

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE COMMONWEALTH OF DOMINICA
Civil Division

Claim No. DOMHCV2025/0131

IN THE MATTER OF AN ORIGINATING MOTION UNDER PART 56 OF THE CIVIL PROCEEDINGS RULES FOR
DECLARATORY RELIEF PURSUANT TO SECTION 103 OF THE CONSTITUTION OF THE COMMONWEALTH
OF DOMINICA

BETWEEN:

LENNOX LINTON

Claimant

and

THE ATTORNEY GENERAL OF THE
COMMONWEALTH OF DOMINICA

Defendant

Before Her Ladyship, Honourable Madame Justice Zainab Jawara-Alami

Appearances:

Mr. Jared Jagroo with Mr. Vishaal Siewsaran led by Mr. Anand Ramlogan S.C.
instructed by Mr. Ronald Charles, Counsel for the Claimant

Mr. Jason Lawrence with Mrs. Tameka Burton led Anthony Astaphan S.C. and Mr. Levi
Peter, Counsel for the Defendant

2026: February 12th (Hearing), 25th (Submissions)

April 15th (Hearing)

July 22nd (Judgement)

JUDGEMENT

Background /Claim

[1] **Jawara-Alami.J**; by an Originating Motion brought pursuant to Section 103 of the Constitution of Dominica, the Claimant herein applies to the High Court against the Defendant, THE ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA for the following reliefs, namely:

1. A Declaration that Her Excellency the President breached section 66(2) of the Constitution when, following the resignation of Ms. Jesma Paul-Victor as Leader of the Opposition on 20th June, 2024, she failed and/refused to recognize and/or take into account the support of the four Opposition Senators in determining who commands the support of the largest single group of members of the House who do not support the Government for the purpose of appointing a Leader of the Opposition and hence failed to appoint Ms. Paul-Victor as Leader of the Opposition.
2. A declaration that Her Excellency the President, in failing to appoint Ms. Paul-Victor as Leader of the Opposition, breached section 66(2) of the Constitution.
3. A Declaration that where there is occasion for the appointment of a Leader of the Opposition, after Senators have been appointed, and no elected member of the House of Assembly appears to command the support of the largest single group of members of the House who do not support the Government, the President is obliged to recognize and/or take into account the support of the Opposition Senators in determining who should be appointed as Leader of the Opposition;
4. A Declaration that, the following the resignation of Ms. Jesma Paul-Victor as Leader of the Opposition on 20th June, 2024, the President was obliged to recognize and/or take into account the support of the four Opposition Senators in determining who commands the support of the largest single group of members of the House who do not support the Government for the purpose of appointing a Leader of the Opposition;
5. A Declaration that the failure of Her Excellency the President to recognize and/or take into account the support of the four Senators in determining who should be appointed Leader of the Opposition following the resignation of Ms. Jesma Paul-Victor was illegal and unconstitutional; and
6. Costs;

[2] The facts concerning this matter were put before the Hight Court in **DOMHCV2024/0218 Burney Ryan v The Attorney General of Dominica**. The Defendant applied to have the claim struck out on the basis that it disclosed no viable or reasonable cause of action. The application was granted on 26th May, 2025 and the Court struck out the claim holding that the pleading did not properly invoke the jurisdiction of the Court under Section 103 of the Constitution of the Commonwealth of Dominica. The claimants have returned to this court on the same matter with a different named claimant submitting that the claim was not dismissed on the merits but rather struck out on technical issues as to its form due to non-compliance with inter alia, Part 56 of the CPR.

Defendant's 2nd Application to strike

[3] The Defendant by a Notice of Application dated and filed 27th January 2026 applies to the Court once again for an order to strike out the current claim before the court pursuant to **Rules 1.1, 1.2, 1.3, 25.1(b), 25.1(c), 25.1(d)**,

25.1(e), 25.1(j), 25.1(l), 26.1(2)(a), 26.1(2)(n), 26.1(2)(q), 26.1(2)(y), 26.3(1)(b) and (c) of the EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES (REVISED EDITION) 2023.

- [4] The Defendant's application to strike out is founded on the events that occurred after the commencement of these proceedings. The defendant submits that the claim challenges the President's alleged failure to appoint a leader of the Opposition. However, since the filing of the claim, the President has appointed a LOO with the resultant effect being that the relief sought have been overtaken by subsequent events.
- [5] The defendant submits that because Jesma Paul-Victor subscribed to the prescribed oaths on Monday 19th January 2026, with her appointment taking effect from Friday 16th January 2026, there is no longer a live or justiciable issue before the Court.
- [6] The defendant also submits that the reliefs sought by the claimants of declarations and/or orders concerning the appointment, would have no practical utility and the instant claim would become an academic exercise. The defendant also argues that the proposed strike-out application raises an arguable issue that the instant claim should be struck out as it discloses no reasonable grounds and is an abuse of process.
- [7] The Defendant emphasizes that this is not a case which warrants the exceptional exercise of judicial discretion to determine an academic matter. The claim does not raise a recurring point of constitutional interpretation likely to arise in a large number of similar cases which exist or are anticipated. Rather, the issues raised are fact-specific, time sensitive and dependent upon particular political circumstances. They therefore do not require judicial determination in the absence of live controversy between the parties.
- [8] Further, permitting the claim to proceed notwithstanding its mootness would constitute an abuse of the Court's process. It would result in unnecessary expenditure of scarce judicial resources, impose unjustified litigation burdens on the Defendant and undermine the overriding objective of dealing with cases justly, proportionately and efficiently.
- [9] The Defendant submits that the present proceedings have become plainly academic. Any determination by this Honourable Court would constitute the Court rendering an advisory opinion, contrary to the caution expressed in **ex parte Salem**. The defendants also places extensive reliance on **Borowski v Canada** ¹.
- [10] The defendants further argue that the present case is analogous to **James v Speaker** ² where the court held that the claim had become academic after the claimants were re-elected, thereby removing the factual foundation of the dispute. Similarly, they submit that the declarations sought relate solely to alleged past failures to appoint a

¹(1989) 1 SCR 342,
² DOMHCV2010/199,

Leader of the Opposition and would have no practical legal effect now that such an appointment has been made. In their view, the Court should not issue declarations merely to pronounce upon historical conduct.

[11] The defendants also contend that the claimant's request for prospective guidance is, in substance, an invitation for the Court to issue an advisory opinion, which falls outside its constitutional function. Accordingly, they submit that the proceedings should be dismissed as moot.

Claimant's Submission in response to the application to strike

[12] In response, the Claimant's position is that this claim concerns that correct legal interpretation of **section 66 of the Constitution of the Commonwealth of Dominica**, which governs the appointment of the Leader of the Opposition (LOO) in the House of Assembly (HOA). The claimant submits that the President failed and/or refused to appoint a LOO for 18 months following the resignation of the then LOO on 20th June 2024. This decision was fundamentally flawed because it was based on a wrong interpretation of the law which the Claimant seeks to have clarified in the public interest, to uphold and vindicate the rule of law and ensure that the President is not misguided in the future.

[13] The claimant submits that this is the new role and focus of the court in public law matters and relies on the case **of Dumas v The Attorney General**³ in support of that proposition. The claimant contends that the central issue is simply whether the President's failure or refusal to appoint a LOO during the period of vacancy was unconstitutional, and, in particular, how section 66(2) is to be construed and applied where the second limb of that provision is engaged.

[14] The claimant further submits that the relief sought is grounded on the factual matrix disclosed by the evidence, namely the President's position that the views of the Opposition Senators were constitutionally irrelevant to the appointment exercise.

[15] The claimant emphasize that the subsequent appointment was not the result of any concession on that interpretive question, which remained unresolved and relies on **R v Secretary of State for the Home Department, Ex p Salem**⁴. Therefore, what remains before the Court is a live dispute as to the correct construction and operation of section 66(2) of the Constitution, arising from the President's position that she was not required to take into account the support of the Opposition Senators when determining the appointment of the LOO.

[16] Thus, the claimant argues that the dispute therefore remains live on the issue of whether, on a proper construction of section 66(2), the President was entitled to treat the support of the Opposition Senators as constitutionally

³ Civil Appeal No P-218 of 2014 (per Jamadar JA at para 95, 115-16, 127, -134) whose dissent was upheld and approved by the Privy Council [2017] 1 WLR 1978.

⁴ [1999] 1 AC 450 at p 457.

irrelevant when the second limb was engaged. In those circumstances, the Defendant cannot justify a strike out or a stay on the basis that the claim has become academic.

[17] The Court is being asked to clarify how section 66(2) is meant to operate in precisely the type of situation that produced the prolonged vacancy and argues that the modern trend in constitutional and public law jurisprudence is for the Court to pronounce on important issues of statutory interpretation in relation to appointments to important public offices. The claimant places considerable reliance on the authority of **Ravi Balgobin Maharaj v The Minister of Finance** to support this proposition⁵.

[18] The Claimant also argues that the case raises issues of significant public interest and as such the Court should not decline jurisdiction in a matter which concerns the appointment to an important public office where the Claimant is contending that the relevant public official (in this case the President, which is the highest office in the land), has exercised the power conferred by the Constitution on an incorrect interpretation of the law which regulates her power to make the said appointment. Similarly, they submit that The President exercised her power and made a decision not to appoint Ms. Jesma Paul-Victor because she was of the view that she was not required by law to take into account the support of the Senators. To simply bypass and ignore this would mean that unconstitutional and illegal decisions regarding an important public office will remain valid and unchallenged to the detriment of the Constitution, the rule of law and the public interest. It would have also set a wrong precedent for the future.

[19] Finally, the claimant submits that there is no prejudice whatsoever to the Defendant if this claim is heard and determined as the State and the public stand to benefit from a judgment in this matter as it will provide much needed guidance and clarification on an important issue of statutory interpretation on section 66 of the Constitution. **It will also provide guidance for the future so that where there is occasion for the appointment of a Leader of the Opposition, after Senators have been appointed,**

Issues for Determination

[20] The issue falling for determination is whether the claim before the court has become academic or moot in light of the supervening events of the recent appointment of the LOO by the President of the Commonwealth of Dominica,

The Law and Discussions

⁵ [2026] UKPC 4 at paragraph 4:

[21] In **Joseph Borowski v the Attorney General of Canada** ⁶, the Supreme Court explained the doctrine of mootness and the principles applicable in determining whether a court should continue to hear a case where the underlying controversy or dispute has ceased to exist; the court stated that;

“The doctrine of mootness is part of a general policy that a court may decline to decide a case which raises merely a hypothetical or abstract question. An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. The general policy is enforced in moot cases unless the court exercises its discretion to depart from it. The approach with respect to mootness involves a two-step analysis. It is first necessary to determine whether the requisite tangible and concrete dispute has disappeared rendering the issues academic. If so, it is then necessary to decide if the court should exercise its discretion to hear the case. (In the interest of clarity, a case is moot if it does not present a concrete controversy even though a court may elect to address the moot issue.)

[22] The foregoing establishes a two-prong approach to the determination of mootness. The first enquiry is whether the dispute has disappeared, making the issues merely academic or hypothetical. The second inquiry arises only if the latter is found to be moot, namely whether the court should nevertheless exercise its discretion to hear and determine the case notwithstanding the absence of a live controversy. Accordingly, I shall proceed by considering each of these two stages in turn.

whether the dispute has disappeared, making the issues merely academic or hypothetical

[23] The Affidavit of the Applicant/Defendant in support of the strike out application avers that on Friday the 16th day of January 2026, the Office of the President of the Commonwealth of Dominica received a joint letter signed by both Jesma PaulVictor and Anthony Charles, Parliamentary representatives for the Salisbury and Marigot constituencies respectively, indicating their support for Jesma Paul-Victor to be appointed as Leader of the Opposition⁷.

[24] They also aver that on Monday the 19th day of January 2026, before Her Excellency Sylvanie Burton, President of the Commonwealth of Dominica, Jesma Paul-Victor took the prescribed oath of office and was formally and constitutionally appointed as Leader of the Opposition of the House of Assembly taking effect from Friday 16th January 2026.

[25] Apparent from the above therefore is the fact that the Claimant's claim was premised on circumstances existing prior to the appointment of a Leader of the Opposition, and that those circumstances no longer obtain. The claimant's claim was for a number of declarations that Her Excellency the President breached section 66(2) of the Constitution when, following the resignation of Ms. Jesma Paul-Victor as Leader of the Opposition on 20th June, 2024, she failed and/refused to recognize and/or take into account the support of the four Opposition Senators in

⁶ Supra,1

⁷ A true copy of this letter is annexed and marked "DB2".

determining who commands the support of the largest single group of members of the House who do not support the Government for the purpose of appointing a Leader of the Opposition and hence failed to appoint Ms. Paul-Victor as Leader of the Opposition.

[26] The issue is therefore settled that there is no longer a live dispute before the court because the failure to appoint a LOO has been settled with the appointment of Jesma Paul -Victor on 20th January 2026. Which leads me to consider the next limb namely;

whether the court should nevertheless exercise its discretion to hear and determine the case notwithstanding the absence of a live controversy

[27] In **R v Secretary of State for the Home Department, ex parte Salem**⁸**ex parte Salem**, Lord Slynn of Hadley, stated: “ ...

in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se... The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.”

[28] In **R (Heathrow Hub Ltd) v Secretary of State for Transport [2020]**, the Court of Appeal stated, at para [208], that;

“It is well-established that Courts should not opine on academic or hypothetical issues in public law cases other than in exceptional circumstances where there is good reason in the public interest for doing so.”

[29] In **Ravi Balgobin Maharaj v The Minister of Finance** [⁹at paragraph 4: the court held that;

“the modern trend in constitutional and public law jurisprudence is for the Court to pronounce on important issues of statutory interpretation in relation to appointments to important public offices- However, as was recognised in Salem, judicial review should not be granted for moot issues unless they raise matters of general legal importance. Having considered her arguments very carefully, including her suggestion that the court should exercise in this case an advisory function, I am not persuaded that any matters of general legal importance or of public interest arise in her claim. In particular, I am not satisfied that there is any question that needs to be answered for a genuine, practical purpose.

[30] In **SUSAN CHARLEAU AND COMMISSIONER OF POLICE AND CORPORAL JOHN, SERGEANT FITZROY GRAY** it was highlighted that Courts do have the discretion to grant declaratory relief even if it is the only relief requested by an applicant. Courts do have jurisdiction to grant both declarations and prospective declarations with

⁸ (1999) 1 AC

⁹ 2026] UKPC 4

one caveat; that there must be proof of exceptional circumstances. Exceptional circumstances were identified to include; a) Need for certainty re legality of administrative action; (b) To stop a rampant wrong/bad or illegal practice; (c) Clarification of an important issue – statutory construction; (d) To definitively answer similar cases actually before or to come before the court. The court further stressed that the existence of such exceptional circumstances must be established by clear and cogent evidence and not by mere speculation.

[31] Based on the foregoing authorities it is evident that a court should not grant advisory or prospective declaratory relief unless exceptional circumstances are established. In applying the test articulated in *Ex parte Salem*, the overarching principle is that, although the public law proceedings may become moot, the court retains a limited discretion to determine the issues where there exist sufficient reasons in the public interest to do so

[32] Having regard to the foregoing authorities, the question that now arises is whether the claimants have shown any exceptional circumstances which would justify the court exercising its discretion to determine what is otherwise a moot issue.

[33] The claimant contends that the issue before the court concerns the proper interpretation of the second limb of section 66(2) of the Constitution which provides; **“whenever there is occasion for the appointment of a Leader of the Opposition ... if no elected member of the House appears to him to command such support, the elected member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government”**.

[34] The claimants rely on the letter dated 13 January 2026 (“DB2” which shows that that Ms Jesma Paul-Victor was re-appointed after having received the support of the other lone elected member of the House who does not support the Government. As a result, it was not necessary for the President at the time of the appointment, to consider the second part of section 66(2) and hence the issue as it relates to the correct interpretation of the second part of section 66(2) remains unresolved. The claimants submit that this gives rise to a need for certainty and clarity as to the construction of an important constitutional provision.

[35] Accordingly, I find that the issue raised on the mootness of these proceedings and whether the claim has become academic, give rise to a discreet question of law, namely, the proper interpretation of the second limb of section 66(2) of the Constitution.

[36] There is, in my view, a legitimate public interest in resolving this uncertainty. The office of leader of the opposition is an essential part of the constitutional and democratic framework of the country and serves an important role in ensuring accountability within a democracy. It would therefore be undesirable for uncertainty to remain as to the circumstances in which that office may properly be filled. Further, the circumstances giving rise to this issue are capable of recurring. In the absence of no authoritative guidance, similar uncertainty may arise in the future, giving

rise to further constitutional questions and litigation. In those circumstances, I find that the claimants have demonstrated exceptional circumstances sufficient to justify the court exercising its discretion to determine the issue notwithstanding that the immediate controversy between the parties has ceased to exist.

[37] As a consequence, therefore, the application to strike out the proceedings is refused. I shall therefore proceed to consider the question of law raised by the claimants and determine the reliefs sought.

On the issue of standing

[38] The Court has previously recognized that the concept of “sufficient interest” under CPR 56.2 is to be interpreted broadly and flexibly, particularly in matters involving public interest litigation. Authorities such as **John Mussington v. Development Control Authority (Antigua & Barbuda)**¹⁰, and **Treasure Bay (St Lucia) Ltd v Gaming Authority and Attorney General of Trinidad and Tobago v Dumas (2017) 90 WIR 507** demonstrate that standing is not restricted to persons with a direct personal interest, and that the categories of persons entitled to bring judicial review proceedings are not exhaustive according to CPR Rule 56.2(1) and 56.2(2).

[39] In applying the flexible approach adopted by the courts in determining “sufficient interest,” I find that the Claimant falls within the category of persons contemplated by CPR 56.2(2)(d). The claim raises issues of significant public interest and the Claimant has demonstrated sufficient standing to bring these proceedings.

The Issue for determination in the substantive claim

[40] Having determined that it is in the public interest for the court to proceed to determine the substantive claim, and bearing in mind that a leader of the opposition has been appointed, the remaining issue for determination is as follows;

Whether the President was obliged to recognize and/or take into account the support of the four Opposition Senators who indicated their support for Ms. Paul-Victor as leader of the Opposition in determining who commands the support of the largest single group of members of the House who do not support the Government for the purpose of appointing a leader of the opposition,

THE CLAIMANT’S FACTS

[41] The claimant asserts that in Dominica the major political parties are the Dominica Labour Party (DLP) and the United Workers Party UWP) and that the DLP has been in government since 2000. That in 2022 snap elections were held in which the UWP boycotted the elections on the basis alleging that electoral reform to facilitate free and fair elections in Dominica were not implemented. The following results were returned after the December 6th 2022

¹⁰ [2024] UKPC 3 Privy Council Appeal No 0116 of 2021

polls: • DLP- 19 seats • Two independent candidates (Jesma Paul-Victor and Anthony Charles) each took the other two seats of Salisbury and Marigot respectively and The DLP which was the incumbent party, again formed the Government.

[42] The Claimant contends that there was no clear person to be appointed as the Leader of the Opposition However, the President was informed by letter dated 9th December 2022 cosigned by Ms. Paul-Victor and Mr. Charles of a power sharing arrangement whereby each, beginning with Ms. Paul-Victor, would hold the office of Leader of the Opposition for a period of eighteen (18) months and a further arrangement would be made for the balance of the parliamentary term. Based on that arrangement Ms. Paul-Victor was sworn in as Leader of the Opposition on 20th December, 2022.

[43] Having appointed a Leader of the Opposition, the four (4) Opposition Senators were subsequently appointed namely: i. Delbert Parris ii. Lorie Victor iii. Chalikia Vidal iv. Lorraine Henderson-Reid . Consistent with the agreement, Ms. Paul-Victor resigned from the post of Leader of the Opposition with immediate effect on 20th June, 2024 to make way for Mr. Charles to be appointed as Leader of the Opposition.

[44] During Ms. Paul-Victor's stint as Leader of the Opposition Mr. Charles changed his political status and moved away from being an Independent Candidate and aligned himself with the United Progressive Party (UPP). By letter dated 20th June, 2024 the four Opposition Senators indicated their support for Ms. Paul-Victor to be recognized and appointed as Leader of the Opposition. The letter is also signed by Ms. Paul-Victor indicating her interest in re-appointment.

[45] Her Excellency accepted the resignation of Ms. Paul-Victor and by a letter dated 5th July, 2024 the President indicated her refusal to appoint Mr. Charles as the Leader of the Opposition on the basis that he does not command the support of the majority of members who do not support the Government.

[46] The claimant also contends that despite the letter of 20th June, 2024 from the Senators, the President by letter dated 3rd July, 2024, refused to re-appoint Ms. Paul-Victor to the office of Leader of the Opposition and cited that ***“unelected Senators are not empowered to canvass the President nor otherwise participate in the appointment of the Leader of the Opposition, nor is the President on the occasion of the appointment of the Leader of the Opposition, required to take into account any views of unelected Senators”***. In the said letter the President further states that ***“there is no elected member of the House who appears to Her Excellency most likely to command the support of a majority of the elected members of the House who do not support the Government nor is there any elected member of the House who appears to Her Excellency to command the support the largest single group of elected members of the House who do not support the Government”***.

Claimant's submissions

[47] The claimant submits that the central issue is whether, on a proper construction of s 66 (2) the President is obliged to take the support of the opposition senators into account when determining which member appears to command the support of the largest single group of members of the House who do not support the Government. The Claimant contends that the President is obliged to do so and the Defendant contends that she cannot. This is the crux of the dispute that has prompted this claim for “public interest litigation for constitutional review”¹¹ that is rooted in correct interpretation of s 66 of the constitution.

[48] The claimant contends that, having regard to the use of the word “shall” in section 66(2), the provision imposes a mandatory obligation on the President to appoint a person who falls within one of the two constitutional categories; Category 1. an elected member of the House who appears to him most likely to command the support of a majority of the elected members of the House who do not support the Government or, if no elected member of the House appears to him to command such support;

Category 2. an elected member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government.

[49] The Claimant argues that the word if and the connecting language between the two categories indicate a sequential process . Accordingly, Category 1 must be considered first when seeking to discharge the power of appointment of a LOA. It is only if there are no suitable elected members in the opinion of President within category 1 then he may move on to consider the elected members in Category 2.

[50] The Claimant submits that Category 2 is deliberately broader than Category 1. While Category 1 is concerned with the support of an individual elected member by a majority of other elected members who do not support the Government, Category 2 refers to support from the “largest single group of members of the House who do not support the Government.” The Claimant contends that the constitutional language does not restrict that group solely to elected members, and therefore the support of Opposition Senators must be capable of consideration when determining whether an elected member commands the requisite support under the second limb of section 66(2).

[51] The Claimant further submits that the phrase “Members of the House” in section 66(2) is not defined in the Constitution but it is clear that senators as well as representatives are both “members” of the House.

[52] The Claimant argues that it would be incorrect to interpret the phrase “members of the House” in section 66(2) as meaning only “elected members of the House” where the Constitution does not expressly use that qualification.

¹¹ See The Attorney General v Dumas (2017) 90 WIR 507 at paras 12-13 where the Board cited with approval the dictum of Jamadar JA (as he then was) in the Court of Appeal.

The Claimant contends that the omission of the word “elected” at that particular point in the provision is deliberate and significant.

[53] It is submitted that the constitutional framers demonstrated an ability to distinguish between elected and non-elected members, as section 66(2) expressly uses the phrase “elected member(s) of the House” on several occasions. Accordingly, where the word “elected” is omitted and the provision refers simply to “members of the House,” that wording must be given its ordinary meaning so as to include both elected Representatives and appointed Senators.

[54] The Claimant further relies on other provisions of the Constitution, including sections 2(a) and 17, where the phrase “members of the House” is used without the qualification “elected,” and submits that those references necessarily include both elected and appointed members.

[55] Accordingly, the Claimant contends that the Constitution consistently uses the expression “elected members of the House” when intending to refer only to Representatives, and the unqualified expression “members of the House” when referring to the wider body comprising both Representatives and Senators. On that basis, the Claimant submits that the reference in the second limb of section 66(2) to the support of the “largest single group of members of the House who do not support the Government” must include appointed Senators.

Defendant’s Submissions

[56] The Defendant submits that the Claimant has misconstrued the constitutional powers of the President in relation to the appointment of the Leader of the Opposition. It argues that the Constitution does not require the President to consider the support of unelected Senators when making the appointment. Instead, sections 63(2)(c) and 66(6) expressly confer on the President the authority to act in her own deliberate judgment, free from any obligation to seek advice or consult persons outside the elected opposition members.

[57] The Defendant further contends that section 66(2) establishes a hierarchical process for appointment, under which both the eligible candidates and those whose support is relevant must be elected members of the House. The President must first determine whether an elected member commands the support of the majority of the elected members in opposition and, failing that, whether an elected member commands the support of the largest single group of elected opposition members. On this interpretation, the views of unelected Senators are constitutionally irrelevant.

[58] Relying on *Adegbenro*, the Defendant submits that the Constitution entrusts the President with a subjective judgment as to who appears to command the requisite support. It argues that this constitutional discretion is not justiciable and should not be subjected to judicial review unless exercised in a manner that is plainly irrational or

perverse. The Defendant maintains that the President's decision accords with the Constitution, democratic principles, and public policy.

[59] In the alternative, the Defendant argues that, even if the President's decision were justiciable, the relief sought by the Claimant would effectively amount to an order of mandamus compelling the President to appoint a particular individual as Leader of the Opposition. Relying on *Re Blake*, it submits that such an order would impermissibly interfere with the constitutional discretion vested in the President and should therefore be refused.

[60] Finally, the Defendant submits that where no elected member commands the support of either a majority or the largest single group of elected opposition members, the President is entitled, and indeed obliged under section 66(6), to decline to appoint a Leader of the Opposition.

The Law and Discussions

[61] In interpreting the foregoing constitutional provisions, the court is guided by the well-established principles of constitutional interpretation. In **Trust Co (Guyana) Ltd v Guyana Securities Council**, the Caribbean Court of Justice reaffirmed that constitutional and statutory provisions are to be interpreted purposively so as to give effect to the values, principles and objectives embodied in the Constitution. The Court stated:

“...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, values and constitutional principles contained in Commonwealth Caribbean Constitutions.”

[62] A similar approach was adopted in **R (Quintaville) v Secretary of state for Health**¹² where Lord Bingham observed that the court's fundamental task;

‘is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. Every statute, other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.’

[63] In **R v Secretary of State for the Environment, Transportation and Regions ex parte Spath Holme** Lord Nicholls observed at page 396:

“Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful so long as it is remembered that the ‘intention of Parliament’ is an objective concept, not

¹² 2003] UKHL13; [2003] 2 AC 687

subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used".

[64] Additionally, in the **Prime Minister of the Commonwealth of Dominica v Hector John (Leader of the Opposition)**,¹³ , the court observed that;

"This case involves a dispute in a matter in which the rules were laid down by the Constitution and, as such, the Court, as guardian of the Constitution, must be the final arbiter."

[65] Accordingly, the task of the court is not merely to examine the literal meaning of the words used, but to construe the provision in its constitutional context and in a manner that gives effect to the purpose which the framers intended it to achieve. **"That legislative intention is an inference drawn from the primary meanings of the words and phrases used in the statute with such modifications of those meanings as may be necessary to make them consistent with the statutory context"**¹⁴

[66] **Bennion's "informed interpretation rule"** is that the court should infer that the legislator, when settling the wording of legislation intended it to be given a fully informed, rather than a purely literal interpretation (though the two usually produce the same result). This is the proper approach to be adopted by a court in interpreting statutory provisions.

[67] These principles provide the foundation for the analysis that follows.

[68] **Section 66 of the Constitution** on leader of the opposition provides ;

"1. There shall be a Leader of the Opposition who shall be appointed by the President.
2. Whenever there is occasion for the appointment of a Leader of the Opposition the President shall appoint the elected member of the House who appears to him most likely to command the support of a majority of the elected members of the House who do not support the Government: or,
if
no elected member of the House appears to him to command such support, the elected member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government:

[69] The question that arises at this point, is firstly to determine who is referred to as a member of the house. The Constitution clearly does not define who a member is but guidance on the meaning of "member" can be found in several provisions of the Constitution.

[70] Section 29 establishes the parliament of the Commonwealth of Dominica and provides that parliament shall consist of the President and a House of Assembly. Section 30(1) provides that the House of Assembly shall consist of: (a) Representatives elected for the constituencies established under section 57 of the Constitution; and (b) nine Senators appointed or elected in accordance with section 34. Section 30(2) further provides that where a person

¹³ Civil Appeal No. DOMHCVAP2013/0006,

¹⁴ Douglas v The Police

who is not already a member of the House is elected Speaker, that person becomes a member of the House by virtue of holding that office. In addition, section 30(3) provides that where the office of Attorney General is a public office, the Attorney General is, by virtue of holding or acting in that office, a member of the House.

[71] The Constitution consistently recognises Representatives and Senators as members of the House. Section 32(1), which prescribes the qualifications for election or appointment, provides that a person shall not be qualified to be elected or appointed as a Representative or Senator and thereafter refers to such persons collectively as "a member."

[72] Similarly, section 35(1), which deals with the tenure of office of Representatives and Senators, provides that a Representative or a Senator (thereinafter referred to as "a member") shall vacate his or her seat upon the dissolution of Parliament following his or her election or appointment. Section 35(2) further provides that a Senator appointed under section 34(a) vacates his or her seat where the appointment is revoked by the President acting on the advice of the Prime Minister, while a Senator appointed under section 34(b) vacates his or her seat where the appointment is revoked by the President acting on the advice of the Leader of the Opposition. These provisions reinforce that Senators, once appointed, are members of the House for all constitutional purposes unless the Constitution expressly provides otherwise.

[73] The foregoing provisions make it clear that senators are members of the house. Section 30, 32, and 35 consistently treat both representatives and senators as members of the house. While senators are not elected by the electorate, once duly appointed they become full members of the house and are entitled to exercise the rights, privileges and functions conferred by the Constitution, subject to any express constitutional limitations.

[74] Against this constitutional background, the reference in Section 66 to "**member of the house**" cannot be confined to elected representatives alone. Had the framers intended such limitation, they could easily have referred specifically to "**representatives**". Instead, they deliberately use the boarder expression "**members of the house**" which includes both representatives and senators.

[75] Having identified the members of the house, the next question to is, who are the members of the house who do not support the Government" for the purposes of Section 66. Giving the words of Section 66 of the constitution their ordinary and natural meaning together with the purpose and scheme of the Constitution, these are members of the house, whether representatives or senators, who are not aligned with or do not support the Government. Collectively, they constitute the parliamentary opposition.

[76] Further support of this interpretation is found in Section 34(1)(b) of the Constitution. Section 34(1)(a) provides that five Senators shall be appointed by the President acting in accordance with the advice of the Prime Minister, while section 34(1)(b) provides that four Senators shall be appointed by the President acting in accordance with the

advice of the Leader of the Opposition. Accordingly, Senators appointed under section 34(1)(b), together with any Representatives who do not support the Government, form part of the group of members whose support is relevant when identifying the person who should be appointed Leader of the Opposition under section 66.

[77] It is therefore necessary at this stage to consider the President's letter dated **3rd July 2024**, in which she set out her reasons for declining to reappoint Ms. Paul-Victor to the office of Leader of the Opposition. The contents of the letter are central to determining whether the President properly exercised the discretion conferred upon her by section 66 of the Constitution and whether the decision was made in accordance with the constitutional requirements governing the appointment of the Leader of the Opposition. The President states in material part;

“unelected Senators are not empowered to canvass the President nor otherwise participate in the appointment of the Leader of the Opposition, nor is the President on the occasion of the appointment of the Leader of the Opposition, required to take into account any views of unelected Senators”

there is no elected member of the House who appears to Her Excellency most likely to command the support of a majority of the elected members of the House who do not support the Government nor is there any elected member of the House who appears to Her Excellency to command the support the largest single group of elected members of the House who do not support the Government”.

[78] Section 66(2) provides that where there is no member who appears able to command the support of **a majority** of the members of the House who do not support the Government, the President shall appoint:

“...the member of the House who, in her judgment, appears likely to command the support of the largest single group of those members who are prepared to support one leader.

[79] In my view section 66(2) imposes a mandatory obligation on the President to appoint a Leader of the Opposition, provided that an elected member satisfies one of the two constitutional categories prescribed by the section. The use of the word "shall" is imperative and requires the President to make an appointment where the constitutional conditions are met. Those categories are, first, an elected member of the House who appears to the President most likely to command the support of a majority of the elected members of the House who do not support the Government; and secondly, where no such member appears to command that support, an elected member of the House who appears to command the support of the largest single group of members of the House who do not support the Government.

[80] The language of section 66(2) establishes a sequential process for the exercise of the President's power of appointment. The use of the word "if" between the two categories makes clear that the President must first consider whether there is an elected member who appears most likely to command the support of a majority of the elected

members in opposition. It is only where no such member appears to command that support that the President may proceed to consider whether an elected member commands the support of the largest single group of members of the House who do not support the Government. The second category therefore operates only upon the failure of the first, reflecting the clear hierarchy established by the constitutional text.

[81] It is accepted that by virtue of Section 66(3), that the president exercises the power to appoint the leader of the opposition in her judgement. However, the discretion must be exercised for the constitutional purpose for which it was conferred and in accordance with Section 66. Therefore, to exclude the four senators from consideration would be inconsistent with the constitutional definition of membership of the house and would fail to give effect to the plain language employed by the framers of the constitution.

[82] Accordingly, the President's reasons failed to take into account the second limb of Section 66(2) which clearly provides that where the President is required by section 66 to appoint as Leader of the Opposition the member who appears best able to command the support of those members who do not support the Government, the relevant body of members includes all opposition members of the House, including opposition Senators. It was therefore incumbent upon the President to consider the views of the unelected senators who form part of the opposition and are members of the house by virtue of the constitution.

[83] It is noted that the Claimants have not sought relief in respect of breach of any constitutional rights for Ms. Jesma Paul-Victor but have in their submissions, attempted to advance such arguments. As no such claim or relief has been pleaded, the court declines to consider that aspect of the submissions.

The Issue of costs

[84] The question of costs requires consideration of the circumstances of these proceedings. While the Claimants have raised an issue of constitutional significance, the fact that proceedings involve constitutional questions does not, of itself, create an entitlement to costs. The Court must have regard to the conduct of the parties, the nature of the issues raised, and the overall outcome of the proceedings. In this case, although the proceedings were ultimately determined notwithstanding the absence of a live controversy, the Claimants were responsible for bringing before the Court a genuine constitutional question concerning the proper interpretation of section 66(2) of the Constitution. The issue was not frivolous or vexatious, and the Court has found that there was a legitimate public interest in resolving the uncertainty identified. In those circumstances, and having regard to the public importance of the constitutional issue raised, I consider that it would be appropriate to depart from the usual rule that costs follow the event and to make no order as to costs.

Disposition

[85] Accordingly, it is hereby Ordered and Declared that:

1. Where there is occasion for the appointment of a Leader of the Opposition, after Senators have been appointed, and no elected member of the House of Assembly appears to command the support of the largest single group of members of the House who do not support the Government, the President is obliged to recognize and/or take into account the support of the Opposition Senators in determining who should be appointed as Leader of the Opposition;
2. The President was obliged to recognize and/or take into account the support of the four Opposition Senators in determining who commands the support of the largest single group of members of the House who do not support the Government for the purpose of appointing a Leader of the Opposition, following the resignation of Ms. Jesma Paul-Victor as Leader of the Opposition on 20th June, 2024;
3. The failure of the President to recognize and/or take into account the support of the four Senators in determining who should be appointed Leader of the Opposition following the resignation of Ms. Jesma Paul-Victor was illegal and unconstitutional; and
4. There shall be no order as to costs.

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.