**IN THE CARIBBEAN COURT OF JUSTICE**
**APPELLATE JURISDICTION**

**ON APPEAL FROM THE COURT OF APPEAL OF**
**THE EASTERN CARIBBEAN SUPREME COURT (DOMINICA)**

**CCJ Civil Appeal No DMCV2020/001**
**DM Civil Appeal No DOMHCVAP2018/0004**

**BETWEEN**

**ROOSEVELT SKERRIT** **APPELLANTS**
**REGINALD AUSTRIE**
**RAYBURN BLACKMORE**
**CASSIUS DARROUX**
**JUSTINA CHARLES**
**KATHLEEN DANIEL**
**IAN DOUGLAS**
**JOHNSON DRIGO**
**COLIN MC INTYRE**
**ROSELYN PAUL**
**IAN PINARD**
**PETTER ST JEAN**
**IVOR STEPHENSON**
**KELVAR DARROUX**
**KENNETH DARROUX**

**AND**

**ANTOINE DEFOE** **RESPONDENTS**
**EDINGCOT ST VALLE**
**MERVIN JOHN BAPTISTE**

**Before The Honourable:** **Mr Justice A Saunders, PCCJ**
**Mr Justice J Wit, JCCJ**
**Mr Justice W Anderson, JCCJ**
**Mme Justice M Rajnauth-Lee, JCCJ**
**Mr Justice D Barrow, JCCJ**
**Mr Justice A Burgess, JCCJ**
**Mr Justice P Jamadar, JCCJ**

**Appearances**

Mr Anthony Astaphan SC, Mr Lennox Lawrence, Mrs Heather Felix-Evans and Ms Jodie Luke for the Appellants

Ms Cara Shillingford and Mr Wayne Benjamin Marsh for the Respondents

*Elections – General election – Election offences – Allegation of treating -Whether a Magistrate has jurisdiction to try a member of the House of Assembly for the statutory offence of treating – Election jurisdiction vested in the High Court – Whether charge must be heard and determined by the High Court by way of an election petition – Whether provisions of the House of Assembly (Elections) Act relating to the election offence of treating are inconsistent with s 40 (1) of the Constitution, which grants jurisdiction to the High Court to hear and determine any questions of membership – Magistrate's Code of Procedure Act s68 - House of Assembly (Elections) Act - ss 59 and 61 - Constitution of the Commonwealth of Dominica s 40 (1).*

**SUMMARY**

The issue in this appeal is whether a Magistrate has the jurisdiction to hear and determine a charge of treating against a member of the House of Assembly. The issue originated with the filing of criminal complaints in the Magistrates' Court by the Respondents pursuant to sections 56 and 59 of the House of Assembly (Elections) Act (the "Elections Act"). The Respondents alleged that the Appellants (members of the Dominica Labour Party, "DLP") were guilty of the offence of treating by hosting two free public concerts shortly before the 2014 General Elections, intending thereby to corruptly influence the electorate to vote for the DLP.

After the Magistrate issued the summonses, the Appellants sought judicial review of his decision to assume jurisdiction over the complaints. Stephenson J held that the Magistrate was acting in excess of his jurisdiction since a charge of treating challenged the validity of the Appellants' election, and as such, any action had to be brought byelection petition to the High Court. This view was premised on section 40 (1) (a) of the Constitution which provides that the High Court has the jurisdiction to hear questions of membership and questions concerning the validity of an election. The summonses were quashed.

The Respondents appealed. The majority Court of Appeal decided in favour of the Respondents and reinstated the summonses. The majority stated that section 59 created a summary process and gave the Magistrate the power to summarily try and convict a person for treating. That power did not intrude upon the accepted exclusive jurisdiction of the High Court in section 61 of the Elections Act and section 40 (1) (a) of the Constitution to determine questions of membership of the House. Therefore, the relevant sections did not conflict.

The Appellants appealed to the CCJ. The judgment of the Court was delivered by the Honourable Mr Justice Anderson, JCCJ, who crystallised the issues before the Court as falling under four headings: the 'Parallel Modes of Trial Point'; the 'Constitutionality Point'; the 'Weight of Jurisprudence Point' and the 'Equality before the Law Point'.

In relation to the 'The Parallel Modes of Trial Point', the Court stated that, where a candidate was involved, there were two distinct modes of addressing elections offences, evident on a reading of the Elections Act. First, the summary offences procedure, where offences like treating are tried before a Magistrate. Second, the election petition procedure, which was concerned with the undue return or undue election of a member of the House and where one of the bases upon which such return or election can be found to be undue is the engagement in certain corrupt practices, inclusive of treating. The imposition of the disqualification from retaining a seat in the House set out in the section 61 of the Act did not fall within the summary jurisdiction mode of trial and therefore, was not within the Magistrate's power.

In relation to the 'Constitutionality Point', the Court found that the relevant provisions of the Elections Act did not conflict with section 40 (1) of the Constitution. First, summary proceedings for treating did not concern the validity of elections; they were concerned to vindicate the criminal law. Second, on reading section 35 (4) of the Constitution, it was clear that 'any person' may be convicted of treating and such conviction impacts, inter alia, their membership, or prospective membership, in the House. Such a person necessarily included members of the House of Assembly.

In relation to the 'Weight of Jurisprudence Point', the Court held that the cases relied on by the Appellants were all inapplicable to the present appeal as they dealt with the quite separate issue of the exclusive jurisdiction of the High Court, to determine the validity of an election by way of election petition. The proceedings before the Magistrate did not directly concern any question of validity of elections, it concerned the criminal prosecution of the summary offence of treating.

In relation to the 'Equality Before the Law Point', the Court agreed with the Respondents that the Appellants' contention, if correct and put into practice, would create two categories of offenders, that is, ordinary citizens subject to the summary prosecution process and members of the House who were immune from it. Such an interpretation offended the principles of equality before the law and the rule of law

which were deeply embedded in the Constitution. There was no evidence that it was the intention of the Legislature of Dominica to create this bifurcation in the exposure to the criminal law.

In a concurring judgment, Burgess JCCJ agreed with the decision of the majority, that the appeal should fail, but did not agree with all of the majority's reasoning to that decision. Specifically, the Honourable Judge found that the seven constitutional grounds raised in the appeal were not properly before the Court. Sections 103 and 104 of the Constitution were relevant in coming to this conclusion. The former provision is described by Dr Francis Alexis as the 'general constitutional redress' provision and the latter, the 'general constitutional redress reference' provision. The Constitution has established a system for constitutional redress and interpretation which is reinforced by Parts 56 and 61 of the Eastern Caribbean Supreme Court Procedure Rules (CPR). As such, no question relating to constitutional redress and interpretation can be raised by way of a segue as was done in this case, in a claim for judicial review. This threatened to encroach on the majesty of the Constitution.

Justice Burgess then turned to the reason why, in his opinion, the appeal should fail. The Honourable Judge noted that the Elections Act created a two-pronged punitive approach aimed at eliminating corrupt electoral practices, first, the imposition of criminal consequences and second, the unseating of successful candidates. A comparative analysis of legislation from various Commonwealth jurisdictions demonstrated that this two-pronged approach is not anomalous. The Appellants argued that the words, "every person" in section 56 of the Elections Act did not encompass successful candidates, and Justice Burgess found that in the absence of express language by Parliament, that argument must fail.

The appeal was dismissed, the essential orders of the Court of Appeal affirmed, and the Appellants were ordered to pay to the Respondents EC$25,000 in costs, in furtherance of the pre-trial agreement between the parties.

**Cases referred to:**

*Ali v David and Chief Election Officer* [2020] CCJ 10 (AJ); *Attorney General v Jones* [2000] QB 66; *Attorney General of Saint Christopher and Nevis v Douglas* (2020) 96 WIR 355, [2020] 5 LRC 1; *Attorney General of Saint Christopher and Nevis v Douglas* (Saint Christopher and Nevis HC, 2 July 2018); *Blackburn case* (1869) 1 O'M & H

198; *Browne v Francis-Gibson* (1995) 50 WIR 143; *Dabdoub v Vaz* (2009) 75 WIR 357; *Defoe v Skerrit* (Eastern Caribbean Supreme Court CA, 28 May 2020) (Dominica); *Durand v President of the Commonwealth of Dominica* (Dominica HC, 17 April 2020); *Gairy v The Attorney General of Grenada* [2001] 1 LRC 119; *George v The Senior Magistrate and the DPP* (Saint Christopher and Nevis HC, 15 January 2019); *Green v Saint Jean* (Dominica HC, 7 June 2011); *Habet v Penner* (Belize SC, 4 May 2012); *Hamilton v Liburd* (Saint Christopher and Nevis HC, 3 April 2006); *Hughes v Marshall* (1831) 2 C & J 118, (1831) 149 ER 49; *Joseph v Codrington* (Antigua and Barbuda HC, 30 June 2009); *Joseph v Reynolds* (Eastern Caribbean Supreme Court CA, 31 July 2012) (Saint Lucia); *Nedd v Simon* (1972) 19 WIR 347; *Panday v Gordon* [2005] UKPC 36, (2005) 67 WIR 290; *Petrie v The Attorney General* (1968) 14 WIR 292; *Prevost v Blackmore and the Returning Officer for the Mahaut Constituency* (Dominica HC, 14 September 2005); *Quinn-Leandro v Jonas* (2010) 78 WIR 216; *Radix v Gairy* (1978) 25 WIR 553; *Ram v The Attorney General* [2019] CCJ 10 (AJ), [2019] 4 LRC 554; *Russell (Randolph) v Attorney General of Saint Vincent and the Grenadines* (1995) 50 WIR 127; *Sabaroche v Speaker of the House of Assembly of Dominica* (1999) 60 WIR 235; *Sharma v Brown-Antoine* (2006) 69 WIR 379; *Singh v Perreira* (Guyana CA, 11 November 1998); *Webster v Attorney General of Trinidad and Tobago* [2015] UKPC 10, [2015] ICR 1048; *Williams v Giraudy and Bourne* (1975) 22 WIR 532

**Legislation referred to:**

**Australia** - Commonwealth Electoral Act 1918; **Barbados** - Barbados Election Offenses and Controversies Act, Rev Ed 1971, Cap 3; **Canada** - Canada Elections Act S C 2000, c 9; **Dominica** – Constitution of the Commonwealth of Dominica, Rev Ed 1990, Cap 1:01, House of Assembly (Disqualification) Act, Rev Ed 1990, Cap 2:02, House of Assembly (Elections) Act, Rev Ed 1990, Cap 2:01, Magistrate's Code of Procedure Act, Rev Ed 1990, Cap 4:20; **Guyana** - Constitution of the Co-operative Republic of Guyana, Rev Ed 2011, Cap 1:01, National Assembly (Validity of Elections) Act, Rev Ed 2011, Cap 1:04; **Jamaica** - Representation of the People Act, Cap 342, Elections Petitions Act, Cap 107; **New Zealand** - Electoral Act 1993; **Trinidad and Tobago** - Representation of the People Act, Rev Ed 2006, Cap 2:01; **United Kingdom** - Bill of Rights 1688 (1 Will & Mar sess 2 c 2); Commonwealth of Dominica Constitution Order 1978/1027, First Statute of Westminster 1275 (3 Edw 1 c 5), Parliamentary Elections Act 1868 (31 & 32 Vict c 125), Representation of the People Act 1949 (12, 13 & 14 Geo 6 c 68), Representation of the People Act 1983 (c 2)

**Other sources referred to:**

Alexis F, *Changing Caribbean Constitutions* (2nd edn, Carib Research & Publications Inc, 2015); Eastern Caribbean Supreme Court Civil Procedure Rules 2000; Orr G, 'Suppressing Vote-Buying: The War on Electoral Bribery from 1868' (2006) 27 J Legal Hist 289; Trinidad and Tobago Consolidated Civil Proceedings Rules 2016

**JUDGMENT**
**of**
**The Honourable Mr Justice Saunders, President**
**and The Honourable Justices Wit, Anderson, Rajnauth-Lee, Barrow**
**and Jamadar, Judges**

**Delivered by**
**The Honourable Mr Justice Anderson**

**and**

**CONCURRING JUDGMENT**
**of**
**The Honourable Mr Justice Burgess**

**on the 9th day of March 2021**

**JUDGMENT OF THE HONOURABLE MR JUSTICE ANDERSON, JCCJ:**

## Introduction

[1] The central issue in this appeal is whether a Magistrate in the Commonwealth of Dominica has jurisdiction to hear and determine a charge of treating against a duly elected and sitting member of the House of Assembly, or whether such a charge must instead be heard and determined by the High Court, by way of an election petition. The issue has importance for the membership and composition of the House because, if convicted, the member, in addition to any other punishment imposable by the Magistrate, is statutorily rendered incapable of retaining his seat and ineligible to seek election for seven years. Reversing the decision of the trial judge, the Court of Appeal, by majority, held that a Magistrate did, in fact, have jurisdiction to try persons, including a member, for the offence of treating. It is this decision of the Court of Appeal that is on appeal in these proceedings.

## Background

[2] A general election was held in the Commonwealth of Dominica on 8 December 2014. The election was mainly contested by the Dominica Labour Party ("DLP") and the United Workers' Party ("UWP"). The DLP, led by Mr

Roosevelt Skerrit, won the majority of seats in the House of Assembly and so formed the new government. A subsequent general election, held on 6 December 2019, was again contested by the DLP and the UWP, and was again won by the DLP, but the 2019 election is not directly relevant in this case.

[3] Shortly before the 2014 election, the DLP held two free public concerts in Roseau. The three respondents ("the Respondents") alleged that the concerts amounted to the commission of the election offence of treating. Five months after the election, in May 2015, the Respondents filed criminal complaints in the Magistrates' Court against the fifteen successful DLP candidates ("the Appellants") alleging that they had committed the offence of treating, contrary to section 56 of the House of Assembly (Elections) Act Cap 2:01 ("the Act" or "the Elections Act"). The particulars of the complaints are that the Appellants worked together to influence the results of the election by holding free public concerts on 28 November 2014 and 6 December 2014 at Windsor Park in Roseau, Dominica, with performances by international gospel and reggae stars, "for the purpose of corruptly influencing the Dominican electorate"[1] to vote for the candidates of the DLP in the general election, contrary to section 56 of the Elections Act.

[4] Consequent upon the filing of the complaints, the Magistrate duly signed and issued his summonses directing the Appellants to appear to answer the complaints. Having been served with the summonses, the Appellants filed an application for judicial review in the High Court seeking to set aside and quash the complaints on the grounds that they did not disclose an offence under section 56 of the Elections Act; that the complaints were time-barred having been filed outside of the twenty-one day limitation period under section 65 of the Elections Act for filing an election petition; that they were an attempt to subvert the time restriction in section 65; and that the Magistrate acted in excess of his jurisdiction in issuing the summonses. The Respondents, who were interveners in the application for judicial review, opposed the application.

[1] Complaint laid on 28 May 2015, paras (i) and (ii).

**Judicial Review in the High Court**

[5] The application was heard by Stephenson J, ("the learned trial judge"), who held that the Respondents' attempt to charge the Appellants with the election offence of treating could not be heard by a Magistrate. The learned trial judge so held for the reasons that: (i) the effect of the charges of treating that were brought by the Respondents was to challenge the validity of the election of the Appellants; (ii) the validity of an election could only be challenged in the High Court by way of an election petition brought in accordance with the provisions of the Elections Act; and (iii) section 59 of the Act, which permits trial of the offence of treating by the Magistrate, was in conflict with section 40 (1) (a) of The Constitution of Dominica ("the Constitution") which provides that the High Court shall have jurisdiction to hear and determine any question regarding the validity of the election of a candidate, and therefore, had to be construed in a manner that brought it into conformity with the Constitution. The learned trial judge considered that it could not have been the intention of the legislature to dictate the composition of the House of Assembly by a summary jurisdiction process. She concluded that the Magistrate acted in excess of his jurisdiction by entertaining the complaints and issuing the summonses. The learned trial judge quashed the complaints and summonses and made no order for costs.

**Appeal in the Court of Appeal**

[6] The Respondents were dissatisfied with the learned trial judge's decision and appealed to the Court of Appeal, which by a majority, (comprising Michel JA and Webster JA (Ag)), allowed the appeal and ordered the reinstatement of the complaints and summonses. Each party was ordered to bear his or her own costs of the appeal and his or her own costs in the High Court. A strong dissent was entered by Blenman JA, who, however, would also have ordered that the parties bear their own costs of the appeal.

[7] Webster JA (Ag), who delivered the leading judgment for the majority, distilled the several important matters raised in the appeal as revolving around the main issue of whether the Magistrate had jurisdiction to try the Respondents for the

statutory offence of treating. In a commendably clear and skilful opinion, the learned Justice of Appeal found that the Magistrate had jurisdiction under section 59 of the Elections Act to try the Appellants, and that such a trial was not a challenge to the validity of their 2014 election. If they were convicted, the Magistrate would impose such sentences as he saw fit under section 59 of the Act, but that had nothing to do with the stipulation under section 61 of the Act which provided that upon conviction for treating, an elected member was incapable of retaining his or her seat. As section 59 was not concerned with the validity of the election, it was not inconsistent with section 40 (1) of the Constitution which gave the High Court jurisdiction to determine the validity of elections.

[8] Michel JA agreed. Section 59 of the Elections Act under which the Appellants had been charged made no exception for members of the House of Assembly. The effect of a conviction would not be to invalidate the election of the member and therefore, did not intrude upon the exclusive jurisdiction of the High Court to determine the validity of the election, even though the summary conviction could have the consequence under section 61 of the Act of disqualifying a member from retaining his or her seat.

[9] The majority further explained that the effect of upholding the learned trial judge's decision would be that the only way of proceeding against a member accused of committing the offence of treating would be by way of election petition to the High Court under section 65 of the Elections Act, thereby challenging the validity of his or her election. This would create two types of offenders, namely, non-parliamentarians who could be charged, convicted, and sentenced by the Magistrates' Court, and members of the House who were immune from criminal prosecution. The majority considered that to imply such an immunity was offensive to the principle of equality before the law and to the rule of law.

[10] Blenman JA dissented. The learned Justice of Appeal reasoned that section 40 (1) (a) of the Constitution as interpreted in numerous precedents, gave the High Court exclusive jurisdiction to hear allegations of pre-election infractions by way of election petition. When stripped of its niceties, the allegation of treating

questioned whether the Appellants were validly elected or, at the very least, whether they could have retained their seats. The Justice of Appeal agreed with the learned trial judge that sections 59 and 61 were inconsistent with the Constitution because when section 59 was read with section 61, it was evident that the Magistrate could disqualify a member from retaining his or her seat in the House. Applying Paragraph 2 (1) of Schedule 2 to the Constitution Order, Blenman JA therefore held that sections 59 and 61 must be read with the necessary modification to bring them into conformity with the Constitution.[2] The result of that modification was that section 59 and 61 of the Elections Act were inapplicable to elected members.

**Appeal to the CCJ**

[11] The Notice of Appeal filed on 10 September 2020 in the CCJ, listed nine grounds of appeal against the decision of the Court of Appeal. The essential case for the Appellants[3] is that under the Constitution the High Court enjoys exclusive jurisdiction to hear and determine all election petitions concerning an undue election or undue return against an elected Member. They maintain that an allegation of the corrupt practice of treating is directly relevant to the question of an undue return. Were the High Court to find that a corrupt practice had been committed by an elected Member and make a report of guilty, as it would be required to do, the Member would be incapable of retaining his or her seat. The Respondents submit that this special jurisdiction of the High Court was not so engaged because the complaints of treating were summary offences which would form the subject of a complaint before a Magistrate, and not allegations of undue election or return which would form the subject of an election petition to the High Court. They claim that the Magistrate had jurisdiction to consider and determine the complaints.

[12] The parties disagree on four main points which may conveniently be encapsulated as follows: (i) whether two parallel systems of adjudication existed under the Elections Act, one under the jurisdiction of the Magistrate and the

[2] Commonwealth of Dominica Constitution Order, sch 2, para 2(1): "The existing laws shall, as from the commencement of the Constitution, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order."
[3] Submission in *Skerrit v Defoe*, 29 October 2020, at [8].

other under the jurisdiction of the High Court, to try treating, ("the two parallel modes of trial point"); (ii) whether the summary trial of the offence of treating was consistent with the constitutional provisions for giving the High Court jurisdiction to determine the validity of elections and the composition of the House of Assembly, ("the constitutionality point"); (iii) whether the decades of election law decisions by Caribbean courts had confirmed the exclusive jurisdiction of the High Court to try, by way of election petition, all electorally corrupt practices (such as treating) that could have the effect of altering the composition of the House, ("the weight of jurisprudence point"); and (iv) whether an interpretation of the Elections Act that led to different treatment by the criminal law of members of the House as compared with ordinary citizens would breach the constitutional principles of the rule of law and equality before law ("the equality before the law point").

(i) **The Two Parallel Modes of Trial Point**

[13] Part V of the Elections Act (sections 49-64) is headed 'Election Offences' and provides for the criminal trial of the election offences of, inter alia, bribery, treating, undue influence and personation. Section 56 defines the offence of treating as follows:

> The following persons shall be deemed guilty of treating within the meaning of this Act:
>
> > (a) every person who corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly, gives, or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or to refrain from voting at the election, or on account of that person or any other person having voted or refrained from voting at the election;
> >
> > (b) every voter who corruptly accepts or takes any such food, drink, entertainment, or provision.

[14] Section 59 of the Act prescribes the penalty for a person found guilty of the election offences of bribery, treating or undue influence. The section provides,

> "every person who is guilty of bribery, treating or undue influence under

> the provisions of this Act is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months."

[15] Part V, therefore, through its diverse sections, provides for summary trial of persons alleged to have committed the offence of treating and sets out the extent of the Magistrate's power to impose punishment on those found guilty of having committed the offence. Section 20 (b) of the Magistrate's Code of Procedure Act as amended[4] ("the Magistrate's Code of Procedure Act") stipulates that in all cases where a charge or complaint is made before a Magistrate, "that any person, … has committed or is suspected of having committed any offence punishable on summary conviction", the Magistrate may issue a summons requiring that person to appear before the Magistrates' Court to answer the charge or complaint. Section 68 of the Magistrate's Code of Procedure Act specifies that charges must be made within six months from the time of the matter giving rise to the charge unless another period is stipulated.

[16] The preceding statements of law are not disputed and are indisputable. An apparent complication is introduced by section 61 of the Elections Act which provides for certain incapacities upon conviction for specified election offences, including treating.

As far as relevant, the section reads as follows:

> Every person who is convicted of … treating… shall (in addition to any other punishment) be incapable during a period of seven years from the date of conviction –
>
> > (a) of being registered as an elector, or voting at any election of a member of the House of Assembly;
> >
> > (b) of being elected a member of the House of Assembly or if elected before his conviction, of retaining his seat as such member.

We shall shortly return to the consequences, if any, of section 61 for the summary mode of trial for the offence of treating.

[17] Part VI of the Act (sections 65-68) is concerned with the undue return or undue election of a member of the House. One of the bases upon which such return or

[4] Cap 4:20.

election can be found to be undue is the engagement in certain corrupt electoral practices. These corrupt practices are tried by way of an election petition before the High Court. Section 65 prescribes the election petition procedure in the following terms:

> A petition complaining of an undue return or undue election of a member of the House of Assembly, in this Act called an election petition, may be presented to the High Court by any one or more of the following persons:
>
> (a) some person who voted or had a right to vote at the election to which the petition relates;
>
> (b) some person claiming to have had a right to be returned at the election;
>
> (c) some person alleging himself to have been a candidate at the election.

[18] Section 66 provides for the trial of election petitions and reads:

> Every election petition shall be tried before the High Court in the same manner as a suit commenced by a writ of summons. At the conclusion of the trial, the Judge shall determine whether the member of the House of Assembly whose return or election is complained of or any and what other person was duly returned or elected, or whether the election was void, and shall certify the determination to the President and, upon the certificate being given, the determination shall be final; and the return shall be confirmed or altered, or a writ for a new election shall be issued, as the case may require, in accordance with the determination.

[19] Section 67 provides that the powers of the judge trying the election petition shall, subject to the Elections Act and any Proclamation made by the President, be as nearly as circumstances will admit, to a trial of a civil action in the High Court. Section 68 outlines the time-sensitive procedure to be followed for presenting an election petition. It requires that a petition be presented within twenty-one days after the return of the member, unless the petition concerns a corrupt practice and specifically alleges payment of money or other reward, since the time of the return, in which case the petition may be presented at any time within twenty-eight days of payment.

[20] It would therefore appear that the Elections Act presents at least two separate and distinct modes for addressing treating. Part V prescribes the summary

offences procedure whereby treating (as well as bribery and undue influence[5]) are triable in the Magistrates' Court. Part VI prescribes the election petition procedure whereby allegations of corrupt practices involving payment of money or other reward are heard in the High Court. It should also be noted that Part V appears to prescribe a third mode whereby the election offence of personation is triable on indictment.[6]

[21] The Appellants argued against the existence of parallel modes of trial for two reasons. First, treating, it was said, was an example of a corrupt practice that went to the validity of the election and therefore fell within the exclusive jurisdiction of the High Court under section 68 of the Elections Act. Second, the effect of sections 59 and 61 of the Act, when read together, was that a conviction for treating in the Magistrates' Court, when the accused is a member or aspiring member of the House, had the inevitable consequence of disqualifying the convicted member from being a member of the House and would therefore, intrude upon the exclusive jurisdiction to determine the composition of the House given to the High Court by section 40 (1) of the Constitution.

[22] It is true that the offence of treating is of great antiquity and can be traced to ancient common law designed to stamp out corrupt electoral practices and thus enhance the integrity of elections. Electoral corruption was rampant with the shift from parliamentary service being considered a burdensome duty, at least until the Sixteenth Century, into being regarded as an office of value. In the Parliamentary Elections Act 1868, the English Parliament finally conceded to the courts, the role of trying cases of alleged electoral corruption which, as Australian elections law scholar, Dr Graeme Orr reports, "led to a flowering of jurisprudence, reported in the seven-volume specialist series, O'Malley and Hardcastle's *Election Cases*."[7] Treating was therefore known as a corrupt electoral practice for over eighty years before its inclusion as a summary offence in the Elections Act. The very definition of treating in the Act specifically emphasises the requirement **for a corrupt purpose**. Under section 56, it is not

[5] See the House of Assembly (Elections) Act, ss 55 and 57.
[6] The indictable offence of personation is dealt with in ss 58 and 60.
[7] Graeme Orr, 'Suppressing Vote-Buying: The 'War' on Electoral Bribery from 1868', (2006) 27 Legal Hist 289, 291.

the mere payment of expenses or the provision of goods, drink or entertainment that constitutes treating; **there must be a corrupt intent to influence** the person receiving these favours to exercise his or her franchise in a particular way.[8]

[23] Section 61 of the Elections Act does not affect the section 59 jurisdiction of the Magistrate in any way. The section 61 incapacities that are sustained by a person on conviction for treating are separate from and in addition to the punishment imposed by the Magistrate. The Magistrate exercises absolutely no discretion in the imposition of the section 61 incapacities. Given the words in that section ("in addition to any *other* punishment"), those incapacities are, in fact, an additional mandatory sanction. A conviction for treating, if not appealed or on appeal upheld, has the ultimate effect that the convicted person, if elected before his or her conviction, is by statute, incapable of retaining his or her seat as an elected member of the House of Assembly but, as was said in the court below, this would be purely a matter of law brought about by the operation of section 61 of the Act.[9]

[24] Therefore, purely as a matter of statutory interpretation, the parallel modes of the summary trial of the offence of treating and the trial of the corrupt practice of treating in an election petition, coexist peaceably in the Elections Act. As a matter of policy, they serve very different ends. The summary offence mode in the Magistrates' Court serves the objective of subjecting election offences to the scrutiny of the criminal law and the imposition of the sanctions of the criminal law, namely a fine or imprisonment, whereas the electoral mode of interrogating corrupt practices in the High Court serves the purpose of determining the validity of elections, the composition of Parliament, and the imposition of electoral incapacities and disqualifications. The criminal mode is concerned with the establishment of criminality; the electoral mode is concerned with whether the returned candidate can properly be said to represent the popular will of the electorate. The two modes differ in their timeframe for commencing litigation (twenty-one or twenty-eight days, as the case may be, for election petitions; six months for summary offences); the applicable standard of proof (summary offences must be proved beyond reasonable doubt; election petitions

[8] The need for a corrupt intent is emphasised in the hundreds of cases reported in O'Malley and Hardcastle's *Election Cases.*
[9] See, *Defoe v Skerrit* at para [102] (Webster JA).

are generally established on a balance of probabilities, although allegations of fraud may require a higher level of proof); and the possible levels of appeals (election petitions may be appealed only to the Court of Appeal; summary convictions may be appealed ultimately to the CCJ).

[25] The Representation of the People Act 1983 of the United Kingdom[10] ("the UK Act") has a similar structure and intent as the Elections Act of Dominica. Sections 113-115 of the UK Act classify the offences of bribery, treating and undue influence as corrupt practices that are punishable by the criminal process. It is also a corrupt practice for a candidate or election agent to knowingly make a false declaration (section 82 (6)). A corrupt practice may be triable on indictment where conviction attracts a term of imprisonment not exceeding two years and/or a fine; or may be tried by way of summary proceedings where conviction carries a term of imprisonment not exceeding six months and/or a fine not exceeding the statutory maximum.

[26] Section 122 of the UK Act provides, in the same terms as section 68 of the Elections Act, for the presentation of the election petition within twenty-one days after the election of the member, unless, the petition relates to a corrupt practice and specifically alleges payment of money or other reward, since the election in which case the petition may be presented within 28 days of the payment. Where a candidate is reported by an election court of being guilty of a corrupt practice, his election shall be void[11] and, for a specified number of years,[12] he shall be incapable of being registered as an elector, or of being elected to the House of Commons, or of holding any public or judicial office.[13] If the person was already elected to a seat in the House of Commons, he shall vacate the seat from the date of the report.[14]

[27] The provisions in the UK Act prescribing parallel modes of trying corrupt practices were illustrated in *Attorney General v Jones.*[15] Mrs Jones was elected

[10] The Representation of the People Act 1983 (c 2).
[11] ibid s 159.
[12] ibid s 160 (5): "For the purposes of subsection (4) above the relevant period is the period beginning with the date of the report and ending—
(a)in the case of a person reported personally guilty of a corrupt practice, five years after that date, or
(b)in the case of a person reported personally guilty of an illegal practice, three years after that date."
[13] Section 160 (4) of the UK Act.
[14] 9 July 1955 and 18 October 1955
[15] [2000] QB 66.

as a Member of the House of Commons at the general election held in May 1997. In March 1999 – nearly two years after the twenty-one days limit for filing an election petition had expired – she was convicted on indictment of the corrupt practice of knowingly making a false declaration as to election expenses contrary to section 82 (6) of the UK Act. As a consequence of the conviction, the Speaker of the House of Commons declared Mrs Jones' seat vacant. However, within a month, the conviction was overturned on appeal and thereafter, the Attorney-General, acting on behalf of the Speaker, sought and obtained a declaration from the Queen's Bench Division of the High Court that, as a by-election had not been held to fill the seat, Mrs Jones was entitled to resume her seat in Parliament.

[28] Mrs Jones' alleged infractions could equally have been raised by way of an election petition, within the rules established for this, or by way of criminal prosecution, as indeed it was. Evidently, the conviction which resulted from that prosecution could have affected, and did in fact affect, the composition of Parliament.

[29] A related point is worth noting. As indicated earlier [at para 25], the offence of commission of a corrupt electoral practice in *Jones* was triable either way and could, therefore, have been tried summarily. A summary conviction would have also precluded her retention of her seat in Parliament. The poorly reported Jamaican case of *Rose Leon v R*[16] is illustrative of an election offence being tried summarily and impacting the membership of Parliament. Mrs Leon, a sitting Member of the House of Representatives, was convicted in the Clarendon Resident Magistrates' Court for making false statements about a candidate of the opposing political party for the upcoming general election, contrary to the Representation of the People Act, and her appeal to the Court of Appeal was dismissed. Mrs Leon's seat in Parliament was declared vacant, and she was disqualified from contesting the next general election.

[30] In sum, then, the Elections Act of Dominica, in common with election laws elsewhere in the Commonwealth, prescribes criminal prosecutions and election petitions as separate and independent modes for the trial of the election offence

[16] The only reports to date are from the Daily Gleaner of 9th July 1955; and 18th October 1955.

of treating and for the trial of treating as a corrupt electoral practice. Both modes could, ultimately, have the effect of disqualifying someone from membership of the House but they are attended by different procedures, exhibit different features and characteristics, and serve different ends. There is no conflict within the Act in relation to these modes of pursuing the election offence, or the corrupt practice, of treating.

(ii) **The Constitutionality Point**

[31] The Constitution is the supreme law of the Commonwealth of Dominica and prevails over any other law that is inconsistent with it, to the extent of the inconsistency.[17] Paragraph 2 (1) of Schedule 2 of the Constitution Order (*supra*) stipulates that if there is any conflict between another law and the Constitution, that other law must be modified so as to bring it into conformity with the Constitution and the Supreme Court Order. The issue for present consideration is whether the provisions of the Elections Act relating to the criminal prosecution of the offence of treating are inconsistent with section 40 (1) of the Constitution, which grants jurisdiction to the High Court to hear election petitions, such as to be rendered void to the extent of the inconsistency, or to invite the question of modification to bring about conformity with the Constitution and the Supreme Court Order.

[32] Section 40 (1) of the Constitution confers jurisdiction on the High Court to determine any question concerning the validity of elections and the membership of the House of Assembly. As far as relevant, the section reads:

> (1) The High Court shall have jurisdiction to hear and determine any question whether –
>
> > (a) any person has been validly elected as a Representative or Senator; …
> >
> > (d) any member of the House has vacated his seat or is required, under the provisions of section 35(4) of this Constitution, to cease to perform any of his functions as a member of the House.

[33] The section does not in precise terms provide that the jurisdiction it confers is exclusive, but it is well understood in Caribbean jurisprudence that the High

[17] Constitution of the Commonwealth of Dominica, s 117 ("supreme law clause").

Court jurisdiction described in section 40 (1) is exclusive and exclusionary. No other court may hear and determine the question of whether any person has been validly elected or whether any member has or is required to vacate his or her seat or must cease to perform his or her functions as a member of the House. Any attempt by another court to adjudicate these questions would be unwarranted and unlawful. As was said by this court in *Ali and another v David, Chief Election Officer and others*[18] in context of matters falling within the exclusive jurisdiction of the Guyana High Court under Article 163 of the Guyana Constitution, any such attempt would likely constitute a trespass on the jurisdiction of the High Court.[19]

[34] The mode and manner of the exercise of the section 40 (1) High Court jurisdiction are expressly provided in the Constitution and the Elections Act of Dominica. It has already been seen that the Act establishes that questions as to the validity of the election of a member of the House must be brought to the High Court by way of an election petition complaining of an undue return or undue election and filed within twenty-one days of the member's election. At the conclusion of the trial of the petition, the High Court determines whether the member was validly elected: *Quinn-Leandro v Jonas, Maginley v Fernandez, Spencer v St Clair Simon;*[20] *Dabdoub v Vaz and others;*[21] *Nedd v Simon*[22] and *Radix v Gairy.*[23] Where the challenge seeks to disqualify a sitting member from continuing to sit as a member of the House, the procedure to be followed may not be the election petition but rather, an application by fixed date claim form, as was illustrated in the recent case of *Attorney General of St Christopher and Nevis v Dr Denzil Douglas.*[24]

[35] Basing themselves on the accepted premise that treating is an instance of a corrupt practice, the Appellants argue that section 59 of the Elections Act, which gave the Magistrate power to try the offence of treating, when conjoined with the fact that a conviction automatically triggers section 61, which rendered a

[18] [2020] CCJ 10 (AJ) (GY).
[19] ibid., at [31].
[20] (2010) 78 WIR 216.
[21] (2009) 75 WIR 357.
[22] (1972) 19 WIR 347.
[23] (1978) 25 WIR 553.
[24] Saint Christopher and Nevis HC 2 July 2018; (2020) 96 WIR 355.

sitting member convicted of treating incapable of retaining his or her seat, gave rise to an immediate and obvious conflict with section 40 (1) of the Constitution, which gave the High Court exclusive jurisdiction to determine the composition of Parliament. The argument appears to be that all allegations of the commission of offences of corrupt practice challenge the validity of the election or due return of the elected member and therefore, must be pursued by election petitions before the High Court.

[36] This argument cannot be accepted for two reasons. First, summary proceedings for the offence of treating are not proceedings to challenge the validity of elections or the due return of the elected member; questions of validity rest within the sole preserve of the High Court. Summary proceedings are intended to serve the altogether different purpose of vindicating the criminal law (see above, paras [23] – [24]). As was said by Ventose J in *Wingrove George v The Senior Magistrate and Another,*[25] where a charge of treating is laid against a sitting member of the House, that person "remains a validly elected member of the House of Assembly until he or she is convicted of treating by a Magistrate thereby becoming disqualified from retaining his or her seat as a member of the House of Assembly". The charge of treating is not required to be brought under section 65 which provides for complaints of an undue return or undue election of a member by way of election petitions, for the simple reason that the charge does not specifically challenge the return or election of the member. The elected member continues to function as any other member of the House until and unless prohibited from the ***prospective*** performance of those functions by the application of section 61. The charge is properly brought in summary proceedings to prosecute the alleged infraction of the criminal law, which if proved beyond a reasonable doubt, attracts the criminal penalties stipulated in section 59.

[37] Proceedings for the summary conviction for treating could have the effect of rendering a member incapable of retaining his or her seat under section 61. But not every proceeding that could lead to the incapability of the member retaining his or her seat must be brought by election petition to the High Court. The cases

[25] Saint Christopher and Nevis HC 15 January 2019.

of *Jones* and *Leon* have already been discussed, and the case of *Dr Denzil Douglas* has already been cited. *A propos*, section 35 (3) and section 35 (4) of the Constitution provide that a member may be required to vacate his seat if the member is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House; if he ceases to be a citizen of Dominica; if he is elected to be President or is elected to act as President; if he is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt, or convicted or reported guilty of an offence relating to elections. Proceedings for the disqualification of a member under these provisions clearly do not require presentation of an election petition.

[38] Second, the Constitution itself contains provisions which expressly anticipate that a sitting member may be convicted of treating and that such conviction may impact his or her membership of the House. Section 35 concerns the tenure of members of the House. It specifies the circumstances in which members are required to vacate their seat. Section 35 (4) provides for the vacating of the seat in the circumstance of the conviction of the member and is worth quoting in full:

> 35 (4) *(a)* If any circumstances such as are referred to in paragraph *(c)* of subsection (3) of this section arise because any member is under sentence of death or imprisonment, adjudged to be of unsound mind, declared bankrupt *or convicted or reported guilty of an offence relating to elections* and if it is open to the member to appeal against the decision (either with the leave of a court of law or other authority or without such leave), he shall forth with cease to perform his functions as a member but, subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:
>
> Provided that the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.
>
> *(b)* If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.
>
> *(c)* If at any time before the member vacates his seat such circumstances aforesaid cease to exist, his seat shall not become vacant on the

> expiration of the period referred to in paragraph *(a)* of this subsection and he may resume the performance of his functions as a member.

[39] The circumstances referred to in section 35 (3) (c) are those which, if the member had not been a member of the House, would cause that person to be disqualified from being elected or appointed as such by virtue of section 32 (1) of the Constitution or any other law enacted in pursuance of section 32 (2), (3) or (5). Section 32 (3) provides as follows:

> (3) If it is so provided by Parliament, a person who is convicted by any court of law of any offence that is prescribed by Parliament and that is connected with the election of members or who is reported guilty of such an offence by the court trying an election petition shall not be qualified, for such period (not exceeding seven years) following his conviction or, as the case may be, following the report of the court as may be so prescribed, to be elected or appointed as a member.

[40] The Appellants contend that sections 32 (3), 35 (4) and 40 of the Constitution, when interpreted in their historical context, excludes the summary jurisdiction of the Magistrate to try sitting members for election offences. They say the words, "any person convicted of such offence … or reported guilty of such offence by the court trying an election petition," were to be given a restricted meaning. The words "… or reported guilty of such offence by the court trying an election petition" were originally inserted in sections 25 (3), 28 (4) and 32 of the pre-independence 1967 Constitution and enacted in section 4 of the House of Assembly (Disqualification) Act.[26] The purpose and intent of these provisions were to draw a clear distinction between a person being convicted and one reported guilty; the 1967 Constitution had removed the pre-1967 jurisdiction of the Magistrate to hear complaints against elected members and vested it exclusively in the High Court. The sweeping away of the colonial jurisdiction of the Magistrate to hear election offences was confirmed in section 40 (1) of the independence Constitution, adopted in 1978.

[41] The difficulty with this contention is the express wording of the Constitution itself. As regards the alleged offender and the consequences of a conviction, the provisions of the Constitution make no distinction between a member of Parliament and any other person. Section 32 (3) speaks of "a person" being

[26] Cap 2:02.

convicted or reported guilty, and section 35 (4) speaks of "any member" being convicted or reported guilty. In both instances, the disqualifications are the same. Any doubt as to the applicability of section 35 (4) to sitting members of Parliament is removed by the cross reference to section 35 (3) (c), which provides that a member shall vacate his seat in the House if circumstances arise that, *if he were not a member*, would cause him to be disqualified to be elected or appointed. One such circumstance is that the member "*is convicted by <u>any</u> court of law of <u>any</u> offence that is prescribed by Parliament and that is connected with the election of members*".[27] The offence of treating as legislated in the Elections Act unquestionably constitutes an offence prescribed by Parliament and connected with the election of members of Parliament.

[42] Furthermore, the exclusivity of the High Court jurisdiction to hear and determine any question whether a member is required to cease to perform his or her functions as a member of the House is, by virtue of section 40 (1) of the Constitution, retained even in the face of a conviction in the Magistrates' Court.

[43] It therefore follows that there is no conflict between the provisions in the Elections Act which grant jurisdiction to the Magistrate to try any person for the election offence of treating (and bribery and undue influence) and section 40 (1) of the Constitution granting the High Court exclusive and exclusionary jurisdiction over questions concerning validity of elections and membership of the House of Assembly. In these circumstances, there is no opportunity to declare the provisions of the Act void or to entertain any question of modification in accordance with Paragraph 2 of Schedule 2 of the Constitution Order.

### (iii) **The Weight of Jurisprudence Point**

[44] Before the Court of Appeal and before this Court, the argument was advanced that the weight of decades of Caribbean jurisprudence favoured the interpretation of section 40 (1) of the Constitution as conferring an exclusive jurisdiction on the High Court to determine by way of an election petition

[27] See s 35 (3) (c) and s 32 (3).

whether a member had committed the election offence of treating. The cases cited or otherwise relied upon included the following: *Gladys Petrie and others v The Attorney-General and others*;[28] *William Bruce Williams v Emanuel Henry Giraudy and Eudes Bourne;*[29] *Daven Joseph v Chandler Codrington et al.;*[30] *Browne v Francis-Gibson and Another,*[31] *Russell (Randolph) et al v Attorney-General of St. Vincent and the Grenadines;*[32] *Eugene Hamilton v Cedric Liburd and Others;*[33] *Russell (Randolph) et al v Attorney General of St. Vincent and the Grenadines;*[34] *Julian Prevost v Rayburn Blackmore et al;*[35] and *Ram v The Attorney General and Others.*[36]

[45] It is not necessary to consider these cases in any detail because they dealt with the quite separate and uncontested proposition that the High Court has exclusive jurisdiction to determine the validity of elections by way of election petitions. In none of the cases cited or otherwise relied upon was there a decision on whether a member of Parliament could be criminally prosecuted for the summary election offences of bribery, treating or undue influence; or whether such offences could only be dealt with by way of an election petition before the High Court.

[46] Many of these cases simply emphasised that the exclusive and exclusionary jurisdiction of the High Court to determine the validity of elections by way of election petitions was essentially a parliamentary jurisdiction which had been assigned to the judiciary by the Constitution and by legislation; it is a special jurisdiction distinct and different from the ordinary civil or even constitutional jurisdiction: *Gladys Petrie and others v The Attorney-General and others*;[37] *William Bruce Williams v Emanuel Henry Giraudy and Eudes Bourne;*[38] *Russell (Randolph) et al v Attorney-General of St. Vincent and the Grenadines;*[39]*Eugene Hamilton v Cedric Liburd and Others.*[40] Several others emphasised that this

[28] (1968) 14 WIR 292.
[29] (1975) 22 WIR 532.
[30] Antigua and Barbuda HC 30 June 2009.
[31] (1995) 50 WIR 143.
[32] (1995) 50 WIR 127.
[33] Saint Christopher and Nevis HC 3 April 2006.
[34] (1995) 50 WIR 127.
[35] Dominica HC 14 September 2005.
[36][2019] CCJ 10 (AJ), [2019] 4 LRC 554.
[37] (1968) 14 WIR 292.
[38] (1975) 22 WIR 532.
[39] (1995) 50 WIR 127.
[40] Saint Christopher and Nevis 3 April 2006.

special jurisdiction features mandatory rules designed to ensure, inter alia, that disputed election proceedings were brought to completion expeditiously so that the legitimacy of a government should not long remain in question: *Julian Prevost v Rayburn Blackmore et al;*[41] *Ezechiel Joseph v Alvina Reynolds;*[42] *Browne v Francis Gibson;*[43] *Jacqui Quinn-Leandro v Dean Jonas;*[44] *Habet v Penner*[45] *Green v Saint Jean*[46] *Singh v Perreira; Jagan v Perreira.*[47]

[47] None of the cases cited purported to decide that election offences could only be tried by the High Court in election petitions. Insofar as there was developing a tendency in judicial pronouncements to give the exclusive election petition jurisdiction of the High Court a wide interpretation to encompass not just matters relating to the validity of the election of members, but also any matter that may ultimately affect the composition of the House of Assembly, these pronouncements went too far and ought not to be followed. The origin of this tendency may have been a misinterpreted statement made by Davis CJ in *Williams v Giraudy and Bourne*[48] where the Chief Justice said that section 34 (1) of the Constitution of Saint Lucia, which is similarly worded to section 40 (1) of the Dominica Constitution, confers "jurisdiction on the High Court in election matters". In the present case before this Court, the learned trial judge referenced this statement by Davis CJ as support for the conclusion that section 40 (1) of the Constitution, "confers jurisdiction solely on the High Court to deal with election matters."[49] Similarly, in *Loftus Durand and others v President of the Commonwealth of Dominica and others*[50] an application for judicial review based, inter alia, on alleged breaches of the nomination process and errors in the register of electors, and which sought an injunction to delay the 6 December 2019 elections, was dismissed at first instance. The Court of Appeal referenced several well-known authorities, including the dictum by Davis CJ, on the way to rejecting the application on the ground that as it represented an attack on the merits and validity of the pending election; it engaged the election jurisdiction

[41] Dominica HC 14 September 2005.
[42] Eastern Caribbean Supreme Court CA, 31 July 2012, (Saint Lucia).
[43] (1995) 50 WIR 143 at 148.
[44] (2010) 78 WIR 216 at [32].
[45] (Belize SC, 4 May 2012) at [38].
[46] (Dominica HC, 7 June 2011) at [69].
[47] (Guyana CA, 11 November 1998) at [19].
[48] (1975) 22 WIR 532.
[49] Para 70.
[50] (Dominica HC, 17 April 2020).

of the High Court under section 40 (1) and had to be pursued by way of an election petition after the elections.

[48] However, the dictum of Davis CJ in *Williams* was not at all attempting to describe the scope of matters which fell within the exclusive jurisdiction of the High Court. The Chief Justice was there dealing with the preliminary point of whether the Court of Appeal had jurisdiction to hear an appeal against an order made by a judge of the High Court, which had dismissed an application for enlargement of time to furnish particulars in an election petition. Counsel for the Applicant had submitted that section 34 (1) did not give jurisdiction to the High Court in elections petitions but rather dealt with membership of the House only. In rejecting that submission Davis CJ said:

> On a perusal of the provisions of the Constitution, *this section is the only one which confers jurisdiction on the High Court in election matters*. Counsel for the applicant submitted that this section did not give jurisdiction to the High Court in election petitions but rather dealt with membership only. I do not agree with this submission. Section 34 (1) (a) states that the court shall have jurisdiction to hear and determine any question whether any person has been validly elected as an elected member of the House of Assembly. In my view, this sub-paragraph gives jurisdiction to the court in election petitions and the means by which a question is determined whether a person is validly elected or not is by an election petition.[51]

[49] Evidently, in referring to section 34 (1) as the *only* section conferring the jurisdiction on the High Court in election matters, the learned Chief Justice was simply locating the relevant provision in the Constitution that dealt with jurisdiction in election matters. He was not thereby purporting to describe the width or scope of that jurisdiction, and he was certainly not suggesting that all election offences that could affect the composition of the House, had to be brought before the High Court by election petitions.

[50] The Appellants also placed significant reliance on the recent decisions of this Court in the consolidated appeals in *Ram v Attorney General of Guyana and others*[52] and *Ali and another v David, Chief Election Officer and others*[53] to

[51] (1975) 22 WIR 532 at 535. Emphasis added.
[52] [2019] CCJ 10 (AJ), [2019] 4 LRC 554.
[53] [2020] CCJ 10 (AJ) (GY).

support an exclusive jurisdiction in the High Court to try election offences against members of Parliament by way of election petitions. These cases must be distinguished on the basis that they were not at all concerned with election offences but rather with the interpretation of certain provisions in the Guyana Constitution.

[51] Among the provisions considered in *Ram* was Article 163 (1) which expressly provided, inter alia, that, "the High Court shall have exclusive jurisdiction to determine any question … regarding the qualification of any person to be elected as a member of the National Assembly". Article 163 (4) empowered Parliament to make provisions to govern the proceedings for the determination of questions raised in Article 163. The Parliament of Guyana did this by enacting the National Assembly (Validity of Elections) Act and Rules. These did not create election offences; rather, they expressly provided the redress procedure of election petitions to determine any question regarding the qualification of any member. Unsurprisingly, therefore, this Court held that the challenge to the qualification of a person to be elected as a member of the National Assembly had to be brought by election petition filed within the stipulated time (28 days in Guyana). This was because "The National Assembly (Validity of Elections) Act provides a complete code for challenging the validity of an election on the ground that a person is not qualified to be elected."[54]

[52] In *Ali,* this Court considered the effect of Order No. 60[55] issued by the Guyana Elections Commission (GECOM) to facilitate the recount of votes in the 2 March 2020 general election. An application had been made seeking to invoke the Court of Appeal's jurisdiction under Article 177 (4) of the Constitution, to challenge the credibility of the count by GECOM under Order 60. Article 177 (4) grants the Court of Appeal "exclusive jurisdiction to hear and determine any question as to the validity of an election of a President in so far as that question depends upon the qualification of any person for election or the interpretation of this Constitution…" The decisions by the Court of Appeal under Article 177 (4) are final and cannot be appealed to the CCJ. This Court held that the application, concerned as it was with the credibility of the recount, did not raise

[54] *Ram* at [41].
[55] As amended on 29 May 2020 by Order No. 69 of 2020.

issues which fell for final determination by the Court of Appeal under Article 177 (4). This Court therefore decided that the exclusive jurisdiction of the High Court under Article 163, to determine any question in relation to whether an election has been lawfully conducted, was unaffected by Order 60. Similarly unaffected was the National Assembly (Validity of Elections) Act ("the Validity Act") which provides the method of questioning the validity of an election through the filing of an election petition.

[53] Accordingly, no question of the competence to adjudicate criminal prosecution for an election offence arose in either *Ram* or *Ali*, and the statements by this Court in both cases are entirely consistent with the exclusive jurisdiction of the High Court to determine the validity of elections and the membership and composition of Parliament.

(iv) **The Equality Before the Law Point**

[54] Ms Shillingford argued that the Appellants' contentions that sitting members of Parliament were immune from being charged under the summary jurisdiction prescribed for the offences detailed in section 61 would produce two types of offenders: ordinary citizens who could be charged, convicted, and sentenced by a Magistrate; and members of the House who could not be exposed to prosecution. She contended that this discriminatory application of the criminal law would cause tension with the principles of equality before the law and the rule of law. Counsel drew the attention of the Court to dicta in several cases to underscore that persons holding high office no less than ordinary citizens are required to abide by the law. In the Privy Council decision in *Sharma v Brown-Antoine and others*[56] Lord Bingham said:

> The rule of law requires that, subject to any immunity or exemption provided by law, the criminal law of the land shall apply to all alike. A person is not to be singled out for adverse treatment because he or she holds a high and dignified office of State, but nor can the holding of such an office excuse conduct which would lead to the prosecution of one not holding such an office. The maintenance of public confidence in the administration of justice requires that it be, and be seen to be, even handed.

[56] (2006) 69 WIR 379 at [14].

[55] Similarly, in *Eric Matthew Gairy et al v The Attorney General of Grenada*[57] Byron CJ (as he then was) stated the following:

> Litigation between the citizen and the State has always been considered problematic. In constitutional democracies under the rule of law, however, the courts have assumed jurisdiction to hear and determine all disputes of a justiciable nature. The principle of equality before the law, where everyone whatever his rank or condition, is subject to the ordinary law, must result in every official from the Prime Minister down to a junior clerk having the same responsibility for every act done without lawful justification, as any other citizen.

[56] This Court agrees that the Appellants' contentions, if successful, would have implications for the rule of law and equality before the law; principles that are deeply embedded in the Constitution of Dominica. Under those contentions, allegations that a member of the House had committed any of the offences of treating, bribery or undue influence could only be brought by way of election petition under section 65 of the Elections Act, challenging the validity of that member's election. This would indeed create two separate and distinct categories of persons before the law. The first would be members of the House against whom petitions must be brought within twenty-one days; against whom no proceedings may be brought if the deadline is missed, or if the offence is committed between elections after the twenty-one period; and who, even if found guilty at the trial of the petition would be subject to the disqualifications provided in section 4 of the House of Assembly (Disqualification) Act ("the Disqualification Act") and sections 32 (3) and 35 (4) of the Constitution, but would not be eligible for any criminal sanctions. The member would be able to freely commit any of these offences as often as he or she wished, and the only possible sanction would be that, if successful in the next general election, the member could be challenged by filing an election petition within twenty-one days after that election. The second category would be ordinary citizens, including politicians who had not succeeded in being elected, who under section 59 of the Elections Act could be summarily prosecuted at any time within six months of the alleged commission of the offence of treating, bribery, or undue influence; and who, as well as suffering disqualifications under section 4 of the

[57] [2001] 1 LRC 119 at [9]; reversed by the Privy Council on grounds not affecting this dictum: [2001] UKPC 30.

Disqualification Act and sections 32 (3) and 35 (4) of the Constitution, could also be sentenced by the Magistrate to a fine or to imprisonment under the terms of the section.

[57] Section 13 (1) of the Constitution explicitly prohibits the making of any law "… that is discriminatory either of itself or in its effect". This Court agrees that the creation of two distinct and separate categories of offenders before the criminal law with the mentioned disparities in the application of that law, which would undoubtedly be a fact if the Appellants' contentions were to be accepted, would indeed run afoul of the rule of law and equality before the law; principles which are fundamental attributes of the Constitution. Having engaged in the preceding task of interpreting the relevant provisions of the laws and Constitution of Dominica, this Court is confirmed in the presumption that it was never the intention of the legislature of Dominica to create a discriminatory bifurcation in the exposure and liabilities of the citizens of Dominica to the criminal law of Dominica.

## Conclusion

[58] For all the reasons given, this Court finds that there is no conflict between section 40 (1) of the Constitution which provides for the exclusive jurisdiction of the High Court to determine the validity of elections and the composition of the House, and the provisions of the Elections Act of Dominica which give jurisdiction to a Magistrate to hear and decide a charge of treating against a sitting member of the House. The appeal is therefore dismissed, and the orders of the majority in the Court of Appeal are affirmed except those in relation to costs, in respect of which, the parties entered into a pre-trial agreement which was notified by them to the Court.

**JUDGMENT OF THE HONOURABLE MR JUSTICE BURGESS, JCCJ:**

## Introduction

[59] The *fons et origo* of this appeal is the Appellants' claim for judicial review before the High Court of Dominica on the basis that sections 56 and 59 of the House of Assembly (Elections) Act, ("the Elections Act" or "the Act")[58] do not

[58] Cap 2:01.

confer jurisdiction on a Magistrate to hear a complaint or issue summonses for the offence of treating against sitting members of the House of Assembly. Notwithstanding the basis of the Appellants' judicial review claim, the High Court granted the relief sought on the grounds that the effect of those sections was to permit the challenge of the validity of the election of members of Parliament and that, consequently, this brought those provisions into conflict with the provisions of the Constitution. Accordingly, the High Court held that the sections could not be interpreted as conferring jurisdiction on a Magistrate to hear a complaint or to issue summonses.

[60] The majority of the Court of Appeal interpreted those provisions differently and reversed the decision of the High Court. Rather surprisingly, the grounds of appeal raised before this Court against the decision of the majority of the Court of Appeal do not once challenge the majority's decision on the interpretation of the relevant provisions. Rather, of the nine grounds raised, seven relate to questions of constitutional interpretation and two to the interpretation of provisions of the Elections Act other than sections 56 and 59 and to principles of election law.

[61] I have read in draft the judgment of my brother Anderson JCCJ, writing for the majority, and agree with their conclusion that this appeal should be dismissed. I do not agree, however, with some of the reasoning of the majority in reaching their conclusion and as this is an unusual appeal with potential far-reaching implications, I have decided to set out hereafter the two principal reasons that have led me to the same conclusion as the majority.

**First Reason: Encroaching on the Majesty of the Constitution**

[62] The first reason why I think the appeal must fail is because the seven constitutional grounds raised before this Court are not properly before us and they threaten to involve this Court in an encroachment on sacrosanct values of the Constitution of Dominica. I will explain.

[63] Commonwealth Caribbean constitutional jurisprudence has universally proclaimed the majesty of our independent constitutions. This hallowed principle is enshrined in section 117 of the Constitution of Dominica which

declares the Constitution to be the "supreme law of Dominica". If Redhead JA's observation in the Dominican Court of Appeal case of *Sabaroche v The Speaker of the House of Assembly*[59] that the court is "the sentinel" of the Dominican Constitution, then this Court must regard itself as the Chief Sentinel. In my view, in that role, it is incumbent on this Court to insist on the vindication of all the rules and principles embraced by that Constitution.

[64] If the foregoing be accepted, two provisions in the Dominican Constitution assume relevance in this appeal. These are sections 103 and 104.

[65] Section 103 is the section which confers on the High Court comprehensive power to enforce the general part of the Constitution. In his leading treatise, 'Changing Caribbean Constitutions',[60] Dr Francis Alexis labels this section "the general constitutional redress section". The section provides as follows:

> 103. (1) Subject to the provisions of section 22(5), 38 (6), 42(8), 57(7), 115(8), 118(3) and 121(10) of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.
>
> (2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened and to make a declaration accordingly.
>
> (3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the persons on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under the law of Dominica in proceedings in the High Court.
>
> (4) …
>
> (5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.
>
> (6) The right conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the

[59] (1999) 60 WIR 235, at 247.
[60] (2nd edn Carib Research & Publications Inc 2015) at [17.86].

same matter that may be available to that person under any other enactment or any rule of law.

(7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 40 of this Constitution.

[66] And section 104 deals with the reference of questions of constitutional interpretation to the High Court. Dr Francis Alexis calls this provision the 'general constitutional redress reference' provision[61]. That section provides as follows:

104. (1) Where any question as to the interpretation of this Constitution arises in any court of law established for Dominica (other than the Court of Appeal, the High Court or a court martial) and the court is of opinion that the question involves a substantial question of law the court shall refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal of the Judicial Committee, in accordance with the decision of the Court of Appeal or, as the case may be, the Judicial Committee.

[67] I have recited these provisions *verbatim* to underline the observation that the Dominican Constitution has established a comprehensive system for constitutional redress and for constitutional interpretation. This system is reinforced by special procedural rules in Parts 56 and 61 of the Eastern Caribbean Supreme Court Procedure Rules (CPR) on how a person seeking constitutional relief or referring a question of constitutional interpretation to the High Court "must" apply to that Court. I think it is important to set out *in extenso* the relevant portions of these CPR.

[68] Part 56 declares in relation to applications for constitutional relief as follows:

56.1 (1) This Part deals with applications —

(a) by way of originating motion or otherwise for relief under the Constitution of any Member State or Territory;

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[61] ibid. at [17.89].

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(2) In this Part –
such applications are referred to generally as **"applications for an administrative order".**

[69] Part 56.2 makes provision for who may apply for judicial review. That Part provides in the relevant sections:

> 56.2 (1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.
>
> (2) This includes –
>
> (a) any person who has been adversely affected by the decision which is the subject of the application;
>
> .
>
> .
>
> .
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> .
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> …
>
> (f) any other person or body who has a right to be heard under the terms of any relevant enactment or Constitution.

[70] Part 56.7 contains provisions on how to make application for an administrative order in the relevant parts as follows:

> 56.7 (1) An application for an administrative order must be made by a fixed date claim identifying whether the application is for
>
> .
>
> .
>
> (c) relief under the relevant Constitution…"

(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 –

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.

(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…

[71] Part 56.9 deals with the service of the claim form for an administrative order. Notably, Part 56.9 (2) provides that, '[a] claim form relating to an application for relief under a relevant Constitution must be served on the Attorney General.…'

[72] Part 61.1 (2) makes provision for the manner in which the reference of questions of constitutional interpretation must be made to the High Court. In this regard, Part 61.1 (2) (b) mandates that an application must be made by fixed date claim which must (i) identify the question of law upon which it is sought to have a case stated; and (iii) state the grounds of the application. Notably, under Part 61.3, a constitutional application must be served on the Attorney General.

[73] It is evident from the foregoing that the Constitution and CPR have established an elaborate procedural system on how to access constitutional redress and constitutional interpretation in the High Court. A fundamental constitutional value appears to be at the foundation of that system. It is the ensuring of the rule of law by limiting judicial discretion in deciding who may access constitutional redress on the basis of a judge's own particular preferences. This is achieved by the fact that the objective procedural rules in CPR eliminate *sua sponte* decisions by a judge as to whether a constitutional question is in issue in any given case.

[74] For me, then, it is clear beyond peradventure that the elaborate system of rules governing access to constitutional redress in Dominica forecloses on any theory that questions relating to constitutional redress and constitutional interpretation

can be raised by way of a segue, as here, in a claim for judicial review. Such a theory would constitute in pith and substance an encroachment on the majesty of the Dominican Constitution.

[75] At this point, I consider it appropriate to relate the foregoing to the relevant facts of the case before us.

[76] General elections were held in the Commonwealth of Dominica on 8 December 2014. The Dominica Labour Party (DLP) led by Mr Roosevelt Skerrit won the majority of the seats in House of Assembly and formed the Government. Mr Skerrit and fourteen other Appellants were the successful candidates in the election for the DLP.

[77] In the lead up to the elections, on 28 November 2014 and 6 December 2014, two free public concerts alleged to have bee sponsored by the Appellants were held in Roseau.

[78] On 28 May 2015, the Respondents filed criminal complaints in the Magistrates' Court against the Appellants and summonses were issued by the Magistrate. In the complaints, the Respondents alleged that the Appellants held the free public concerts for the purpose of corruptly influencing the electorate of the Commonwealth of Dominica to vote for the candidates of the DLP in the upcoming general elections. Accordingly, the Appellants had thereby committed the offence of treating contrary to section 56 (a) of the Elections Act.

[79] I consider it important to digress here to stress two facts in relation to the complaints by the Respondents. The first is that the Respondents' complaint did not purport to be an application by election petition under section 65 of the Elections Act to challenge the election of the Appellants and that there was nothing in the complaints or summonses that challenged the election of any of the Appellants. The second is that the complaints were filed within the six-month limitation period specified in section 68 of the Magistrate's Code of Procedure Act.[62]

[80] Returning to the narration of the facts. The Appellants upon receiving the Magistrate's summons filed a claim in the High Court for judicial review in

[62] Cap 4:20.

which they sought to quash the Respondents' complaints and the summonses issued by the Magistrate on four grounds. These were: (i) that the complaints did not disclose an offence under section 56 of the Elections Act; (ii) that the complaints were time-barred having been filed outside of the twenty-one day limitation period under section 65 of the Elections Act for filing an election petition, (iii) that the complaints were an attempt to subvert the time restriction in the same section 65; and (iv) that the Magistrate acted in excess of his jurisdiction in issuing the summonses.

[81] As can be plainly seen, no issue was raised in respect of the Dominican Constitution, including of sections 31 or 40 of that Constitution, in the Appellants' judicial review claim nor was any issue raised relating to the constitutionality of any of the provisions of the Elections Act, or for that matter, any other Act. In fact, the only reference to constitutional redress by the Appellants before the High Court was, as Blenman JA noted in the Court of Appeal, in the list of issues filed by them as part of the case management of their fixed date claim where they raised the question of whether "section 68 and other relevant provisions of the Magistrate's Code of Procedure Act have been impliedly or expressly repealed by the provision of the Constitution and the Elections Act which expressly vested election jurisdiction in the High Court".

[82] In my view, the inclusion of that question in the Appellants' list of issues is at best a mere segue and certainly does not go anywhere near to satisfying the procedure stipulated in Part 61 of CPR for questions respecting the interpretation of the Constitution. The issue raised by that question was unmistakably about the interpretation of the Magistrate's Code of Procedure Act against the provisions of the Constitution. The Appellants should therefore have applied by a fixed date claim to the High Court under Part 61.2 of CPR for an order to the Magistrate for a reference of that question to the High Court pursuant to section 104 of the Dominican Constitution. By Part 61.1 (3) (a), the claim should have been served on the Attorney General. Absent such an application by the Appellants, the High Court judge could not *sua sponte* decide that a question of constitutional interpretation was in issue and proceed to rule on it.

[83] Assuming, on the other hand, that sections 56 and 59 of the Elections Act in effect implied the contravention of members of Parliament's rights contemplated by section 40 of the Constitution, as the High Court and Blenman JA in the Court of Appeal appear to have thought, section 103 of the Constitution would have applied. This is because such a contravention would affect the interests of the Appellants as members of Parliament. The Appellants would therefore have had to apply to the High Court under Part 56.7 (1) (a) of CPR in a claim form headed "Originating Motion" to have this matter determined. It is not without significance that by Part 56.9 (2), such a claim form would have had to be served on the Attorney General.

[84] The majority of the Court of Appeal held that the constitutional issues canvassed by the Appellants were not in issue in the appeal before that court and so they refused to decide on the constitutional issues. For the reasons just outlined, I am in entire agreement with that decision of the majority in the Court of Appeal in refusing to deal with those constitutional issues. In my judgment, for those reasons also, this Court should similarly decline to treat with the constitutional challenges raised in the Appellants' appeal to this Court.

[85] In my judgment, the Privy Council decision in *Webster v Attorney General of Trinidad and Tobago*[63] (very graciously drawn to my attention by my esteemed brother, Justice Peter Jamadar) lends strong support to the general principle which underpins my opinion. In that case, the Trinidad and Tobago Civil Procedure Rules provided, similarly to the Eastern Caribbean Supreme Court Rules, that judicial review claims were to be made in the Form 1 fixed date claim form whereas claims respecting breach of the constitution were made in the Form 2 fixed date claim form. The appellant brought a claim in a Form 1 fixed date claim form seeking damages for what he alleged was his unlawful arrest and detention by the police. Three additional claims for declarations which were reflective of the appellant's rights under the Constitution were included in the appellant's Form 1 claim form. The central question in the case was whether the claims for declarations were rightly included in the Appellant's Form 1 claim form. The Privy Council, in upholding the decisions of Pemberton

[63] [2015] UKPC 10, [2015] ICR 1048.

J in the High Court and the Court of Appeal that the declarations were not correctly included in Form 1 and should be struck out, stated at [13], "It is clear that the appellant was wrong to make his claim in Form 1. He should have made it in Form 2, as a fixed date claim."

[86] Another Privy Council appeal from the Court of Appeal of Trinidad and Tobago, *Panday v Gordon*[64] again kindly drawn to my attention by Jamadar JCCJ, suggests a caveat to the general principle adumbrated above. That case concerned a claim by the Respondent against the Appellant for damages for defamation. The Appellant raised in his statement of defence a defence based on the Constitution, but he did not pursue that defence in the High Court. He raised it for the first time in the Court of Appeal. There, Hamel-Smith JA considered that Mr Panday should not be permitted to raise this defence at such a late stage. However, the other Justices of Appeal, Sharma CJ and Warner JA, did not opine on this issue. The Privy Council held, reversing Hamel-Smith JA, that the Appellant could pursue the defence before that body. This case therefore seems to be authority that a defence based on the fundamental rights provisions in the Constitution, which is included in a Defendant's statement of defence, but which was not pursued before the High Court may be properly raised on appeal. It must be emphasised here, however, that *Panday v Gordon* did not concern the question of the procedural requirements for initiating a constitutional claim.

[87] I would conclude on the issue of initiating a constitutional claim by noting that decisions of this Court constitute binding precedents on courts in countries which have signed on to this Court's appellate jurisdiction. For this reason, I remain extremely reticent about creating a precedent which can be cited as even obliquely supporting an argument that the montage of constitutional rules and procedures governing access to constitutional redress may be side-lined save in exceptional circumstances. The Appellants have not adduced any such circumstances and, even in such exceptional circumstances, I consider that were a court to embark on such a course as the majority have endorsed, it would be both necessary and wise to invite the Attorney General to join and participate in the constitutional arguments to be undertaken.

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[64] [2005] UKPC 36.

**Second Reason – Sections 56 and 59 of the Elections Act Conferred Jurisdiction on the Magistrate**

[88] This brings me to the second reason why, in my view, the appeal should fail. It is because, as is pointed out in the majority judgment, the real issue in this case is, and has always been, whether a complaint and a summons issued by a Magistrate for treating pursuant to sections 56 and 59 of the Elections Act against a member of the House of Assembly can be instituted and prosecuted in the Magistrates' Court in Dominica. For the reasons set out hereafter it is my judgment that the answer to that question must be answered in the affirmative.

[89] The Dominica Elections Act is based on the Representation of the People Act 1949 (the "UK Act"), now consolidated in the UK Representation of the People Act 1983. As such, the organising principle of the Dominican Act, through the UK Act, is rooted in the long-held ideal in England that parliamentary elections be fair and free, and that they be devoid of corruption. In pursuit of this ideal, English parliamentary law dating back to the First Statute of Westminster,[65] and the Bill of Rights[66], and the common law have historically sought to deal with some of the more gross forms of corruption such as bribery, treating and undue influence. More specifically, with respect to treating, the *Burough of Blackburn case*[67] shows that parliamentary law required a successful candidate who was guilty of corrupt treating to be unseated whilst *Hughes v Marshall*[68] appears to support the proposition that treating was a common law misdemeanour.

[90] Thus, emerged in English electoral law a two-pronged punitive scheme aimed at eliminating corrupt electoral practices including treating. To be clear, this scheme requires that a candidate found responsible directly, and indirectly through an agent, for corrupt practices be unseated. The scheme also imposes criminal liability on perpetrators of a corrupt practice.

[91] The UK Act embraced this two-pronged punitive scheme in dealing with corrupt electoral practices generally, and particularly, in dealing with treating. The Act imposed criminal consequences for persons guilty of the commission

[65] (1275) 3 Edw, 1, c. 5.
[66] (1688) 1 Will & Mar., sess. 2, c. 2.
[67] (1869) I O'M &H 198.
[68] (1831) 2 C & J 118; (1831) 149 ER 49.

of corrupt treating. Equally, the Act provided for the unseating of a successful candidate.

[92] The Commonwealth of Dominica Elections Act, based on the UK Act, unsurprisingly has adopted a similar two-pronged punitive scheme to that found in the UK Act. Part V of the Act, which includes sections 49-64 makes provision for "Election Offences" and Part VI, which includes sections 65-68, for "Election Petitions".

[93] Sections 56 and 59 constitute the first prong of the punitive scheme for treating. They make provision for the criminal consequences of treating. Section 56 provides as follows:

> Definition of treating. **56.** The following persons shall be deemed guilty of treating within the meaning of this Act:
>
> *(a)* every person who corruptly, by himself or by any other person, either before, during, or after an election, directly or indirectly, gives, or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, or provision to or for any person, for the purpose of corruptly influencing that person, or any other person, to vote or to refrain from voting at the election, or on account of that person or any other person having voted or refrained from voting at the election;
>
> *(b)* every voter who corruptly accepts or takes any such food, drink, entertainment, or provision.

[94] Section 59 stipulates the penalty for a person found guilty of treating. It provides as follows:

> Penalty for bribery, treating or undue influence **59.** Every person who is guilty of…treating…under the provisions of this Act is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months.

[95] Section 61 is part of the second prong of the punitive scheme as it makes specific provision for the electoral consequences of treating. It provides as follows:

> Disqualification for bribery, etc. **61.** Every person who is convicted of…treating…shall (in addition to any other punishment) be incapable during a period of seven years from the date of conviction –

(a) of being registered as an elector, or voting at any election of a member of the House of Assembly;

(b) of being elected a member of the House of Assembly or if elected before his conviction, of retaining his seat as such member.

[96] Sections 65 to 68 is part of the second prong and provides for another method of securing electoral consequences for corrupt and illegal practices, including treating, by a successful candidate. It is by way of a petition presented to the High Court complaining of an undue return or undue election of a member of the House of Assembly called an election petition. An election petition may be presented by a person who voted or had a right to vote at the election to which the petition relates; a person claiming to have had a right to be returned at the election; or a person alleging himself to have been a candidate at the election.

[97] Like the Commonwealth of Dominica, many Commonwealth countries have adopted the British two-pronged punitive scheme in dealing with corrupt electoral practices including treating. The model is preserved in the UK Representation of the People Act, 1983. It is also the model which still obtains in Canada[69], Australia[70] and New Zealand[71]. Most importantly, however, it is the model, which is found in most Commonwealth Caribbean countries including, for example, Jamaica, Barbados and Trinidad and Tobago.

[98] In Jamaica, Part VIII of the Representation of the People Act, which contains sections 70, 75-103 deals with "Election Offences". Section 91 (2) of that Act is identical to section 56 of the Elections Act; section 94 is almost identical to section 59 of the Elections Act in constituting treating as a summary offence; and section 96 is almost identical to section 61 of the Elections Act in providing for the unseating of a successful candidate found guilty of treating. The Jamaican Elections Petitions Act, Cap 107, like the Elections Act, makes provision for an election petition to be presented to the Supreme Court complaining of an undue return or undue election of a member of the House of Assembly.

[69] Canada Elections Act S C 2000, c 9.
[70] Commonwealth Electoral Act 1918.
[71] Electoral Act 1993.

[99] The Barbados election laws, like the Jamaican election laws, contain provisions which mirror the provisions in the Election Act. Parts II and III of the Barbados Election Offenses and Controversies Act[72], which contain sections 3-35 of that Act, deal with election offences and the consequences of these offences. Section 7 constitutes treating an election offence in very similar terms to section 56 of the Elections Act; section 27 (1), in much the same language as section 59 declares treating to be a summary offence; sections 59 and 60 in the Barbados Act are to the same effect as section 61 of the Elections Act. Parts IV and V containing sections 36-51 deal with "Election Controversies". These sections, like the sections in the Elections Act, provide for the presentation of an election petition to unseat a successful candidate guilty of an election offense including treating.

[100] The system established in the Trinidad and Tobago Representation of the People Act[73], is fundamentally the same as in the Election Act. Part V, containing sections 60-105 deal with "Offences" and Part VI, containing sections 106- 155 with "Legal Proceedings". Section 97 of that Act is similar to section 56 of the Election Act in that it creates an offence of treating; section 100 similarly to section 59 of the Election Act declares treating to be triable summarily; and section 148 has the same effect as section 61 of the Election Act. Part VI of the Trinidad and Tobago Act, like Part VI of the Election Act make provisions for the presentation of election petitions.

[101] It is evident from the foregoing that there is nothing peculiar or exceptional about the provisions in sections 56 and 59 on treating as a summary offence or the provision in section 61 on the electoral consequences of being convicted for the offence of treating. Section 56 expressly constitutes "treating" an offence and is committed by "every person" who contravenes section 56 (1). Section 59 provides for the summary trial of a person charged with treating and the penalty for such a person if found guilty of treating. That defines the limits of the Magistrate's jurisdiction in relation to the offence of treating and section 61, on its plain language has nothing to do with that jurisdiction. Section 61 stipulates as to electoral consequences, not criminal consequences.

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[72] Cap 3.
[73] Cap 2:01.

[102] The foregoing notwithstanding, the Appellants argue that the Magistrate's jurisdiction does not include successful candidates. They argue, in effect, that the expression "every person" in section 56 is not intended to encompass successful candidates. In my judgment, in the absence of express language by Parliament to this effect, that argument must fail. After all, it seems obvious that the persons at whom the treating provisions are primarily aimed are candidates in an election and their agents. It would be remarkable, therefore, that if Parliament intended to exclude successful candidates from the expression "every person" it did not do so by express language.

[103] In my sum, the complaint by the Respondents and the summons issued by the Magistrate for treating pursuant to sections 56 and 59 against the Appellants could have been instituted and prosecuted in the Magistrates' Court in Dominica. Accordingly, the time within which the Respondents' complaint had to be filed was the time prescribed in section 68 of the Magistrate's Code of Procedure Act and the complaint was so filed. This matter had absolutely nothing to do with an election petition pursuant to section 65-68 of the Election Act and the twenty-one-day time-period for filing a petition was entirely irrelevant.

[104] For the two foregoing reasons I would dismiss the appeal and make the orders set out in the majority judgment.

**Disposal**

[105] The following are the Orders of the Court:

a. The appeal is dismissed.

b. The following orders of the Court of Appeal are affirmed, namely:

i. The complaints filed by the Respondents and the summonses issued by the Magistrates' Court are reinstated; and

ii. The Chief Magistrate shall proceed to assign a Magistrate to hear the complaints filed by the Respondents.

c. The stay of proceedings granted by the Court of Appeal in the order dated 14th July 2020 regarding the execution of the judgment and/or all the proceedings in the Magistrates' Court, is discharged.

d. The Appellants shall pay to the Respondents EC$25,000 in costs in furtherance of the pre-trial agreement between the parties.

/s/ A Saunders
**The Hon Mr Justice A Saunders (President)**

/s/ J Wit
**The Hon Mr Justice J Wit**

/s/ W Anderson
**The Hon Mr Justice W Anderson**

/s/ M Rajnauth-Lee
**The Hon Mme Justice M Rajnauth-Lee**

/s/ D Barrow
**The Hon Mr Justice D Barrow**

/s/ A Burgess
**The Hon Mr Justice A Burgess**

/s/ P Jamadar
**The Hon Mr Justice P Jamadar**