

DOMINICA’S REPLY TO ‘DEMOCRATIC INTEGRITY IN DOMINICA’ PUBLISHED BY

COHA

The Government of the Commonwealth of Dominica condemns outright the publication titled “DEMOCRATIC INTEGRITY IN DOMINICA” produced by the Council of Hemispheric Affairs with the collusion of Clayton Shillingford and the leadership of the United Workers Party (UWP). The publication is one sided, biased and littered with grave misrepresentations of the facts, the law, and makes insidious imputations against the independence of the Judiciary and the Electoral Commission.

The Government of Dominica relies on the following ¹

- i. The source of the allegations is a discredited critic of the Dominica Labour Party and Government with a political axe to grind. Recent internal correspondence of the Dominica Academy of Arts and Science (DAAS) disclosed that the unilateral conduct of Clayton Shillingford² led to the resignation of the then President of DAAS. This correspondence also showed that the DAAS has been dysfunctional for some time. Additionally, there have been a number of scandals involving monies belonging, and lands gifted, to DAAS. The only other sources from Dominica are the political leader and high ranking members of the United Workers Party.
- ii. The article was therefore published in direct conflict with the long established principles of responsibility and fairness, namely making independent and objective inquiries, and seeking the other side of the story especially from the Dominica Labour Party, the Electoral

¹ These reasons are not exhaustive as Dominica does not intend to reply to the alleged particulars of the allegations made by Clayton Shillingford.

² Shillingford has lived in America since at least 1978.

Commission, the Government of Dominica and officials of the Supreme Court of Justice before publication. This was not done at all.

- iii. There is no law in Dominica which makes the unconditional transportation of voters illegal or a crime. Consistently with this law, the United Workers Party and other political parties in the OECS and CARICOM have over the years provided airline or boat tickets and transportation to their supporters to come home to vote. The United Workers Party did so by providing tickets and transportation to supporters in every election from 1995 to 2009. This was done in an effort to facilitate the constitutional right to vote and ensure maximum voter turnout.
- iv. Allegations of bribery, which included the allegation of transportation to supporters, were part of election petitions by the United Workers Party after the 2009 election. The Party retained one of the leading Counsels in the Caribbean to represent its members. The allegations of bribery were heard by Mr. Justice Errol Thomas, one of the most senior and experienced Judges in the Organization of the Eastern Caribbean. These allegations of bribery and many others were dismissed as wholly without merit and a fishing expedition³. The Learned Judge also threw out the claim that overseas voters were not qualified to vote. He ruled that in the absence of an objection a voter may not lawfully be removed from the Register of Voters.
- v. The Judiciary however ordered that the allegation of an acknowledgment of foreign allegiance to France against the sitting Prime Minister be sent to trial. This preliminary finding of a triable issue against

³ Similar allegations were dismissed in Saint Kitts and Nevis and Antigua and Barbuda

the Prime Minister is conclusive evidence against the insidious allegation of political manipulation of the Judge made by Shillingford and Linton, and repeated by COHA. The allegation of an acknowledgment of foreign allegiance to France against the Prime Minister was determined at trial after several days of evidence by Madame Justice Gerthel Thom. The High Court held that this allegation against the Prime Minister was entirely without merit. The United Workers Party appealed the judgment of Madame Justice Gerthel Thom on the alleged issue of an acknowledgment of foreign allegiance to the Court of Appeal.

- vi. The Court of Appeal consisted of three (3) Justices. There was neither allegation nor ground of appeal of any form of political manipulation ~~of~~ or interference against the judgment of Mr. Justice Errol Thomas or Madame Justice Gerthel Thom. The Court of Appeal unanimously dismissed the appeal on the merit on the grounds that it was completely without factual or legal foundation nor merit. In addition, the majority of the Court of Appeal held that Mr Justice Thomas was wrong to have submitted the alleged foreign allegiance to trial because all there was was a bare and bald allegation and therefore nothing on the record to try by the High Court. One of the Justices went further and said the law needs to be amended to empower the High Court to order costs against meritless claims.
- vii. To avoid the obvious impact of these decisions to the allegations of alleged bribery made by the opposition Mr. Ryan Eustace, in the fourth (4th) paragraph of the publication, was induced by Shillingford and Linton to write

'In the summer of 2010 representatives of the main opposition party, the United Workers Party (UWP), brought petitions charging bribery and other electoral irregularities to the ECSC. The petition alleged not only that plane tickets were paid for by the government, but also that voters were further bribed with cash when they arrived in Dominica. However, the court rejected the majority of the petitions. [7] While there were issues with some of the petitions, the dismissal of others, particularly those concerning bribery, raised suspicions of political manipulation. According to two high-ranking members of the opposition, speaking on condition of anonymity with this researcher, the high court was subjected to political tampering. COHA's sources noted their conversation with ECSC Judge Brian Cottle in which he admitted that "no judge will ever rule against a sitting government if it can be avoided."

viii. Later on in his publication Mr. Ryan Eustace wrote

'It appears that a disturbing trend is developing in which Dominica is diverting from the norms of the rest of the English speaking Caribbean. According to Michael Edghill:

The tradition in the English-speaking Caribbean has always been one that maintained respect for the institutions of government. Governments in power get to appoint who they want to various commissions and boards and also get to nominate a majority of upper house members under the Westminster model. Respect for government itself however (sic) has precluded most governments

from nominating simple party loyalists as opposed to highly qualified and respected politicians.[22]

These qualities seem to be eroding in Dominica where political manipulation of the judicial branch is becoming harder and harder to deny. This erosion of judicial independence cheapens Dominican democracy.'

ix. These allegations are for the following reasons, manifestly false:

- a) Judges of the High Court of the Eastern Caribbean Supreme Court are appointed by the Chief Justice and not by the Prime Minister of Dominica or any other State in the OECS.
- b) There is no factual basis for this far reaching allegation of *'suspicions of political manipulation'*. It simply never happened. But more importantly Mr. Eustace does not even pretend to make inquiries or identify the evidence or factual framework for this insidious attack on the integrity of the High Court of Justice. Instead of making the required and responsible inquiries to ascertain whether the allegation was truth or false, Mr. Eustace wrote, *'According to two high-ranking members of the opposition, speaking on condition of anonymity with this researcher, the high court was subjected to political tampering. COHA's sources noted their conversation with ECSC Judge Brian Cottle in which he admitted that "no judge will ever rule against a sitting government if it can*

be avoided'. This is extraordinary. No particulars or evidence of this very serious allegation of tampering is given. Also, Mr Eustace relies instead on allegations, which are clearly false, from 'senior members of the opposition' to support the very allegation of political manipulation that the opposition United Workers Party itself and no one else has made. The suggestion that Justice Cottle would have made such a statement is absurd. In any event, Justice Cottle was never involved in any of the election cases. This is therefore a transparent case of self-serving reporting, and constitutes a naked attack on the independence and impartiality of the High Court and Court of Appeal of the Eastern Caribbean⁴, and contempt of the court;

- c) Further, Mr. Eustace relies on certain writing on allegation in countries in ALBA to support the premise of his wholly unsupported and false allegation of political manipulation and attack against the Court. This is misconceived if for no other reasons than (i) the structure and framework of our constitutional Government, (ii) the separation of powers between the Executive and Legislative Branches and the Judiciary, and (iii) the framework and constitutional protection of our Judiciary are fundamentally different to those in the Latin American countries in ALBA. Additionally, the Eastern Caribbean Supreme Court has been in existence since 1967. There has not been one (1) research paper or

⁴ This attack on the independence and impartiality of the Eastern Caribbean Supreme Court has been referred to the Attorney General and the Chief Registrar of the Court.

inquiry which has shown, far less established, any form of manipulation of the Court by the Executive or Legislative Branches of the Government as may exist elsewhere. Mr. Eustace's obvious motive was to link Dominica to ALBA, not for the great benefits ALBA has brought to our Nation, but to plant in the minds of COHA's audience the pathological seed that simply because Dominica is part of ALBA, its Government and Judiciary, which is shared with every other State in the OECS, are the same, function the same and are subject to the same manipulations and interference that may exist in the Latin American countries in ALBA. This is manifestly speculative and unacceptable.

- x. Mr. Eustace was obviously misled in believing the Electoral Commission is part of the Judiciary of Dominica. The Commission has never been and is not part of the Judiciary. Its members are essentially political appointees made by the Prime Minister and Leader of the political Opposition in accordance with the authority vested in them by section 56 (3) of the Constitution to appoint two (2) members each to the Commission. Its Chairman is an independent person appointed by the President, and its functions are set out in various Acts of Parliament.
- xi. Mr. Eustace also writes, on information provided to him by Shillingford and Linton, that there is resistance by the Electoral Commission to the removal of persons from the list who have died or overseas for more than 5 years. He relies on the allegation by Mr. Linton that three (3) members of his family are still on the register of voters although overseas for more than 15 years and dead. Significantly, no other

person was identified by Mr. Linton. It is manifestly clear that Mr. Eustace has not informed himself of the law and legal developments in Dominica. He was not informed, made no inquiries to find out and therefore does not know that the High Court and Court of Appeal of the Eastern Caribbean Supreme Court have ruled that a duly registered voter may not be removed from the register of elector, even if overseas for more than 5 years, unless and until an objection is submitted and heard in accordance with the due process provisions under then Registration of Electors Act and the general law.

- xii. Despite Mr. Linton's protestations to COHA, the records indicate that the United Workers Party has not filed any notice of objection against any name on the Register for at least the last ten (10) years. This failure to file any objection is simply because the United Workers Party has itself courted the overseas vote for several years. Having realized however that this vote is now lost to it, the Party has flip flopped on the right of the overseas voter to participate in an election. Consequently, the Party and Mr. Linton have taken the politically expedient and dishonest position that voters should be unilaterally removed by the Commission and due process should not apply. In other words, the United Workers Party and Mr. Linton want the Commission to delete names on mere allegation and by the stroke of the pen. This is not only undemocratic, it is contrary to law. [See an interesting article published in the local media, <http://dominicavibes.dm/the-law-and-sanitizing-the-electors-list/>]
- xiii. The Electoral Commission, unanimously, issued a press release in June 2014 in which the Commission stated

'By letter dated Monday, 16th June, 2014, the Commission, through the Chief Elections Officer, responded and invited the UWP to meet on Wednesday 18th June, 2014, at 4: 00 pm, at the Electoral Office. The meeting was convened accordingly and all members of the Commission along with the Chief Elections Officer were in attendance, together with the representatives of the UWP.

.....

It must be pointed out that last Wednesday's meeting was one of several that the Commission has held with the UWP over the past two (2) years. Some of those meetings were convened at the request of the party, while others were held as part of the Commission's outreach to political parties and other stakeholders of the electoral process. In the course of previous meetings, the Commission indicated its position, as well as provided details of the work being done, in respect of several of the issues raised above.

The position of the Commission as articulated at Wednesday's meeting with the UWP is as follows;

(1) On the matter of the cleansing of the electoral list, the Commission explained to the meeting the steps being taken to cleanse the list. These included :

- 1. obtaining reports from the Civil Registry on a monthly basis which, following verification with Registering Officers in the districts, are used in the removal of the names of deceased persons from the electoral list;*

- 2. *Investigation into Commonwealth citizens who no longer reside in Dominica with a view to removal of their names from the list;*
- 3. *The fact that the enrollment process of the MPID is assisting in providing information which is used to cleanse the list;*
- 4. *That names of persons who are supposedly deceased and which are submitted by political parties and other interested stakeholders for removal from the list, are submitted to the Civil Registry for verification prior to being removed from the Electoral List;*

The Commission also emphasized the obligation of political parties and other stakeholders to draw to the attention of the Commission, the names of persons whom they believe should not be on the list and the fact that the electoral law contains procedure for objections leading to the removal of such persons from the list.'

- xiv. There is therefore no basis for the allegation that there has been any wrong doing by the Commission or that the Commission is refusing to 'cleanse' the list.
- xv. Mr. Ryan Eustace referred to emails written by Mr. Anthony W Astaphan, SC and Mr. Alick Lawrence, SC to support some form of interference by them with the Commission. This is false for the following reasons
 - a) Mr. Astaphan is on public record denying any interference, and stating that he wrote the email because he had

credible information that members of the Commission appointed by the Prime Minister were not attending meetings of the Commission notwithstanding the important proposals tabled for discussion. It was his view that it was wrong for members of the Commission not to attend important meetings of the Commission;

- b) The law empowers the Prime Minister and Leader of the Opposition to appoint two members each to the Electoral Commission. The Chairman is appointed by the President. Mr. Lawrence was appointed by the Prime Minister. There is no provision or principle of law which excludes him from appointment. On the assumption the excerpt referred to by Mr. Eustace is accurate, and properly in context, there is nothing in law which prevents an appointee of the Electoral or Boundaries Commission consulting with the person or authority that appointed him or her;
- c) The Commission has in recent times acted unanimously with no dissent; and
- d) There has been no challenge to any decision of the Electoral Commission by the United Workers Party.

- xvi. Mr. Ryan Eustace then speaks about the ID card issue. While the OAS did recommend voter ID cards, this still remains an issue for the relevant authorities. One of the main arguments in favour of ID cards is to prevent voter impersonation or fraud. However, there has been no voter impersonation or fraud in the Nation of Dominica, which requires

ID cards to prevent such voter fraud. The Supervisor of Elections published election reports after the 2005 and 2009 elections. The OAS and CARICOM Community Observers also wrote reports after the 2009 election. In none of these reports was there any allegation or suggestion of voter impersonation or fraud in any of these or other elections. In any event, the Government of Dominica, consistently with other countries in the OECS and Caricom, decided to implement a Multi-Purpose Identification Card (MPID) under the auspices of the Electoral Commission. This was and is the most cost effective way of providing ID for an election and other purposes.

xvii. In its press release referred to earlier the Commission declared

‘On the matter of the issuance of the MPID and its use for voting in the upcoming general election, the Commission provided to the UWP, details of the progress that was being made with the enrollment and some of the challenges it faced. The Commission emphasized that even before the commencement of enrollment; it had indicated to the general public that the process would take approximately 18 months. Now that the process has begun, the Commission was of the view that the process is more likely to take approximately 2 years. The Commission stated that it had previously indicated, and this is still its position, that it would not recommend the use of the MPID for elections, unless it was satisfied that each person who is entitled to vote had the reasonable opportunity of being enrolled and issued a card. The UWP expressed concerns that based on the timeline given by the Commission; it was unlikely that the MPID card would be ready for use for the next election. They therefore suggested that the

Commission examine the model⁵ adopted in the recent Antigua election, including the re-registration process adopted prior to that election. The Commission responded that from its understanding such a model would require new legislation. The UWP inquired whether the Commission would support a call by it for such legislation to be implemented. The Commission indicated that the UWP should send it material on the Antigua model for consideration.'

- xviii. This release speaks for itself. But there is a great deal more which was dishonestly withheld from Mr. Eustace. The Government of Dominica, which is led by the Prime Minister, provided the required funding to the Electoral Commission for it to engage a senior prominent legal consultant to advise on changes to the elections law as requested by the Commission. In addition, it was the Government of Dominica with the assistance of the World Bank that bought the equipment required to produce and issue the national ID cards. It is therefore entirely misleading to suggest that there is any attempt by the Commission or Government to deny or frustrate the issuance of ID cards.
- xix. Under the heading '**Where is the money coming from**' Mr Eustace implies that foreign Governments fund the Dominica Labour Party but provides not a shred of evidence. He then refers to alleged statements made by the Prime Minister in 2005 as conveyed by Shillingford. What the Prime Minister in fact said in 2005 was that Mr. Linton and other members of the United Workers Party who were asking for the source of his Party's funds in 2005 can get lost unless and until the United Workers Party discloses its own source of funding. It refused.

⁵ This so called model targeted Commonwealth citizens and caused the removal of some 6000 voters from the Register of Voters.

- xx. Subsequent to the 2005 general election the Government discovered the United Workers Party was funded by six (6) foreign investors who transferred 6 million ECD to the United Workers Party. In exchange the leadership of the United Workers Party promised diplomatic passports, diplomatic posting and the right of participation or control over the economic citizenship program. One of these investors was convicted in North Carolina for, among others, conspiracy to defraud the IRS and recently released from jail in America.
- xxi. In 2009 a foreign firm Strategic Communications Laboratories ('SCL ') managed the campaign of the United Workers Party for a 1.5 million USD fee. Perhaps Mr. Eustace would like to ask Mr. Linton who paid this 2009 campaign management fee of 1.5 million USD for the United Workers Party.

In all of the circumstances, it extremely disappointing that a supposedly reputable organization such as COHA would so flagrantly breach the basic rules of fairness, and allow itself to be used and manipulated by persons with obvious political axes to grind to publish such baseless allegations. Such a publication cannot be in the best interest of COHA.

In the interest of fairness we therefore request that COHA's publication be withdrawn with an appropriate retraction or apology, and that this reply be published by COHA.

Dated the 16th August 2014

Submitted on behalf of the Government of Dominica

Darryl V Titre

Press Attaché

OFFICE OF PRIME MINISTER