
COMMONWEALTH OF DOMINICA
ELECTORAL REFORM
MYTH OR FACT?
Anthony W. Astaphan s.c.

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ELECTORAL REFORM: MYTH OR FACT?

Introduction

1. There is much talk about "electoral reform." Having looked at the various Bills and proposed amendments, I think the better description of the process is that the Electoral Commission, and the respective Branches of Government, believe that the proposed amendments are part of an ongoing process to improve the efficiency of the existing laws. Nevertheless, for the purposes of this paper I will continue to use "electoral reform."

2. There appears to be five (5) essential issues concerning the ongoing public "debate" on "electoral reform" namely:

    i. The "sanitization" of the register;

    ii. Identification cards (the ID Card or Cards);

    iii. The rights of registered voters in the Diaspora to vote; and

iv. The precise authority of the Electoral Commission; and

v. The authority of the Parliament and laws with extra territorial application.

3. The purpose of this paper is to show that the ongoing public debate on "electoral reform" is based on a misnomer, and false factual premises, partisanship, and misrepresentations of the law. This debate is further flawed or undermined by the deliberate refusal of some in this debate to refer to the many cases on the election and registration laws of Dominica, and the wider OECS and CARICOM.

4. The debate has also recklessly, if not intentionally, failed to refer to:

i. The steps taken by the Electoral Commission and Executive Branch of Government to give effect electoral reform;

ii. The numerous press releases issued by the Commission;

iii. The meetings by the Commission or its Chairman with the DAIC, the Dominica Christian Council, the Builders and Contractors Association etc;

iv. The invitation of the Attorney General to submit recommendations to him;

v. The existence of the Bills on the Government's website;

vi. The meeting at the Goodwill Parish Hall;

vii. The incitement to violence by Opposition forces on May 23, 2017, and on-going threats; and

viii. The injunction sought by an agent of the United Workers Party.

5. The facts set out in 4 (vii) and (viii) above, have caused considerable delay in enacting the required amendments to the law to give effect to reform.

Chronology of events towards reform

6. **February 21, 2011.** The Cabinet formally informs His Excellency the President, with a request for the onward notice to the Electoral Commission, of its Decision to introduce a National ID Card that will include all the features requisite in a voter's identification card

7. **June 15, 2011.** The Commission informs the Executive that it is "not averse" to a National ID card that can be used for voting and, further, proposes the St. Lucian model.

8. **July 16, 2013.** His Excellency the President requests financing for the issuance and administration of the National ID Card.

9. **August 20, 2013.** The Executive commits to providing finances for the ID Cards and encourages the search for a draughtsman for the legal amendments.

10. **December 9, 2013.** The Honourable Prime Minister, His Excellency, and the Electoral Commission Chair meet to discuss and advance discussions pertaining to the implementation of the National I.D Card and the

engagement of a legal consultant to facilitate revisions and subsequent amendments to the relevant laws.

11. **December 1, 2015.** Cabinet directs that copies of the Bill for an Act to amend the Registration of Electors Act Chap. 2:03 and the House of Assembly (Elections) Act Chap. 2:01 and the related S.R.Os be sent to His Excellency for his information and requesting that he forward copies to the Electoral Commission for its consideration, advice, and/or approval.

12. **December 4, 2015.** The Executive submits draft copies of Bills to Electoral Commission for scrutiny and comments: namely the House of Assembly (Elections) (Amendment) Act, Chap 2:01 and the Registration of Electors (Amendment) Act, Chap 2:03.

13. The Electoral Commission was assisted in this exercise of reviewing the Bills by an expert from the Commonwealth before the submission of its reactions to and recommendations to the Executive Branch;

14. **September 7, 2016.** His Excellency submits to the Honourable Prime Minister, the Commission's reactions to and recommendations on the draft amendments to the

electoral laws and further, advises of the Commission's availability to discuss the same.

15. **February 21, 2017.** The Executive approves $2,043,108.80 for the procurement of the ID Card management system and a maintenance contract for the same.

16. **May 2 and 3, 2017.** The Executive authorized for expenditure by the Electoral Office:

1. The sum of $91,402.08 for general staff adjustments [at the Electoral Office;

2. The sum of $3,995,789.49, that is:

a. **$319,961.45** to employ additional staff required for the confirmation exercise and issuing of ID Cards;

b. **$274,618.05** to meet the costs associated with clearing the equipment at the port and the installation of the system network;

c. **$162,408.00** to purchase a passenger bus, pay the cost of premium insurance for the bus, and the maintenance of the same;

d. **$341,011.58** for the costs of the confirmation exercise to include public

relations, subsistence, and rental of property;

e. **$1,136,546.40** for meeting the costs of travelling to confirmation Centres for confirming overseas-based nationals; and

f. **$1,761,244.01** to meet the cost of 300 mobile checkpoint units.

17. **May 9, 2017.** Cabinet authorizes and instructs the creation of legal instruments on electoral reform.

18. **May 23, 2017.** The Executive tables the Bills entitled Registration of Electors (Amendment) Act 2017, and House of Assembly (Elections) (Amendment) Act 2017. These bills provided for among other things

i. The "sensitization" of the register by way of a confirmation process which would require persons registered to establish that they visited Dominica at least once in the immediately preceding five (5) years; and

ii. Identification cards.

19. The matters mentioned in 18 (i) and (ii) are currently being debated as if nothing has happened to give effect to

them. In other words, the fact of the Bills and their contents are simply ignored, especially by those with an obvious personal or partisan agenda.

20. **May 23, 2017.** Gunshots were fired outside Parliament when persons protesting the scheduled debate of the Registration of Electors (Amendment) Act 2017, and House of Assembly (Elections) (Amendment) Act 2017 breached Police barriers and attempted to march on the Parliament.

21. **May 25, 2017.** The Honourable Prime Minister advises the Honourable Speaker of the House that the Government will no longer pursue the debate of the Registration of Electors (Amendment) Act 2017, and House of Assembly (Elections) (Amendment) Act 2017 as detailed in the Order Paper in order "to avoid obvious confrontation that others are seeking."

22. The violence mentioned in 18 and 19 above is also consistently ignored as if it never occurred.

23. **August 8, 2018.** The Executive informs the His Excellency of Government's intention to table on September 17, 2018, two Bills: The Registration of Electors (Amendment)

Act 2018 and a revised House of Assembly (Elections) (Amendment) Act 2018.

24. **September 7, 2018.** An application is filed for an injunction preventing the Government from seeking Parliament's approval to nine (9) clauses in the Bill that proposes amendments to the Registration of Electors Act 2018, and declarations that those 9 and other clauses of the Bill are unlawful and/or in breach of the Constitution. There are 13 clauses in the Bill. The first two describe the title:

> Clause 1: "This Act may be cited as the – REGISTRATION OF ELECTORS (AMENDMENT) ACT, 2018."
>
> Clause 2. "In this Act the Registration of Electors Act is referred to as "the Act".

25. This application for an injunction and declarations is also ignored in this public 'debate.'

26. **September 10, 2018.** Consultation organized and chaired by the Executive at the Goodwill Parish Hall in Roseau with all relevant actors on electoral reform. The Attorney General invited all to submit recommendations for consideration for inclusion in the finalised Bill.

27. These events, which are set out in paragraphs 6 to 26 above, establish conclusively that the Executive Branch took the fact that changes to the existing laws were required seriously, and actively pursued steps to create the lawful authority required to give effect to the changes by seeking to pass the necessary amendments. However, violence, and threats of further violence, and an application for an injunction, delayed the legislative process and the enactment of the proposed amendments into law by the Parliament.

28. Significantly, all of the steps taken by the Executive Branch over the years, the violence, and application for the injunction have been left out this public "debate." This convenient or reckless blindness to indisputable acts raises serious questions of credibility on the present "debate" on "election reform." This convenient or reckless blindness has continued in utterances or publications from a number of persons or grounds including the opinion by John Elue Charles, and a self-described Interim Report . I will now address these two.

Mr. John Elue Charles and the Dominica Business Forum/Builders and Contractors Association

29. Attorney-at-Law Mr. John Elue Charles, in his opinion submitted to the Dominica Business Forum/Builders and Contractors Association, has recognized the existence of the legislative regime for objections in paragraph 7, 8 and 9 of the opinion. He then went on in paragraph 14 to say

> *" … Further I intend to argue that as a result of lack of knowledge of the electoral laws, the statutory procedures respecting objections to the inclusion of the names on the register of electors are not followed or hardly relied on."*

30. This statement acknowledges the failure or refusal of himself and others to object. However, Charles ignores the fact that every published list or register has a clear notice informing electors of their right of objection. It also ignores the many statements by the Commission and Chief Registering Officer that the right exists and must be exercised.

31. Mr. Elue Charles in paragraph 21 of his opinion stated

> *"It is contended that, on the reading of the provisions of the Act, Chap. 2:03 and the Registration Regulations, the active participation of*

the electors within each polling district is encouraged in the process of preparing a credible register of electors. It therefore follows that the cleanliness of the register of electors turns substantially on the collaborative efforts among the key stakeholders, namely (a) the registering officer/Commission/Electoral Office, (b) the registered electors within each polling district and (c) the political parties."

32. Significantly, Charles does not detail the "*collaborative efforts."* For the record, there can be no collaborative effort unless authorized by law, and every effort must begin with an objection, continue with due process, and end with the right to appeal or apply for judicial review.

33. Mr Charles goes on in paragraph 25 of his opinion to refer to Regulation 37(1) of **Registration of Electors Regulations** and concludes as follows in paragraph 28:

"Accordingly, I am of the view that regulation 37(1) of the Registration Regulations provides, among other things, for the Commission/Electoral Office to receive and review "Notices of Objections" aimed at removing the names of ineligible electors from a preliminary register or a monthly list."

34. Charles' conclusion is wrong. Regulation 34 and Form 4, the Notice of Objection Form, requires that every Notice of Objection must be submitted to the registering officer in every constituency. Regulation 34(3) requires the registering officer to make all objections available for inspection in the constituency.

35. Further, Regulation 25, and not 37, vests powers on the registering officers to investigate the objections. Additionally, regulation 35 (2) requires the registering office to set the date for the hearing of objections. Regulation 36 confers the right to be heard on every objection. On the other hand, Regulation 37, which Elue Charles relies on, merely vests the power to request documents on the Chief Elections Officer, a registering officer or enumerator for a variety of reasons. It does not mention the Electoral Commission. Nor does Regulation 37 leapfrog or by-pass the other earlier Regulations which created the process for objections and the hearing of objections by the registering officers in the constituencies. Nor does it create a right to receive, review or determine objections as wrongly stated by Mr Elue Charles or at all. It therefore follows that Mr Charles' opinion in paragraph 30 is falsely premised, and is wrong.

36. Quite incredibly Mr Charles said in paragraph 39 of his opinion

> *"It is arguable that, **if the register of electors is clean**, there would not be any pressing need for voter ID cards on the presumption that the residents / electors in a polling district have an intimate knowledge of each other. However, in recent times there has been much movement of people within the geographical area of a polling district and, as a result of such dynamics within the polling districts, one may mount a successful challenge against the presumption that the residents / electors in a polling district have an intimate knowledge of each other."*

37. Paragraph 39 is simply astonishing. The imputation of an unclean list is made simply on an allegation that there exists a pressing need for ID cards because, allegedly, residents / electors in a polling district may no longer have intimate knowledge of each other or new comers. This statement is purely subjective, and again, completely ignores the fact that lists of electors are regularly published with the notice informing electors of the right to object. Every citizen has the right to review the lists. Also, it is simply astonishing that Mr Charles would also ignore the fact and law that merely moving to a neighbourhood or district does not create an immediate

or automatic right to vote in that neighbourhood or district. There must be a request to transfer, and the names of all transferees, if their transfers are approved, are listed on the preliminary lists of electors for the new neighbourhood, district or constituency. These lists will contain a notice informing electors of the right to vote.

38. Mr Charles in paragraph 46 concluded as follows:

> *"In conclusion, I am of the view that the Registration of Electors Act and the Registration Regulations **are sufficiently flexible** to permit the Electoral Commission/Electoral Office to prepare and publish a "clean register of electors" in time for the next general election."*

39. I am not sure which principle of law led to the view that the election laws "***are sufficiently flexible."*** Nevertheless, the Chief Elections Officer is obliged by law to publish the various lists and registers. But no person may be removed from the Register unless dead or after the due process determination of an objection.

Mr Charles, the imputation of an unclean register, and the need for cleansing or sanitization of the register

40. Importantly, and directly relevant to the core of his opinion, is Mr Charles' failure to define or state what he means by a register which is unclean or simply not clean except to say the following in paragraph 14 of his opinion

> "*I also intend to argue that the number of registered electors does not reflect the resident population of Dominica but those electors who reside within and without Dominica."*

41. How this amounts to unclean lists is difficult to understand. Nevertheless Charles went on in paragraph 15 to say

> "*The literature review revealed that concerns have been expressed in relation to the accuracy of the "electors list, due to the fact that the number of people registered exceeded the population of the country."*

42. In my respectful view that the contents of paragraphs 14 and 15 of the opinion do not disclose an unclean register, especially in the absence of some material to show fraudulent voting. No such evidence exists. Therefore, what the contents of paragraphs 14 and 15 do disclose is a profound lack of understanding of the election laws, the manner in which the system of registration and objection

works, and Register prepared. Indeed, I am prepared to go further and say that it ought now to be clear that the mere mention of an unclean register, or need to clean or sanitize the register especially for the reasons advanced by Charles is a red herring or myth for at least the following seven (7) reasons, namely

i. There is no record of fraudulent voting in Dominica;

ii. The law of the Commonwealth of Dominica places the burden on parties and others to object to names of the voters list;

iii. In **Frampton** v **Pinard** Rawlins J at paragraph 40 said

*"With respect, I shall follow **Radix v Gairy.** In the first place, it is a Judgment of our Court of Appeal. Any statements of principle that it contains must be treated by this Court with the deference which the doctrine of precedent requires. In any case, it is my view that the statement is sound in principle. Where there is a legislative regime, which provides a detailed procedure for registration and for the hearing of*

claims and objections in relation to the electoral Register, the procedures set out in the legislation must mean something. Candidates and political parties are expected to be ever vigilant. By acting in accordance with the procedures which the regime provides, they would assist elections officials to provide an accurate Register of the persons who are entitled to vote according to law. The ***Registration of Voters Act, Cap.2:03*** *and the* ***Registration of Voters Regulations*** *made there under provide such a procedure in Dominica..."*

iv. In **Lindsay Fitzpatrick Grant** v **Rupert Herbert and Others**, Belle, J delivered on the 12th July 2006 said at paragraph [61]

"*He Supervisor of Elections being the Chief Registration Officer can be blamed for certain problems relating to the list. However the scheme of the legislation places the onus on all voters and the supporters of political parties to object to any apparent false, erroneous, or illegal listings. If they fail to discharge this duty they cannot be heard to complain thereafter as to the consequences and indeed the Supervisor's hands would be tied with regard to any cleaning up of the Register of Voters in the circumstances. See the Rawlins*

J statement on this issue in ***Ferdinand Frampton v Ian Pinard."***

v. Persons duly registered are entitled to remain on the register except if dead or removed in accordance with an objection and due process;

vi. Since 1984/85 there have been minimal if not zero objections in accordance with the **Registration of Electors Regulations**. On the other hand, there have been and continue to be, a number of new registered electors every year since 1984/85. The result is that the number of electors on the Register has continuously increased over the last few decades with little or no removals except by way of death. For example, in 1995 the number of registered electors was 57,632, in 2000 the number of registered electors was 60,266, in 2005 the number was 65,889, in 2009, the number was 66,923, and 72,277 in 2014. These figures show over 5000 additions to the Register between 2000 and 2005, and some

5,354 additions between 2009 and 2014. That is over 10,000 additions in 14 years. Consequently, if one adds the new registrants since 1995 with little or no objections, it will be obvious that the Register will increase by an average of 3000 to 5000 every year; and

vii. As shown below, the Commonwealth Observers at the 2014 election believed the Register was accurate and in accordance with the law; this notwithstanding selective criticisms that the register included Dominicans overseas, and at page 20 concluded that the voters' list "did not materially affect the credibility and transparency of the election process or the results".

43. I therefore reject Mr Elue Charles' opinion, as I do the document described as an Interim Report, as sound premises for electoral reform, or setting the parameters on the way towards electoral reform for at least the following reasons:

i. The opinion is premised on a significant amount of subjectivity, and does not accurately reflect the law;

ii. There is no mention of the steps taken by the Executive Branch of the Government;

iii. There is no or no serious mention of the Bills before the Parliament;

iv. There is no mention of the violence, threatened violence, and the abuse of the process of the court by the so called Concerned Citizens Movement, all of which have delayed the enactment of reforms;

v. There is no reference to or analysis of the relevant case law and decisions of our Courts; and

vi. It is imperative that any debate on election reform or change be premised on the law and facts and not myth, otherwise it will be harmful to the public interest.

The Interim Report on electoral reform effort by the group comprising leaders of church, business and civil society.

44. I have read this Interim Report. I reject it for the reasons I have rejected the opinion of Mr Charles, and for the following additional reasons

i. I am not quite sure who are the participants of this process. I certainly do not know whether these "representatives" of the various groups are, or whether the groups themselves are part of this Interim Report;

ii. The Interim Report and its recommendations are premised on the seriously flawed opinion by Elue Charles;

iii. The Interim Report's obsession with "public perception" tells me that the report is concerned substantially with what some people, perhaps selected people, may think regardless of the facts and law. This is especially troubling because the author(s) of this Report seems willing to accept that a

perception however flawed, may justify violence;

iv. In paragraph 3 a) the author(s) have planted a falsehood or fake news in the minds of the public with the allegation, insidiously made without evidence, that the Registers are not accurate which potentially compromises the elections opening it up to "corrupt practices." We have had elections since at least 1980 with the very same process and Register. So since 1980 and most definitely since 2000 there has been no credible allegation or claim of the Register having compromised an election or led to corrupt practices;

v. In paragraph 4, the author(s) suggests some delay on the part of the Commission. I will merely refer to the chronology set out above, and mention specifically that it must be a deliberate act of concealment on the part of the author(s) not to refer to the acts and threats of violence, and application for the injunction;

vi. In Part 2 under the heading Review of Data on Past Elections the author(s) makes a number of assumptions, and concludes that there may be "close to 20,000 extra names on the list." The author(s) then say they reviewed the data of deaths, and allege there " is almost 16,000 persons whose names ought not to be on the registered lists of electors. This is the issue, that the existing lists have to be sanitised."

viii. Significantly, the author(s) neglected to mention that in 1995 the number of registered electors was 57,632, in 2000 the number of registered electors was 60,266, in 2005 the number was 65,889, in 2009, the number was 66,923, and 72,277 in 2014. These figures show

a) The difference between the number of registered electors in 1995 (57,632) and 2014 (72.277) is about 14,645 thousand electors;

b) It is indisputable that over 2,359 additions were made to the Register between 1995 and 2000, and over 5000 between 2000 and 2005. There were 5,354 additions between 2009 and 2014. That is over 12,000 additions from 1995 to 2014. Consequently, if one adds the new registrants since 1995 with little or no objections, it will be obvious that the Register will increase every five (5) years. It will also be obvious that the increase in the number of registered electors from 1995 to 2014 is consistent with the number electors registered between 1995 and 2014;

vii. The statistics mentioned in paragraph 44 vii a) and b) repudiates the entire premises of the Interim Report in Part 2 under the heading <u>Review of Data on Past Elections;</u>

viii. The author(s) also neglected to mention, no surprise, that the number of persons who actually voted remained relatively constant between 1995 to 2014. For example, in 1995 37,563 electors voted, in 2000 some 36,244 electors voted. In 2005 38,927 voted, in 2009 36,907 voted, and in 2014 the number of electors who voted was 41,520. In not one of these elections was there any allegation of fraudulent voting. The reason is obvious. There was no fraud;

ix. In Part 3 the author(s) asserts on page 7 that the Electoral Commission has the authority to issue ID Cards. I deal with this specific issue later. But I must mention now that the author(s) do not seem to understand that on the assumption they are right, and they are not because the Commission has no such authority, that the Commission will be obliged to issue ID Cards to every single registered elector on the Register without exception. This, as I understand it, will merely recycle the debate;

x. Further, there are no Regulations which provide for the logistics, costs, the request for and acquisition of biometrics, and issuance of photo ID Cards. In any event, as shown above**,** His Excellency in submitted the Commission's reactions to and recommendations on the draft amendments to the electoral laws to the Honourable Prime Minister on September 7, 2016. These would also have included reactions and recommendations on the draft amendments, which provided for biometric and photo ID Cards

xi. In stark contrast to the existing laws, the proposed amendments disclosed in the Bills will authorise the Commission to require photographs, biometrics, and refuse to issue an ID Card to a person who fails to show he or she has visited Dominica at least once in the five years immediately preceding the date of confirmation;

xii. The partisan nature of this Interim Report is further revealed at note 1 to 7 on page 8 whether the author(s) made every attempt to undermine the efforts to ensure qualified electors are not disenfranchised by the confirmation process. Additionally, in note 7 the author(s) suggests that local confirmation should proceed leaving registered electors overseas in a state of suspended animation;

xiii. In their conclusion, the author(s) allege that the Commission has not been proactive in its efforts in "sanitizing" the register. As I discuss later in this paper, the duty to " sanitize" is laid frontally at the feet of the public and political parties, and not the Electoral Commission.

45. I have said enough to show why reliance, faith and confidence cannot be placed on the Interim Report, its recommendations or conclusions. The aforementioned notwithstanding, I believe it is necessary to set out the law and legal issues in the public interest otherwise the present mischiefs of misinformation and partisanship will continue

to contaminate the process, issues and mindset of the public.

The constitutional framework

46. Section 33 (2) of the Constitution provides that that a person is entitled to be registered as such a voter only in accordance with the provisions of any law in that behalf. Properly construed, section 33 (2) means that the Parliament is empowered to make laws for the purposes of an election including registration or conformation of electors, including the requirement for ID cards.

47. This construction is further supported by other provisions of the Constitution.

48. Section 38 of the Constitution provides:

> *"The Electoral Commission shall be responsible for the registration of Electors for the purpose of electing representatives and for the conduct of elections of Representatives and Senators* ***and shall have such powers and other functions relating to such registration and elections as may be prescribed by law*****....."**

49. Put simply, the Electoral Commission has only such powers as are prescribed by Parliament in an Act of Parliament. Therefore, the Commission has no power to do anything not expressly authorized by an Act of Parliament or make laws or Regulations.

50. Section 41 of the Constitution provides

> *"Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Dominica."*

51. Section 51 of the Constitution states

> ***"****Every proposed bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the purpose of electing Representatives or to the election of Representatives and Senators shall be referred to the Electoral Commission and to the Chief Elections Officer at such time as shall give them sufficient opportunity to make comments thereon before the bill is introduced in the House or, as the case may be, the regulation or other instrument is made.*

52. There is no question as shown in paragraph 11 above, that the proposed Bills were referred to the Electoral Commission and Chief Elections Officer at such time as

gave them sufficient opportunity to make comments thereon before the bills were presented to the House or, as the case may be, the regulation or other instrument is made.

53. In summary, it is for the Parliament to make laws for the Electoral Commission, and the registration or confirmation of, among other things, electors, ID cards and elections.

The constitutional right to vote

54. Section 33 (2) (a) and (b) of the Constitution provides:

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

in accordance with the provisions of any law in that behalf, and no other person may so vote. "

55. The language of section 33 (2)(b) is crystal clear. The words "*Every person <u>who is registered</u>"* refers to persons whose names appear on the register as duly registered electors. Subject to any objection or disqualification which may exist, such a person is '*entitled so to vote'*. Consequently, the law is that once a person is registered to vote he or she enjoys a constitutional right to vote guaranteed by the entrenched provisions of section 33 (6) of the Constitution. [See **<u>Russell</u>** v **<u>The Attorney General</u>** (1995) 50 WIR at page 139].

56. In **<u>John Abraham</u>** v **<u>Kelvar Darroux</u>** CLAIM NO. DOMHCV2010/0003 Justice Thomas in a matter from Dominica said at paragraph 78

> *"…The point is* that the Petition is impugning the alleged practice of processing persons to vote knowing that some of them are prohibited from voting. The alleged illegality is *absence from Dominica. But this fact in and of itself is not an illegality. It requires the successful objection to and deletion of such a person's name from the Register of Electors pursuant to section 11 (6) of the Registration of Electors Act having regard to*

section 7 and 11 (4) and (5) of the said Act. It is not automatic. Indeed, section 7 is clear in its purpose in saying that: "A person registered … shall remain registered unless and until his name is deleted from the register because … he has been absent from Dominica for a period exceeding five years."

57. In **Parry** v **Mark Brantley** HCVAP 2012/00 the Court of Appeal at paragraphs 49 and 50 said

> ***"The right of enfranchisement***
> *[49] The constitutional right of enfranchisement is not in doubt. In* ***Russell v Attorney-General of Saint Vincent and the Grenadines,*** *this Court underscored and explained the nature of the rights guaranteed by an almost identical provision in the St. Vincent and the Grenadines Constitution:*
>
> > *"The constitutional right conferred by section 27 is two-fold. The first is the basic right to be registered as a voter in the appropriate constituency. That basic right is granted to every Commonwealth citizen of the age of 18 years or upwards, if he possesses the prescribed qualifications relating to residence or domicile in St Vincent and is not disqualified by Parliament from registration as a voter. The second is the concomitant right to vote in the appropriate constituency. That concomitant right is granted to every citizen who is*

entitled to the basic right. That concomitant right is a right to vote 'in accordance with the provisions of any law in that behalf'. This means that although the manner of voting is statutory or customary, the right to vote is inherently constitutional."

[50] The Canadian Supreme Court has emphasized the importance of the right to vote, not only as it relates to the system of democracy which it underpins, but also as an expression of the dignity of the individual. The South African Constitutional Court has made the point that the vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts. The provisions of the Act governing the exercise of the right to vote may be said to have a constitutional pedigree. In applying the law and the regulations, preference must be given to recognition of the right to vote, and the legislation must be construed in a manner which promotes enfranchisement and guards against disenfranchisement. These concepts and principles apply to the states and territories of the Eastern Caribbean no less than they do in Canada and South Africa."

The rights of registered voters in the Diaspora to vote

58. There ought to be no question that once registered persons in the Diaspora have, subject to a successful

objection or the proposed confirmation, the constitutional right to vote.

59. Thomas J In paragraph 94 of his judgment in **John Abraham** v **Kelvar Darroux** said

> "*Contrary to the submissions on behalf of the Petitioners, it is the further ruling of the Court that persons living abroad in excess of five years are qualified to vote, unless their names are deleted in accordance with section 7 and 11 (b) of the Registration of Electors Act. And section 4 (1) of that Act does not alter that legal section. That section merely says that a person is qualified to be an elector if on polling day he is qualified to be an elector in the register for the polling district and is on that day registered in the register of electors to be used at the election. Accordingly, the disqualification or non-entitlement would arise if his name is not included on the official register of electors."*

60. This right to vote was expressly recognized by the Commonwealth Observers. At page 13 of their Report they said:

> *"The contentious debate seems to rest on the interpretation the law ascribes to the concept of "absence" as used in the legislation referred. As the*

law refers to absence and not residence, the criteria of five years absence may be casually satisfied by returning to the island once every 4 years, 364 days. ***The Mission believes therefore that under existing legislation the majority of Dominicans residing overseas would be entitled to receive a national ID card, therein allowing them to vote****."*

61. I should add that the Supreme Court of Canada has in its recent judgment in **Frank** v **The Attorney General of Canada** 2019 SCC 1 declared the five (5) year bar imposed on the right to vote on Canadians overseas as unconstitutional. Importantly, Chief Justice Wagner in paragraphs 33 to 35 of his judgment said

> *"In any event, the role of residence in our electoral system must be understood in its historical context. The requirement emerged at a time when citizens were generally unable to travel as easily and extensively as they do today and tended to spend their lives in one community. At that time, the right to vote was linked to the ownership of land, and only male property owners could vote. The residence requirement was designed, in part, to prevent "plural voting", that is, to prevent a person who owned property in several ridings from casting a vote in each of them (Haig v. Canada (Chief Electoral Officer), [1993] 2 S.C.R. 995, at p. 1052).*

Today, in contrast, we live in a globalized society. The ability of citizens not only to move, but to remain connected and maintain communications in so doing, is unprecedented. Many Canadians live abroad, and many do so for five years or more. The application judge cited evidence showing that in 2009, approximately 2.8 million Canadians — or 8 percent of Canada's population at the time — had been living abroad for one year or more, and that there were well over one million Canadians to whom the non-residence limit in the Act applied. He also noted that the results of one research project show that non-resident Canadian citizens maintain strong connections, both family- and employment-related, to Canada, as well as a strong sense of belonging. According to Penny J., the evidence revealed that, in addition to socio-cultural connections, many non-residents maintain strong economic ties to Canada by contributing to social insurance programs, paying taxes and receiving benefits. Further, he noted that 60 percent of surveyed respondents were solely Canadian citizens and, if denied the right to vote in Canada, would be unable to vote in any other country (see application judge's reasons, at paras. 19-30).

In sum, the world has changed. Canadians are both able and encouraged to live abroad, but they maintain close connections with Canada in doing so. The right to vote is no longer tied to the ownership of property and bestowed only on select

members of society. And citizenship, not residence, defines our political community and underpins the right to vote."

62. I have no doubt that the Chief Justice's words would apply with equal or considerable force to Dominica. They also provide a complete answer to those like the Leader of the Opposition who consistently say Dominicans who reside overseas must vote where they live, and do not have, or should not have the right to vote in Dominica. Therefore, the current debate ought to have taken this decision and the reasoning of the Supreme Court into account. Regrettably, this has not happened.

The issue of the register, objections and due process under the Registration of Electors Act Chapter 2:03 (Chapter 2:03) and the law

63. The **Registration of Electors Act** (Chapter 2:03) was enacted in 1974. Dominica became Independent, and acquired its constitution in 1978. It is therefore a law which must be read subject to the provisions of the Constitution. This includes the constitutional right to vote. Consequently, the Court of Appeal in **Parry** v **Mark Brantley** HCVAP 2012/00in held

"*The right of enfranchisement has a constitutional pedigree and, in applying the law and the regulations, preference must be given to recognition of the right to vote, and the legislation must be construed in a manner which promotes enfranchisement and guards against disenfranchisement.*"

64. Under Chapter 2:03 "electors" in relation to an election means; "*any person whose name is for the time being on the appropriate register of electors to be used in that election*"

65. Section 4 (1), (2) and (3) of Chapter 2:03 provides as follows

> *"4 (1) Subject to this Act, a person is entitled to vote as an elector at an election if on polling day he is qualified to be an elector in the register for that polling district and is on that day registered in the register of electors to be used at that election.*
>
> *(2) A person is not entitled to vote as an elector at an election unless he is registered in the register of electors to be used at that election.*
>
> *(3) A person who is subject under any written law to any incapacity to vote is not entitled to vote as an elector at an election"*

66. Sections 5 and 6 state:

> *"5(1) Subject to this Act and any written law imposing any disqualification for registration as an elector, a person is qualified to be registered as an elector for a polling district if he –*
>
> *(a) is a citizen of the Commonwealth of Dominica; or*
> *(b) is a Commonwealth of citizen who has resided in Dominica for a period of twelve months immediately before the qualifying date; and*
> *(c) is eighteen years of age or over; and*
> *(d) has resided in that polling district for a continuous period of at least three months immediately preceding the date of registration; but in the case of a person who had attained the age of eighteen years within the period of three months immediately preceding the date of his registration, no such residence qualification shall be required.*
>
> *(2) A person is not qualified to be registered as an elector for more than one polling district.*
>
> *(3) Where a person who is registered as an elector for a polling district has ceased to reside in that polling district he shall not on that account cease to be qualified to be registered as an elector for that polling district until he has become*

qualified to be registered as an elector for another polling district.

"6. A person is disqualified from being registered as an elector and shall not be so registered if he –

(a) is a person found or declared to be a person of unsound mind or a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness by virtue of any written law;
(b) is undergoing any sentence of imprisonment in Dominica;
(c) is under sentence of death imposed on him by a court in any part of the Commonwealth or under sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or under some sentence substituted therefor by competent authority and has not suffered the punishment to which he was sentenced or received a free pardon therefor, or
(d) is under any written law disqualified for registration as an elector.

67. Section 7 (c) provides that a person registered shall remain on the list unless his name has been deleted because;

"he has been absent from Dominica for a period exceeding five years; or"

68. Section 11 (3) (c) vests a discretion in the Chief Elections Officer. However, an elector may not be removed from the list unless and until the Chief Elections Officer forms an opinion that an elector being a citizen of the Commonwealth of Dominica was, and is, absent from Dominica for a period exceeding five years. But this cannot be done in a vacuum. The **Registration of Electors Regulations**, provides for claims and objections. Regulation 38 speaks to the alteration of the list. Five reasons are given for the alteration of the list in sub paragraphs (a) to (e). There is no specific reference in Regulation 38 to an elector being absent from Dominica for a period exceeding five years as an express reason for the alteration of the list. However, claims and objections, and decisions of the Chief Elections Officer and death are expressly mentioned.

69. I accept that an elector's name may be properly and lawfully deleted from the list or Register if he or she was absent from Dominica for a continuous period exceeding five years immediately preceding an objection but a person's name may not be deleted from the lists or register unless an objection is filed, and a due process determination by the Chief Elections Officer in accordance

with the regime for objections under the Regulations. Put differently, unless dead, an elector's name cannot lawfully be removed without an objection and/ or a hearing in accordance with the Regulations, due process and the protection of the law.

70. This was confirmed as the law by the Court of Appeal in **Parry** v **Mark Brantley** HCVAP 2012/00 which held as follows

> *"……The requirement at Regulation 23, that the Registration Officer shall give at least five days' notice (of the date, time and place for consideration of objections) of which there is evidence that it has been received by the addressee, applies both to a notice in writing that is personally served on the addressee and to a notice that is sent by registered post. Where a notice of a hearing at which a person's rights may be affected is involved the burden on the person sending the notice is to be very careful to see that the person is fully apprised of the proceedings before making an order against him.* ***The Election Registration Regulations 1984****, as amended, considered;* ***R v London County Quarter Sessions Appeals Committee Ex parte Rossi*** *[1956] 1 QB 682 followed.*

Proceedings such as the hearing of objections to registration on the Voters' List which ought to have been served but which did not come to the notice of the objectee are a nullity. This is the normal result of a failure to comply with the requirements of natural justice. ***Re Pritchard*** *[1963] Ch 502 followed.*

The failure of the Chief Registration Officer to publish the Revised Monthly Lists as required by section 46 of the Act, despite being reminded of the obligation by both Mr. Brantley and the leader of his party in separate communications, had the effect of concealing the removal of the names of the objectees from the Voters' List by the Registration Officer. The failure to communicate an administrative decision which is adverse to an individual is without legal effect. ***The National Assembly Elections Act Cap 2.01*** *as amended, considered;* ***Regina (Anufrijeva) v Secretary of State for the Home Department and Another*** *[2004] 1 AC 604 followed.*

The failure of the Chief Registration Officer and the Registration Officer to communicate the removal of their names from the Register of Voters to the persons objected to either by notice or by publication of the Revised Monthly Lists deprived those persons of an opportunity either to appeal the decision or to apply for re-registration. The failure to give notice of a right of appeal invalidates the decision against which an appeal may be

brought. ***Rayner v Corporation of Stepney*** *[1911] 2 Ch 312;* ***Agricultural Horticultural and Forestry Industry Training Board v Kent*** *[1970] 2 QB 19;* ***London & Clydeside Estates Ltd v Aberdeen District Council*** *[1980] 1 WLR 182 followed…."*

71. Mr Justice of Appeal D Mitchell explained the constitutional basis for the Court's findings in paragraph 73 of his judgment where he said

> "…..***The law is now well established that an administrative decision which is adverse to an individual must be communicated to him or her before it could have the character of a determination with legal effect, thereby enabling him or her to challenge it in the courts if he or she so wished****: **Regina (Anufrijeva) v Secretary of State for the Home Department and Another**. As Lord Steyn said, this is not a technical rule.* ***It is simply an application of the right of access to justice. That is a fundamental and constitutional principle of our legal system. Where decisions are published and notified to those concerned accountability of public authorities is achieved. He described the suggestion that an uncommunicated administrative decision can bind an individual as an astonishingly unjust proposition. In our system of law surprise is regarded as the enemy of justice. Fairness is the guiding principle of our public law. Elementary***

fairness therefore supports a principle that a decision takes effect only upon communication*…."*

72. The judgment of the Court of Appeal in **Parry** v **Mark Brantley** HCVAP 2012/00 is clear. Accordingly, the legal consequence is that no registered elector may be removed from the Register of Electors for however long or short a period of time, and for whatever purpose or by whatever process, unless the person is the subject of an objection, is given full notice of an objection or adverse decision, and due process including the right to challenge the decision in Court or appeal.

73. I am not aware that there have been any objections the ground that any elector was absent from the State for a period in excess of five (5) years under or in accordance with the **Registration of Electors Regulations**, Consequently, the Register of Electors was on Polling Day conclusive, as provided for in section 20(1) of the **Registration of Electors Act**, and parties cannot be heard to complain after Polling Day. [See **Frampton** v **Pinard** Rawlins J at paragraph 40 and **Lindsay Fitzpatrick Grant** v **Rupert Herbert and Others**, at paragraph [42] referred to above.]

Commonwealth Observers and the 2014 election

74. Observers from the Commonwealth were in Dominica for the 2014 general election. They prepared a Report. At page 12 to 13 of their the Observers said

> *"The Mission notes that within the confines of a small close-knit society as Dominica, verifying the identity of a voter is not a major issue, a view supported by the fact that historically cases of voter fraud have not been recorded in the country."*

75. The Observers in relation to registered voters who reside overseas and ID cards said

> "*The legislation regarding voter registration and the right to remain registered is of pivotal importance in navigating the legal debate on why, and how, the voters' list is larger than the enfranchised population residing in Dominica. The law is very clear on the issue of voter ID cards and voter registration. The Mission believes, however that there is a logical, and even necessary, debate which Dominica needs to have if residency is to remain a requirement and qualifying factor to exercise the franchise. There are individuals who have been absent for a period long enough to disqualify them from voting, but are nonetheless returning to vote (either of their own accord or*

through financial inducement from political parties).

The apparent lacuna in the legislation is centred on Chapter 2:03 of the Registration of Electors Act, Section 7.(c), which provides that a person registered may be deleted from the register should said person be "absent from Dominica for a period exceeding five years". The contentious debate seems to rest on the interpretation the law ascribes to the concept of "absence" as used in the legislation referred. As the law refers to absence and not residence, the criteria of five years absence may be casually satisfied by returning to the island once every 4 years, 364 days. ***The Mission believes therefore that under existing legislation the majority of Dominicans residing overseas would be entitled to receive a national ID card, therein allowing them to vote****."*

76. The Observers also addressed the register at page 20 where they said

"The Mission concludes that, despite its aforementioned shortcomings, ***the voters' list did not materially affect the credibility and transparency of the election process and of the results****. <u>The list is however widely and publicly discredited</u>* ***and despite, in the Mission's view, being accurate and appropriate in the eyes of existing legislation,*** *<u>the Mission does not believe it</u>*

necessarily reflects the reality or the wishes of Dominican society."

77. At page 22 the Observers said

> "***The list currently complies with legislation*** *but is widely discredited. "*

78. Frankly, these findings or comments are highly contradictory. It is difficult to understand how the voters' lists, which did not materially affect the credibility and transparency of the election process and of the results, and which is accurate in accordance with the law, could lead the Observers to believe the lists did not reflect " the reality," whatever this means. Indeed, it is flatly contradictory to say the list currently complies with legislation but is widely discredited.

79. The reason for this open contradiction lies in the explanation given by the Observers on page 22 where they went on to say

> *"There appears to be credible public appetite for the revision of legislation guiding the compilation of the voters' register, and* ***for elections to be more reflective of the wishes of persons resident in the Commonwealth of Dominica****. "*

80. The explanation in bold reflects the political position of the United Workers Party. This explanation misses the point that a registered voter has a constitutional right to vote and may only be removed with due process regardless of where he lives. This right was recently confirmed in large measure by the Supreme Court of Canada in **Frank** v **The Attorney General of Canada** 2019 SCC 1

The ID Cards

81. An ID card is required for identification purposes. However, the Jamaican Constitutional **Court in Julian J Robinson** v **The Attorney General of Jamaica** [2019] JMFC Full 04 recently declared the National Identification and Registration Act unconstitutional. I have not yet determined how this case may affect us in Dominica. Accordingly, and subject to my reserved position to comment later on the Jamaican case, I will address the issue of ID Cards.

82. There is no question that the existing election laws do not require any particular form of ID card, and certainly do not authorize the acquisition of biometrics from electors. It merely mentions an ID Card. Nor, do the existing laws

make an ID card mandatory. The Chief Elections Officer may devise other means for identifying electors. [See Section 19 of the **Registration of Electors Act** and Regulation 15 of the **Registration of Electors Regulations**.]

83. Nevertheless, it is clear from the proposed Bill, which the Executive intends to take to the Parliament, that the term "National ID Card" is merely nomenclature, and that the ID Card is required for the purposes of identifying an elector at an election. It is also clear that under the proposed amendments it will be the responsibility of the Commission and Chief Registering Officer/Chief Elections Officer to ensure that the confirmation process takes place, that ID Cards are issued properly, and proper registration details are inserted on the ID Card as prescribed by the proposed amendments.

84. Further, one of the key features of the proposed confirmation process is the authority given to registering officers to refuse to confirm any registered elector who lives overseas and who fails to establish he or she has visited Dominica at least once in the five years immediately preceding their application for confirmation. Every other registered elector is entitled to an ID Card.

The authority of the Electoral Commission,

"sansitization" and " ID Cards."

85. Any discussion on the authority of the Electoral Commission must begin with section 56 (3) of the Constitution which created the Commission, and section 38 (1) which provided that it *"… **shall have such powers and other functions relating to such registration and elections as may be prescribed by law**……"* These sections establish that the Commission may only exercise such powers as are expressly conferred by the Constitution or an Act of Parliament

86. There is a suggestion the Electoral Commission may under the **Registration of Electors Act** sanitize the Register or issue ID Cards without parliamentary authority. This suggestion is completely misconceived. As set out above section 38 of the Constitution the Commission "..***shall have such powers and other functions relating to such registration and elections as may be prescribed by law……"*** Prescribed by law means expressly conferred or vested by an Act of Parliament.

87. Importantly, the Constitution does not confer the jurisdiction or authority to sanitize and list or issue ID Cards. Also, a review of the election and registrations laws of Dominica discloses that there is no provision which confers the power or function on the Commission to conduct a confirmation process. The sole function vested in the Commission by the **Registration of Electors Act** in the legislative process for claims and objections is the obligation to hear an appeal from a decision made by the Chief Registering Officer. Nor is there any provision authorizing the Commission to issue ID Cards. [See section 13 (3) of the **Registration of Electors Act**.].

88. The only provision which speaks to an ID Card is section 19 of the **Registration of Electors Act.**

89. Section 19 provides

> *" The Chief Registering Officer may cause identification cards containing prescribed information to be issued in accordance with the Regulations, or may employ other suitable methods of preventing electors from voting more than once."*

90. Section 19 gives a discretion to the Chief Registering Officer. The exercise of this discretion is not obligatory. In

any event, there are no Regulations which provide for ID Cards. Also, the Electoral Commission is not mentioned in Section 19. Nevertheless, it is said that the Commission could by Regulations provide for ID Cards, or the framework for the Chief Elections Officer. This suggestion is misplaced. The power of the Commission to make Regulations is limited by the provisions of section 25 of the **Registration of Electors Act**. Therefore, unless the **Registration of Electors Act** empowered the Commission to make Regulations for photographs, biometrics and ID Cards, it does not have that power.

91. Properly construed, section 25 of the **Registration of Electors Act** does not authorize e the Electoral Commission to make regulations for ID Cards, and certainly not the type of ID Cards contemplated by the proposed amendments. . Consequently, the Electoral Commission does not have the jurisdiction or authority to make Regulations for ID Cards. It is therefore manifestly a matter for the Parliament to make laws for the acquisition of photographs, biometrics and issuance of ID Cards by the Electoral Commission as proposed in the respective Bills before the Parliament.

The authority of Parliament to act

92. There can be no question that the provisions of sections 38, 41 and 51 of the Constitution vest the power in the Parliament to make laws, or amend laws which provide for the registration or confirmation of electors, the introduction of ID Cards, and generally for elections. Nor, can there be any question that the sole fetter on the legislative competence of the Parliament is an express restrictive constitutional provision. There are no relevant or applicable constitutional fetters which could prevent Parliament from exercising its constitutional power to amend the existing law to provide expressly for the Electoral Commission to issue ID Cards.

93. It is therefore manifestly the law that the Executive Branch is at liberty to submit Bills to the Parliament for enactment into law which provide for a confirmation process and ID Cards. Indeed, the Parliament can expressly rather than implicitly repeal section 19 of the Act in order to make an ID Card a legal part of the registration process, as the Bills seek to do.

The competence of Parliament and extra-territorial legislation

94. There is no question that the Parliament of the sovereign State of Dominica may in furtherance of its authority to make laws for the peace, order and good governance of Dominica make laws which have extra-territorial effect or application especially in matters affecting Dominicans and matters under Dominican law. Put more frontally, our Parliament has the right to make laws for or in respect of Dominicans where ever they may live whether it be Dominica or elsewhere.

95. In **R (Al-Skeini)** v **Secretary of State for Defence** [2007] 3 WLR 33 Lord Bingham at paragraphs 45 to 47 said

> *"Behind the various rules of construction, a number of different policies can be seen at work. For example, every statute is interpreted, "so far as its language permits, so as not to be inconsistent with the comity of nations or the established rules of international law": Maxwell on the Interpretation of Statutes, 12th ed (1969), p 183.* ***It would usually be both objectionable in terms of international comity and futile in practice for Parliament to assert its authority over the subjects of another***

sovereign who are not within the United Kingdom. *So, in the absence of any indication to the contrary, a court will interpret legislation as not being intended to affect such people. They do not fall within "the legislative grasp, or intendment," of Parliament's legislation, to use Lord Wilberforce's expression in Clark v Oceanic Contractors Inc [1983] 2 AC 130, 152C–D. In Ex p Blain; In re Sawers (1879) 12 Ch D 522 the question was whether the court had jurisdiction, by virtue of the Bankruptcy Act 1869 , to make an adjudication of bankruptcy against a foreigner, domiciled and resident abroad, who had never been in England. James LJ said, at p 526:*

> *"But, if a foreigner remains abroad, if he has never come into this country at all, it seems to me impossible to imagine that the English legislature could have ever intended to make such a man subject to particular English legislation."*

…….

Subjects of the Crown, British citizens, are in a different boat. International law does not prevent a state from exercising jurisdiction over its nationals travelling or residing abroad, since they remain under its personal authority: Oppenheim's International Law, 9th ed (1992), vol 1, Pt I, para 138. So there can be no objection in principle to Parliament legislating for British citizens outside

the United Kingdom, provided that the particular legislation does not offend against the sovereignty of other states. *…….*

…..

Restating the position in the language of the 1980s, in Clark v Oceanic Contractors Inc [1983] 2 AC 130, 145, Lord Scarman said that the general principle is simply that:

> *"unless the contrary is expressly enacted or so plainly implied that the courts must give effect to it, United Kingdom legislation is applicable only to British subjects or to foreigners who by coming to the United Kingdom, whether for a short or a long time, have made themselves subject to British jurisdiction."*

The cases indicate, therefore, that British individuals or firms or companies or other organisations readily fall within the legislative grasp of statutes passed by Parliament. So far as they are concerned, the question is whether, on a fair interpretation, the statute in question is intended to apply to them only in the United Kingdom or also, to some extent at least, beyond the territorial limits of the United Kingdom."

96. The law is therefore clear. The proposed amendments concern citizens of Dominica who are registered to vote but reside overseas. They seek to preserve the constitutional rights of Dominicans to vote. The amendments do not concern foreign citizens, and do not concern or affect the laws of the countries in which the Dominicans reside. Consequently, the proposed amendments including the confirmation process do not contravene any constitutional or extra-territorial prohibition. They expressly provide for the confirmation process to take place extra territorially as well as locally.

Conclusion

97. For the reasons mentioned above, I believe that the Executive and Legislative Branches of Government of Dominica are on the right track on making the proposed changes to the election and registration laws, or what some are calling electoral reform. The confirmation process will preserve the right to vote subject only to the obligation to establish one has been in Dominica in the preceding five year period. This may result in the removal of electors under the proposed amendment without the

need for an objection. But such removals will be done in accordance with the law as amended including the provisions for due process.

98. I also believe that as the current "debate" in the media and elsewhere has failed to address and accept the basic legal principles and law, the "debate" will continue to misinform the public as it is premised substantially if not wholly on misconceived notions of law and fact, and in many instances, partisan mischief making, and calculated misinformation.

99. I have avoided criticisms of the Report of the Observers from the Organization of the American States. I did not think it necessary to do so as on the face of the Report it is obvious that the Report is highly superficial, and reflects largely if not solely allegations made to the Overserves, and not on objective fact or the correct application of the law.

100. Finally, I have not dealt with the issue of campaign finance, at least for now. The reason is that I am presently reviewing the decision of the United States Supreme Court

in **Citizens United** v **The Federal election Commission** with a view to assessing how it may be relevant to Dominica.

Dated the 29th April 2019

ANTHONY W ASTAPHAN, SC