

STATEMENT BY THE DOMINICA BAR ASSOCIATION ON RECENT COMMENTS MADE AGAINST THE JUDICIARY

The Dominica Bar Association (DBA) has been made aware of recent statements made on the radio and on social media alleging bias against a sitting judge and demanding that the judge recuse herself from hearing a striking out application brought by the government of Dominica against election petitions filed with regard to the Dec 6th, 2019, general elections.

The DBA wishes to make a few things clear:

1. Dominica currently has two resident justices, one assigned to the civil jurisdiction of the High Court and the other assigned to the criminal jurisdiction. Assignments of judges are done by the Chief Justice (CJ) and the CJ may at any time reassign Justices. The sitting of a judge in the Civil Court when he/she is formally assigned to the criminal jurisdiction of the court is not unheard of and ought not to create any suspicion or elicit any concern or mistrust in the operations of our justice system. Purely for the record, Stephenson J is the judge formally assigned to the civil jurisdiction of the High Court in Dominica and the other resident judge is formally assigned to the criminal jurisdiction of the High Court. Nevertheless, as of March 2020, (due to the COVID-19 pandemic) the Criminal High Court in Dominica has not been sitting and both resident justices have heard civil matters.
2. Our justice system as it relates to the independence of the judiciary and the dispensation of justice in Dominica and in the region enjoys a reputation that all and any person seeking justice can have full confidence in. The Court system is adversarial by nature. This means that parties in litigation go to trial, at the end of which the court determines the winner and the loser. Any party who is dissatisfied with the decision of a sitting judge, at first instance, has the right to appeal that decision to the Eastern Caribbean Court of Appeal and, if also dissatisfied with the decision of the Court of Appeal, to appeal to our final appellate court, the Caribbean Court of Justice (CCJ). The DBA respects the right of

every individual to have his own personal opinion on a decision issued by the court and to exercise his/her right of appeal. But, we also recognise that it is of paramount importance that all persons have, and are aware of, their right of access to the courts with regard to any legal grievance and that they have full confidence in the independence and integrity of our judicial system. A lack of trust in the judicial system may cause aggrieved persons to fail to take advantage of their access to the courts and this would be extremely unfortunate. We therefore urge all individuals, especially those seeking justice in the courts, to exercise prudence and pragmatism when making any public statements or comments so as to avoid any that may 'chip away' at the reputation of our judicial system and/or the public confidence in the dispensation of justice in our local court system.

3. The fact that a trial judge rules against a party and/or that the judge's decision is overturned on appeal in no way means that this judge was incompetent and/or biased. The fact that a litigant is dissatisfied with a decision(s) of the trial court does not, on its own, mean that the judge was incompetent and/or biased. The DBA seriously encourages the public to not allow the dissatisfaction with the outcome of a case to translate into a distrust in our justice system or into a lack of confidence in the ability or integrity of any judge, and to never allow it to result in the public denigration of any judge or the judicial system.
4. Our judicial system allows for any party to a claim, who believes that a particular judge should recuse himself/herself from the hearing of the matter, to bring an application in writing to that judge, supported by evidence on affidavit, requesting that he/she recuse himself/herself from the case. The law on recusal is well established and any application for recusal and any decision of the judge thereon will presumably consider the said established law and principles on the issue. Should any judge dismiss an application properly brought before him/her for recusal and proceed to decide the matter against the applicant, the failure to recuse may form part of the grounds of appeal if the party appeals the substantive decision. The appellate court, in reviewing the recusal decision of the trial judge, will, applying the established law and principles on the issue, determine whether or not

the judge was right to dismiss the application. Our Court of Appeal has in the past both upheld and overruled the dismissal of recusal applications. Access to the Court of Appeal on this point of law operates as reassurance to any litigant that justice will prevail irrespective of whether an application for recusal has been made and dismissed.

The DBA wishes to assure the public that the rule of law, in particular the independence of the judiciary, is alive and well in the Commonwealth of Dominica.

The Dominica Bar Association also urges all citizens, including members of its own legal fraternity, to show due respect and regard for the judiciary which is a critical institution for preserving our democracy. The Association encourages citizens to voice any and all concerns that they may have about the judiciary in a proper and respectful manner that recognizes the rights of all persons, including the rights of the judges who, like all other persons, are entitled to have their reputations protected against false and/or misleading statements that may tend to bring them into odium or disrepute in the eyes of reasonable thinking members of the society. It does our democracy no good to attack the reputation of judges based purely on whether or not they rule in favour of a particular litigant.

The DBA takes this opportunity to remind the public that most judgments of our courts of first instance in the region (the OECS) and those of the Court of Appeal are available on the Eastern Caribbean Supreme Court website eccourts.org and all judgments and proceedings of the Caribbean Court of Justice are available on the CCJ website <https://www.ccj.org/> At a time when information is so readily available at our fingertips, the public is encouraged to keep informed by going on these sites to read the judicial decisions in cases that are of interest to them.

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