

## Cabral Douglas v The Commonwealth of Dominica

Citation: [\[2017\] CCJ 1 \(OJ\)](#)  
Date of Judgment: 21 February 2017  
Nature of Judgment: Judgment on special leave  
Judgment on costs  
Composition of the Court: President: D Byron  
Judges: A Saunders, J Wit, D Hayton and W Anderson

CCJ Application No	Parties
DMOJ2016/001	<b>Applicant</b> Cabral Douglas <b>Respondent/ Proposed Defendant</b> The Commonwealth of Dominica

### Counsel

- Applicant:  
Mr Leslie Thomas QC and Ms Thalia Maragh, Attorneys-at-Law
- Respondent/Proposed Defendant:  
Mr Levi A Peter, Attorney General, Ms Jo-Anne Xavier-Cuffy and Ms Marie-Therese Etienne, Attorneys-at-Law
- The Caribbean Community:  
Ms Gladys Young, Attorney-at-Law

### Nature of Dispute

The dispute involved a claim by Mr Cabral Douglas, a Dominican entertainment proprietor, that by denying entry to an entertainer contracted by him to supply services in Commonwealth of Dominica (Dominica), Dominica breached provisions relating to the free movement of services and persons under the Revised Treaty of Chaguaramas (RTC). Mr Douglas applied for special leave to commence proceedings against Dominica pursuant to Article 222 of the RTC.

### Summary of Legal Conclusions and Orders

- The Court found that the Applicant had failed to satisfy the requirements under Article 222 of the RTC and therefore denied special leave.
- The Court ordered that each party should bear its own costs.

### Legal Provision/s at Issue

- Articles 7, 36, 37, 45, 214, 222 of the RTC

### Other Relevant Community Law/Material Relied upon

- Draft Report for the Twenty- Eighth Meeting of the Conference of Heads of Government of the Caribbean Community (the 2007 Conference Decision)

### Past CCJ Case Law

- *Hummingbird Rice Mills Ltd v Suriname and the Caribbean Community* [2012] CCJ 2 (OJ)
- *Doreen Johnson v CARICAD* [2009] CCJ 3 (OJ)
- *Shanique Myrie v State of Barbados* [2013] CCJ 3 (OJ)
- *Tomlinson v Belize and Tomlinson v Trinidad and Tobago* [2014] CCJ 2 (OJ)
- *Tomlinson v Belize and Tomlinson v Trinidad and Tobago* [2016] CCJ 1 (OJ)
- *Trinidad Cement Limited & TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana* [2008] CCJ 1 (OJ)
- *Trinidad Cement Limited & TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana* [2009] CCJ 1 (OJ)

### Other Sources of International Law

- Article I:2(d) of the World Trade Organization’s General Agreement on Trade in Services

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### Facts

Mr Douglas, a national of Dominica, is a proprietor of his privately-owned entertainment business, who contracted with a Jamaican artist, Mr Leroy Russell to headline an international concert in Dominica. Before the concert, Mr Russell and his entourage were denied entry into Dominica by immigration officials, arrested, detained, and then deported the following day. As a result, the concert was cancelled.

### Findings

In seeking leave to commence proceedings before the Court, the Applicant claimed that the denial of entry to Dominica breached Articles 7, 8, 45 and 46 of the RTC resulting in financial loss, reputational and other loss.

In considering whether the grounds for leave had been satisfied, the Court first noted that, as the Applicant is a national of Dominica, the chapeau of Article 222 had been satisfied.

As to whether the Applicant could make out an “arguable case” that Treaty rights and benefits enured to him, and that he had been prejudiced in the enjoyment of these rights and benefits under Article 222(a) and (b), respectively, the Court found that the Applicant’s claim would fail.

First, as regards Article 7 – which prohibits discrimination on the grounds of nationality only – the Court explained that it is necessarily incongruent for an Applicant to attempt to prove that the Contracting Party of which he is a national, discriminated against him because of his nationality. Moreover, as a stand-alone provision, Article 7 does not confer an inherent substantive right but provides the rule by which framers intended for other rights granted are not distorted by discriminatory actions of the States.

Second, as regards Article 36, the Court noted that although “entertainment services” is an approved sector, there is nothing to suggest that the holding of the concert was an approved activity within that sector. Moreover, the Applicant could not benefit from Article 36(4)(d) which confers the treaty benefit on a “service supplier of one Member State ... in the territory of another Member State” since he was not engaged in the “cross-border” provision of services. It was in fact Mr Russell (and staff) who were the intended suppliers of services within the meaning of Article 36(4)(d). As a “middleman”, the Applicant was not the direct beneficiary of any treaty right. While the right to supply services gave rise to a correlative right for the Applicant to receive services, in this case, the facts alleged did not suggest that the Applicant was a patron or recipient of services to afford a corollary right under Article 36.

The Applicant also failed to satisfy Article 37 (which inter alia, requires removal of discriminatory restrictions on the provisions of services) because, as in the case under Article 7, the Applicant did not point to any facts to suggest that any such infraction impinged a right intended to benefit him directly, and even if it had, none of these rights would have enured to him directly.

Finally, the Court found that the Applicant’s reliance on Article 45 (which is aspirational in nature) and the 2007 Conference Decision (which grants rights to CARICOM Nationals for non-economic purposes) was misconceived. Moreover, his attempt to link the right to freedom of movement for non-economic purposes conferred by the 2007 Conference Decision and the right in Article 36 to provide services was misguided, and the regimes governing movement for the provision or receipt of services, for employment purposes, and for non-economic purposes were distinct and had to be separately proven.

As the Applicant could not make out an arguable case under Article 222(a), the request for special leave to commence proceedings was dismissed. The Court held that each party should bear its own cost.

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*This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.*