COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

HCVAP 2008/005

BETWEEN:

[1] NICHOLLS ESPRIT
[2] EDISON JAMES
[3] EARL WILLIAMS
[4] RON GREEN
[5] NORRIS CHARLES
[6] CLAUDIUS SANFORD

Appellants

and

[1] SPEAKER OF THE HOUSE OF ASSEMBLY
[2] ATTORNEY GENERAL
[3] MATHIAS ABRAHAM, Sergeant at Arms

Respondents

Before:

The Hon. Mde. Ola Mae Edwards	Justice of Appeal
The Hon. Mde. Janice Pereira (formerly George-Creque)	Justice of Appeal
The Hon. Mr. Michael Gordon, QC	Justice of Appeal [Ag.]

Appearances:

Dr. J. S. Archibald, QC and Mr. B. McDonald Christopher for Appellants 1 to 5
Mr. Anthony Astaphan, SC and Mrs. Felix Evans for the Respondents

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2010: April 22;
2011: October 19.

Civil appeal – Dispute which took place during a sitting of the House of Assembly – Amendments made by the Speaker of the House of Assembly to questions to be asked by members of the House of Assembly – Standing Orders of The House of Assembly, Chap. 1:01, Laws of the Commonwealth of Dominica 1990 – Whether the learned trial judge erred in not treating the appellants' Originating Motion as the required means of approaching the court with material facts

This is an appeal in an action arising from a dispute which took place during a sitting of the House of Assembly on 8th January 2007 in the Commonwealth of Dominica. All six appellants are Members of the House of Assembly of the Commonwealth of Dominica ("the House"). Nicholls Esprit and Earl Williams, the first and third appellants respectively, intended to ask specific

questions at a sitting of the House. Mr. Esprit's questions were to be directed at the Prime Minister while Mr. Williams' questions were to be directed at the Honourable Attorney General. The questions were reviewed by the Speaker of the House ("the Speaker") and each was altered to a form which the Speaker considered was most appropriate for asking at a sitting of the House. The Speaker did not get in touch with Mr. Esprit to inform him about the alterations to his questions because she did not view them as substantial. This was not the case with Mr. Williams however, who had parts of his question deleted because the Speaker had formed the view that the deleted parts did not conform to the Standing Orders of the House of Assembly[1] ("the Standing Orders"). The Speaker explained to Mr. Williams why this was so; the information which he sought to obtain by asking the questions in their original form could easily have been obtained from the Registry.

The altered questions were placed on the Order Paper for the sitting of the House scheduled for 8th January 2007. Mr. Esprit and Mr. Williams received their Order Papers on 29th December 2006 and did not approach the Speaker prior to the sitting of the House to raise any objections to the altered questions. At the sitting of the House, Mr. Williams asked the question standing in his name on the Order Paper and received an answer to it. He then sought permission to ask a supplementary question, the purpose of which would normally be to seek clarification on any part of an answer given. The Speaker inquired of him what part of the answer he did not understand and called for the next question on the Order Paper to be asked. Mr. Esprit then declared that he was going to ask his question in its original form as submitted to the Clerk of the House. The Speaker advised him that he could not do this and that he had to read exactly what was on the Order Paper. Disorder and disruption ensued and the sitting of the House was suspended on two occasions. As a result, the Speaker referred the House to Standing Order 50(2)(b), following which the appellants were asked to withdraw from the House for obstructing or disrupting the business of the House. The appellants refused to do this. The Attorney General moved a motion that they be removed from the House and once the appellants were suspended, the business of the House continued. They were escorted from the House by the third respondent, Mathias Abraham. Mr. Abraham gave evidence that he touched the appellants lightly on their elbows in escorting them out, only because the second and third appellants, Mr. James and Mr. Williams, stated individually to him that they would not leave the Parliament unless he touched them.

The appellants filed an Originating Motion in the court below, seeking declaratory and injunctive relief, as well as damages. The learned trial judge found in favour of the respondents however, and denied the appellants the relief claimed in their Originating Motion. The appellants appealed to the Court of Appeal.

Held: dismissing the appeal, varying the sum of the costs awarded to the respondents in the court below to $40,000.00 and awarding costs in this court to the respondents in the sum of two-thirds of $40,000.00, that:

1. CPR 56.7 makes it mandatory that an application for an administrative order must identify whether the application is for relief under the relevant constitution. In the present case however, no such identification exists. The appellants sought to get around this omission by stating that the affidavit in support of their Originating Motion supplies the required information. This however, will not suffice; the Civil Procedure Rules 2000 require that

[1] Chap. 1:01, Laws of the Commonwealth of Dominica 1990.

both the Originating Motion and affidavit be specific. Accordingly, the trial judge was correct in holding that the appellants have not identified or pleaded any express provision of the Constitution which was purportedly infringed by the Speaker of the House.

2. The courts do not exist to assist persons in their peripheral agendas. The trial judge was correct in holding that a person cannot seriously contend that they were assaulted when they invited the Sergeant at Arms to touch them.

3. The court has no supervisory jurisdiction over the Speaker in her application of Standing Order 50 of the Standing Orders of the House of Assembly. Therefore, applying Standing Order 50(3)(c), it follows ineluctably that the appellants' salaries would cease for the period of their suspension.

4. There was no breach of section 10 of the Constitution that is reviewable by this court. There was a clear misreading of Standing Order 49(1) on the part of the appellants, when they stated that the bar to appeal under this Standing Order contravened or threatened to contravene the rights guaranteed by section 10 of the Constitution. The trial judge correctly found that the appellants never moved a substantive motion for the exclusive purpose of challenging any decision of the Speaker of the House. They failed to avail themselves of the remedy provided by Standing Order 86(3).

JUDGMENT

[1] GORDON, J.A. [AG.]: The courts are the guardians of the Constitution, but Parliament is the policeman of its own procedure. In Methodist Church in the Caribbean and the Americas (Bahamas District) et al v Symonette et al,[2] a case deriving from The Bahamas, Lord Nicholls of Birkenhead giving the advice of the Privy Council, expressed the legal position in this way:[3]

> "Two separate, but related, principles of the common law are relevant. They are basic, general principles of high constitutional importance. The first general principle, long established in relation to the unwritten Constitution of the United Kingdom, is that the Parliament of the United Kingdom is sovereign. This means that, in respect of statute law of the United Kingdom, the role of the courts is confined to interpreting and applying what Parliament has enacted. It is the function of the courts to administer the laws enacted by Parliament. When an enactment is passed, there is finality unless and until it is amended or repealed by Parliament; see the well-known case, *Pickin v British Railways Board* [1974] AC 765.

[2] (2000) 59 WIR 1.
[3] At p. 13 of the judgment.

> "The second general principle is that the courts recognise that Parliament has exclusive control over the conduct of its own affairs. The courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions; … 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 Parliament alone." (Emphasis added).

Lord Nicholls continued:[4]

> "The courts have the right and duty to interpret and apply the Constitution as the supreme law of the Bahamas. In discharging that function the courts will, if necessary, declare that an Act of Parliament inconsistent with a constitutional provision is, to the extent of the inconsistency, void. That function apart, the duty of the courts is to administer Acts of Parliament, not to question them.
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> "Likewise, the second general principle must be modified to the extent, but only to the extent, necessary to give effect to the supremacy of the Constitution. Subject to that important modification, the rationale underlying the second constitutional principle remains as applicable in a country having a supreme, written Constitution as it is in the United Kingdom where the principle originated."

[2] The above establishes the legal parameters for the resolution of the dispute that has arisen between the appellants and the Speaker of the House of Assembly.

[3] The learned trial judge set out the factual circumstances with great clarity and I borrow from his judgment:[5]

> "The Claimants[6] 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:
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> > 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

[4] At p. 14.
[5] See paras. 1-4 of the trial judge's judgment.
[6] The appellants in the present appeal.

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."

"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.

"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.

"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."

[4] The appellants filed an Originating Motion in which they alleged, inter alia:[7]

"The 1st Claimant was handicapped by the Speaker's decision to change his original question. He was not given a fair hearing to express his disapproval; and in the premises the Speaker made a further decision which curbed his right to be heard. In consequence the Speaker's decisions were biased, unfair; and by reason that the Speaker was not complying with the basic procedural standard of Natural Justice, the initial rulings and decisions were VOID.

"The 1st Claimant in the process of asking the question of which he gave notice was prevented from doing so; and the Speaker, contrary to the Standing Orders of the House requested the Member to withdraw and on his showing reluctance the Speaker herself moved a motion for the member to go out. …

"It was unfair for the government majority in the House of Assembly to proceed to suspend the Claimants otherwise than the Standing Orders provide…"

A number of particulars were pleaded.

[5] The appellants further alleged in their Motion[8] that "[b]y reason that the House does not have absolute and exclusive jurisdiction to act without regard to the provisions of the Constitution the moving, carrying of the motion was unconstitutional and void". The Motion referred, in particular, to section 52 of the Commonwealth of Dominica Constitution Order 1978 ("the Constitution") which reads as follows:

"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 motion sought declaratory relief, injunctive relief as well as damages.

[7] See Appeal Record – Vol. 2, p.3.
[8] See Appeal Record – Vol. 2, p.4.

[6] In summary, the learned trial judge found, inter alia, that the Speaker acted within her jurisdiction and did not contravene any provisions of the Constitution when she altered the questions proposed by the appellants in accordance with Standing Order 23(2)(b). He also found that the Speaker acted within her jurisdiction when she refused the supplementary question proposed by Mr. Williams.[9] The learned trial judge also awarded costs to the respondents which award is also a matter of appeal. Against these findings, the appellants have appealed.

[7] As I understand the grounds of appeal, as filed by the appellants, what they take issue with is the determination by the learned trial judge that the proceedings, of which complaint was made in the Originating Summons, arose out of the internal proceedings of the House of Assembly and, as such, were outside the purview of the courts. To put it another way, the appellants contend that in the particular circumstances of this case, the correctness or otherwise of the actions of the Speaker are justiciable issues in this court.

[8] Learned Queen's Counsel for the appellants expressly agreed with the learning as expressed in the Methodist Church in the Caribbean and the Americas case[10] in his written argument.[11] Whilst one is gratified by such a concession, one is in no way surprised given the eminence and learning of learned Queen's Counsel. Indeed, he had no option.

[9] Having said the above, however, one is constrained to refer to the trial judge's finding at paragraph 15 of his judgment to the following effect:

> "Mr. Astaphan SC [learned counsel for the respondents] 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 [sic] 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."

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[9] The third appellant.
[10] Cited at para. 1 above.
[11] Supplementary Skeleton of Leading Counsel for the Appellants (filed 20th April 2010) at paragraph 6.

[10] The Grounds of Appeal by the appellants deal with his finding in this way:[12]

> "The learned Judge erred in not treating the Originating Motion as the required means of approaching the Court with material facts. The Affidavit took the place of pleadings and contained material information which the Claimants could provide to give the facts at first hand. It is evidence to prove their case. In accordance with Court rules CPR 56.7(3) Appellants by (para 27 to 30) of their Affidavit gave the evidence which is not subject to the technical rules applicable to pleadings."

[11] The relevant parts of Civil Procedure Rules 2000 ("CPR") Part 56.7 are reproduced hereunder:

> "56.7 (1) An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is for-
> (a) a declaration;
> (b) judicial review;
> (c) relief under the relevant Constitution; or
> (d) for some other administrative order (naming it);
> and must identify the nature of any relief sought.
> (2) The claim form in an application under a relevant Constitution requiring an application to be made by originating motion should be headed 'Originating Motion'…
> (3) The claimant must file with the claim form evidence on affidavit.
> (4) The affidavit must state –
> (a) the name, address and description of the claimant and the defendant
> (b) the nature of the relief sought identifying –
> (i) any interim relief sought; and
> (ii) whether the claimant seeks damages, restitution, recovery of any sum due or alleged to be due or an order for the return of property, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;
> (c) in the case of a claim under the relevant Constitution – the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;
> (d) the grounds on which such relief is sought;
> (e) the facts on which the claim is based;
> (f) the claimant's address for service; and
> (g) the names and addresses of all defendants to the claim."

[12] What cannot be gainsaid is that Part 56.7 of CPR makes it mandatory that an application for an administrative order must identify whether the application is for relief under the relevant constitution. In this case no such identification exists. The ground of appeal, as

[12] See Appeal Record – Vol. 1, p. 10.

framed, and quoted above, attempts to seek a way around this omission by stating that the affidavit in support of the Originating Motion supplies the required information. With respect, CPR requires both the Motion and the affidavit to be specific. This was not done and so I would agree with the finding of the learned trial judge as stated at paragraph 9 above.

[13] If, however, I am wrong in that latter conclusion, I shall, for completeness deal with the alleged breaches of specific sections of the Constitution referred to in the affidavit dated the 26th January 2007 filed on behalf of the appellants (hereafter "the Affidavit").[13]

[14] At paragraph 27 of the Affidavit, the appellants state:

> "We have a right under Section 3 of the Constitution not to be deprived of our personal liberty except as the law provides."

It was part of the appellants' case that they suffered assault and battery from the 3rd respondent. The trial judge dealt with it in this way:[14]

> "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… .' A person cannot seriously contend that they were assaulted when they invited the Sergeant at Arms to touch them."

I completely agree. The courts are not there to assist persons in their peripheral agendas.

[15] At paragraphs 28 and 29 of the Affidavit the appellants complain that their rights under section 6 (no compulsory taking of property without provision for payment) and section 8 (stated to be "guaranteed protection of the law") of the Constitution were breached. The breach of section 6 of the Constitution relates to the fact that during their period of suspension from the House, their entitlements to their salaries was suspended.

[16] In the court below, Mr. B. McDonald Christopher, who appeared alone for the appellants,[15] argued that at the time that the Speaker made her ruling with respect to the permissibility of the questions and the consequence of the subsequent unruly behaviour, Parliament was acting as an "authority". Section 8(8) of the Constitution states (in part):

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[13] See Appeal Record – Vol. 2, p. 29.
[14] At para. 44 of his judgment.
[15] The claimants in the court below.

> "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… ."

Section 8(8) further requires that where proceedings are instituted for such determination, the case shall be given a fair hearing within a reasonable time.

[17] The trial judge found that in the circumstances with which this court is concerned, 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." Indeed, the Speaker was applying Standing Order 50 of the Standing Orders of the House of Assembly,[16] subsidiary legislation made pursuant to the powers contained at section 52 of the Constitution. In that capacity, this court has no supervisory jurisdiction over the Speaker. One remarks that Standing Order 50(3)(c) specifically states:

> "Any remuneration to which a Member is entitled as a Member of the House shall cease for the period of his suspension."

Having decided that this court has no supervisory jurisdiction over the proceedings in Parliament and the appellants having been suspended, it follows ineluctably that their salaries ceased for the period of their suspension.

[18] Based on the reasoning above, I find no merit in the claim that sections 6 and 8 of the Constitution were breached.

[19] Standing Order 49(1) states that the Speaker in the House and the Chairman in Committee shall be responsible for the observance of the rules of order of the House and the 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 upon a substantive motion made after notice.

[20] When, therefore, the appellants state at paragraph 32 of the Affidavit[17] that the bar to appeal under Standing Order 49(1) contravened or threatened to contravene the rights guaranteed by section 10 of the Constitution, namely to enjoy freedom of expression and freedom to communicate ideas and information without interference, there was a clear

[16] Chap. 1:01, Laws of the Commonwealth of Dominica 1990.
[17] See Appeal Record – Vol. 2, p. 34.

misreading of Standing Order 49(1). As the learned trial judge found, "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)." I find that, in the circumstances of this case, there was no breach of section 10 of the Constitution that is reviewable by this court.

[21] In conclusion, I find no merit in this appeal and would dismiss the same.

[22] The learned trial judge awarded prescribed costs to the respondents which were assessed at $204,000.00. Learned Queen's Counsel for the appellants indicated in his written skeleton arguments that Leading Counsel for both sides agreed to indicate to the court that a maximum order of costs on the judgment as delivered should be in the range of $35-45,000.00. In his written skeleton, learned Senior Counsel for the respondents thought that an order for costs of 'around' $40,000.00 would be appropriate.

[23] No reason for challenging the trial judge's award of costs having been offered (the challenge being only to quantum) and the appellants having failed in every respect of their appeal I would confirm the award of costs in the court below to the respondents but vary the sum of such costs to $40,000.00 and award costs in this court to the respondents in the sum of two-thirds of $40,000.00.

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Ola Mae Edwards
Justice of Appeal

I concur.

Janice M. Pereira
Justice of Appeal