

Regional and Judicial Legal Services Commission  
63 Tragarete Road  
Port of Spain;|  
Republic of Trinidad and Tobago;  
West Indies

April 6, 2017

## OFFICIAL COMPLAINT

### Cabral Douglas v Dominica (Original Jurisdiction)

Dear Commission

The following irregularities among others were identified in the adjudication of the above captioned matter:

1) The fact that the proposed Defendant was permitted to be heard despite filing their request to be heard out of time, and not applying for and obtaining relief from sanctions as required by rule 19.4(1) which reads:

“Where a party or an intervener has failed to comply with any rule, the direction, practice direction or any order, any sanction for such non-compliance imposed by the rule, direction, practice direction or the order has effect **unless the party or intervener in default applies for and obtains relief from sanctions.**”

2) The fact that the court did its own research and featured such research in its decision without ever putting the said research to the Applicant to comment on.

3) The fact that the Application was not decided based on the actual submissions made by the Defendant. The court failed to rely on any of the submissions made on behalf of the Defendant by Attorney General Levi Peter, instead choosing to rely on untested research as indicated above.

4) The fact that the Court failed to properly deal with the Applicants submissions but, again, relied on untested research without references or scrutiny by the Applicant.

5) The fact that Article 36 of the RTC enures to the **DIRECT** benefit of both service providers and those contracted to receive those very services was never in dispute, this is obvious to make sense of the treaty, even the Defendant agreed with this when the question was put to him by Justice Wit. Indeed the court itself agreed with this in their decision, but they said in paragraph 28 of the decision that it was the audience and not the Applicant who was receiving the service, knowing very well from our submissions that the Applicant was the only

party who contracted to receive the service.

6) The effect of the decision is that the 4 Jamaican nationals denied entry into Dominica have standing in the court, even third parties (i.e. the audience) as indicated in paragraph 28, whom are not privy to the contract for service can access the court for nominal damages (i.e. the price of admission), opening the floodgates for litigation, which could not possibly be the intention of the treaty, but the one person, the Applicant, who contracted to receive the service is barred from the court, thereby having a discriminatory effect on the Applicant.

7) The fact that not only did CCJ President Sir Dennis Byron attended the Heads of Government meeting in Guyana on 17 February 2017 but the court announced it had come to a decision during this very meeting. We are indeed very concerned about this. We believe an urgent investigation is required. Did Mr. Byron meet with the Defendant Prime Minister Skerrit? If so in what capacity? Was the pending case against the Defendant discussed with the Defendant Prime Minister? Did Mr. Byron meet with CARICOM Secretary General and Dominican national, Irvin Larocque? If so, did these discussions have an undue influence on the decision? In any event, it is our submission, relying on *R v Sussex Justices, ex Parte McCarthy (1924)*, which has been adopted throughout the free world and indeed the Commonwealth, that the mere presence of Sir Dennis Byron at the Heads of Government meeting, attended by the Defendant Prime Minister creates the appearance of bias sufficient to overturn the decision. According to Lord Hewart in *McCarthy*: "Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice".

Furthermore, this decision is not only a problem for the Applicant, it's a problem for all investors operating in approved sectors within CARICOM's 15 member grouping.

On the one hand, you have the Heads of Government approving sectors in which services can be provided and received within CARICOM member states, yet on the other, the CCJ is barring investors from approaching the court, when prevented from exercising these rights by signatory's to the Treaty in those sectors approved by Conference Decisions at the Heads of Government level.

This creates a serious problem for the implementation of the Caribbean Single Market and Economy (CSME).

It means the CCJ, which is the judicial arm of CARICOM, will not enforce Conference Decisions when it's not politically expedient to do so.

This in my humble opinion brings the court and its credibility into disrepute.

The CCJ in its original jurisdiction is an international court, so its decisions are binding on all signatories to the RTC, not just the Applicant, or Dominica for that matter, creating commercial uncertainty for all investors operating in approved sectors.

Sincerely yours

Cabral Douglas BA, L.LB

**(signed)**