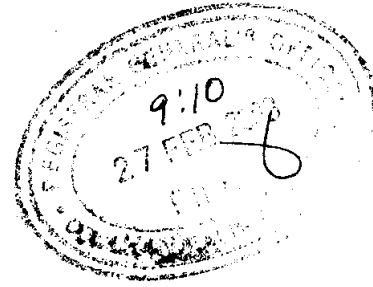


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA

Claim No. DOMHCV2007/0025

BETWEEN

Nicholls Esprit
Edison James
Earl Williams
Ron Green
Norris Charles
Claudius Sanford



Claimants

and

Speaker of the House of Assembly
Attorney General
Matthias Abraham

Defendants

B McDonald Christopher for the Claimants
Anthony Astaphan SC and Heather Felix-Evans for the Defendants

2007: June 11
2008: February 27

JUDGMENT

[1] *BAPTISTE J.*: The Claimants are members of the House of Assembly of the Commonwealth of Dominica. Two of the Claimants, Nicholls Esprit and Earl Williams, intended to ask questions at a sitting of the House. The questions concerned an organization called Citizens for a Better Dominica Inc., and one Ms. Susan Oldie. Citizens for a Better Dominica Inc. is a non-profit company incorporated under the Companies Act of Dominica. Susan Oldie, a citizen of Canada, was the holder of a diplomatic passport

of the Commonwealth of Dominica and an Ambassador at Large. The intended questions of Mr. Esprit directed to the Prime Minister were:

Has Ms. Oldie made any financial contribution towards the earthquake relief effort and if so, when was such contribution made and what was the amount involved?

Has Ms. Oldie made any other financial contribution to the Government of Dominica or to any organization which includes the word "Dominica" in its name and if so, when was the contribution made and how much was the contribution?

The Speaker altered both questions. The first question was altered by deleting the word "involved" while the second question was altered by deleting all the words appearing after "Government of Dominica".

[2] The intended questions of Mr. Williams were:

Will the Honourable Attorney General inform the Honourable House as follows:

- (1) Is he aware of an organization registered in Dominica named Citizens for a Better Dominica?
- (2) If so has permission been granted for the inclusion of "Dominica" in the name of the organization?
- (3) Who are the Directors, Promoters, Members, Representatives of the organization?

The Speaker deleted questions 2 and 3. The question as altered read:

Will the Honourable Attorney General inform this Honourable House whether he is aware of an organization registered in Dominica named Citizens for a Better Dominica?

The Speaker altered the questions because she formed the view that the 2nd and 3rd parts of the questions did not conform to the Standing Orders.

The Speaker explained to Mr. Williams why the 2nd and 3rd parts of his question would be deleted. The Speaker pointed out to Mr. Williams that the information he sought to obtain from these questions could easily be obtained from the Registry and for that reason were in breach of the Standing Orders. The Speaker did not get in touch with Mr. Esprit because she did not view the deletion to his question as substantial.

[3] The altered questions were placed on the Order Paper for the meeting scheduled 8th January 2007. Mr. Esprit and Mr. Williams received their Order Paper on 29th December 2006. They did not approach the Speaker prior to the sitting of the House to raise any objections to the altered questions. Mr. Williams asked the question standing in his name on the Order Paper. He received an answer to the question. The answer was: "Yes I am aware of an organization registered in Dominica named Citizens for a Better Dominica." Mr. Williams sought permission to ask a supplementary question. The Speaker inquired of him what part of the answer he did not understand since supplementary questions are meant to seek clarification on any part of the answer given. The Speaker called for the next question on the Order Paper to be asked. Mr. Esprit declared that he was going to ask his question in its original form as submitted to the Clerk of the House of Assembly. The Speaker advised him that he could not ask his question in its original form and he had to read what was on the Order Paper and nothing else.

[4] The sitting of the House was suspended on two occasions because of the ensuing disorder and disruption. Upon resumption, the disorder, disruption and obstruction continued. As a result, the Speaker referred the House to Standing Order 50(2)(b), following which the Claimants were asked to withdraw from the House for obstructing or disrupting the

business of the House. The Claimants refused to withdraw. The Speaker named the Claimants. The Attorney General moved a motion that they be removed from the House. Once the Claimants were suspended the business of the House continued.

[5] The Claimants are aggrieved by their suspension. In their originating motion they aver, *inter alia*, that:

- They were suspended otherwise than the Standing Orders provide.
- Standing Order 50(3)(a) required that they be named, but they were not named.
- They were suspended without being allowed an opportunity to participate before the motion was carried. The Standing Orders of the House were not supplemented by observance of the rules of natural justice.
- The Speaker acted unfairly when several members were suspended contrary to Standing Order 50(4).
- Their conduct was not in breach of any privilege and there was no breach of privilege entitling the Speaker to suspend them.
- They were hindered from enjoyment of freedom of expression guaranteed by section 10 of the Constitution and their right to ask questions in accordance with the Standing Orders of the House.
- The House failed to act in accordance with rules or its Standing Orders derived from the Constitution.

[6] In the premises the Claimants seek declaratory and injunctive relief as well as damages. They seek declarations that: (a) they were not

suspended in accordance with the Standing Orders of the House and were suspended in breach of their parliamentary privilege; (b) the Speaker exercised her powers invalidly and in breach of natural justice; (c) their personal liberty was infringed when the Sergeant at Arms seized them; and (d) the first Claimant had a legitimate expectation to obtain an explanation of why his original question was changed without reference to him. The Claimants seek damages for, inter alia, assault and battery by the Sergeant at Arms. They also seek an Order that their salaries be paid to them forthwith.

- [7] The Claimants also allege that they were hindered from enjoyment of freedom of expression guaranteed by section 10 (1) of the Constitution. In their affidavit in support the Claimants purported to expand their Constitutional claim by roping in sections 3, 6 and 8 of the Constitution. These sections deal respectively with the right not to be deprived of personal liberty; the right against compulsory taking of possession of property and the protection of the Law.
- [8] In his skeleton arguments Mr. Christopher stated, inter alia, that the central issue is that Standing Order 50(2)(b) of the House was relied upon as the basis for suspension for alleged gross disorderly conduct but the Speaker and the House did not comply with the procedures which were to precede suspension. This rendered the suspension invalid. The preliminary steps for suspension were not in compliance with the Standing Orders. Mr. Christopher also stated that the central issue to be determined is whether there was prima facie gross disorderly conduct. Mr. Christopher argued that by reason of the fact that the Speaker did not comply with Standing Order 50(3) that is, directing attention of members to the incident, the Speaker did not identify what offence was committed.

In consequence the suspension was unlawful. Mr. Christopher pointed out that Standing Order 49 conferred on the Speaker powers and responsibility for keeping order but contended that the procedure adopted by the Speaker did not satisfy the requirements of fairness.

[9] Mr. Christopher argued that the Speaker was entrusted with mandatory duties to order a grossly disorderly member to withdraw. Then she had a discretionary power to name the member. That power was subject to a mandatory duty, so that if she decided to name the member, she had the mandatory duty to carry out the procedure of naming in a manner precisely stated by statute. Mr. Christopher complained that the mandatory procedure was not used and the Claimants were not called by name. Mr. Christopher contended that it was not a trifling part of the procedure to call members of the House by name "Mr" and not as a member of a constituency or Senator. Mr. Christopher invited the Court to construe the naming requirement as imperative or mandatory and to hold that any failure to observe it is fatal. Mr. Christopher submitted that the Speaker failed to observe procedural requirements imposed by statute when making a decision affecting the rights of the Claimants as well as their constituents.

[10] It is clear to me that all of the arguments of Mr. Christopher relate to the internal proceedings of the House. From a perusal of the pleading and arguments it is clear that this case is concerned with the internal proceedings of the House. The substrata of the claim are: (1) the Speaker's power in relation to questions in the House; (2) the Speaker's power to maintain order in the House and (3) the power of the House to remove or suspend members for disorderly conduct in or obstructing or disrupting the proceedings of the House.

[11] Important consequences flow from a finding that this case is concerned with the internal proceedings of the House. "The High Court can only inquire into the internal proceedings of the House where it can do so in its capacity as guardian of the Constitution, and that will only be where the internal proceedings of the House are specifically provided for in the Constitution... the jurisdiction of the Court to inquire in such an instance being based on the fact that a part of the internal procedure of the House has been specifically incorporated as a provision of the Constitution. It follows from this, that where a procedure of the House...is not specifically incorporated into the Constitution then the High Court has no jurisdiction to inquire into the internal proceedings of the House. From this it would further follow that the manner of the application of the Standing Orders by the Speaker... in matters concerning the internal proceedings of the House..., unless specifically provided for in the Constitution, are not cognizable in the Court". I adopt this statement of the Court in **Butadroka v Attorney General of Fiji**, HBC 0208 of 1993, at page 16, as an accurate statement of the law.

[12] In **Methodist Church v Symonette (2000) 59 WIR 1**, a decision of the Privy Council, at page 13, Lord Nicholls referred to two basic general principles of high constitutional importance. In the context of Dominica, the first principle would be the supremacy of the Constitution. The Constitution is the supreme law of Dominica and subject to the provisions of the Constitution if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency be void. [Section 117 of the Constitution.] "The second general principle is that the courts recognise that Parliament has exclusive control over the conduct of its own affairs... The law-makers must be free

to deliberate upon such matters as they wish. Alleged irregularities in the conduct of parliamentary business are a matter for the Parliament alone. This constitutional principle ... is encapsulated in the United Kingdom in article 9 of the Bill of Rights 1689: 'that... proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.' " Lord Nicholls stated that, that principle must be modified to the extent but only to the extent necessary to give effect to the supremacy of the Constitution. The principle is essential to the smooth working of a democratic society which espouses the separation of power between a legislative Parliament, an executive Government and an independent judiciary. The courts must be ever sensitive to the need to refrain from trespassing, or ever appearing to trespass, upon the province of the legislators. [**Methodist Church v Symonette** pages 13 and 14]. I respectfully accept these principles as the guiding legal principles applicable to the case at bar.

[13] In **Sabaroche v Speaker of the House of Assembly** [1999] 60 WIR 235 at 247 Redhead J A said:

".....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 Constitution."

The questions which arose in **Sabaroche** were: (1) whether the House of Assembly could suspend a member for an alleged breach of privilege which did not exist in law and (2) whether the court has jurisdiction to inquire into the existence and extent of the alleged privilege.

[14] Section 16 (1) of the Constitution gives a right of access to the High Court to any person alleging that any provision of the Constitution has been, is being or is likely to be contravened in relation to him. Section 16 (2) gives the High Court original jurisdiction to hear and determine any such application made by any person in pursuance of subsection 1 and to make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 of the Constitution. Section 41 of the Constitution states that subject to the provisions of this Constitution, Parliament may make Laws for the peace, order and good government of Dominica. Section 52 ordains that subject to the provisions of this Constitution, the House may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

[15] Mr. Astaphan SC submitted that there is no Constitutional challenge to the Standing Orders and the Claimants have not pleaded or particularized a proper or viable constitutional case entitling them to any relief under section 16 of the Constitution. I agree. Mr. Astaphans SC further submitted that the Claimants have not identified or pleaded any express provision of the Constitution which was purportedly infringed by the Speaker of the House. I also agree. In fact when one looks at the Claimants' originating motion it is seen that no relief is claimed under the Constitution.

[16] Mr. Christopher referred to section 52 of the Constitution and argued that the effect is the Standing Order made under the Constitution; and the House is controlled by the Standing Order made under section 52 of the Constitution. Section 52 states:

“subject to the provisions of this Constitution, the House may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.”

Mr. Christopher submitted that the words “subject to” are to be construed as words of restriction. Mr. Christopher referred to **Smith v London Transport Executive** [1951] AC 555 as authority for his submission. Mr. Christopher stated that the guarantee of freedom of expression under sections 10 and 43 of the Constitution cannot be usurped by the Speaker’s “standing up”. The Constitution imposes a limitation to the Speaker’s authority.

[17] In **Methodist Church v Symonette**, Lord Nicholls considered article 55(1) of the Constitution of the Bahamas, the equivalent of section 52 of the Constitution of Dominica. Article 55(1) provides:

“Subject to the provisions of the Constitution, each House may regulate its own procedure and for this purpose may make rules of procedure.”

Lord Nicholls stated at page 20:

“Thus, subject to contrary provision in the Constitution, the Constitution entrusts to each House power to manage its own affairs. Several articles in the Constitution do make contrary provisions, restricting the freedom of the House of Assembly or the Senate in particular respects.”

His Lordship gave as an example article 59(3), which precludes the House of Assembly from proceeding on any Bill for the raising of tax except on the recommendation of the Cabinet. That section is mirrored in section 50 of the Constitution of the Commonwealth of Dominica.

[18] In **Methodist Church v Symonette**, there was a constitutional challenge to the regularity of the law-making process which led to the passing of an Act. The challenge was founded on the combined effect of article 59 (1) of the Constitution and rule 15 of the Rules of the House of Assembly. Article 59 (1) provides:

“Subject to the provisions of the Constitution and the rules of procedure of...the House...any member...may introduce any Bill or propose any motion for debate in, or may present any petition to that House, and the same shall be debated and disposed of according to the rules of procedure of that House.”

Rule 15 of the Rules of the House states:

“That a Bill of a private nature shall not be introduced in the House except upon petition from the party or parties desiring such Bill or until a report has been made by a committee appointed to inquire into the allegations of such petition. Evidence of advertisement of the petitioner’s intention in at least two newspapers in the Bahamas shall be required by the Chair at the time of the introduction of the Bill.”

Lord Nicholls stated at page 19: “In accordance with the principles already discussed, irregularity in the conduct of parliamentary business is a matter for Parliament, not the courts.” At page 20, Lord Nicholls stated that the issue before the Board was whether article 59 of the Constitution has the effect of displacing these principles by making compliance with the rules of procedure of the House of Assembly, or at least such of them as afford safeguards for citizens, a constitutional requirement. His Lordship opined that this was a matter of interpretation of article 59 (1) and concluded that article 59 (1) did not have this effect and that, accordingly, the departure from the procedure prescribed by rule 15, if there is a departure, did not violate the Constitution.

[19] Lord Nicholls further stated:

“Article 59(1) is a provision with a wide, general application. The first limb of art 59(1) is permissive, or enabling: subject to the provisions of the Constitution and the rules of procedure of the relevant House, any Member of the House may introduce a Bill, propose a motion for debate, or present a petition. Their Lordships do not think that this provision was intended to be restrictive, so as to found a claim for violation of the Constitution if a Member were permitted to introduce a Bill, or propose a motion for debate or present a petition, in breach of the rules of House. The second limb of art 59(1) provides what is to happen to any proceeding initiated by a Member: ‘the same shall be debated and disposed of according to the rules of procedure of that House’. Their Lordships do not think that this reference to the rules of procedure of the two Houses was intended to deprive either House of the power given by art 55(1) to regulate its own affairs. Clearer language would be required before it would be right to construe this provision as having the far-reaching effect of opening up to court scrutiny the procedures followed in Parliament on all Bills, motions and petitions initiated by Members.”

[20] In the **Butadroka** case in Fiji at page 26 the court said that:

“the words subject to the provisions of the Constitution as set out in section 63 (1) do not have the effect of applying the Chapter 2 provisions to the internal proceedings of the House of Representatives and making such proceedings subject to those provisions”.

Section 63 (1) in Fiji is similar to section 52 of the Constitution of Dominica. Section 63 (1) states:

“subject to the provisions of this Constitution each House of Parliament may regulate its own procedure and may make rules for that purpose, including in particular, the orderly conduct of its own proceedings.”

As stated earlier, section 52 of the Constitution of Dominica states:

“subject to the provisions of this Constitution the House may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.”

The Chapter 2 provisions in Fiji refer to the protection of the Fundamental Freedoms. It is the equivalent of Chapter 1 in Dominica, protection of Fundamental Rights and Freedoms. I agree with the view of the learned judge at page 22 in the **Butadroka** case, that:

“...the proper construction of section 63 (1) of the Constitution is that the High Court is concerned to see that the Standing Orders and their application conform to the provisions of the Constitution where the constitution specifically provides for the procedure of the House. That is where the jurisdiction of the High Court ends. That being so, once the House acts under Standing Orders then the jurisdiction of the court is satisfied. The manner of the application of Standing Orders, whether in accordance with the procedures set out therein or not is an internal matter within the walls of Parliament relating to the powers and procedure of the House and ... is not cognizable in this court.”

[21] I would certainly apply this construction to section 52 of the Constitution of Dominica. I also agree that all the provisions of the Constitution generally do not apply to the internal proceedings of the House and that those proceedings are only subject to the Constitution where provision is specifically made with regards to the operation, function and procedures of the House.

[22] Mr. Astaphan SC argued that unless there exists an express constitutional provision making the fundamental rights provisions applicable and there are none in this case, the fundamental rights provision do not apply to members during the proceedings or sitting of the House and or matters dealt with by the Standing Orders. Further, to the extent that this case concerns questions and answers in the House, the Standing Orders are the

governing law, not Chapter 1 of the Constitution. I agree. Mr. Astaphan S C stated that this must of necessity be so because it would cause great chaos and anarchy in the House if every time a member is dissatisfied, he runs to the court seeking constitutional relief. Additionally, such a state of affairs would lead to conflicts of the type the separation of powers doctrine is designed to prevent.

[23] The matter was put most eloquently in **Butadroka** where the judge said at page 23:

“If the provisions of Chapter 2 applied to the internal proceedings of the House those proceedings would be open to investigation by the High Court every time a member alleged that the authority of the House, its Committees or its Officers had violated those provisions either in the manner of the application of Standing Orders themselves, or in any ultimate sanction imposed under them.

This could lead to every aggrieved member of the House who had been silenced, suspended or otherwise dealt with under Standing Orders, alleging a breach of his Fundamental Freedoms under Chapter 2 and seeking to have the High Court adjudicate on the internal proceedings of the House that gave rise to the complaint. Clearly such an occurrence would be neither desirable nor in the best interests of the Parliament. For this court to inquire into, and adjudicate on the activities of the Speaker and the Privileges Committee in the application of the powers and privileges set out under Standing Orders, without a specific mandate to do so from the Constitution, would involve...an unlawful invasion by the court into the Constitutionally guaranteed right of the House of Representatives to regulate its own proceedings, and to provide for its own powers, privileges and immunities free from the interference of the Court.”

[24] It must be noted also that the fundamental rights provisions in Chapter 1 of the Constitution of Dominica are not absolute. They are subject to provisos which place limits upon the particular Fundamental Freedoms in

the interests of those freedoms being respected in others, or in the interests of the public generally and public order. [See section 1 of the Constitution of the Commonwealth of Dominica]. [See **Butadroka** at page 25]. Further, some of the Fundamental Rights and Freedoms begin with the words "except with his own consent...", example sections 9, 10 and 11 of the Constitution of Dominica. Section 10(1) states: "Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression...". As was pointed out in **Butadroka** at page 32, those sections anticipate that the Fundamental Rights and Freedoms set out therein may also be limited by the consent of the individual himself. As the judge said: "The fact that the Plaintiff took his seat in the House of Representatives implies consent on his part to be bound by the rules of the House and to accept the limitations imposed on members for the orderly conduct of its business and proceedings. The suspension of the plaintiff from the House of Representatives was pursuant to its own internal rules...the suspension does not affect those Fundamental Freedoms in the Plaintiff outside the Parliament and in society in general, it is just that he cannot exercise them within the walls of Parliament for two months. I cannot see that any rights in the Plaintiff have been infringed, for his rights in relation to the taking of his seat in the House of Representatives is the right to take that seat in accordance and compliance with the rules and regulations of the House of Representatives." I agree. This would also apply to the Claimants in the instant case.

[25] It must also be pointed out that the Constitution of Dominica has not made specific provision for the application of Chapter 1 provisions to the internal proceedings of the House. Therefore, as stated in **Butadroka**, an alleged breach of those provisions in Chapter 1 arising from internal proceedings of the House is neither cognizable nor reviewable in the High

Court. Thus the words “subject to the provisions of this Constitution” set out in Section 52 do not have the effect of applying the Chapter 1 provisions to the internal proceedings of the House and making such proceedings subject to those provisions. [See **Butadroka** page 27].

[26] The Courts have drawn a clear distinction between the legislative making power of the Parliament, which may be subject to review, and the internal proceedings of the Parliament which is not. [**Symonette v Methodist Church**] The court will in the exercise of its jurisdiction review the existence and extent of the Standing Orders, but it will not inquire into the Speaker’s or House of Assembly’s compliance with Standing Orders concerning its internal proceedings or the maintenance of order in the House unless an express provision of the Constitution limiting the Speaker’s authority under the Standing Orders and House’s jurisdiction is contravened. [See **Prebble v New Zealand Ltd.** (1995) 1 AC 321 and **Symonette v Methodist**]. The Standing Orders are part of the terms and conditions of membership in the Parliament. By taking the oath of allegiance and a seat in the House a member agrees to be bound by the Standing Orders. Suspension from the House under the Standing Orders does not contravene the fundamental rights of the Claimants. [See **Butadroka v Attorney General of Fiji**]

[27] I now address the issue relating to the asking of questions in the House. There is no unfettered right to ask questions in the House. Questions are subject to the provisions of these “Standing Orders”. Questions may be put to ministers relating to public affairs for which they are officially responsible. [Standing Order 21]. The right to ask a question is subject to the general rules stated in Standing Order 23(1), and the Speaker shall be the sole judge of the interpretation of the general rules. The proper object

of a question is to obtain information on a question of fact within the official responsibility of the minister to whom it is addressed, or to ask for official action. [Standing Orders 23(1)(a)] No question shall be based upon a newspaper report or upon an unofficial publication. [Standing Order 23 (1)(c)].

[28] Standing Order 23(2) states:

“If the Speaker is of the opinion that any question of which a Member has given notice to the Clerk infringes the provisions of any Standing Order or is in any way an abuse of the right of questioning, he may direct -

- (a) that the member concerned be informed that the question is out of order; or
- (b) that the question be entered in the Order Book with such alterations as he may direct; or
- (c) ...”

It can be seen that Standing Order 23(2)(b) expressly vests the Speaker with the power to alter questions if in the Speaker’s opinion any question of which a member has given notice to the clerk infringes the provisions of any standing order or is in any way an abuse of the right of questioning. Standing Order 23(2)(a) and (b) are disjunctive. There is no obligation imposed on the Speaker to inform a member if she intends to alter a question under Standing Order 23(2)(b) or if she intends to direct that a question be entered in the Order Book with alterations.

[29] Whether or not Ms. Oldie made financial contributions to Citizens for a Better Dominica Inc., a non-profit, private company, could not be categorised as a question of fact within the official responsibility of the minister. Likewise whether or not Ms. Oldie made any financial contribution to any organization which includes the word “Dominica” in

its name, and if so when was the contribution made and how much was the contribution, could not be described as questions of fact within the official responsibility of the minister. The question relating to whether permission had been granted to include "Dominica" in the name of the organization would fall within the category of a question of fact within the official responsibility of the minister. If the answer to that question could be found at the Registry of the High Court, the question would run foul of Standing Order 23(1)(g)(ix) which states that questions shall not be asked seeking information which can be found in accessible documents. The Speaker would be entitled to disallow the question. The same goes for the question relating to who are the directors of the company. Further, that latter question would not be a question of fact within the official responsibility of a minister. Likewise the question relating to promoters, members, representatives of the organization would not be a question of fact within the official responsibility of the minister. Questions which are not questions of fact within the responsibility of a minister would infringe Standing Orders 23 (1) (a). In my view the Speaker acted *intra vires* the Standing Orders in altering the questions proposed by the Claimants to ensure compliance with the Standing Orders.

[30] Supplementary questions are provided for in Standing Order 24(5) which states:

"After the answer to a question has been given supplementary questions may, at the discretion of the Speaker be put for the purpose of elucidating the answer given, but the Speaker may refuse any such questions which in his opinion introduces matters not relative to the original question or which infringes any of the provisions of Standing Order 23...and may in that case direct that the question not be reported in the Official Report."

In *Erskine May* the learned authors state at pages 295-296: "A supplementary question may refer only to the answer out of which it immediately arises." Mr. Astaphan SC stated, and I agree, that "a supplementary question cannot raise a new matter or any matter which does not arise out of the question given."

[31] It is seen that Standing Order 24 (5) confers a very wide discretion on the Speaker. The Speaker may permit a supplementary question for the purpose of elucidating the answer given. The Speaker may refuse such a question which in her opinion introduces matters not relative to the original question or which infringes any of the provisions of Standing Order 23. The question asked by Mr. Williams was, "Will the Honorable Attorney General inform this Honorable House whether he is aware of an organization registered in Dominica named Citizens for a Better Dominica?" The Attorney General's answer was, "Yes. I am aware of an organization registered in Dominica named Citizens for a Better Dominica." Mr. Williams asked the Attorney General: "Can you inform the House what non-profit activity it is engaged in?" The Speaker disallowed the question as not falling within the rules governing supplementary questions. Mr. Astaphan argued that the Attorney General's answer was crystal clear and required no elucidation, hence the Speaker was right to disallow the question. I agree.

[32] A member who is aggrieved by the decision of the Speaker in relation to the Standing Orders is not left without a remedy. Standing Order 86 (3) provides that: "A decision by the Speaker, whether relating to these Standing Orders or to a matter for which these Standing Orders do not provide, shall not be challenged save upon a substantive motion moved for that exclusive purpose." A member can challenge a decision of the

Speaker in relation to the Standing Orders by a substantive motion moved for that exclusive purpose. In the instant case, the Claimants never moved a substantive motion for the exclusive purpose of challenging any decision of the Speaker. The Claimants failed to avail themselves of the remedy provided by Standing Order 86(3).

[33] I now address the issue of order in the House. The Speaker is responsible for the observance of the rules of order in the House and the Speaker's decision upon any point of order shall not be open to appeal and shall not be reviewed by the House except upon a substantive motion made after notice. [Standing Order 49(1)] Standing Order 49(2) mandates that when the Speaker rises any member then speaking or wishing to speak shall immediately resume his seat and the House shall be silent. In my estimation, failure to comply with that Standing Order, as was clear in this case, would constitute disorderly conduct or conduct calculated to disrespect the Chair of the Speaker and bring the proceedings of the House into disrepute.

[34] Standing Order 50(2)(b) empowers the Speaker to order any member whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of the sitting. If a direction to withdraw is not complied with at once or if the Speaker considers that his powers under the previous provisions of Standing Order 50 are inadequate, the Speaker may name such member in pursuance of the procedure prescribed in paragraph 3 of Standing Order 50.

Standing Order 50(3) provides:

"If a Member shows disregard for the authority of the Chair or abuses the rules of the House by persistently and wilfully

obstructing the business of the House, or otherwise, the Speaker...shall direct the attention of members to the incident mentioning by name, the Member concerned. Wherever a Member has been so named by the Speaker...then -

- (a) if the offence has been committed in the House the Speaker shall call upon a minister to move "That Mr. ...be suspended from service of the House" The Speaker shall put the question on the motion forthwith, no seconder being required and no amendment, adjournment or debate being allowed."

Standing Order 50(3) (c) prescribes the consequences which are to flow if the motion is carried. His suspension on the first occasion shall last until the next meeting of the House. Any remuneration to which a member is entitled as a member of the House shall cease for the period of suspension.

[35] Standing Order 50(4) provides that not more than one member shall be named at the same time, unless several members present together have jointly committed the offence. A member who is directed to withdraw or who is suspended under this standing order shall forthwith leave the House and its precincts. [Standing Order 50(5)] Standing Order 50(6) and (7) authorize the use of force if a member who has been suspended or who has been directed to withdraw refuses to leave the House. In the case of grave disorder in the House, the Speaker may adjourn the House without question put, or suspend the sitting for a time to be named by him. [Standing Order 50(9)]. Standing Order 50 [10] deals with breaches of privileges. Standing Order 50(11) reserves the power of the House to move against any member according to any resolution of the House.

[36] It is indubitable that the Speaker has authority and jurisdiction to maintain order in the House. That is reflected in Standing Orders 49 and 50. Further, the House may suspend its members for disorder and for

disrupting the business of the House. Looking at the affidavit evidence of the defendants and the unedited transcripts it is difficult to find fault with the conclusion that the Claimants were acting in a disorderly manner and were interfering with and obstructing the proceedings of the House. The Claimants were, no doubt, most aggrieved by the action of the Speaker in relation to the alteration of the questions and matters which followed therefrom. They undoubtedly felt a sense of righteous indignation and frustration at what they perceived to be unfairness and or unlawfulness on the part of the Speaker in her interpretation and application of the Standing Orders. Be that as it may, there was a clear remedy available to the Claimants under Standing Order 86(3) to address the situation. They did not avail themselves of the remedy.

[37] In an affidavit filed on 27 February 2007 the Speaker stated that "it became clear to me at this stage that the members of the opposition were bent on creating disorder and were seriously obstructing the business of the House." The Speaker also stated that in accordance with the provisions of the Standing Orders she called on the members of the Opposition to withdraw, and then proceeded to invoke the provisions of Standing Order 50. After naming each member of the Opposition who had refused to withdraw in turn, she called on the second defendant to move a motion to suspend each Claimant and as each motion was carried, the Sergeant at Arms escorted the respective Claimant out of the House.

[38] Mr. Astaphan SC submitted that in view of the uncontradicted affidavit evidence and unedited transcripts, the Speaker was absolutely right to ask the Claimants to withdraw. The evidence shows that the Claimant refused to withdraw. On their refusal to withdraw, the Speaker named the Claimants and asked the Attorney General to move the motion of

suspension. The Attorney General moved a motion against each of the Claimants.

[39] On the question of naming members, Mr. Christopher argued that it was not a trifling part of the procedure to call members of the House by name "Mr" and not as a member of a constituency or senator. Mr. Christopher pointed out that "the naming was the Hon. Member for the Marigot constituency". In inviting the court to hold that the naming requirement was imperative or mandatory and any failure to observe it was fatal, Mr. Christopher relied on the case of **Howard v Bodington** 1877 L R. Probate Volume 2, page 203 as authority for the proposition that "if an imperative is not carried out the whole thing fails and the procedures which follow will be void."

[40] That proposition does not represent nor is it reflective of the current law. The modern approach is reflected in a decision of the High Court of Australia in **Project Blue Sky Inc v Australia Broadcasting Authority** (1998) CLR 355. At paragraph 93 it was stated:

".... a court, determining the validity of an act done in breach of a statutory provision may easily focus on the wrong factors if it asks itself whether compliance with the provision is mandatory or directory and, if directory, whether there has been substantial compliance with the provision. A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid."

This passage was approved by the House of Lords in **R V Soneji** [2005] WLR 303. Lord Steyn stated at paragraph 23 thereof:

".....the rigid mandatory and directory distinction and its artificial refinements have outlived their usefulness. Instead ... the emphasis ought to be on the consequences of non-compliance, and

posing the question whether Parliament can fairly be taken to have intended total invalidity.”

[41] Having regard to the Standing Order in respect of naming, the unedited transcript and affidavit evidence in support of naming and applying the modern approach, it could not be that a breach of the naming requirement, assuming there were a breach, could have the result contended for by Mr. Christopher. In other words, Parliament could not have intended total invalidity. In any event this is a matter which concerns the internal proceedings of the House and does not involve a breach of the Constitution.

[42] Mr. Christopher submitted that in the context of sections 8 (9) and (10) of the Constitution, the Claimants’ civil rights or obligations were determined in proceedings in Parliament as an authority.

Section 8 (8) of the Constitution states:

“Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.”

Section 8 (10) of the Constitution states:

“Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.”

[43] I am of the view that section 8 (9) and (10) of the Constitution have no application to the suspension of the Claimants. In dealing with the

Claimants under the Standing Orders, neither the Speaker nor the House was an authority called upon to determine the existence or extent of a civil right or obligation of the Claimants. They were simply dealing with the internal proceedings of the House. Further, the internal proceedings of the House is not subject to the provisions of Chapter 1 of the Constitution.

[44] Mr. Astaphan SC argued and I agree, that the allegation of assault and battery is without merit. Here we have a rather peculiar situation where one of the Claimants stated: "we need the assault and battery". "You have to hold us...we will not go voluntarily. You have to touch us, you have to push us...push us out, kick us, anything but just establish the assault.... we are not going voluntarily." A person cannot seriously contend that they were assaulted when they invited the Sergeant at Arms to touch them. The evidence of the Sergeant at Arms is that he touched the Claimants he escorted out, lightly on their elbows only because Honourable James and Williams, the 2nd and 3rd named Claimants stated individually to him that if he did not touch him they would not leave the Parliament.

[45] The Speaker acted within her jurisdiction and did not contravene any of the provisions of the Constitution when she altered the questions proposed by the Claimants, in accordance with Standing Order 23(2)(b). The Speaker also acted within her jurisdiction when she refused the supplementary question proposed by Mr. Williams. In light of the prevailing disorder, obstruction and disruption in the House the Speaker acted within her jurisdiction and did not contravene any provisions of the Constitution when she named the Claimants and asked the Attorney General to move that they be suspended in accordance with Standing Order 50(3)(a). In view of the prevailing disorder and obstruction or

disruption in the House, and the Claimants refusal to withdraw, the right of the House to suspend any member for disorderly conduct or obstruction or disrupting the business of the House was lawful

[46] In conclusion, as stated in **Butadroka** at page 27, the House has exclusive control over the management of its internal proceedings subject only to the Constitution, when it specifically provides for the regulations of those proceedings. The matter of which the Claimants complain arose out of the internal proceedings of the House which are not specifically provided for in the Constitution and as such fall within the category of being wholly internal proceedings of the House with which the court cannot interfere.

[47] The proceedings are governed by the Standing Orders of the House which may or may not provide for a hearing. When they do not provide for a Member to be heard or to be informed, no such right can be implied by the court. The Claimants suspension from the House did not violate the Constitution. Their suspension did not breach any of the Fundamental Rights and Freedoms of sections 3,6,8 or 10 (1) of the Constitution. All these freedoms were still available to the Claimants unhindered outside the walls of Parliament. Having regard to the suspension of the Claimants and the fact that they invited the Sergeant at Arms to touch them, the Sergeant could not be guilty of assault and battery.


[48] For all the above reasons, the relief claimed in the originating motion are denied and the originating motion is dismissed.

[49] On the issue of costs, the Defendants contend that they are entitled to an order for wasted costs under Part 64 or alternatively, an order for prescribed costs. The general rule is set out in Rule 56.13 (6). As a general

rule no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application. While accepting the general rule, the Defendants submit that the Claimants and their counsel acted unreasonably in making their Claim and or in the conduct of the case. They contend that, inter alia:

1. The Claimants failed to invoke the remedies provided to them under S.O. 49 (1) and 86 (3) of the Standing Orders.
2. The Claimants allege that they are entitled to constitutional relief but failed to properly plead or particularize any alleged contravention of any provision of the Constitution.
3. The Claimants insisted on wanting to cross-examine the Speaker on her alleged "improper purpose" or "bias" although those allegations were struck out by the Learned Judge.
4. The Claimants insisted on cross-examining the Defendants in order "to establish" matters already disclosed in the exhibits notwithstanding that the Defendants' Counsel had repeatedly offered to consent to all of the affidavits and documents being admitted without further proof.
5. The Claimants cross examined on undisputed matters set out in the unedited transcripts of the House thereby wasting the time and resources of the court.
6. The Claimants continued to deny they were named when the affidavit evidence of the Defendants and unedited transcripts showed that they were in fact named.

These are all valid points made by the Defendants and there is a proper basis for the court to make an exception to the general rule set out in CPR 2000 Rule 56.13 (6). In the premises the court makes an order for prescribed costs in favour of the Defendants.


.....
DAVIDSON KELVIN BAPTISTE
HIGH COURT JUDGE