

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
Civil Division**

CLAIM NO. DOMHCV 2024/0181

BETWEEN:

**TAHIRA BLANCHARD
DIANE VICTOR
MICHAEL ASTAPHAN
NICHOLAS GEORGE**

Claimants

And

**PRESIDENT OF THE COMMONWEALTH OF DOMINICA, SYLVANIE BURTON
CHIEF ELECTIONS OFFICER IAN ANTHONY
THE ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
DUNCAN STOWE, CHAIRMAN OF THE ELECTORAL COMMISSION
HILARY SHILLINGFORD, MEMBER OF THE ELECTORAL COMMISSION
WAYNE JAMES, MEMBER OF THE ELECTORAL COMMISSION
LENNOX LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION
ALICK LAWRENCE, MEMBER OF THE ELECTORAL COMMISSION
DOMINICA BROADCASTING CORPORATION**

Defendants

Before Her Ladyship, Honourable Madame Justice Zainab Jawara-Alami

Appearances:

Ms. Zahidha James, Counsel for the Claimants

Ms. Nadira Lando led by Mr. Rishi Daas S.C., and Mr. Anthony Astaphans S.C., with Ms. Sasha Sukhram, Counsel for the 1st and 3rd Defendant

2026: January 26th (Hearing), February 13th, 18th (Submissions)
April 13th (Hearing), July 7th (Decision)

*the Registration of Electors Act of 2025, residency and question of unconstitutionality;
Scope of Parliamentary authority conferred by the Constitution*

JUDGEMENT

[1] **JAWARA-ALAMI J.:** This is an originating motion commenced by a Re-Amended Fixed Date Claim Form dated and filed on 5 August 2025, by which the Claimants seek the following reliefs

1. A declaration that:

- i. Section 13(4)(a)(ii) of the Registration of the Electors Act 2025¹and;
- ii. Regulations 51 (1) Form 31 of the New 2025 Act² are ultra vires and/or are in contravention of Section 33 (2)) (a) of the Constitution of Dominica.

2. A declaration that any prescription passed by parliament which allows for registration and election of representatives by citizens who are neither resident nor domiciled in Dominica must be unconstitutional.

[2] On 6th November 2025, this Court determined the Defendants' applications to strike out the claim, filed on 30 October 2024 and 3 January 2025. The Court held that it had no jurisdiction to entertain the Claimants' claims for declaratory relief relating to the 2019 and 2022 general elections and struck out those aspects of the claim. The Court further ordered that the Claimants were precluded from instituting any further proceedings before this Court in relation to those elections.

[3] Notwithstanding its findings on jurisdiction in relation to the election challenges, the Court permitted Reliefs 1 to 3 of the Re-Amended Fixed Date Claim Form to proceed. Those reliefs seek declarations that certain provisions of the Registration of Electors Act, the House of Assembly (Elections) (Amendment) Act, 2025,(The Act) and the accompanying Regulations are inconsistent with the Constitution. The Court found that those claims properly fell within its constitutional jurisdiction under section 103 of the Constitution. Accordingly, the present

¹ No 1 of 2025 of the Laws of Dominica ("the New 2025 Act")

² The Registration of Electors (Amendment) (No2) Regulations 2025, 39 of 2025

proceedings are confined to those constitutional challenges, and it is in respect of those reliefs alone that this application now comes before the Court.

The Claimant's Submissions

- [4] The gravamen of the Claimants' case is that section 13(4)(a)(ii) of the Registration of Electors Act,, together with the related Regulations, permits citizens of Dominica who are not resident in the State to remain on, or be included in, the register of electors and thereby to vote at general elections. They contend that this is inconsistent with section 33(2)(a) of the Constitution³, which they interpret as requiring residence in Dominica as a condition of eligibility to be registered as a voter, without exempting Dominican citizens residing abroad.

- [5] The claimants contend that the phrase “**other than a citizen of Dominica**” in Section 13.4(a.ii) improperly excludes non-resident Dominican citizens from disqualification on the ground of non-residence, thereby permitting them to remain on the register of electors to vote notwithstanding that they do not satisfy the alleged constitutional requirement of residence. They submit that this is unconstitutional and undermines the integrity of the electoral register.

- [6] Based on the affidavits filed they allege that there has been the importation of supporters to vote in general elections, thereby increasing the risk that persons who do not satisfy the applicable residence requirements may unlawfully participate in the electoral process.

- [7] After the filing of the case, however, the relevant regulation (Regulation 51(1), Form 31) was amended by the Electoral Commission to include the word “current,” which the claimants accept has cured that particular defect, and they are no longer pursuing that aspect of the challenge.

- [8] Overall, the claimants are asking the High Court to interpret the Constitution, determine that the challenged provisions are inconsistent with it, and strike them down (or grant appropriate constitutional relief). They rely on the Court's constitutional jurisdiction under section 103 of the Constitution to seek declarations and remedies where legislation is alleged to violate constitutional provisions

³ THE CONSTITUTION OF THE COMMONWEALTH OF DOMINICA(Order 1978 (S.I. 1978 No. 1027 (U.K.)

Defendant's submission

- [9] The defendants argue that the claim is fundamentally misconceived because it challenges provisions of the 2025 electoral legislation that were validly enacted under clear constitutional authority.
- [10] They contend that the Constitution of Dominica expressly empowers Parliament to determine the qualifications for voter registration, including criteria relating to residence or domicile and submit that section 33(2)(a) of the Constitution, deliberately gives Parliament the discretion to set or omit residency requirements for Commonwealth citizens.
- [11] On the substance of the claim, the defendants say the challenged provisions section 13(4)(a)(ii), Regulation 51(1), and Form 31 of the Act are consistent with section 33(2)(a) of the Constitution. They argue that the wording of that constitutional provision explicitly allows Parliament to prescribe residency or domicile qualifications for voters, meaning it is within Parliament's lawful authority to decide how residence requirements operate in practice
- [12] The defendants submit that the principle of separation of powers, arguing that courts must be cautious not to interfere with primary legislation passed by a democratically elected Parliament unless there is a clear and direct inconsistency with the Constitution. They contend that constitutional review is limited and should not be used to override policy choices lawfully made by the legislature.
- [13] They also assert that the claimants have misread the Constitution and misunderstood the breadth of Parliament's powers. According to the defendants, the Constitution does not impose an absolute residency requirement on all voters; instead, it delegates that question to Parliament.

The Issues

- [14] Against that background, the issues falling for determination by the court are as follows;

1. whether sections 13(4)(a)(ii) of the Elections Act 2025 is unconstitutional;
2. Whether the amendment in paragraph (c) of subregulation (2) by inserting immediately after the word “citizen” the words “other than a citizen of Dominica” of Regulation 51 are unconstitutional.

Resolution of issue No. 1- whether sections 13(4)(a)(ii) of the Elections Act 2025 is unconstitutional

[15] As previously stated, the Claimants case is a challenge to the constitutionality of Section 13(4)(a)(ii) of the Act. They contend that the Amending Act of 2025 by removing Dominican citizens from disqualification to vote on the basis of residency, permits non-resident Dominicans to remain on the register of electors to vote at general elections. The claimant contends that the amending act of 2025 is inconsistent with Section 33(2a) of the Constitution because it expressly requires voters to be resident in Dominica as a prerequisite for eligibility to vote.

[16] **Section 13 of the Registration of Electors Act** provides;

(4) A person to whom subsection (3)(b) refers is a person whose name appears on the register adopted under subsection (1) and who (a) since the last publication of the register of electors under the former Act, appears to the Chief Registering Officer – (i) to have died; (ii) being a Commonwealth citizen, other than a citizen of Dominica, to be no longer resident in an polling district on the effective date and to have departed from Dominica; (iii) whose request for the deletion of his or her name from the register has been approved; (iv) whose registration has not been confirmed in accordance with section 49;

[17] **Section 33. (1) of the Constitution of Dominica** provides;

“Each of the constituencies established in accordance with the provisions of section 57 of this Constitution shall return one Representative to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.

(2)(a) Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Dominica as Parliament may prescribe shall, unless he is disqualified by Parliament from registration as a voter for the purpose of electing Representatives, be entitled to be registered as such a voter in accordance with the provisions of any law in that behalf, and no other person may be so registered.(my emphasis)

[18] The reference to "Commonwealth citizen" in the foregoing section is noteworthy as the right to be registered as a voter under that provision is conferred upon persons who fall within that category, subject to the qualifications relating to residence or domicile prescribed by Parliament.

[19] Accordingly, the term Commonwealth Citizen is defined in **Section 13** of The **Commonwealth of Dominica Constitution Order**⁴, which provides that:

“..... the expression “Commonwealth citizen” shall have the meaning assigned to it by the British Nationality Act, 1948 or any Act of the Parliament of the United Kingdom altering that Act.

[20] **Section 121** of the Constitution further provides for the interpretation of Commonwealth citizen” by stipulating that it shall have such meaning as Parliament may by law prescribe. The relevant law in this regard is the **British Nationality Act 1981** and section 37 provides;

(1)Every person who—

a)under this Act is a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British subject; or

(b)under any enactment for the time being in force in any country mentioned in Schedule 3 is a citizen of that country, shall have the status of a Commonwealth citizen.

[21] In interpreting the foregoing provisions, the court is guided by the well-established principles of constitutional interpretation enunciated by the Caribbean Court of Justice in **Trust Co (Guyana) Ltd v Guyana Securities Council**⁵ that;

“.....an important principle of statutory interpretation, especially in the context of Commonwealth Caribbean Jurisdictions, is that legislation must be interpreted purposively to give effect to the fundamental rights and values and constitutional principle, contained in the commonwealth Caribbean constitutions”

[22] In **OO vs BK The Attorney General Of Barbados vs Operation Safe Space Movement For Change (Oss)** ⁶ the CCJ held among others that in interpreting legislation the court should

⁴ Ch.1:01 Schedule 2 to the Order

⁵ (2021) CCJ 11(AJ) GY

⁶ CCJ Appeal No BBCV2022/001

interpret the legislation to achieve the objectives and intention of Parliament in alignment with fundamental human rights and core constitutional values and principles contained in Commonwealth Caribbean Constitutions and international treaty obligations and commitments of these States.⁷ Still on Statutory Interpretation, the court pointed out that **“constitutional democracies function under the rule of law and in the context of constitutional supremacy.**

[23] Applying the foregoing principles to the present case, a proper interpretation of section 33(2)(a) of the Constitution requires consideration of both its plain language and its constitutional purpose.

[24] On its ordinary meaning, section 33(2)(a) establishes three essential criteria, namely; Eligibility, which is limited to Commonwealth citizens aged 18 years or older who must satisfy whatever qualifications relating to residence or domicile in Dominica as Parliament prescribes; qualifications which are not defined by the Constitution. Instead, it expressly delegates to Parliament the authority to determine what residence or domicile requirements, if any, must be met; Parliament also has the power to prescribe disqualifications from registration, and persons meeting the constitutional qualifications are entitled to be registered in accordance with the electoral legislation.

[25] Furthermore, the phrase **"such qualifications relating to residence or domicile in Dominica as Parliament may prescribe"** is particularly noteworthy because the words **"as Parliament may prescribe"** confer legislative discretion. They indicate that the Constitution does not itself impose a fixed or immutable residence requirement. Rather, it authorises Parliament to determine the content of those qualifications through legislation.

[26] Having construed Section 33(2)(a) of the Constitution, I now turn to Section 13(4)(a.ii) of the Act. A plain reading of section 13(4) suggests that it is not creating new qualifications for voter registration, but rather identifying the categories of persons whose names must be removed from the existing register when the new register is being prepared. Subsection (4) provides that a person whose name appears on the existing register is to be removed if; **“since the last publication of the register, the Chief Registering Officer determines that the person; has**

⁷ See paragraphs 146, 147 & 149 of the Judgment of Anderson J and paragraph 154 & 158 of Judgment of Jamadar in OO V Bk

died; is a Commonwealth citizen, other than a citizen of Dominica, who is no longer resident in a polling district on the effective date and has departed from Dominica; has requested that his or her name be removed; or has failed to confirm his or her registration in accordance with section 49.

[27] The effect of the phrase **"other than a citizen of Dominica"** on its ordinary meaning, is that the mandatory removal for non-residence from the register on the grounds of non-residency applies only to non-Dominican Commonwealth citizens. Dominican citizens are excluded from that particular ground of removal. Consequently, a Dominican citizen who has left Dominica and is no longer resident is not by virtue of this provision solely, liable to be removed from the register of electors on the basis of non-residence.

[28] This is what has given rise to the controversy before the court warranting the competing interpretations of the parties. The claimants' interpretation is that the subsection effectively permits non-resident Dominican citizens to remain on the register and vote. They argue that this conflicts with section 33(2)(a) of the Constitution, which they contend requires all eligible voters, including Dominican citizens, to satisfy residence requirements.

[29] They defendants on their part argue that Parliament was constitutionally entitled to decide which categories of electors should be removed and that section 33(2)(a) leaves the prescription of residence or domicile qualifications to Parliament. On their view, excluding Dominican citizens from this removal ground does not itself violate the Constitution.

[30] Accordingly, the legal issue is not what section 13(4) literally says but whether Parliament has the constitutional authority to excludes Dominican citizens from removal on the specified ground of non-residence. That is the constitutional question the court must resolved. I leave this here for now and turn to the authorities addressing the scope of Parliament's power to prescribe qualifications relating to residence or domicile for the purposes of voter registration.

[31] Of particular relevance is the decision of the Eastern Caribbean Court of Appeal **The Hon. Gaston Browne v Attorney General of Antigua and Barbuda and others** ⁸ wherein the appellant challenged the constitutionality of the amending Act of 2010 and the registration process conducted by the Electoral Commission pursuant to that Act. It was contended that: (i) the amending Act 2010 was discriminatory in effect as it prescribed different residency requirements for non-Antigua and Barbuda Commonwealth citizens; and infringed the right to vote conferred by s 40 of the Constitution, which was itself an entrenched section; (ii) the new re-registration process had retrospective effect, infringing s 40(3) of the Constitution and s 19 of the principal Act; (iii) the new re-registration process was null and void as a consequence of the Supervisor of Elections being unlawfully stripped of her powers and duties as Chief Registration Officer; and (iv) the Chairman of the Commission had been actuated by bias, such bias infecting the Commission and its subsequent functions.

[32] The court t held that;

“In amending the principal Act by way of repealing the word ‘three’ and substituting the word ‘seven’ in s 16, thereby increasing the residency qualification of Commonwealth citizens other than citizens of Antigua and Barbuda, the amending Act 2010 did not infringe s 40 or any other provision of the Constitution. Section 40(2) bestowed on Parliament the right to make such an amendment. On a purposive construction, sub-s (2) meant that Parliament might from time to time by ordinary legislation pass laws prescribing qualifications relating to residence and domicile for Commonwealth citizens to vote and that was what Parliament had done by the amending Act of 2010”

[33] The above authority is instructive on defining the scope pf parliamentary authority. This case instant raises a slightly different and distinct question on whether parliament can prescribe residence requirements and create a distinction between Dominican citizens and commonwealth citizens as electors.

[34] In resolving that question, the Court must again adopt a purposive approach to constitutional interpretation, having regard not only to the text of the relevant provisions but also to their purpose,

⁸ (Civil Appeal 18th February 2014) ANUHCVP2013/0028

context and the constitutional principles which they embody. Therefore, the Constitution does not expressly require that voters be resident in Dominica., Instead, section 33(2)(a) provides that a Commonwealth citizen aged 18 or over who possesses "such qualifications relating to residence or domicile in Dominica as Parliament may prescribe" is entitled to be registered, unless disqualified. This denotes that the Constitution recognizes that residence or domicile may be a qualification and leaves it to Parliament to prescribe what those qualifications are. It does not itself state that every voter must be resident in Dominica at the time of voting.

[35] Thus, the proposition that the Constitution "expressly requires voters to be resident in Dominica" is difficult to sustain. Section 33 does not prescribe residence. It leaves residence qualifications to Parliament and Parliament may amend those qualifications by ordinary legislation.

[36] In fact, Section 33(2) of the Constitution does more than merely describe the electoral process. It uses mandatory, rights-conferring language; A qualified Commonwealth citizen "shall... be entitled to be registered" as a voter.; A registered voter "shall... be entitled so to vote." The phrase "shall be entitled" is generally understood in constitutional interpretation as creating a legal entitlement, not merely expressing a policy preference. However, the right is not absolute because the Constitution itself permits Parliament to prescribe residence or domicile qualifications, regulate the registration process and disqualify certain persons from registration or voting.

[37] Further, Section 33 of the Constitution is characterized as creating a qualified constitutional right to vote, however, Parliament has the power to regulate the exercise of that right. It does not distinguish between Dominican citizens and other Commonwealth citizens. The Constitution does not say that Dominican citizens are exempt from residence requirements, nor does it say that they must always be resident. It is silent on any separate rule for Dominican citizens.

[38] The respondents may contend that Parliament cannot legislate in a manner that is inconsistent with the constitutional entitlement to registration as a voter by discriminating amongst Dominicans and commonwealth citizens. The answer lies in Section 13 of the Constitution which states that the no law shall make any provision that is discriminatory either of itself or in effect. However,

Subsection 4 states that Subsection (1) of this section shall not apply to any law so far as that law makes provision - with respect to persons who are not citizens of Dominica

[39] The significance of this provision is that the Constitution itself recognises that Parliament may, in certain circumstances, enact laws which distinguish between citizens of Dominica and persons who do not possess Dominican citizenship.

[40] To conclude on this issue therefore, I find that the distinction created by section 13(4)(a)(ii) of the Registration of Electors Act, 2025, falls within the scope of that constitutional authority of section 33(2)(a).

Issue No 2; Whether the amendment in paragraph(c) of subregulation (2) by inserting immediately after the word “citizen” the words “other than a citizen of Dominica of Regulation 51 of the Registration of Electors (Amendment) (No2) Regulations 2025, 39 of 2025 is unconstitutional

[41] The claimants submit that since the commencement of these proceedings, the Electoral Commission has amended Regulation 51 (1) Form 31 of the 2025 Act, to include the word “current”. They accept that this amendment has effectively cured the alleged unconstitutionality of the section and accordingly the Claimants will no longer pursue that aspect of their claim. In light of that concession, the issue has become moot and it is therefore unnecessary for the court to expend further judicial time considering it.

[42] To conclude, I reiterate that the distinction created by section 13(4)(a)(ii) of the Registration of Electors Act, 2025, falls within the scope of the legislative authority conferred upon Parliament by section 33(2)(a) of the Constitution. Parliament was entitled, in prescribing qualifications relating to residence or domicile, to determine the circumstances in which persons may be removed from, or retained on, the register of electors.

DISPOSITION

[43] Accordingly, it is hereby Ordered and declared that ;

1. The Claimants have not established that section 13(4)(a)(ii) of the Registration of Electors Act, 2025, is inconsistent with section 33(2)(a) of the Constitution;
2. Section 13(4)(a)(ii) of the Registration of the Electors Act 2025 No 1 of 2025 of the Laws of Dominica ("the New 2025 Act") is not in contravention of Section 32(2)(a) of the Constitution of Dominica;
3. Regulations 51 (1) Form 31 of the New 2025 Act are not contravention of Section 33 (2)) (a) of the Constitution of Dominica.

Zainab Jawara-Alami

High Court Judge



BY THE COURT

REGISTRAR (Ag.)

The court office is at Dame Eugenia Charles Blvd., Roseau Telephone Number ext. 266 3029, 4526, 3388 and 4535. The email address is registrydominica@gmail.com.