (2012) para 720 & *Bombay Province –v- Bombay Municipal Corporation* [1947] AC 58 & Halsbury's Laws of England/Constitutional and Administrative Law Volume 20 (2014) Para 139

¹⁵ Halsbury's Laws of England 3rd Edition Constitutional Law Volume 7 p221 Paras 463, 469 & 494

prerogative in the state subject to the Constitution. Relying on the learning contained in Francis Alexis work on “Changing Caribbean Constitutions”¹⁷ and **Baird (Michael) –v- Public Service Commission**¹⁸ and **Qurase –v- Bainimarama**¹⁹ it is contended that the absolute immunity as vested in the English Monarch does not form part of the constitutional law of the Commonwealth of Dominica which is a sovereign state with a supreme law clause in the terms of Section 117 of the Constitution of the Dominica.

Court’s Considerations

[45] An appropriate starting point would be to repeat section 27 of the Constitution of Dominica in its entirety

(i) Section 27

(1) Whilst any person holds office or is acting as President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity.

(2) Where the provision is made by law limiting the time within which proceedings of any description may be brought against any person, the period during which any person has held office or acted as President shall not be taken into account in calculating any period of time described by that law which determines whether any such proceedings as are mentioned in subsection (1) of this section may be brought against that person

¹⁶ Op cit

¹⁷ 2nd Edition at page 50 para 2.99, page 297 para 13.62, para 13.63. para 13.64

¹⁸ (2000) 63 WIR 134

¹⁹ [2009] FJCA 9

[46] In addressing the issue in the case at bar whether the Commission's request for declaration of assets from the President in relation to his last year in public office, and the President's refusal to submit same and in the Commission's submission of the list of defaulters including the name of the President for publication in the Gazette and submitting a report of defaulters including the name of the President to the Director of Public Prosecution for consideration for the institution of criminal proceedings was proper and whether or not the actions of the Commission are in contravention of Section 27 of the Constitution of Dominica. The defendant contends *inter alia* that the publication of the defaulting list with the President's name included for publication and the submission of the report is the trigger for possible prosecution. I agree with that submission as I am of the considered view that upon a true construction of Section 27 the President is shielded from the institution of criminal proceedings which ought to and should include any preparatory steps which would likely result in the institution of criminal proceedings.

[47] The Court of Appeal in the **Hector John**²⁰ case held *inter alia* that:

"Exclusion clauses in statutes as well as in constitutions are ordinarily to be accorded a literal (as distinct from a liberal) interpretation. In essence they must be treated as meaning what they say and no more".

[48] The Court of appeal went on to state that

"The framers of the Constitution, holding the Office of the President in the highest regard, sought to protect the integrity of the office from disrepute"

[49] Accordingly, I am of the considered view that for the President's name to appear on a list of defaulters in the Gazette or to be named in a report presented to the Director of Public Prosecution for further action which is for possible criminal prosecution even though it would be for an alleged default in his private and personal capacity would be flying in the face of the protection offered by the Constitution and would be bringing the office of the President into disrepute.

[50] I now turn to the issue as to whether given the protection offered by this section can be extended to the President in the circumstances of the case. I do believe that it does. I am of the view that whilst

²⁰ Op cit

the President is in office any obligations which he may have in his personal life imposed by law which has a criminal or civil sanction as a result of inaction or action on his part is suspended whilst he is in office.

[51] Learned Counsel for the defendant has drawn to the court's attention that the correspondence to His Excellency Mr. Savarin regarding his declaration was not addressed to him personally or sent to his personal address but sent to the President's secretary to be drawn to the President's attention and to the President's official address. Clearly the Commission sought to engage His Excellency Mr. Savarin as President and not personally, and I agree with learned counsel for the defendant that this should not be. That to do so was indeed improper and I so declare.

[52] I hasten to add that all is not lost, as one must take into consideration subsection 2 of Section 27 of the Constitution. Once the President demits office which he has to, his obligation to file his declaration as it regards the period that he was in public life prior to his assuming the office of President resumes and the time limit as set by Section 16 (1) of the IPO Act would be within two months and twenty six days of his demitting office, there after the Commission would be free to take the action as laid down in the IPO Act.

[53] I have given careful consideration to the arguments and authorities cited in this matter and based on my reasoning as stated above I decline to make the declarations sought by the claimant and would accordingly grant the defendant's application and make the following declarations:

- (i) That upon the proper construction of Section 16(2) of the IPO Act a person who assumes the office of President of the Commonwealth of Dominica having been a person in public life during the immediately preceding period, is not required to file a declaration in Form 2 whilst that person holds the office of President of the Commonwealth of Dominica;
- (ii) That upon proper construction of Section 22 of the IPO Act the Integrity Commission is not entitled to nor is it required to have published in the Gazette the name of a person who holds the office of President of the Commonwealth of Dominica declaring that that person has not filed a declaration in Form 2.

[54] There has been some discussion on the doctrine of “Crown immunity” learned counsel on both sides made submissions on this issue, as it was raised by the defendant in the alternative, however, having come to my conclusion based on the application of Section 27 of the Constitution and my finding I did not think it necessary to include the discussion on same or make a finding in that regard.

[55] Neither party has sought an order for costs. I note that the general rule is that costs follow the event; however, considering the nature of the matter, I do not consider it appropriate to make an order as to costs.

[56] I am grateful to counsel for their valuable assistance to this court

M E B Stephenson J (sgd)

M E Birnie Stephenson
High Court Judge