COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 20 OF 1997

BETWEEN:

HERBERT SABAROCHE
THE MEMBER FOR COLIHAUT

Appellant

and

[1] THE SPEAKER OF THE HOUSE OF ASSEMBLY

First Respondent

[2] THE ATTORNEY-GENERAL OF THE COMMONWEALTH OF DOMINICA

Second Respondent

Before:

The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Albert Matthew	Justice of Appeal [Ag.]

Appearances:

Mr. Anthony Astaphan for the Appellant
Mr. Anthony La Ronde, Attorney-General,
for the Respondents

1999: April 19, 20;
May 25.

JUDGMENT

REDHEAD J.A.

In 1995 the appellant was elected as a member of the House of Assembly in Dominica for the constituency of Colihaut.

On 24th February, 1997 during his contribution to an ongoing debate in the House of Assembly, the appellant said of the Honourable Minister for Communications, Works and Housing:-

> AOn visiting the road on Saturday 22nd February I was a little taken aback that the road had not been fixed. Mr. Speaker because people in Colihaut, people in Salisbury, people in Morne Rachette,

> Coulibistrie and Dublanc they confronted the Minister for Communications and Works on the same feed road. [Hon. Earl Williams had made statements to the effect that the road was repaired.] I am talking about a feeder road in Colihaut. And I wonder why Parliamentarians have to behave in public like that. The people, the farmers were asking about that feeder road and you should hear. I cannot repeat it in the House. You should hear the kind of language that the Hon. Minister used to those poor farmers. It was a big shame and not that - even in my presence - no one told me, I was there. I can call names of other persons who were there. You all must admonish him on that. It is a shame for Government Ministers to be behaving in public like that when people are asking them about their problems - feeder road problems. We must not tolerate that kind of behaviour from Ministers of Government and I do not know in what forum we must bring it up, whether it is in Parliament or some where else. There must be a code of conduct for the way the ministers and government officials behave in public and I would be happy that he would be there to hear what I am saying so that he could respond to it.@
>
> A[A side] Mr. Speaker, I will accept that because I recognise that a number of them behave the same way that the Hon. Minister behaved. I can accept that because they will mumble and grumble because that [is] the same way that they behave, and the Hon. Member for Mahaut in my presence used a word to his fellow companion, the junior minister for the Carib Reserve and he cannot deny it and this kind of behaviour has got to stop] [Aside]. He is trying to disturb me, Mr. Speaker@.

On the following day, Tuesday the 25th day of February, 1997, the Honourable Minister of Communications, Works and Housing made reference in the House of Assembly to the appellant's speech and alleged that it was a matter of privilege. He complained that the appellant had used insulting and disrespectful language in relation to him and the entire incident was untrue. He then expressed an intention to move a motion against the appellant in accordance with Standing Order 44[4] and asked that the appellant apologise. A debate among the members ensued.

On Wednesday 26th February, 1997 the minister presented a motion to the House in the following terms:-

> AThe member for Colihaut - used offensive, insulting and disrespectful language and indulged in personalities in reference to another member of the House and the Honourable Minister for Communication Works and Housing by implication members of the government side of the House.@

The motion read:

> "**BE IT RESOLVED** that the House comes to a decision on the alleged fault and that if so proved the member be suspended for the remainder of this sitting and the next sitting of the Honourable House"

After the motion was read the Speaker permitted the minister and the appellant to speak for twenty minutes each. There was no further debate.

The Speaker then said:

> AI have heard what the member has to say. I would not like to compare myself to Pilate but the point, is the matter is out of my hands. I wish to wash my hands.@

The Speaker then went on to say that as judge in that matter he ought not to take sides and besides the responsibility for the decision making rests surely in the hands of the members of the House according to him. He said that he had absolutely no business in this at all. He is just there to preside and leave it to the members of the House to make their own decisions.

Finally the Speaker said:

> AThe fact is that I did not stop the member [I think he quoted section 44[4], because I want all members to understand this, just because..... mean I do not know. A member makes a statement about an incident which occurred somewhere. I am in no position to say that statement is correct or not. So, the statement was not abusive, it was not offensive. As to whether it was disrespectful, I do not know because of the fact that I was not present and I was in no position to determine whether the statement was accurate or not. So that is why the rules provide when making statements members should satisfy themselves that those statements are accurate.

> So I have no alternative but to put the question to the House for the House to make its own decision on the matter.@

The motion was then passed. The voting was along party lines. The appellant was suspended for the remainder of the sitting of the House and the next sitting.

The next sitting of the House was on 13th March. While standing outside of the House of Assembly building the appellant was informed by a senior police officer that it was his understanding that the appellant was allowed to go to the gallery and that he was prepared to escort him there. The appellant agreed, but on arriving on the steps of the gallery, Inspector Sylvester told him he had no right to be on the gallery. The inspector however went to clarify the matter with the Speaker. On the Inspector's return he told the appellant that the Speaker had directed that he was not allowed to be in the building and that he should be escorted outside. Whereupon the appellant was removed from the building without his consent and against his will.

On 14th March, 1997 during a sitting of the House the Speaker's attention was drawn to the definition of ASitting@ as contained in Order 2[1] of the Standing Orders of the House. At approximately 8.00pm that evening the House was adjourned sine die. Just prior to the adjournment the speaker made the following announcement:

> "This sitting has/is been completed and therefore Mr. Sabaroche is to remain suspended for the next sitting as well."

On 17th March, 1997 the appellant received a letter from the Speaker of the House inviting him to attend the next sitting of the House of Assembly.

On 24th March, 1997 a motion was filed in High Court of Dominica seeking a number of declarations alleging that his suspension from the House was illegal. The appellant also claimed damages for his alleged unlawful suspension from the House.

The appellant's case was substantially dismissed except that the learned trial judge held that the suspension of the appellant ended when the House adjourned on 13th March, 1997.

On page 33 of his judgment the learned judge wrote:

> AThere should be a declaration that the suspension of the applicant ended when the House adjourned on 13th March, 1997. Otherwise the proceedings should be dismissed. I will hear the parties on costs on a date to be arranged.@

The appellant now appeals to this court.

One ground of appeal with 12 sub-heads was filed on behalf of the appellant.

[a] challenges the decision on the ground that the decision is erroneous in point of law because the learned trial judge failed to consider and properly decide the central issues arising in this case, namely, what, if any, are the privileges of the House of Assembly in the absence of specific legislation enacting or prescribing, inter alia the privileges of the Parliament inclusive of the House of the Assembly to punish or suspend for breach of a privilege.

[b] the learned trial judge erred in failing to hold that the appellant was suspended for a breach of >privilege@ which did not and does not exist in law, and/or in failing to hold that the words spoken by the appellant did not constitute or amount to a breach of the Aprivileges@ of the Parliament of the Commonwealth of Dominica.

[c] .....

In my view these two grounds are the central theme running through the other grounds. So I shall not set them out in full.

Mr. Astaphan, learned Counsel, for the appellant in his written submissions posed these questions. The questions which arise in this appeal are, did the alleged privilege of which the appellant was accused and/or suspended and/or denied re-entry to the House of Assembly exist

in law and, does the court have jurisdiction to enquire into the existence and extent of the alleged privilege?

I agree entirely with Mr. Astaphan that these are the issues which fall for determination in this appeal. I deal with the first part of the question first. In order to do so it is necessary in my opinion that a careful examination of the complaint against the appellant must be addressed.

The Minister for Communications and Works [the minister] complained the day after the appellant had spoken in the House of Assembly that the appellant used insulting and disrespectful language in relation to him and that the entire incident was untrue. The Minister then indicated his intention to move a motion against the appellant in accordance with Standing Order 44[4] and asked that the appellant apologise.

I now refer to the relevant standing orders:

> **S.O 4.4[4]**
> AIt shall be out of order to use offensive and insulting or disrespectful language about members or against the House of Assembly.@
>
> **44[6]**
> “No member shall impute improper motives to any member of the House or indulge in personalities except on a substantive motion moved for the purpose.”
>
> **49[1]**
> “The Speaker in the House and the Chairman in Committee respectively and their decision upon any point of order shall not be open to appeal and shall not be reviewed by the house except on a substantive motion made after notice.@
>
> **50[1]**
> AThe Speaker or the Chairman, after having called the attention of the House or the Committee to the conduct of the member who persists in irrelevance or tedious repetition either of his own argument or of the arguments used by other members in debate, may direct him to discontinue his speech and to resume his seat.@

50[2][a]

AAny member who has used objectionable or unparliamentary expressions and on being called to order has refused to withdraw the words or expressions or to explain them and has not offered an apology for the use thereof to the satisfaction of the House may be proceeded against and dealt with as though he had committed an offence under 2[b].@

50[2][b]

AThe Speaker or the Chairman shall order any member whose conduct is grossly disorderly to withdraw immediately during the remainder of the sitting. If a direction to withdraw under this paragraph is not complied with at once or if, on any occasion, the speaker or the Chairman considers that his powers under the previous provisions of this paragraph are inadequate, the Speaker, or Chairman may name such member in pursuance of the procedure prescribed in paragraph 3.@

50[3]

If a member shows disregard for the authority of the chair, the business of the House, or otherwise, the Speaker and the Chairman, shall direct the attention of the members to the incident mentioning by name the member concerned. Whenever a member has been so named by the Speaker or by the Chairman then -

[a] if the offence has been committed in the House, the Speaker shall call upon a minister to move Athat Mr..... be suspended from service of the House@. The Speaker shall put the question forthwith on the motion forthwith, no seconder being required and no amendment, adjournment on the debate being allowed.@

50[10]

AIn the case of a breach of privilege the following procedure shall be observed:

[a] the member must first make a complaint that there has been a breach of privilege and then declare that he intends to propose a motion to that effect.

[b[the motion must set out the accusation in explicit but moderate terms, together with the facts of the case. It must propose that the House comes to a decision on the alleged fault after considering a report from a select committee following on inquiry by the committee as of right. The motion is not susceptible to amendment or divisions.@

50[10][1][c]
AThe mover and the member whose conduct is impugned may speak for twenty minutes each when they have concluded, the matter shall either be considered by the House or a select Committee appointed to investigate the matter. In addition to its finding the Committee may include recommendations in its report.@

From the record it is obvious that the minister proceeded or rather brought his complaint in accordance with Standing Orders 44[4] and or 44[6].

I make two observations, having regard to what the appellant said in the House of Assembly on 24th February, 1997 about the minister what could be regarded as offensive, insulting or disrespectful? [S.O. 44(4)]. Or was there anything in what the appellant said that could be regarded as imputing improper motives to the minister or indulging the personalities? [44(6)]. I think not.

The words used by the appellant in my opinion cannot in the context be regarded as having being offensive, insulting, disrespectful or imputing improper motives to the minister. The appellant was obviously making a complaint against the minister in the House of Assembly - the proper forum in my view - of what he perceived to be ungentlemanly conduct towards members of the public.

From the record it does not even seem to me that the complaint by the appellant was investigated, as in my view, there ought to be an investigation, when he said that there were others present and he proceeded to name names of those whom he said were present. Yet the House proceeded along party lines to find him guilty of a breach of privilege.

It is interesting to note that if a member uses offensive, and insulting or disrespectful language or imputes improper motives to any member neither S.O.44[4] nor S.O.44[6] stipulates how that member should be dealt with. There is no doubt that he can be dealt with under Standing Orders 50[2][a] and 50[2][b].

In my judgment offensive and insulting or disrespectful language could be regarded as objectionable or unparliamentary expressions. If a member uses unparliamentary expressions Aand on being called to order [by the Speaker] refuses to withdraw the words or expressions or to explain them and has not offered an apology for the use thereof to the satisfaction of the House he may be proceeded against and be dealt with as though he had committed an offence under paragraph 2[b]@, that is to say, his conduct will be regarded as gross misconduct and he will be asked to withdraw immediately from the House during the remainder of the sitting.

To state the obvious, it is clear that all these things i.e to say, the use of the unparliamentary language, the request by the speaker for the withdrawal of those words or explain them and the refusal to offer an apology and finally the Speaker asking him to withdraw immediately from the House for the remainder of that sitting, must occur during the course of a sitting.

But of course this was not the procedure which was adopted in this case. The appellant was proceeded against under S.O 50[10] although as I have said above the complaint made against him comes within the purview of S.O.[44][4] and 44[6].

S.O.50[10] begins with the words AIn the case of a breach of privilege.@ This presupposes that a breach of privilege has occurred. The appellant was undoubtedly punished for a breach of privilege. What privilege did the appellant breach? This in my view brings me to an analysis of the privileges as they pertain to the House of Assembly of the Commonwealth of Dominica.

In **Thomas William Doyle v George Charles Falconer 1866 L.R. P.C 328**

It was there laid down in clear and unambiguous terms that:-

> AThe legislative Assembly of Dominica does not possess the power of punishing a contempt, though committed in its presence and by one of its members; such authority does not belong to a Colonial

> House of Assembly by analogy to the lex et consuetudo Parliamenti; which is inherent in the two Houses of Parliament in the United Kingdom or to a court of justice, which is a court of record, a Colonial House of Assembly having no judicial functions.@

In that case, Falconer, a member of the lower House of Assembly during an address in the House said to the speaker Doyle, Ayou are a disgrace to this House.@ He was called upon by Doyle to apologise. He refused to do so and repeated the same words to the Speaker. The House of Assembly having called upon Falconer to apologise he again refused to do so. He was then held in contempt and having, whilst so in contempt, interrupted and obstructed the business before the House. It was thereupon resolved that Falconer, for his disorderly conduct and contempt of the House, be taken in to the custody of the Sergeant –At-Arms. The Speaker in pursuance of a resolution by House, issued a warrant Ain pursuance of customs and practice by the House@, committing Falconer to the common goal during the pleasure of the House.

Sir James W. Colvile at page 339 said:

> AThe privilege of the House of Commons, that of punishing for contempt being one, belong to it by virtue of the lex et consuetudo Parliamenti, which is a law peculiar to and inherent in two Houses of Parliament of the United Kingdom. It cannot, therefore be inferred from certain powers by the House of Commons by virtue of that ancient usage and prescription, that the like powers belong to the Legislative Assemblies of comparatively recent creation in the depedencies of the crown.@

The power of arrest for contempt by the House of Assembly of the Island of the New Foundland was called for determination in:-

Edward Kielley v William Carson John Kent and others 1842 4 Moore P.C. 348 which decided that the House of Assembly of the Island of the New Foundland does not possess as a legal incident, the power of arrest, with a view to adjudication on a contempt committed out of the House but possess any such powers as are reasonably necessary for the proper exercise of its functions and duties as a local legislation.

Parke B at pages 347-348 said:

> AThe whole question then is reduced to this- whether by law, the power of committing for a contempt, not in the presence of the Assembly, is incident to every local legislature. The statute law on this subject-being silent, the common law is to govern it; and what is the common law depends upon principle and precedent.
>
> Their Lordships see no reason to think, that in the principle of the common law, any other powers are given them, than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both sides, it is admitted, it is competent for the crown to perform. This is the principle which governs all legal incidents. **AQuando Lex aliquid Concedit, Concedere Viditur et illud, sine quo res ipsa esse non potest.@** In conformity to this principle we feel no doubt that such an assembly has the right of protecting itself from all impediment to the due course of its proceedings. To the full extent of every measure which it may be really necessary to adopt to secure the free exercise of their legislative functions, they are justified in acting by the principle of the common law. But the power of punishing anyone for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local legislature whether representative or not."

In **David Landers et al v Douglas Woodworth 1878 2 S.C.R. 158**

The Respondent a member of the House of Assembly of the Province of Nova Scotia, accused the Provincial Secretary of having falsified a record, on investigation by a Committee of the House it was discovered that the accusation was unfounded. The House resolved that the respondent in making the charge without sufficient evidence was guilty of a breach of privilege. The respondent was then ordered to make an apology. He refused to do so. Another resolution found him guilty of contempt and ordered him to withdraw from the House until such apology be made. He refused, another resolution which was passed ordering his removal from the House by the Sergeant-At-Arms who with his Assistant enforced the order.

The respondent brought an action of trespass against the Speaker and other members of the House and obtained $500.00 damages.

On appeal it was held affirming the judgment of the Supreme Court of Nova Scotia that the Legislative Assembly of the Province of Nova Scotia has, in the absence of express grant, no power to remove one of its members for contempt unless he is actually obstructing the business of the house; and the respondent having been removed from his seat, not because he was obstructing the business of the house, but because he would not repeat the apology required, the appellants were liable.

Ritchie J. at page 201 said:-

> AI think a series of authorities, binding on this court, clearly establish that the House of Assembly of Nova Scotia has no power to punish for any offence not an immediate obstruction to the due course of its proceedings and the proper exercise of its functions, such power not being an essential attribute, nor essentially necessary, for the exercise of its functions by a local legislature, and not belonging to it as a necessary or legal local legislatures have not the privilege which belong to the House of Commons of Great Britain, by the lex et consuetudo Parliamenti!@

In light of the authorities referred to above, I entertain absolutely no doubt that a colonial legislature has very limited powers in relation to contempt. Its powers in that regard, are only such as are reasonably necessary for the proper exercise of its functions and duties as a local legislature.

What is the position of the House of Assembly in an independent Commonwealth of Dominica? Learned Attorney General, Mr. LaRonde, argued that the privileges of the House of Commons apply to Dominica by virtue of Standing Order 87 which provides as follows:-

> A87[1] In any matter not herein provided for resort shall be had to the usage and practice of the House of Commons of the Parliament of Great Britain and Northern Ireland which shall be followed as far as the same may be applicable to the House and not inconsistent with Standing Order nor with the practice of this House.

The learned Attorney-General contended that both the decisions of Bradlaugh v Gossett 884 12 QBD 271 and Jagan And Others v Gajraj

1962 WIR 333 show clearly that the House can discipline its member for >breach of privilege such as disorderly conduct.@

The learned Attorney-General in support of his contention that the House of Assembly of the Commonwealth of Dominica possesses these powers relies on:-

Fotofili And Others v Saile 1988 2 L.R.C. [Const] 102.

At page 106

> AApart from the question of supremacy there are other privileges and immunities which must be available to a legislative body, which are incidental to its existence and status, or necessary for the reasonable and proper exercise of the functions vested in it.@

In my judgment Standing Orders must be differentiated from privileges. Section 52 of the Constitution of Dominica says in part, the House may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings. This refers to Standing Orders only.

I agree with the submission of Mr. Astaphan, learned Counsel, for the appellant that the House of Assembly - being only one of the two constituent parts of the Parliament of the Commonwealth of Dominica – has no authority to make any laws prescribing the privileges of the Parliament of the Commonwealth of Dominica or any laws providing for an alleged breach of Parliamentary privilege. The authority for making any laws prescribing the privileges of Parliament resides in the Parliament of Dominica under and by virtue of Section 41 of the Constitution which provides inter alia, A.....Parliament may make laws for the peace and good government of Dominica@.

Section 43 of the Dominica Constitution contemplates the making of such laws for prescribing the privileges of the >House of Assembly when it provides inter alia:-

> “Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of the House and its Committees or privileges and immunities of the members and

officers of the House and of other persons concerned in the business of the House or its Committees.....”

Mr. LaRonde also submitted that the doctrine of necesity makes it incumbent that there are privileges of the House and breaches thereof may be punished. I reject this submission.

The Parliament of the Commonwealth of Dominica not having passed any legislation as provided for under Section 41 of the Constitution and the House not having acquired privileges under common law by virtue of ancient usage and prescription, the only privileges therefore which the House of Assembly of the Commonwealth of Dominica possesses are those which are essentially necessary for the exercise of its functions.

The conduct of the appellant, therefore could never be regarded as a breach of privilege. Even if by the stretch of the imagination to its limit one were to categorise what the appellant said in the House under head of Amisconduct@, the action of the members of the House was in effect to punish the appellant for a past misconduct as a contempt and this by no means was essentially necessary for the exercise of its functions.

If the appellant was obstructing the proceedings of the House or if, at the time he was speaking what he was saying was considered to be objectionable or unparliamentary and the Speaker had asked him to withdraw the words and offer an apology and he had refused to apologise then the House could have proceeded against him for gross mis-orderly conduct but that did not happen in this case.

The appellant made a speech on the 24th of February the minister on the following day went in the House of Assembly said that he wanted to move a motion against the appellant. The motion was read by the minister. The minister presented the motion. The minister voted on the motion. The minister is a member of the majority party which forms the government. The record shows that the minister presented the petition. He voted on the motion to suspend the appellant. I agree with learned Counsel=s submission that the minister was judge in his own cause.

Moreover, the speaker like Pontius Pilate, washed his hands of the whole affair. He could not find any fault in the appellant's speech to condemn him in contempt or any breach of the standing orders so he left it up to the members of the House, in my opinion, as in the case of **Landers v Woodworth** [supra] as Ritchie J. at page 204 quoting Lord Denman said: with one voice accused condemned and executed" the appellant.

In my judgment the appellant had committed no breach of privilege. The words spoken by him could not be regarded as objectionable or unparlimentary. Even if they were, action would have had to be taken at the time he used those words. An opportunity had to be given to him to withdraw those words and offer an apology and if he failed to do those things then he could be suspended under order 50112][b] for remainder of the sitting. In the premises therefore the appellant=s suspension from the sitting of the House was unlawful.

I now address the question of whether the court has jurisdiction to inquire into affairs of the House of Assembly. Mr. Astaphan, learned Counsel for the appellant in his skeleton argument said that the courts have a responsibility and duty to ensure that every authority, inclusive of the House of Assembly, act in accordance with legislation, statutory rules and laws. He submitted that if the House of Assembly purports to suspend a member for an alleged breach of privilege which does not exist in law but purports to do so in complete disregard of the very Standing Orders made by the House, the court is obliged to act and afford the aggrieved member the appropriate relief. With this I am in full agreement. I shall go further and say the constitution of the Commonwealth of Dominica is the supreme law of the land. The House of Assembly gets its authority from the Constitution; the court being the sentinel of the constitution must act and has a duty to act when any authority acts in non conformity with any rules or laws which it derives under the very constitution.

In **Rediffusion Hong Kong v Attorney-General of Hong Kong** 1470 A.C. 437 Lord Diplock at page 1155 said:

> AAlthough the argument that a court of justice had no jurisdiction to enquire as to what is done within the walls of parliament@ had been advanced at the hearing in the Supreme Court it received no mention in the judgment. Both that court and the Judicial Committee treated it as automatic that the court had jurisdiction to inquire into and grant relief for unlawful conduct by members of a legislative assembly in the course of legislative proceedings in the chambers.@

In **Delille And Another v Speaker of the National Assembly** 1998 7 BCLR 916.

The High Court in cape Province, South Africa was considering section 57[1][a] of the Constitution which permits the Assembly to determine and control its internal arrangements proceedings and procedures. This section is similar to section 52 of the Dominica Constitution which provides inter alia:-

> A.....the House may regulate its own procedure and may in particular make rules for orderly conduct of its own proceedings.@

Hlopha J. at page 938 said:

> AIt does not, however follow that the Assembly can do so in a manner inconsistent with the constitution. The exercise of the power conferred on the Assembly by Section 57[1][a] remains subject to the Constitution and subject to constitutional review by the courts.@

With respect I accept this as a correct principle of the law on this subject.

Mr. Astaphan argued that the appellant has a legal right to sit in the House of Assembly unless he is suspended in accordance with the rules or in compliance with Standing Order. I accept this argument.

Having decided that the appellant=s suspension was illegal, the appellant is therefore entitled to the declarations and orders which he seeks.

I hereby declare that the appellant=s suspension from the House of Assembly of the Commonwealth of Dominica was unlawful.

The appellant had also asked for damages in the High Court. Mr. Astaphan told this court that the appellant was paid his salary. No evidence was led as to any loss which the appellant suffered as a result of his unlawful expulsion from the House. I shall therefore award nominal damages in the sum of $500.00 for his unlawful expulsion.

Costs to the appellant to be taxed, if not agreed.

A. J. REDHEAD
Justice of Appeal

I Concur

SATROHAN SINGH
Justice of Appeal

I Concur

ALBERT MATTHEW
Justice of Appeal [Ag.]