

*IN THE HIGH COURT OF JUSTICE
ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
A.D. 2012*

Claim No. NEVHCV2011/0130

*In the Matter of Section 3, 12, 15, 18, 20, (3), 33, 34, 36, 96, 101(4) and 104 of the
Constitution of Saint Christopher and Nevis*

And

In the matter of the National Assembly Elections Act Chap. 2:01

And

*In the Matter of the Nevis Island Assembly Election for the Constituency of Nevis 2
(Parish of St. John) held on the 11th July, 2011.*

Between

*Mark Brantley
Petitioner*

And

*Hensley Daniel
Leroy Benjamin (the Supervisor of Elections)
Bernadette Lawrence (Registration Officer for the Constituency of St. John)
Kelvin Daly (Returning Officer)
Joseph Parry Premier of Nevis
Hesketh Benjamin (Chairman, El Commission)
Myrna Walwyn (Member, Electoral Commission)
William Dore (Member, Electoral Commission)
The Attorney General of Saint Christopher and Nevis
Respondents*

Before Jones J.

Appearances:

*Douglas Mendes S.C.
Dane Hamilton,
Kenneth Lake
Jean Dyer
Dahlia Joseph*

for Petitioner,

Dr. Henry Browne

for 1st Respondent

Anthony Astaphan S.C.
Sylvester Anthony
Arudranauth Gossai

for 2nd 3rd and 4th Respondents,

Oral Martin

for 5th Respondent

Dennis Marchant

for 6th, 7th and 8th Respondents.

John Tyne

for Attorney General

JUDGMENT

On the 4th day of July, 2011 the Nevis Island Assembly elections were held. The Petitioner Mark Brantley, the Deputy Political Leader of the Concerned Citizens Movement (CCM) was a candidate for the constituency of Nevis 2, Parish of St. John. The first Respondent, Hensley Daniel, a member of the Nevis Reformation Party (NRP) was also a candidate for the constituency of Nevis.2 Parish of St. John.

The results of the elections were declared on the 12th day of July, 2011 by the fourth named respondent, the Returning Officer. Hensley Daniel, the first named Respondent, received 1,358 votes and the Petitioner received 1,344 votes. Hensley Daniel was, accordingly declared duly elected to the Nevis Island Assembly for the constituency of Nevis 2, Parish of St. John, by a margin of 14 votes.

Dissatisfied with this result, Mark Brantley petitioned the Court for relief on various grounds, the main complaint being the illegal removal of the names of over 200 voters from the list with the result that these persons were not permitted to exercise their franchise on polling day. Thirty-eight of them had declared their intention was to vote for Mr. Brantley.

It might be convenient here to refer briefly to the enactment of the National Assembly Elections (Amendment) Act No. 22 of 2007 and the launch of an electoral reform exercise, whereby the period December 27th 2007 to 4th October, 2008 was designated as the period during which all persons registered as voters for a constituency could confirm their registration and be issued with a National Identification Card.

Quite a number of electors embraced the opportunity to confirm their registration with the result that the names of such persons were included on the new list of registered voters. They were issued with National Identification Cards and remained registered unless for the reasons set out at section 39 as amended their names were removed. The reasons as set out are –

- (a) he or she has died;*
- (b) an objection to his or her registration has been allowed;*
- (c) he or she has become disqualified for registration as a voter under this Act or any other enactment imposing disqualification for registration as a voter;*

A person who is registered as a voter for a constituency pursuant to this Act and who has not voted at two consecutive elections, shall have his or her name deleted from the register of voters for that constituency without prejudice to that person's right to make a new application for registration under this Act.

Notwithstanding subsection 1, a Commonwealth Citizen (not being a citizen of St. Christopher and Nevis) who is registered as a voter for a constituency pursuant to the Act shall have his or her name deleted from the register of voters for that constituency where the Chief Registration Officer is satisfied that that person is no longer resident in Saint Christopher and Nevis without prejudice to that person's right to make a new application under this Act

The annual voters list for Nevis and for St. John Parish dated 28th January, 2011 was published by the second Respondent, the Supervisor of Elections and Chief Registration Officer. That was a statutory obligation pursuant to section 43(1) of the St. Christopher and Nevis National Assembly Election act, Chap. 2:01.

Section 43 reads as follows:

"43(1) The Chief Registration Officer shall cause to be prepared and shall publish not later than the thirty-first day of January in every year a register of voters for each constituency.

(2) The register of voters required by subsection (1) shall consist of—

- (a) all persons who were registered in the register of voters last published for that constituency; and*
- (b) all persons whose names appear in the revised monthly list of voters prepared and published under section 46 for the constituency since the date of publication of the registers mentioned in paragraph (a), and qualified under this Act as voters, but shall not include any person who in the opinion of the Chief Registration Officer, appears since the publication of the registers mentioned in paragraphs (a) and (b)–*

(i) to have died; or

(ii) to have become ordinarily resident in another constituency."

There was initially some debate on the part of the petitioner with respect to the date on which the list was published. The petitioner had, however, during the hearing, accepted the publication date of the register as 31st January, 2011 and that is no longer an issue.

As there was no evidence to the contrary, the January 2011 list referred to hereinafter as the Master List had complied with all the requirements of the Act. In particular included in it were the names of all the electors who had reconfirmed their registration pursuant to the National Assembly Elections

(Amendment) Act, 2007. In fact, those persons had been included on the Annual List since 2009 and for all intents and purposes had not been objected to or otherwise challenged.

THE AMENDED PETITION

The Amended Petition was filed on the 3rd day of August, 2011 and is set out in full herein.

- 1. The Petitioner, Mark Brantley, is a person who has a right to vote and voted and was a candidate at the Nevis Island Assembly election for the Constituency of Nevis 2 (Parish of St. John) (hereinafter referred to as the said election).*
- 2. The said election was held on the 11th day of July, 2011 when the First Respondent, Hensley Daniel, and the Petitioner were candidates and on the 12th day of July, 2011, Kelvin Daley, the Returning Officer and the Fourth Respondent herein, declared that the said Hensley Daniel received 1,358 votes and that the Petitioner received 1,344 votes with 14 spoilt or rejected ballots and returned Hensley Daniel to the Nevis Island Assembly as being duly elected for the Constituency of Nevis 2 (Parish of St. John).*
- 3. The Second Respondent, Leroy Benjamin, is and was at all material times the Supervisor of Elections and ex officio the Chief Registration Officer for the purposes of the National Assembly Elections Act Chap. 2:01 (hereinafter referred to as the Act). As Supervisor of Elections, the Second Respondent is required by section 34(1) of the Constitution of Saint Christopher and Nevis to "exercise general supervision over the registration of voters in elections of Representatives and over the conduct of such elections" and is empowered by section 34(4) thereof to "give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections." In the exercise of his said functions, the Second Respondent is further required by section 34 (7) of the Constitution to "act in accordance with such directions as he may from time to time be given by the Electoral Commission".*
- 4. The Third Respondent, Bernadette Lawrence, is and was at all material times the Registration Officer for, inter alia, the Constituency of Nevis 2 (Parish of St. John) and is and was at all material times required by section 34(4) of the Constitution to comply with any directions given to her by the Supervisor of Elections pursuant thereto.*
- 5. The Fourth Respondent, Kelvin Daley, is and was at all material times the Returning Officer for the Constituency of Nevis 2 (Parish of St. John).*
- 6. The Fifth Respondent, Joseph Parry, is and was at all material times the Premier of Nevis and is responsible for advising His Excellency the Governor General on the date to be fixed for any election to the Nevis Island Assembly and the date on which nominations for such elections are to be held.*

7. *The Sixth Respondent, Hesketh Benjamin, the Seventh Respondent, Myrna Walwyn, and the Eight Respondent, William Dore, are Members of the Electoral Commission, the Sixth Respondent being the Commission's Chairman. The Electoral Commission is required by section 33(4) of the Constitution to supervise the Supervisor of Elections in the performance of his said functions.*
8. *The Ninth Respondent is the Attorney General of Saint Christopher and Nevis and is joined in these proceedings pursuant to section 13(2) of the Crown Proceedings Act in so far as allegations are made herein of breaches of the Petitioner's constitutional rights, or breaches of the Constitution of Saint Christopher and Nevis and the failure to schedule the said election in a timely fashion in accordance with the Act.*
9. *On the advice of the Fifth Respondent, the writ for the said election was issued by His Excellency the Governor General on the 22nd day of June, 2011 requiring the Fourth respondent to proceed to the nomination of candidates on the 4th day of July 2011 and thereafter if necessary to the election of the representative for the Constituency of Nevis 2 (parish of St. John) on the 11th day of July, 2011. Contrary to section 58(2) of the Act, the date fixed for the nomination of candidates was less than 7 days before the date fixed for the said election.*
10. *On or about the 28th day of January, 2011, the Second Respondent duly published the Register of Voters for the Electoral District of Nevis 9 pursuant to section 43(1) of the Act (hereinafter referred to as the January 2011 Register).*
11. *The January 2011 Register included those voters registered and entitled to vote in the Nevis Island Assembly election for the Constituency of Nevis 2 (Parish of St. John). The Constituency of Nevis 9 is the constituency for the National Assembly of St. Kitts and Nevis and includes the Constituency of Nevis 2 (Parish of St. John) for the Nevis Island Assembly. That part of the January 2011 Register containing voters registered for the Nevis Island Assembly Constituency of Nevis 2 (Parish of St. John) is hereinafter referred to as "The Nevis 2 January 2011 Register."*
12. *The names of the persons appearing in the First Schedule attached hereto and which forms part hereof appeared on the Nevis 2 January 2011 Register and were accordingly registered and entitled to vote at any election for the Nevis Island Assembly for the Constituency of Nevis 2 (Parish of St. John).*
13. *Pursuant to section 44 of the Act, the Second Respondent duly published Monthly Lists for the Electoral District of Nevis 9 for the months of January, February, March, April and May, 2011 containing the names of persons who either reached the age of eighteen years and who appeared to the Second Respondent to be otherwise qualified or who otherwise become qualified to be registered as a voter and entitled to vote as such.*
14. *The Second Respondent did not publish any Revised Monthly Lists pursuant to section 46 of the Act at any time prior to the date set for the said election.*

15. *In the premises, pursuant to section 48(1) of the Act, the register of voters to be used for the said election was to consist of the Nevis 2 January 2011 Register only.*
16. *Alternatively, the register of voters to be used for the said election was to consist of the Nevis 2 January 2011 Register together with those persons registered for the Constituency of Nevis 2 (Parish of St. John) whose names appeared on the said Monthly Lists published in accordance with section 44 of the Act.*
17. *In either case, the register of voters to be used for the said election would have included the names of the persons listed in the First Schedule attached hereto.*
18. *However, contrary to section 48(1) of the Act, on July, 2nd 2011, the Second Respondent purported to publish a Register of Voters for the Constituency of Nevis 2 (Parish of St. John) (hereinafter referred to as the July 2011 Register) for use at the said election which was not either the Nevis 2 January 2011 Register or the Nevis 2 January 2011 Register plus those persons registered for the Constituency of Nevis 2 (Parish of St. John) whose names appeared on the said Monthly Lists and did not include the names of the persons listed in the First Schedule. The July 2011 Register was accordingly invalid.*
19. *Contrary to section 48(1), the Fourth Respondent provided each polling station with the invalid July 2011 Register to be used at the said election, with the result that the persons listed in the First Schedule were deemed not entitled to vote at the said election and were accordingly disenfranchised.*
20. *Further, or alternatively, to the extent that the register to be used for the said election was to consist of the Nevis 2 January 2011 Register and those persons registered for the Constituency of Nevis 2 (Parish of St. John) whose names appeared on the Monthly Lists, the July 2011 Register was invalid and issued contrary to section 48(1) of the Act in that it did not contain the persons listed in the May 2011 Monthly List registered for the Constituency of Nevis 2 (Parish of St. John) and accordingly those persons were also disenfranchised. The names of the persons registered for the Constituency of Nevis 2 (Parish of St. John) appearing on the May 2011 monthly list are set out as in the Fourth Schedule to this Petition.*
21. *The persons listed in the Second Schedule attached hereto and which forms part hereof, whose names appear in the First Schedule hereto and accordingly whose names appeared in the Nevis 2 January 2011 Register, and who were accordingly entitled to vote at the said election, turned up to vote at the said election on July 11th 2011 but were not allowed to vote on the ground that their names did not appear on the July 2011 Register and were accordingly unlawfully turned away.*
22. *The persons listed in Part A of the Second Schedule intended to vote for the Petitioner. The persons listed in Part B of the Second Schedule have not indicated how they would have voted, as is their right.*

23. *The persons listed in the Third Schedule did not turn up to vote because they discovered beforehand that their names were not on the July 2011 Register and that they would not have been permitted to vote if they attended the polling station on election day. They all intended to vote for the Petitioner.*
24. *If the persons listed in Part A of the Second Schedule and in the Third Schedule had been permitted to vote at the said election, the Petitioner would have been returned as the representative of the Constituency of Nevis 2 (Parish of St. John).*
25. *If and to the extent that the Second and/or the Third Respondent removed the names of the persons listed in the First Schedule from the January 2011 Register pursuant to objections made to their names appearing on the January 2011 Register, such removal for the purposes of the said election was unlawful since, even if such objection were validly determined, the register of voters to be used at the said election was to consist, in part at least, of the January 2011 Register in accordance with section 48(1) of the Act.*
26. *Alternatively, if and to the extent that the names of the persons listed in the First Schedule were removed from the January 2011 Register pursuant to objections made to their names appearing on the January 2011 Register, such removal was unlawful for the following reasons:*
- (i) *The said objections were all made more than 10 days after the posting of the January 2011 Register, and accordingly were considered by the Second and/or the Third Respondent contrary to Regulation 16 of the Election Registration Regulation (hereinafter referred to as the said Regulations). The Petitioner's party submitted objections to the January 2011 register on the hour before close of business on the tenth day after the posting of the January 2011 Register. The representatives of the NRP, the party to which the First Respondent belongs, declared publicly that they submitted their objections in response to the objections made by the Petitioners. The Petitioner will also rely on the information appearing in Part B of the First Schedule.*
 - (ii) *The Second and/or the Third Respondent did not send any notice to the persons listed in Part A of the First Schedule informing them of the objection made against their registration and of the date on which such objections would be heard, contrary to Regulation 19 of the said Regulations;*
 - (iii) *The Second and/or the Third Respondent did not immediately after receiving notice of the objections send notice to the persons listed in Part B of the First Schedule informing them of the objection made against their registration and of the date on which the objection would be heard, contrary to Regulation 19 of the said Regulations. The dates on which the notice was signed and stamped by the electoral office, and the date on which it was received by the post office are set out in Part B of the First Schedule. Where no such dates are included, the notices are no longer available. In each case, the notice was received by the voter just before, on or after the date fixed for the hearing of the objection. The petitioner has attempted to obtain information concerning whether and if so the dates on which the persons*

listed in Part C of the First Schedule received notices informing them of the objection made against their registration but those persons either did not wish to incorporate or were not located.

- (iv) The Second and/or Third Respondent did not give the persons listed in Part B of the First Schedule at least five days notice of the time and place at which the objections would be considered, contrary to Regulations 23(1) of the said Regulations. The dates on which the notices were received by the post office, and the dates on which the objections were to be heard are indicated in Part B of the schedule. Where no such dates are included the notices are no longer available. In each case, the said notice was received by the persons listed in Part B of the Schedule just before, on or after the date on which the objection was to be considered as indicated on the schedule. When no specific date is mentioned, the notice was received after the date fixed for the hearing of the objection;*
- (v) The Second and/or the Third Respondent did not post a list of the names of persons to whose registration notice of objection has been given, contrary to Regulation 21 of the said Regulations.*
- (vi) The Second and/or Third Respondent considered the objections in the absence of any evidence that the notice of the time and place the objections were to be considered had been received by the persons whose names appear in the First Schedule or had been sent by registered post, contrary to Regulation 23(1) of the said Regulations.*

- 27. In the premises, the persons listed in the First Schedule were not expunged from the list of voters in pursuance of objections made to their registration and/or their names were improperly and unlawfully excluded from the list and they continued to be entitled to vote in the said election and the refusal of the Second and/or the Third and/or the Fourth Respondent to permit them to vote in the said election was unlawful and resulted in their disenfranchisement, contrary to the law relating to elections.*
- 28. Further or in the alternative, by decision communicated by letter dated May 30th 2011, the Third Respondent disallowed objections to the registration of the persons listed below but these persons were nevertheless excluded from the July 2011 Register and accordingly were deemed not entitled to vote at the said election. In the premises, the persons listed below were not expunged from the list of voters in pursuance of objections made to their registration and/or their names were improperly and unlawfully excluded from the list and they continued to be entitled to vote in the said election and the refusal of the Second and/or the Third and/or the Fourth Respondent to permit them to vote at the said election was unlawful and resulted in their disenfranchisement contrary to the law relating to elections.*

*Aderian Quegon Elgin
Patricia Gloria George
Daniel M Fodyce
Jahnelle Corrine Morton*

*Nykesha Liburd
Rhonda Althea George
Ionie Tyson
Michael Shane Liburd*

29. Further, the Third Respondent, who was previously an executive member of the NRP, an activist of that party at least up until 2009 and was recently a poll agent for the First Respondent at the August 27th bi-election contested as between the Petitioner and the First Respondent, heard and determined the objections to the registration of the persons listed in the First Schedule despite objections made to her adjudication of the objections at a meeting held on March 3rd, 2011 and in a subsequent letter to the Second Respondent erroneously dated March 1st 2011. When the Petitioner objected to her adjudications of the Third Respondent reacted in a hostile manner and asserted that all members of the Petitioner's party were liars. In the premises, the determinations made by the Third Respondent of the objections are tainted with bias and are accordingly null and void and of no effect and the persons listed in the First Schedule were unlawfully removed from the register of voters.
30. Upon being informed that objections were being made to the registration of persons on the January 2011 Register and that notices of the time and place that these objections were to be considered were being received after the date fixed for the hearing of the objections, the Petitioner's complained to the Electoral Commission by letters dated May 19th and 25th 2011. After hearing submissions, the Sixth, Seventh and Eighth Respondents by letter dated May 26th 2011 directed the Second Respondent that voters who had reconfirmed under the Act and issued with National Identification Cards were to remain on the voters list as at January 2011.
31. By letters dated June 2nd and 7th 2011, the Second Respondent expressed the view that he was not bound to comply with the Commission's directive and that neither the Commission nor the Supervisor of Elections had the authority to interfere with the exercise of the Registration Officer in the exercise of his/her functions. Accordingly, he was of the view that the Commission had no authority to instruct that voters who had reconfirmed under the Act and issued with National Identification Cards were to remain on the voters list as at January 2011. The Second Respondent stated expressly that he was acting on the advice of Senior Crown Counsel in the office of the Attorney General. The Attorney General himself was a candidate in the said election for the NRP in the Constituency of St. James and an executive of the NRP.
32. By letter in response dated June 17th 2011, the Seventh Respondent informed the Second Respondent that the Supervisor of Elections and the Registration officer were indeed required to comply with the directions of the Commission and drew the Second Respondent's attention to section 34(4) & (7) of the Constitution. Indeed, in a letter dated March 20th 2010, the Second Respondent had asserted the power to direct a previous Registration Officer as to the manner in which his functions in relation to objections were to be exercised. The Second Respondent had directed the Registration Officer to issue new notices to persons who had not received prior notice of the hearing of objections to their registration.
33. In breach of section 34(7) of the Constitution, the Second Respondent failed to comply with the Electoral Commission's direction contained in the said letter dated May 26th 2011 and excluded the persons listed in the First Schedule from the July 2011 Register.

34. *Up until the publication of the July 2011 Register on July 2nd 2011, the Petitioner had not been informed whether the Second Respondent would comply with the Commission direction contained in its letter dated May 26th 2011.*
35. *Furthermore, despite being made aware that persons had received notices after the date fixed for consideration of objections, the First and/or Second Respondent did not reverse any decisions already made, and/or take any steps to reschedule the hearings of the objections and issue fresh notices as the Second Respondent had done on a previous occasion as evidenced by the said letter dated March 20th 2010, and/or notify the persons listed in the First Schedule that the said objections had been upheld so that they could appeal same to the High Court, but instead published the July 2011 Register which for the first time informed the persons affected that their names had been removed from the list. By that time it was already too late to exercise any right of appeal to the High Court.*
36. *The July 2011 Register was published in the usual manner by posting same at the offices of the Electoral Commission. Persons desiring to know whether their names were on the list or had been removed therefrom were not informed in writing or by notice in the newspapers or otherwise that the July 2011 Register was available for inspection.*
37. *Up until June 30th 2011, the Electoral Office was still exhibiting only the January 2011 Register. Persons who made enquiries at the Electoral Office prior to that date were advised to check the list on the wall to see if they were registered, referring to the January 2011 Register. Mr. Denrick Liburd made such an enquiry in the week of June 26th and was referred to the January 2011 Register posted on the wall. No one would have known the result of any objections until the July 2011 Register was posted on July 2nd 2011.*
38. *Further or alternatively, the publication of the July 2011 Register on July 2nd 2011, a mere eight days or five working days before the date fixed for the election, provided the persons listed in the First Schedule with insufficient opportunity to become aware of their non-registration and insufficient time thereafter to apply to have such omissions corrected given in particular that the Second and/or the Third Respondent at no time made any effort to inform them that their names had been taken off the list. There was also insufficient time and opportunity for the Petitioner to contact the persons listed in the First Schedule for the purpose of taking proceedings to restore their names to the list, given that the Petitioner was still in the middle of an election campaign.*
39. *By letter dated July 4th 2011, the leader of the Petitioner's party brought to the attention of the Electoral Commission the fact that a number of persons who were originally on the January 2011 Register were now excluded from the July 2011 Register and asked that, consistent with the Commission's letter dated May 26th 2011 steps be taken to rectify the list.*
40. *Further, by application for judicial review filed on July 5th 2011 in Claim No. NEVHCV 2011/0125, the leader of the Petitioner's party commenced proceedings in his own name to challenge the exclusion of the names of the persons listed in the First Schedule from the July 2011 Register on the ground that the Electoral Commission's directive dated May 26th 2011 had*

not been carried out by the Second and Third Respondents. That application was dismissed on the ground that the leader of the Petitioner's party lacked locus standi to institute the claim since his name was on the July 2011 Register.

- 41. In addition, judicial review proceedings were commenced in Claim No. NEVH 2011/0126 by five voters who claimed not to have had notice of any objections against their registration. Michel J. granted them relief and restored their names to the list but declined the invitation to restore the names of the other persons listed in the First Schedule because evidence that they too had not received notice of the objections had not been tendered. Michel J. held that in the circumstances the names of the applicants had been improperly expunged from the list.*
- 42. By letter dated July 8, 2011, the leader of the Petitioner's party brought to the attention of the Electoral Commission the judgment of the Honourable Michel J. delivered on July 8th 2011 that it was unlawful to exclude from the list of eligible voters persons who had not received notice of the hearing of objections to their registration and asked the Commission to ensure that persons excluded from the July 2011 Register be allowed to vote on July 11th 2011.*
- 43. In breach of their duties under section 33(4) of the Constitution, the Sixth, Seventh and Eighth Respondents failed to take any steps to ensure that the persons listed in the First Schedule were allowed to vote at the said election and in particular failed to ensure that the Second Respondent took steps to do so.*
- 44. Subsequent to the publication of the July 2011, two voters, namely Sheryl Stapleton and Orville Manners discovered that their names had been excluded from the list of voters. Upon remonstrating with Ms. Beulah Mills and the Third Respondent and in the case of Ms. Stapleton threatening through her connections in the United States to have the United States State Department investigate what was happening in Nevis, they immediately restored to the voters list and permitted to vote and did vote in the said election.*
- 45. In the premises, the Second, Third, Sixth, Seventh and Eighth Respondents determined the composition of the list of persons who were to be permitted to vote at the said election in an arbitrary and wholly unlawful manner and unlawfully disenfranchised the person listed in the First Schedule.*
- 46. Further, in all of the above premises, and having regard to the matters pleaded in the paragraph next following, the Second and/or the Third Respondent acted in bad faith and/or committed misfeasance in public office in deliberately or recklessly excluding the names of the persons listed in the First Schedule from the list of persons entitled to vote at the said election.*
- 47. By letter dated July 25th 2011, followed by reminders dated July 26th and 27th 2011, the Petitioner requested inspection of the objections lodged against the registration of the persons listed in the First Schedule, as he was entitled to under Regulation 32 of the said regulations, but the Third Respondent who was aware of the application, having spoken to the Petitioner about it on July 27th 2011, has steadfastly refused to provide such inspection. Indeed, the Second Respondent has*

made herself unavailable for the provision for such inspection by causing her staff on July 25th and 26th to inform the Petitioner that was not in office when he called to make an appointment to see her and on July 27th informing him that she would call him later in the day to let him know when he could inspect the objections but then not calling him back and then again on July 28th causing her staff to inform the Petitioner that she was not in office and could not be reached on any number known to her staff.

48. *By reason of the matters aforesaid, the persons named in the First Schedule were unlawfully excluded from the list of persons entitled to vote in the said election and were accordingly disenfranchised.*
49. *The Nevis Island Administration, of which the Fifth Respondent, Joseph Parry is the Head, operates a nightly segment from 6pm to 10pm on Channel 8 of the Caribbean Cable Company, including a nightly news programme called the Nevis News Cast. The nightly segment is funded out of the public purse.*
50. *During the election period, commencing with the dissolution of the Nevis Island Assembly on June 22nd 2001, the Nevis News Cast was used by the Nevis Island Administration as a propaganda instrument for the ruling Nevis Reformation Party, of which the First Respondent is a member, in that only political events organised by the NRP were given coverage and no political event organised by the Concerned Citizens Movement of which the Petitioner is a member, was given coverage.*

Particulars of political events (date and venue) organised by the NEVIS REFORMATION PARTY during the election period which were carried on the Nevis News Cast programme

JUNE 22nd – Bricklin Village – Announcement of the election date (Aired on NNC on June 23rd)

JUNE 26th - BROWN HILL

JUNE 27th - CHERRY GARDENS

JUNE 28th - HANLEYS ROAD

JUNE 29th - CHARLESTOWN (This was aired during NNC's newscast on June 30th)

JUNE 30th - CRADDOCK ROAD

JULY 2nd - CHARLESTOWN – MANIFESTO LAUNCH (This was aired on NNC on Monday July 4th)

JULY 4th - HANLEYS ROAD - THIS WAS NOMINATION DAY. (Only the NRP Candidates were shown on NNC as they were nominated and also had interviews after they were nominated)

JULY 5TH - CHERRY GARDENS – (This was aired on NNC on July 6th)

JULY 6TH - NEWCASTLE - (This was aired on NNC on July 7th)

JULY 7TH - COTTON GROUND - (This was aired on NNC on July 8th)

JULY 8TH - Several meetings including the Flats.

JULY 9TH - BUTLERS

JULY 10TH - CHARLESTOWN - (This was aired on NNC on July 11th)

Particulars of political events (date and venue) organised by the CONCERNED CITIZENS MOVEMENT during the election period which were not carried on the Nevis News Cast programme.

*JUNE 30TH - JESSUPS
JUNE 25th - RAMSBURY - MANIFESTO LAUNCH
JUNE 27th - HANLEYS ROAD
JUNE 28th - NEWCASTLE
JUNE 29th - CHURCH GROUND
JUNE 30TH - COTTON GROUND
JULY 1st - NO MEETING (WEATHER)
JULY 2nd - BUTLERS
JULY 3rd - BATH VILLAGE
JULY 4th - STONEY GROVE and also NOMINATION DAY
JULY 5th - PANCHO SHOP
JULY 6th - HARDTIMES
JULY 7th - BROWN HILL
JULY 8th - BOCO PARK
JULY 9th - BRICKLIN*

- 51. In the premises, candidates for the said election were not allowed to campaign on equal terms and the state media, resources and facilities (in the form of the Nevis News Cast) were misused and abused by the First and Fifth Respondents by ensure that only the political events organized by the NRP were covered on the Nevis News Cast.*
- 52. In the premises, the Petitioner' constitutional rights guaranteed to him by sections 12 and 15 of the Constitution of Saint Christopher and Nevis to freedom of expression and to not be treated in a discriminatory manner by reason of his political opinion or affiliations have been contravened in relation to him.*
- 53. In the above premises, it will appear to the Court having cognizance of this petition that the said election was not conducted in accordance with the principles laid down in the Act and indeed was a travesty and did not reflect the will of the electorate. It will also appear that the breaches indentified herein did affect the result of the said election and/or may well have or probably would have affected the result of the said election and therefore it will not appear that the said breaches did not affect the result, having regard in particular to the small margin of victory of 14 votes and the large number of persons (207) who were disenfranchised.*

The Petitioner therefore prays:

A declaration that the Petitioner's right to freedom of expression and his right to not be treated in a discriminatory manner by reason of his political opinions or affiliations guaranteed to him by section 12 and 15 of the Constitution of Saint Christopher and Nevis have been contravened in

relation to him by the failure of the Nevis Island Administration on its nightly Nevis News Cast to cover any of the political events organised by the Petitioner's political party during the election period leading up to the said election.

A declaration that the Electoral Commission acted in contravention of section 33(4) of the Constitution in failing to take steps to ensure that the persons listed in the First Schedule were allowed to vote at the said election and in particular failed to ensure that the Second Respondent took steps to do so.

That it be determined that the said Hensley Daniel was not duly elected or returned and that the said election was void;

That the costs of this petition be paid by the Respondents;

That the Petitioner may have such further or other relief as may be just.

FIRST SCHEDULE

Persons whose names were removed from the July list who were on the January list

PART A: Persons who received No Notice

<u>Name</u>	<u>Address</u>	<u>Occupation</u>
1. BALKARAN, CHANDRIKA	CHURCH GROUND	OFFICE CLERK
2. BERRY, ORNETTE E	BROWN HILL	NURSE
3. CAMPBELL, MARCIA	POND BILL	SALES CLERK
4. COLLIN, TISHANA	CHURCH GROUND	WAITRESS
5. DAVID, SHELDON	BROWN HILL	SALES CLERK
6. DEOCHARRAN, SHANTA	BATH VILLAGE	CLEANER
7. EDNEY, JO-ANN	BROWN HILL	ACCOUNTANT
8. FARREL, CECIL L.	CHURCH GROUND	INVESTIGATOR
9. GEORGE, PATRICIA GLORIA	MORNING STAR	BAKER
10. GREENIDGE, PATRICIA	MARION HEIGHTS	RETIRED
11. HAMILTON, JARRON OMARI	COLE HILL VILLAGE	SECURITY OFFICER
12. HANLEY SEVILE	BEACH ROAD	CONST. WORKER
13. HENDRICKSON, KERVAN	PROSPECT ESTATE	OPERATOR

14. HUGGINS, CHARLENE	BROWN HILL	SELF EMPLOYED.
15. HUGGINS, DEBORAH M.	CHURCH GROUND	ACCOUNTANT
16. JAILALL, ESHERDAI	VICTORIA ROAD	COMPUTER OPERATOR
17. JARVIS, DAVIDSON	BROWN HILL	OPERATOR
18. JONES, SIDAMA	PROSECT ESTATE	SALES CLERK
19. LANCASTER, BERT R.	BATH VILLAGE	DRIVER
20. LEYDEN, JOSEPH	MORNING STAR	TAILOR
21. LIBURD, ELVIS W.	PROSPECT ESTATE	SOCIAL WORKER
22. LIBURD MACKLENE	PROSPECT ESTATE	LANDSCAPER
23. LIBURD, MELISSA ANNE	BATH VILLAGE	CASHIER
24. LIBURD, MICHAEL SHANE	PROSPECT ESTATE	CONTRACTOR
25. LIBURD, ORBORNE DENIFF DONALD	BROWN PASTURE	CONTRACTOR
26. MORTON, FRANKLIN EARL	BAILEY'S YARD	CONSTRUCTION SUPER
27. MORTON, JANELLE CORRINE	BROWN PASTURE	TEACHER
28. MORTON, JUANITA	POND HILL	SOCIAL WORKER
29. MORTON, SHERILLE	BAILEY'S YARD	OPERATIONS SUPERVISOR
30. PEMBERTON, DAMIEN	PROSPECT ESTATE	MASON
31. PHILLIPS, ELVIS JULIAN	BAILEY'S YARD	FINANCIAL OFFICER
32. PRASS, RUDOLPH ADOLPHUS	CANE GARDEN	CARPENTER
33. SANICHAR, UGESHWAR	BATH VILLAGE	MECHANIC
34. SEEGOLAM, CHANDRAADT	*UPPER STONEY GROVE	OPERATOR

35. SEYMOUR, LINDEN PATRICK	FARMS ESTATE	MECHANIC
36. SINGH, VISHNU	CANE GARDEN	MASON
37. STURGE, LEROY VICLIN	BROWN HILL	GARDENER
38. VIGO, RUPERT OHANIA	FARMS ESTATE	OPERATOR
39. WALWYN, STEPHEN C.	FARMS ESTATE	BUSINESS MAN
40. WILKSON, GEORGE INCENT	BATH VILLAGE	SAILOR
41. WINTER, SHELLY ANN	VICTORIA ROAD	SALES CLERK
42. AMURDABM ANDSAMMY	CANE GARDEN	DRIVER
43. RAJKUMAR, NANDRAM SHARMA	UPPER STONEY GROVE	OPERATOR
44. RAJKUMAR, ROHANIE	UPPER STONEY GROVE	HOUSEWIFE

FIRST SCHEDULE

Persons whose names were removed from the July list who were on the January list.

PART B: Persons who received Notices.

NAME	DATE OF NOTICE	DATE NOTICE RECEIVED	DATE OF HEARING	STAMPED BY ELECTORAL OFFICE	STAMPED BY POST OFFICE	COMMENTS
ARTHURTON, Janeal	April 4, 2011	May 11, 2011	May 11, 2011	May 2, 2011	May 6, 2011	Notice available
ARTHURTON, Rubylette	May 4, 2011	May 13, 2011	May 11, 2011	May 4, 2011	May 6, 2011	Notice available
BARTLETTE, Nabrisca		May 31, 2011				Received Notice and delivered it to Electoral Office. Not returned. Notice not available
DORE, Laurel		May 13, 2011	May 11, 2011			Notice not available
LIBURD, Denrick	May 4, 2011	After hearing date	May 11, 2011	May 4, 2011	May 16, 2011	Notice available
LIBURD, Latoya	March 25, 2011	April 19, 2011	April 19, 2011	April 8, 2011	April 11, 2011	Notice available
MOHAMED, Sabrena	April 18, 2011	May 18, 2011	April 29, 2011	April 20, 2011	May 4, 2011	Notice available
NEWTON, Catherine	May 4, 2011	May 18, 2011	May 11, 2011	May 5, 2011	May 16, 2011	Notice available
PERSAUD, Bharat	April 18, 2011	May 2011	April 29, 2011	April 20, 2011	April 27, 2011	Notice available

PERSAUD, Shanta	April 18, 2011	May 2011	April 29, 2011	April 20, 2011	April 27, 2011	Notice available
RAMSARRAN, Savitri						Delivered Notice to Electoral Office. Was advised they would get back to him. No follow up. No Notice available
SINGH, Rajkumar						Received Notice after date of hearing. No Notice available
WALTERS, Oscar						Received Notice after hearing date. No Notice available
BHAGWANDEEN, Shiv**						Received Notice after hearing date. No Notice available
WALTERS, Alexis	March 25, 2011		April 19, 2011	April 8, 2011	April 12, 2011	Notice received after hearing date. Notice available
HYMAN, Kendiya Lee Andrea	April 18, 2011	May 31, 2011	April 29, 2011	April 20, 2011	May 4, 2011	Notice available
DANIEL, Chloe		April 2011				Notice received after hearing date. No Notice available.
JAMES, Calette	March 25, 2011	On or about April 30, 2011	April 9, 2011	April 8, 2011	April 11, 2011	Notice available
LIBURD, Nekesha Weeks, Jaemou	April 20, 2011	April 19, 2011 April 18, 2011	April 19, 2011 April 19, 2011	April 20, 2011	April 26, 2011	Notice available No Notice available

FIRST SCHEDULE

Persons whose names were removed from the July list that were on the January list.

PART C: Persons from whom no information was obtained.

NAME	ADDRESS	COMMENTS
1. ALI, SHAMEENA	BATH VILLAGE	Unable to contact
2. ALI SHARMIN	BATH VILLAGE	Unable to contact
3. ARCHER, CARLOTTA ALEXIS	MORNING STAR	Unable to contact

4. ARCHIBALD PATRICK	BROWN PASTURE	Unable to contact
5. BAIRD, AKICHA ROBINA	MORNING STAR	Unable to contact
6. BALGOBIN, OMA DEVI	CANE GARDEN	Unable to contact
7. BANGALORE, VISWANATHA	MORNING STAR	Unable to contact
8. BASDEO, RAJWANTIE	UPPER STONEY GROVE	Unable to contact
9. BESS, MELISSA	CUSTOMER SERVICE REP.	Unable to contact
10. BHOLA, TOELSIEDASH	BATH VILLAGE	Unable to contact
11. BHOOJRAJ, BHAGWATRAM	UPPER STONEY GROVE	Unable to contact
12. BHOOJRAJ, BIBI AKLEEMA	UPPER STONEY GROVE	Unable to contact
13. BHOSLE, ARUN GANGARAM	BATH VILLAGE	Unable to contact
14. BICKARMAJEET, HEMWATTIE	CANE GARDEN	Unable to contact
15. BISSOODYAL, SOOKLACHAN	BATH VILLAGE	Unable to contact
16. BRISTOL, NICKETTA LATOYA	UPPER STONEY GROVE	Unable to contact
17. BYRON, JOSEPH	MORNING STAR	Unable to contact
18. CHANGOOR, JAGMATIE	CANE GARDEN	Unable to contact
19. CHANGOOR, SOHAN	CANE GARDEN	Unable to contact

20. CHAN-LAU, YOUNG	UPPER STONEY GROVE	Unable to contact
21. CHOORAMAN, GANGA DAVIE	CANE GARDEN	Unable to contact
22. CLARKE, ALTON A	BROWN HILL	Unable to contact
23. COATES, FIONA AYANNA	COLE HILL VILLAGE	Unable to contact
24. CUETO, ALCIBIADES RAMIREZ	BATH VILLAGE	Unable to contact
25. DARMOO, USHA SHANTIE	CANE GARDEN	Unable to contact
26. DHANRAJ, RHADICA	BATH VILLAGE	Not cooperating
27. DOOKHAN, BALKARRAN	CANE GARDEN	Unable to contact
28. DORE, RENFORD	BROWN HILL	Voted
29. ELGIN, QUEZON ADERIAN	CHURCH GROUND	Unable to contact
30. ETWAROO, RAMNARINE	BROWN PASTURE	Unable to contact
31. ETWARU, SUDESH	UPPER STONEY GROVE	Sent back to Guyana
32. FORDYCE, DANIELLE M.	HERMITAGE	Unable to contact
33. FRASER, JONELLA NICOLA	UPPER STONEY GROVE	Unable to contact
34. GEORGE, AUDREY	POND HILL	Not cooperating
35. GEORGE, RHONDA ALTHEA	MORNING STAR	Unable to contact
36. GOPEE, LOKESH	UPPER STONEY GROVE	Unable to contact

37. GRIFFIN, VERLEIGH	BROWN HILL	Not cooperating
38. HALL, ALSTON B. W.	BROWN PASTURE	Unable to contact
39. HARICHAND, MALCHAND	BATH VILLAGE	Unable to contact
40. HARIPRASHAD, ANNILA MALVINA	BROWN PASTURE	Unable to contact
41. HARRYLAL, DEONARINE	PROSPECT ESTATE	Unable to contact
42. HARRYLAL, DHANESH	BATH VILLAGE	Unable to contact
43. HENDRICKSON, DEVON	PROSPECT ESTATE	Unable to contact
44. HENRY, ABIOLA KHALILAH	COLE HILL VILLAGE	Not Cooperating
45. HUSSAIN, MOHAMED AZIM	CANE GARDEN	Sent back to Guyana
46. HYMAN, PRICILLA M.	UPPER STONEY GROVE	Unable to contact
47. JAGDEO, MOHANIE	BATH VILLAGE	Unable to contact
48. JAGMOHAN, JAITREE	CANE GARDEN	Contacted - No Info.
49. JAMES, BARBARA	MORNING STAR	Not cooperating
50. JAMES, CHAD	MORNING STAR	Not cooperating
51. JAMES, CHAD L.	MORNING STAR	Not cooperating
52. JAMES, CHESTER LEVI BYRON	MORNING STAR	Not cooperating

53. JONES, WINSTON JAISON	PROSPECT ESTATE	Not cooperating
54. JOYLALL, SATYAVAN	BATH PLAIN	Not cooperating
56. KAWALL, RYAN V.	VICTORIA ROAD	Not cooperating
57. KISTOO, GANESHRAM	CHURCH GROUND	Not cooperating
58. LALL, BALWAN	CHURCH GROUND	Unable to contact
59. LIBURD, JUNIOR	POND HILL	Unable to contact
60. LIBURD, RANDY K.	COX VILLAGE	Unable to contact
61. LOOKNAUTH, HERALALL	BATH VILLAGE	Sent back to Guyana
62. LYTE, ROPNDON JULIUS	BATH VILLAGE	Sent back to Guyana
63. MAHABIR, LEELAWATTIE	BATH VILLAGE	Unable to contact
64. MARK, RIKEL MITCHEL	CHURCH GROUND	Unable to contact
65. MATURA, BUDHRAM	BROWN PASTURE	Not cooperating
66. MATURA, HANSRATIE	BROWN PASTURE	Contacted – No info.
67. MAYNARD, GISEL	BAILEY'S YARD	Unable to contact
68. MENDONCA, ATASHA A.	HERMITAGE	Not cooperating

69. MOHAMMED, ALIM	CHURCH GROUND	Unable to contact
70. MOHAN, LAKERAM	BATH VILLAGE	Not cooperating
71. MOOTOO, BIBI ASSIENA	UPPER STONEY GROVE	Unable to contact
72. MOOTOO, PHILIP	UPPER STONEY GROVE	Unable to contact
74. MUNROE, AKESHA T.	CHURCH GROUND	Returned to Guyana
75. NAGAMOOTOO, GANESH	MORNING STAR	Unable to contact
76. NARAIN, DENITA	BROWN PASTURE	Unable to contact
77. NARAINDIN, RAJKUMARIE	BATH VILLAGE	Unable to contact
78. PERSAUD, ARJUNE	CANE GARDEN	Unable to contact
79. PERSAUD DANANAND J.S	BATH VILLAGE	Unable to contact
80. PERSAUD, DINAND	CANE GARDEN	Unable to contact
81. PERSAUD, SOOKRANIE	BATH VILLAGE	Not cooperating
82. PERSAUD, SWARSATTIE	BATH VILLAGE	Not cooperating
83. PERSAUD, ADIRAJ	BATH VILLAGE	Unable to contact
84. PETERS, NICOLE SONJI	PROSPECT ESTATE	Unable to contact
85. PETTY, RAULETTE LOUISE	PROSPECT ESTATE	Not cooperating

86. PERSAD, MAHADEO	BATH VILLAGE	Not cooperating
87. PRASHAD, MONICA	BATH VILLAGE	Unable to contact
88. PRASS, KEB A	CHURCH GROUND	Not cooperating
89. QUEELEY, GERON AVONELLE	PROSPECT ESTATE	Unable to contact
90. KAJROOP, RAMSHWARROOP	BATH VILLAGE	Not cooperating
91. RAMDEO, DUBRAJ	BRAZIERS ESTATE	Unable to contact
92. RAMNARINE, DAVANAND	BATH VILLAGE	Unable to contact
93. RAMNAUTH RAMCHAND	CANE GARDEN	Unable to contact
94. RAMPAUL, INGEL P.J	CANE GARDEN	Unable to contact
95. RAMSARRAN, DATARAM	BATH VILLAGE	Not cooperating
96. RAMSARRAN, MAHADAI	BATH VILLAGE	Not cooperating
97. RAMSARRAN, WANITA	BATH VILLAGE	Not cooperating
98. RAMSINGH, DEONARINSINGH	POND HILL	Contacted- No info.
99. RAMSINGH, MOHABIR SINGH	POND HILL	Contacted - No info
100. RAWLINS, LUIS VENERADO	BATH VILLAGE	Unable to contact
101. SAMLALL, DIGAMBAR	MORNING STAR	Unable to contact

102. SAMLALL, MOMALMATIE	MORNING STAR	Contacted – No info
103. SAMLALL, BOOPINDRA	MORNING STAR	Unable to contact
104. SARRAN, MOUSHIMI	BATH VILLAGE	Unable to contact
105. SEECHARRAN, NARWANTIE	POND HILL	Unable to contact
106. SEECHARRAN, RAMNAUTH	POND HILL	Unable to contact
107. SHAMSUNDIN, FANTZA	MORNING STAR	Unable to contact
108. SHIVKUMAR, MURATH R	BATH VILLAGE	Sent back to Guyana
109. SHIVNANDAN, DANNY	BATH VILLAGE	Unable to contact
110. SHREEGOBIN, LAKERAM	BATH VILLAGE	Unable to contact
111. SIMMS, RUPERT ALPHONSO	HERMITAGE	Unable to contact
112. SINGH, MOHABIR	CANE GARDEN	Unable to contact
113. SINGH, NALINI	BATH VILLAGE	Contacted – No info
114. SOLOMON, THOMIKA ELIZABETH	CHURCH GROUND	Unable to contact
115. SWANSTON, ROSAMOND GRISELDA	PROSPECT ESTATE	Contacted - No info
116. THOMAS, CYRUS	BATH VILLAGE	Unable to contact
117. TIMAL, SONDAT	COLE HILL VILLAGE	Unable to contact

118. TYSON, IONIE A.	PROSPECT ESTATE	Unable to contact
119. WALWYN, VINCENT VERNAL	BATH VILLAGE	Unable to contact
120. WHEELER, MEREDITH OPHELLA	MORNING STAR	Unable to contact
121. WILLIAMS, IRMEL	BEACH ROAD	Unable to contact
122. WINTER, SEAN CORNELIUS	VICTORIA ROAD	Not cooperating

SECOND SCHEDULE

PART A: *Persons who turned up at the polling station to vote and intended to vote for Mark Brantley, but were denied the opportunity to vote.*

<u>Name</u>	<u>Address</u>
1. ARTHURTON, Janeal	Bath Village
2. ARTHURTON, Rublette	Bath Village
3. BALKARAN Chandrika	Church Ground
4. BARTLETTE, Nabrisca	Hermitage
5. BERRY, Ornette	Brown Hill
6. CAMPBELL, Marcia	Pond Hill
7. COLLINS, Tishana	Church Ground
8. DANIEL, Chleo	Pond Hill
9. DAVID, Sheldon	Brown Hill
10. DEOCHARRAN, Shanta	Bath Village
11. DORE, Laurel	Pond Hill
12. EDNEY, Jo-Ann	Brown Hill
13. FARRELL, Cecil	Church Ground
14. GEORGE, Patricia	Morning Star
15. GREENIDGE, Patricia	Marion Heights

16.	<i>HAMILTON, Jarron Omari</i>	<i>Cole Hill</i>
17.	<i>HUGGINS, Charlene H.M</i>	<i>Brown Hill</i>
18.	<i>HYMAN, Kendieya Lee Andrea</i>	<i>Morning Star</i>
19.	<i>JAILALL, Esher dai</i>	<i>Victoria Road</i>
20.	<i>JAMES, Carlette</i>	<i>Pond Hill</i>
21.	<i>JARVIS, Davidson</i>	<i>Brown Hill</i>
22.	<i>LANCASTER, Bert</i>	<i>Bath Village</i>
23.	<i>LIBURD, Denrick</i>	<i>Cole Hill</i>
24.	<i>LIBURD, Elvis</i>	<i>Prospect Estate</i>
25.	<i>LIBURD, Latoya</i>	<i>Pond Hill</i>
26.	<i>LIBURD, Melissa Anne</i>	<i>Bath Village</i>
27.	<i>LIBURD, Michael Shane</i>	<i>Prospect Estate</i>
28.	<i>LIBURD, Nekesha</i>	<i>Pond Hill</i>
29.	<i>LIBURD, Orborne</i>	<i>Brown Pasture</i>
30.	<i>MOHAMED, Sabrena</i>	<i>Bath Plain</i>
31.	<i>MORTON, Franklin</i>	<i>Bailey Yard</i>
32.	<i>MORTON, Janelle Corrine</i>	<i>Brown Pasture</i>
33.	<i>MORTON, Juanita</i>	<i>Pond Hill</i>
34.	<i>MORTON, Sherille</i>	<i>Bailey Yard</i>
35.	<i>PEMBERTON, Damien</i>	<i>Prospect</i>
36.	<i>PERSAUD, Bharat B.</i>	<i>Bath Village</i>
37.	<i>PERSAUD, Shanta</i>	<i>Bath Village</i>
38.	<i>PHILLIPS, Elvis Julian</i>	<i>Bailey Yard</i>
39.	<i>SEYMOUR, Linden Patrick</i>	<i>Farms Estate</i>
40.	<i>SINGH, Rajkumar</i>	<i>Pond Hill</i>
41.	<i>SINGH, Vishnu</i>	<i>Cane Garden</i>

42.	STURGE, Leroy V.	Brown Hill
43.	VIGO, Rupert Ohania	Farms Estate
44.	WALTERS, Alexis	Pond Hill
45.	WALTERS, Oscar	Cane Garden
46.	WALWYN, Stephen	Farms Estate
47.	WEEKES, Jaemou	Pond Hill
48.	WILKINSON, George	Bath Hill
49.	WINTER, Shelly Ann	Victoria Road

SECOND SCHEDULE

PART B: Persons who turned up to vote but have given no indication of who intended to vote for.

	<u>Name</u>	<u>Address</u>
1.	ANDSAMMY, Amurdan*	Cane Garden
2.	BHAGWANDEEN, Shiv	Bath Village
3.	CHANDRAADT, Seegolam	Stoney Grove
4.	HANLEY, Sevil	Beach Road
5.	LEYDEN, Joseph	Morning Star
6.	LIBURD, Macklene	Prospect Estate
7.	NEWTON, Catherine	Beaumont
8.	PRASS, Rudolph Adolphus	Cane Garden
9.	RAJKUMAR, Nandram Sharma	Upper Stoney Grove
10.	RAJKUMAR, Rohanie	Upper Stoney Grove
11.	RAMSARRAN, Savitri	Bath Village.

* On Voters' List as AMURDAN, Andasammy

THIRD SCHEDULE

Persons who did not turn up to vote and intended to vote for the Petitioner

	<i>Name</i>	<i>Address</i>
1.	<i>HENDRICKSON, Kervan</i>	<i>Prospect Estate</i>
2.	<i>HUGGINS, Deborah</i>	<i>Church Ground</i>
3.	<i>JONES, Sidama</i>	<i>Prospect Village</i>
4.	<i>SANICHAR, Ugeshwar</i>	<i>Bath Village</i>

FOURTH SCHEDULE

	<u><i>Name</i></u>	<u><i>Address</i></u>	<u><i>Occupation.</i></u>
1.	<i>BROWN, Roosevelt Augusta</i>	<i>Cox Village</i>	<i>Rood & Beverage Manager</i>
2.	<i>DORE, Angie Kalene</i>	<i>Montpelier</i>	<i>Waitress</i>
3.	<i>PHILLIP, Ursula Serphina</i>	<i>Bailey's Yard</i>	<i>Retired</i>
4.	<i>HOPE, Raul Findley</i>	<i>Morning Star</i>	<i>Mason</i>
5.	<i>LIBURD, Dyka Varena</i>	<i>Morning Star</i>	<i>Chef</i>
6.	<i>PARRY, Yejide Njambi</i>	<i>Hamilton Estate</i>	<i>Hairdresser</i>
7.	<i>ROBINSON, Troy Anthony</i>	<i>Morning Star</i>	<i>Youth Officer</i>
8.	<i>WEBBE, Vera Veronica</i>	<i>Morning Star</i>	<i>Pharmacy Technician</i>
9.	<i>BROOKES, Mikhail Paschal</i>	<i>Low Ground Estate</i>	<i>Student</i>
10.	<i>BROWNE, Drucilla Olivia</i>	<i>Prospect Estate</i>	<i>Unemployed</i>
11.	<i>HAMILTON, Sophia Veronica</i>	<i>Prospect Estate</i>	<i>Banker</i>
12.	<i>HANLEY, Everette Llewelyn G.</i>	<i>Prospect Estate</i>	<i>Student</i>
13.	<i>MARSHALL, Aschley Monique</i>	<i>Brown Hill</i>	<i>Shop Assistant</i>
14.	<i>PARRIS, Julio T. I.</i>	<i>Prospect Estate</i>	<i>Golf Attendant</i>
15.	<i>PHILLIP, Franklyn Noel</i>	<i>Brown Hill</i>	<i>Accountant</i>
16.	<i>PHILLIPS, Medina Riley</i>	<i>Brown Hill</i>	<i>Law Enforcement</i>
17.	<i>THOMPSON, George Edred</i>	<i>Brown Hill</i>	<i>Retired</i>

- | | | | |
|-----|--------------------------|--------------------|-----------|
| 18. | HOBSON, Steve Llewellyn | Fig Tree | Server |
| 19. | JAMES, Spurgeon Alphaeus | Upper Stoney Grove | Director |
| 20. | WILLIAMS, Kemron Corwin | Cane Garden | Carpenter |
| 21. | MATTHEW, Janita Hynica | Bath Village | Cook |

Dated this 3rd day of August 2nd 2011.

Mark Brantley, Petitioner.

The numerous grounds upon which the Petitioner mounted his case were set out in his affidavit. I will deal with them in due course, but firstly I will consider a point raised by Mr. Astaphan with respect to the pleadings in this case. He reminded the Court of the well known principle that the particulars must be clear and precise. A cause of action cannot be inferred. There must be no vagueness or ambiguity. In this case, he submitted where there are allegations of bias, misfeasance and bad faith, there must be specific pleadings. He cited a number of authorities, but I mean no respect if I do not refer to all. I will confine myself to the recent decision of the Court of Appeal in the case of Jacqui Quinn – Leandro and Dean Jones, John Maginley and Charles Henry Fernandez, and Winston Baldwin Spencer and St. Clair Simon where Rawlins C J reviewed the authorities on the point. I refer specifically to his citation from the case of Charran Lal Sahu v. Giana Zaid Singh (1985) LA. L.C. (Const.) 31 at page 42 d-g.

“In these petitions, pleadings have to be precise, specific and unambiguous so as to put the respondent on notice. The rule of pleadings that fact constituting the cause of action must be specifically pleaded is as fundamental as it is elementary..... The importance of a specific pleading in these matters can be appreciated only if it is realized that the absence of a specific plea puts the Respondent at a great disadvantage. He must know what case he has to meet. He cannot be kept guessing whether the Petitioner means what he says They (the Petitioners) cannot be allowed to keep their options open until the trial and adduced such evidence of consent as seems convenient and comes in handy. This is the importance of precision in pleadings, particularly in election petitions.”

Mr. Astaphan continued -

- (a) *The Petitioner spent a great deal of time on cross-examination in order to establish that a significant number of voters did not receive any notice at all. But the allegation that voters did not receive notice was not expressly pleaded in the Amended Petition. (See paragraph 26 of the Petition).*
- (b) *The pleaded allegations are –*
 - i. *The objections were filed beyond the 10 days after publication of the Register.*

- ii. The Respondents did not send any notice out;
- iii. Notices were not sent out immediately;
- iv. The five (5) days required notice was not given; and
- v. Under paragraph 26 iii) and iv) of the Amended Petition the notices were received before, on or after the scheduled dates for the hearings.

- (c) It is therefore clear that in his Petition the Petitioner understood the difference with "sending" and "receiving" notice. It is accepted that the Schedule to the Amended Petition mentions that certain persons did not receive the notices. But this is either not the same or is in conflict with paragraph 26 of the Petition and paragraph 26 must prevail.

Also, at paragraph 42 of the Amended Petition, the Petitioner makes some reference to a letter written by Mr. Amory, but this was not in relation to paragraph 26 and is in any event a wholly insufficient pleading of no service at all. (See Quinn Leandro v. Dean Jonas CA, No. 2011/018).

- (d) During his submissions Counsel for the Petitioner made submissions concerning alleged bad faith on the part of the Third Respondent on the ground that she knew the notices had not gone out from the Post Office and therefore could have sent out new notices. No such allegation or particulars of bad faith was pleaded or particularised. In support of his pleaded allegation of bad faith, the petitioner relied on the allegation pleaded in paragraph 26 the allegation of bias and post election matters in support of his allegation of bias and misfeasance. He is bound by these pleadings.

- (e) There is also no pleading and particulars of any bias other than the following in paragraph 29 of the Amended Petition. Paragraph 29 states –

"Further, the Third Respondent, who was previously an executive member of the NRP, an activist of that party at least up until 2009 and was recently a poll agent for the First Respondent at the August 27th bi-election contested as between the Petitioner and the First Respondent, heard and determined the objections to the registration of the persons listed in the First Schedule despite objections made to her adjudication of the objections at a meeting held on March 3rd 2011 and in a subsequent letter to the Second Respondent erroneously dated March 1st 2011. When the Petitioner objected to her adjudications of the objections, the Third Respondent reacted in a hostile manner and asserted that all members of the Petitioner's party were liars. In the premises, the determinations made by the Third Respondent of the objections are tainted with bias and are accordingly null

and void and of no effect and the persons listed in the First Schedule were unlawfully removed from the register of voters.

- (f) *There is no specific pleading or particulars of any alleged bias on the ground that the Third Respondent attended NRP Executive meetings as a resource person or otherwise. The pleaded allegation is specific; namely that the Respondent was 'recently' (in 2007) a poll agent and an Executive Member and activist up till 2009 and allegedly said 'all CCM are liars'. There is no pleaded bias on the ground that the Respondent refused to reply to letters or provide information prior to the election. On the assumption that we are wrong, the Respondents submit (later) that the Petitioner had by his conduct waived any objection he may have had.*

Mr. Mendes on the other hand made it clear that the schedules were part and parcel of the pleadings in the petitioner's case and if taken in context will show that the non-receipt of notices by the voters was raised. He pointed out in respect of the claim that the petitioner did not plead the correct role of the 3rd Respondent in relation to her association with the NRP, that the fact that the 3rd respondent had disputed the allegation that she was a member of the executive of the NRP did not affect the plea itself:

It seems to me that the requirement that pleadings in election cases must be precise and unambiguous so as to put the respondent on notice means that the petitioner must state material facts and the grounds relied on to sustain them.

If there is an allegation that the Respondent did not send out notices it is implicit in the allegation that notices were not received. Furthermore, in this case the petitioner used schedules in the petition itself to illustrate the point that no notices were received. That to my mind is sufficient. In so far as the reference to paragraph 42 of the petition not being a proper plea on the question of non-receipt of notices, a close look at paragraph 42 will reveal that that paragraph was not intended to be the pleadings on non-receipt of notices but was making reference to a specific ruling by Michel J.

The complaint that there was no specific pleading or particulars of any alleged bias on the ground that the 3rd Respondent attended NRP Executive meetings as a resource person or otherwise, is misconceived. The simple answer is that that was the response of the 3rd Respondent to the allegations that she was previously a member of the executive of the NRP. The Petitioner is not expected to anticipate a response and formulate a pleading to meet it. Bad faith and misfeasance will be considered later.

Another point of a preliminary nature with which I would deal at this stage is a point raised by Attorney for the Petitioner claiming that the writ of election was issued out of time.

The Petitioner has contended that under section 58(2) of the National Assembly Elections Act, Chap. 2:01 of the Laws of St. Kitts and Nevis, the writ of elections shall specify the day and place of nomination of candidates; the day on which, if necessary, the poll shall be taken, being not less than seven days after the day of such nomination.

On the facts of this case, nomination day was fixed for July 4th 2011 and the election was held on the 11th July 2011.

Was section 58(2) complied with?

In re. Railway Sleepers Supply Co. (1885) 25 CLD 204, a case dealing with computation of time under section 51 of the Companies Act, 1862. Section 51 enacted that "a resolution passed by a company shall be deemed to be special whenever a resolution has been passed..... at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen (14) days, nor more than one month, from the date of the meeting at which such resolution was just passed". The Court decided that the interval of not less than fourteen days which under section 51 of the Companies Act 1862, is to elapse between the meetings passing and confirming a special resolution of a company is an interval of fourteen clear days, exclusive of the respective days of meeting".

Support for such a computation can be found also in Re. Hector Whaling Ltd 1935 EER Re. 302 at pg. 1.

In light of the authorities cited, the Nevis election was held at a time less than seven clear days after nomination day. The election date should therefore have been July 12th.

The Petitioner has not asked for the election to be declared void for this reason but submitted that this error should be taken into account as a factor in determining the validity of the election when taken together with other alleged irregularities.

My own view, however is that the provision is directory as only unjust consequences would follow if an election were to be declared void by holding this provision to be mandatory.

Bearing in mind that the election was held one day early, drives me to the conclusion that no unjust consequences resulted and I am disinclined to attach any weight to this error.

THE PETITIONER'S CASE

The thrust of the Petitioner's case revolves around actions or omissions of the Chief Registration Officer and the Registration Officer that resulted in the removal of 203 names from the 'Register of Voters with the result that those persons were disenfranchised and were deprived of their constitutional right to vote in the election for the candidate of their choice.

Owing to the complex nature of this case and the several issues raised, I have set out in full the evidence of those I consider to be the main witnesses who appeared and gave evidence. I have also listed the names of the overseas witnesses whose evidence was allowed in without cross-examination.

AFFIDAVIT OF MARK BRANTLEY

- "1. I am a citizen of St. Kitts and Nevis. I am a lawyer by profession and have since 2006 been involved in active politics on the island of Nevis.
2. I am a registered voter in District 9 in the Parish of St. Johns and as such I had the right to vote and voted at the Nevis Island Assembly election held on July 11th 2011. I was also a candidate for the Constituency of Nevis 2 (Parish of St. John) in that election. I am the Deputy Political leader of the Concerned Citizens Movement (CCM), one of the main political parties in the Federation of St. Kitts and Nevis. I was appointed a Senator on the Opposition benches in the Nevis Island Assembly by the CCM in 2006 and became a Member of Parliament in Nevis then. On the 27th August, 2007 I contested a bi-election to fill the Federal seat in District 9 made vacant by the sudden death of the then Deputy leader of CCM, the Honourable Malcolm Guishard. I was successful running on a CCM ticket against the Nevis Reformation Party (NRP) candidate Hensley Daniel and won District by 30 votes. I was thereafter chosen by my colleagues in Opposition in the National Assembly to be the Leader of the Opposition in the National Assembly. Thereafter on the 25th January, 2010 I contested District 9 in a Federal general election on a CCM ticket. I was again successful against Hensley Daniel of the NRP and was able to extend my margin of victory to 149 votes. At all relevant times when I ran against Hensley Daniel at the Federal level, he was the Incumbent in District 2 St. Johns for the NRP and was a Minister in the Nevis Island Administration.
3. The first respondent, Hensley Daniel, was a candidate for the constituency of Nevis 2 St. John's in the Nevis Island Assembly election of July 11th 2011. He ran on a NRP ticket. On July 12th 2011, Kelvin Daley, the Returning Officer and the fourth respondent herein, declared that the said Hensley Daniel received 1358 votes and that I received 1344 votes, with 14 spoilt or rejected ballots, and returned Hensley Daniel to the Nevis Island Assembly as being duly elected for the Constituency of Nevis 2 (Parish of St. John).

The parties

4. The Second Respondent, Leroy Benjamin, is and was at all material times the Supervisor of Elections and ex officio the Chief Registration Officer for the purposes of the National Assembly Elections Act Chap. 2:01 (hereinafter referred to as the Act). As supervisor of Elections, the Second Respondent is required by section 34(1) of the Constitution of Saint Christopher and Nevis to "exercise supervision over the registration of voters in elections of Representatives and over the conduct of such elections" and is empowered by section 34(4) thereof to "give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the

conduct of elections." In the exercise of his said functions, the Second Respondent is further required by section 34(7) of the Constitution to "act in accordance with such directions as he may from time to time be given by the Electoral Commission but shall not be subject to the direction or control of any other person or authority." By section 33(1) of the Act the Second Respondent appoints the Registration Officer.

5. The Third Respondent, Bernadette Lawrence, is and was at all material times the Registration Officer, for inter alia, the Constituency of Nevis 2 Parish of St. John) and is and was at all material times required by section 34(4) of the Constitution to comply with any directions given to her by the Supervisor of Elections pursuant thereto. By section 34 of the Act it is the duty of the Registration Officer to compile lists of voters for his or her District in accordance with the Act and the Regulations thereunder.
6. As noted, the fourth Respondent, Kelvin Daley, is and was at all material times the Returning Officer for the Constituency of Nevis 2 (Parish of St. John).
7. The Fifth Respondent, Joseph Parry, is and was at all material times the Premier of Nevis and is responsible for advising His Excellency the Governor General on the date to be fixed for any election to the Nevis Island Assembly and the date on which nominations for such elections are to be held.
8. The Sixth Respondent, Hesketh Benjamin, the Seventh Respondent, Myrna Walwyn, and the Eighth Respondent, William "Dore are Members of the Electoral Commission, the Sixth Respondent being the Commission's Chairman. The Electoral Commission is required by section 33 (4) of the Constitution to supervise the Supervisor of Elections in the performance of his said functions.
9. The Ninth Respondent is the Attorney General of Saint Christopher and Nevis and is joined in these proceedings pursuant to section 13(2) of the Crown Proceedings Act in so far as allegations are made herein of breaches of my constitutional rights, of breaches of other provisions of the Constitution of Saint Christopher and Nevis and the failure to schedule the said election in a timely fashion in accordance with the Act, as noted below.

The Petition

10. I have brought a Petition challenging the result of the said election in the constituency of Nevis, 2 St. Johns on a number of bases. I believe that the election was not carried out in accordance with the law as to elections and the constitution, and that accordingly the result does not express the will of the people in a democratic society, and should be overturned by this Honourable Court. I set out hereunder under different heads the bases of my concerns and

the factual underpinnings of such concerns in support of the Petition and the relief prayed therein.

The Writ of Elections

11. *Acting on the advice of the Fifth Respondent, as he is required to do by law, His Excellency the Governor General issued the writ for the said election on June 22nd 2011 requiring the Fourth Respondent to proceed to the nomination of candidates on July 4th 2011 and thereafter if necessary to the election of the representative for the Constituency of Nevis 2 (Parish of St. John) on July 11th 2011. Contrary to section 58(2) of the National Assembly Elections Act ("the Act"), the date fixed for the said election was less than 7 days after the date fixed for nomination of candidates.*

Disenfranchisement of Legitimate Votes in St. Johns

The Reconfirmation Exercise

12. *The Federation of St. Kitts and Nevis underwent an electoral reform exercise in 2007 which resulted in significant amendments to the Act and the Regulations made thereunder "the Regulations". One of the significant innovations of that exercise was the requirement that voters who were hitherto registered would be permitted a particular prescribed period within which to confirm their registration. Voters who did so were permitted to confirm their registration wherever they were already registered prior to the coming into force of the amendments to the Act.*
13. *Extensive efforts were made by electoral officials and tremendous expense incurred by the 'Government to encourage persons to confirm their voter registration. Indeed, electoral officials travelled abroad to permit the confirmation of many voters resident overseas and travelled throughout the villages in 'St. Kitts and Nevis to ensure that as many people as possible confirmed their voter registration. The Supervisor of Elections, the second respondent herein, actively encouraged voters to confirm their registration and issued public appeals to that effect explaining that it was better for voters to confirm their registration than to register afresh. I exhibit hereto a transcript of a public radio announcement made by the Supervisor of Elections on or about 9th September, 2008 actively exhorting voters to confirm their registration as permitted by law. If voters did not confirm their registration during the prescribed period then their names were to be removed from the voters list and they were then obliged to register afresh. I heard the announcement myself and I confirm that they transcript is an accurate record of what the second respondent said.*

14. *The second Respondent also issued a public announcement on VON radio on 12th January, 2011 and confirmed that people would be allowed to vote where they were registered or where they confirmed even if they had since moved to a different location. I heard the announcement myself and confirm that the Transcript exhibited here is an accurate record of what the second respondent said. I reproduce the statement below:*

"Please be advised that wherever you were confirmed or registered there is where you are supposed to vote on polling day. Let me say that again. "Please be advised that wherever you were confirmed or registered there is where you are supposed to vote on polling day. Kindly be advised that nobody is going to put you in prison for voting where you are registered, even if you have since moved to another location. Let me explain what I am referring to.

For many years I lived in Sandy Point up to 1993. In June of that same year I moved to Basseterre. In December of 1993 there was a General Election. Not because I was living in Basseterre at that time meant that I could vote in Basseterre. I had to drive back to Sandy Point in order to vote thereby participating in the Elections and nobody lock me up and that is still the law. So do not let anyone mislead you that you cannot vote where you register because you have moved".

15. *The electoral reform exercise also ushered into law the issuance of a National Identification Card which was issued to every voter who duly confirmed his or her registration during the confirmation period or was otherwise registered to vote. The purpose behind the National Identification Card issued by the Electoral Office and under the hand of the Supervisor of Elections was to ensure that voters presented this as identification when exercising their franchise. In its function, therefore, it was and is a Voter Identification Card.*
16. *Many voters confirmed their voter registration as prescribed by law and/or registered afresh and were duly entered as voters on the list of voters for the various constituencies in Nevis and in St. Kitts.*

The January 2011 Register of Voters

17. *On 26th January, 2011 the second respondent published the annual Register of Voters for the island of Nevis generally and for Electoral District 9, in particular, pursuant to section 43(1) of the Act. I will refer to this list hereafter as the "January 2011 Register. Electoral District 9 is a constituency for the Federal elections. Electoral district Nevis 2, Parish of St. John is a constituency for the Nevis Island Assembly. Nevis 2 is a subset of District 9. The January 2011 Register therefore includes those voters registered for elections to the Nevis Island Assembly for the constituency of Nevis 2, Parish of St. John. I will refer*

hereafter to that part of the January 2011 Register which contains voters for the constituency of Nevis 2 as the "Nevis 2 January 2011 Register".

18. The persons whose names appear in the first schedule to the petition herein appear on the Nevis 2 January 2011 Register and were accordingly registered and entitled to vote at any election for the Nevis Island Assembly for the constituency of Nevis 2 (Parish of St. John).

The Monthly Lists

19. Pursuant to section 44 of the Act, the Second Respondent is required to publish Monthly Lists, inter alia, for the Electoral District of Nevis 9 containing the names of persons who either reached the age of eighteen years and who appeared to the Second Respondent to be otherwise qualified or who otherwise became qualified to be registered as a voter and entitled to vote as such. The Second Respondent duly published Monthly Lists for the months of January, February, March, April and May 2011.
20. Pursuant to section 46 of the Act, the Second Respondent is required to publish Revised Monthly Lists but he did not publish any such lists for the year 2011 at any time prior to the date set for the said election. Because I am active in politics I make it my habit to check for the publication of any documents pertaining to the registration of voters. I work with a small close knit campaign team in St. Johns and we check regularly for any Notices or other publications from the Electoral Office. In the various areas of St. Johns, the Electoral Officials post various Lists and Notices at designated buildings each month. In Bath Village and its environs, Notices and Lists are usually posted by the Electoral Officials at Albertha Payne Community Centre and/or at Tooties Bar. In Brown Hill and its environs, Notices and Lists are usually posted by the Electoral Officials at Sandy's Shop and/or Hyacinths Shop. In Church Ground and its environs Notices and Lists are usually posted by the Electoral Officials at Stanley's Superette. In Brown Pasture, Pond Hill and their environs Notices and Lists are usually posted by the electoral officials at Sheila's Shop in Brown Pasture and/or Cost Me Less Superette in Beach Road. In Cole Hill, Cox, Montpelier and their environs Notices and Lists are usually posted by the Electoral Officials at Pancho's Shop in Cole Hill and/or Carolee Hendrickson's Shop and/or the Gazebo and/or the Beaumont Church in Cox.
21. I am therefore able to say from my regular checks that no revised monthly lists were published in 2011. Indeed, the non-publication of revised monthly lists has been of some concern to me since 2010. By letter dated January 17th 2011, I had written to the seventh respondent as Chairman of the Electoral Commission raising this matter with him but I got no response to this letter. Similarly, by

letter dated May 25th 2011 the leader of the CCM party raised the non-publication of revised monthly lists in 2011 with the seventh respondent and again there was no response.

22. *In the premises, pursuant to section 48(1) of the Act, the register of voters to be used for the said election was to consist of the Nevis 2 January 2011 Register only.*

The July List

23. *On the afternoon of Saturday 2nd July, 2011 the CCM Party received from the Electoral Office in Nevis a voters list which had portions dated 29th June, 2011 and other portions dated July 1st, 2011. I will refer to the lists hereafter collectively as the July 2011 Register. The Fourth Respondent provided each polling station in Nevis 2 St. Johns with the July 2011 Register to be used at the said election. On Election Day I visited each and every Polling Station several times during the day spoke with my polling agents as well as the various Presiding Officers and with the exception of one Polling Station at Prospect where a single name was added, I am satisfied that the July 2011 Register was the List which was used at the said election. My party received the July 2011 Register a mere 5 working days before the election.*
24. *I have examined the July 2011 Register and I have compared it with the January 2011 Register and the January to May, 2011 Monthly Lists. I have noted that the July 2011 Register contains the names on the January, February, March and April 2011 Monthly Lists but it does not contain the names on the May Monthly List. I have also noted that the July 2011 Register does not contain the names on the first schedule to my Petition. As a consequence, those persons whose names appear on the first schedule would not have been permitted to vote at the said election.*

The Procedure for Objections

The Date Notices of Objections Lodged

25. *In accordance with regulation 16 of the Election Registration Regulations (the Regulations), objections to any name appearing on the January 2011 Register were to be made within ten days of the posting of the Register.*

The January 2011 Register was posted on January 28th 2011 and accordingly objections had to have been made by February 7th 2011 for the latest. The CCM filed certain objections on the last day permitted at the hour of closing of the Electoral office. The NRP has repeatedly asserted that it filed its objections in response to the objections filed on behalf of the CCM which raises an issue as to

when the NRP objections were filed and whether they were filed in the time limited by law.

26. *After the election, I decided to exercise my right under the regulations to inspect the Electoral Office's files concerning the objections purportedly lodged. Accordingly, on Monday July 25th, 2011, by letter delivered personally by hand to Ms. Beulah Mills, I applied to the third respondent, "to inspect and take extracts from (the Registration Officer's) file containing claims and/or notices of objections made under the regulations of the National Assembly Elections Act Chap. 2:01 for district 9" in respect of the persons appearing on a list which I attached to my letter. The said application was urgent and I requested respectfully, that I be able to so inspect and take such extracts on that day July 25th 2011. My request was couched in the most urgent language because the national elections had since concluded and specifically, for St. Johns, there had been at least 203 names removed from the Register on the basis supposedly of objections to these names being received by the electoral office and on the basis supposedly of hearings convened to determine these objections.*
27. *The third Respondent did not accede to my request despite the extreme urgency explained and set out as described. I followed up on Tuesday July 26th 2011 and was informed by Ms. Beulah Mills, manager of the Electoral Office, Nevis Circuit that the third Respondent was not in office, could not be reached and indeed Ms. Mills claimed that she did not know where the third Respondent was. I therefore wrote a second letter that day reiterating the urgency of the application and requested that the third Respondent contact me with a view to making arrangements for me to inspect the files.*
28. *On July 27th 2011 the third Respondent spoke to me on the phone after I called the Electoral Office to follow up on the matter and told me that her staff was getting the necessary information together for my perusal but that she was unable to indicate when the information would be made available. She said that she would contact me by phone later that day to say when I should attend her office to carry out the inspection. The day passed and I was not contacted by the third Respondent. Accordingly, I wrote another letter that day asking for a prompt response.*
29. *I received no response from the third Respondent. On 3rd August, 2011 being the first working day after the holidays of August 1st and 2nd, 2011, I wrote again to the third Respondent demanding to undertake the inspection no later than 4th August, 2011 barring which I would have to seek the intervention of the Court.*
30. *I attended the third Respondent's office on August 4th 2011 and was provided with 86 objection notices only out of the list of 203 Notices I had asked for. I was*

not provided with any notices actually sent out to any of the persons on my list. The third Respondent told me that the reason she had not provided information for the remaining persons was that I had not indicated in the correct column of the list I provided the addresses and occupations for some of the persons. The third Respondent took this position even though an examination of the list would show that, in obvious error the occupation of some of the persons were put under the column headed "address and vice versa, but that the names and polling divisions of the persons were correctly stated. It appeared to me that the third Respondent was being deliberately unhelpful. By letter dated August 4th 2011, I recorded what had happened, enclosed a corrected list of the remaining persons and demanded access by August 5th 2011.

31. I attended on the Electoral office on August 5th 2011 at 9.10 a.m. the third Respondent was not in office there. An officer at the Electoral office called her for me on the telephone and I was permitted to speak to her via telephone. The third Respondent advised me that she was busy, that I should not expect her to jump when I said so and that she would deal with my request when she found the time to do so. I reminded the third Respondent of the urgency of the matter and the fact that I had been waiting since July 25th to undertake the inspection and that she had a legal duty to permit me to inspect. Whilst still speaking to the third Respondent she hung up the telephone on me. By letter dated 5th August, 2011 I recorded what had happened.
32. The third Respondent did not contact my office until 11th August, 2011 advising that I could come and continue the inspection on 12th August, 2011. I was abroad at the time and had my Solicitors write to the third Respondent on my behalf requesting that I be permitted to undertake the inspection during the week of August 22nd 2011.
33. The third respondent did not respond until 17th August, 2011 advising of a date of September 5th, 2011 to continue the inspection. That date was inconvenient as I was travelling. I have had no further communication with the third Respondent on the matter.
34. Of the 86 Notices of Objections I was permitted to inspect the one for Cecil Farrell objected to by Hensley Daniel bore no date whatsoever. All the other objections were dated after February 7th, 2011 (the 8th 9th and 10th February, 2011 save and except 39 being:
 - i. Shameena Ali, Sharmin Ali, Andasammy Amurdan, Rubylette Arthurton, Vincent Vernal Walwyn, David Walwyn objected to by Hensley Daniel. Objections

dated 4th February, 2011. Orborne Daniff, Donald Liburd objected to by Halstead Byron.

Objection dated 4th February, 2011.

- ii. Rhonda Althea George objected to by Halstead Byron. Objection dated 6th February, 2011.*
- iii. Shanta Deocharran, Radicia Dhanraj, Danesh Harrylall, HarrichaMalchand, Rondon Julius Lyte, Satayavan Joylall, Bert Lancaster, Heralall, Looknauth Lakeram Mohan, Sabrena Mohamed, RajkumarieNarandin, Bharat Persaud, Shanta Persaud, Sookranie Persaud, Danarand Monica Prashad, Mahadeo Prasad, Davanand Ramnarine, Ransharoop Rajroop, Datarram Persaud, Ramsarran, Savitri Ramsarran, Mahadai Ramsarran, Luis Rawlins, Ugishwar Sanichar, Moushimi Sarran, Bhagwandeem Shiv, Murath Shivkumar, Danny Shivrinden, Lakeram Sheergobin, Nakim Singh objected to by Hensley Daniel.*

Objections dated 7th February, 2011. Patricia George objected to by Halstead Byron.

Objection dated 7th February, 2011.

35. Of the other Notices of Objections inspected by me:

- i. Rajwatee Basdeo, m Bhagwatram Bhoojraj, Henwattie Bickeranjeet, Young Chan-Lau, Faniza Shhamsudin, Dianand Persaud, Rudolph Prass, Nandram Rajkumar, Dubray Ramdeo, Rohanie Rajkumar, Ramnarth Ramchand objected to by Halstead Byron. Objections dated 8th February 2011. Bibi Bhoojraj, Nikieta Latayo Bristol, Ganga Davi Chooramon, Tishhana Collins, Ushha Shanti Darmo, Diikhan Balkaran, Sudeshh Etwaroo, Patricia greenidge Azim Hussain Mohamed, Esherda Jalall, Ganeshram Kistoo, Ryan Kawall, Balwan Lall, Melissa Ann Liburd, Rickel Mitchell, Alim Mohamed, Phillip Mootoo, Bibi Mootoo Ganesh Nagamotoo, Pricilla Hyman, Swarsathe Persaud, Arjune Persaud, Ingel Rampaul, Wanita Ramsarran, George Vincent Wilkinson objected to by Hensley Daniel. Objections dated 8th February, 2011.*

- ii. *Jagnette Changor, Sohan Changor, Jonella Fraser, Danielle Fordyce, Alston Hall, Alexis Walters, Nikesha Liburd objected to by Halstead Byron.*

Objections dated 9th February, 2011.

- iii. *Oma Devi Balgobin, Lokesh Gopee, Keba Prass and Jahhnelle Morton objected to by Hensley Daniel. Objections dated 10th February, 2011.*

36. *There was no indication on any of the Notices inspected by me whether by date stamp or otherwise the date on which they were lodged with the Electoral Office. In inquired of the third Respondent whether the Electoral Office kept a book or other log so that they could be sure when Notices of Objections were actually received at the Electoral office and she replied that there was no such book or log and there was no record of when any such Notices would have been received by the Electoral Office.*

The late delivery of notice of hearing of objections.

37. *Under the Regulations, the second and/or the third Respondent must immediately after receiving notice of any objection to the name of any person appearing on the voters list, send a notice to that person informing him or her of the objection and of the date on which the objection would be heard. It is also a requirement that five days notice of the hearing be given. It is also a requirement that there be published and exhibited on at least two conspicuous buildings within the constituency a list of all voters whose names have been objected to.*
38. *I have attempted to contact all those persons whose names appear on the first schedule to the petition. Of those I was able to contact, I have discovered that some of them received no notice at all, some of them received a notice but after the date fixed for the hearing of the objection, and some of them received the notice less than five days before the date fixed for the hearing of the objection. In respect of all those persons who received notices, it is also clear that the notices were not sent out immediately as required by the Regulations, on the assumption that some notices were received by the Electoral Office by February 7th 2011. In these regards, I rely on the affidavits sworn and filed by the individual voters whose names appeared in the January 2001 Register but do not appear on the July 2011 Register. I have attempted to obtain information concerning whether and if so the dates on which the persons listed in Part C of the First Schedule to the petition received notices informing them of the objection made against their registration and of the date the objection would be heard but those persons either did not wish to cooperate or were not located.*

Where voters have not been able to swear an affidavit in this matter in the time limited but nevertheless hitherto swore affidavits recording their concern,

39. *I usually make periodic checks in St. Johns for publications by the Electoral Officials but I have not seen published or exhibited anywhere in the constituency a list of voters whose names have been objected to as is required by Regulation 21 at any of the usual locations set out at paragraph 20 or at all.*
40. *What is worse, I have seen from some of the affidavits filed in support of the Petition that when the third Respondent was told that the notice of the hearing of objection was received late and information requested as to the outcome of the hearing if held, the third Respondent simply did not respond or in the case of Oscar Walters told him expressly that she was under no obligation to tell him the outcome. In the case of Vance Amory, for example, he wrote by letter dated June 20th 2011 asking to be informed if his name had been removed from the list in circumstances where he received his notice of the hearing after the date of the hearing. He got no reply to his letter.*

Bias on the part of the third Respondent

41. *Under the Regulations, the Registration Officer is required to determine complaints made about the registration of voters on the list. The third Respondent is the Registration Officer. I am concerned that the third Respondent lacked the necessary impartiality to function lawfully as a Registration Officer hearing claims which by their nature take on the tenor of political contests between CCM and NRP. Whilst it is true that the political parties themselves do not object to names, members or agents of each party are the ones who object to voters and are the ones generally who attend objection hearings.*
42. *On or about the 3rd day of March, 2011 I appeared before the third Respondent as Counsel for and on behalf of Oscar Browne, a person who had made certain objections. I advised Mrs. Lawrence that I had heard on a public radio programme two nights prior that she had hitherto been an executive member of the NRP and a poll agent for the NRP and Hensley Daniel at a polling station at Fig Tree Church in St. Johns in District 9 as recently as the bi-election of 27th August, 2007 in which I was a candidate against Hensley Daniel. I advised her that if these matters were true, I was objecting to her sitting to adjudicate on the objections and was asking her to recuse herself. Mrs. Lawrence became extremely hostile towards me and refused to answer whether she had in fact held an official position with the NRP and acted for and on behalf of Hensley Daniel and the NRP as a poll agent inside the polling station at Fig Tree. She stated "who the hell you think you are? Woke up in a good mood and don't*

get me angry". Mrs. Lawrence further stated that "no one should question me and you all should go elsewhere if you upset about me sitting". She shouted that "no one should ask me any question" and stated "all aryu in CCM are liars". She then invited the Police officer on duty to remove me from the room for questioning her about her role with the NRP. I refused to leave the room on the basis that I had a right to remain there as Counsel for Mr. Browne. I invited Mrs. Lawrence to note my objection to her sitting as the hearing officer but she flatly refused to do so.

43. *Of particular interest is that the hearings scheduled for that day were then adjourned by Mrs. Lawrence on the submission by Minister E. Robelto Hector of the NRP, who attended the hearing for and on behalf of the persons objected to by agents of the CCM, that there were concerns that postal workers had not delivered the objection notices to persons objected to with the effect that persons objected to had no notice of the hearing. Mrs. Lawrence herself then stated that she had heard on a radio talkshow that postal workers could not find persons and she wanted to be certain that the main from the electoral office went out to persons objected to on that basis, the hearings were adjourned. It is instructive that the objections being dealt with at that time were objections by agents of the CCM and Mrs. Lawrence was most concerned then that persons objected to received proper notice of objections and dates for hearing so they could be present.*
44. *Subsequently, by letter erroneously dated March 1st 2011, the leader of the CCM complained to the Commission that the third Respondent ought not to be permitted to adjudicate on notices of objection because of her recent close political association with the NRP. There was no response to this letter.*
45. *I have seen an affidavit by One Elton Marcus Hull dated 14th September, 2011 and filed in support of this petition who states on oath that he was a member of the NRP and attended executive meetings of the Party along with Bernadette Lawrence. Mr. Hull confirms that Mrs. Lawrence attended meetings of the Executive of the NRP, was a candidate for Chairperson of the NRP in 2009, and a vocal activist for the NRP at least up to 2009 when Mr. Hull stopped attending Executive meetings of the Party. Mr. Hull also confirms that Mrs. Lawrence was in fact a poll agent for Hensley Daniel and the NRP in the bi-election of 27th August, 2007. I rely on the sworn testimony of Mr. Hull as clear evidence of the political activism and affiliations of Mrs. Lawrence.*

The Commission's May 26th Directive

46. *In or about the beginning of May 2011, I began to receive complaints from voters that they were receiving notices of hearings of objections after the date*

fixed for the hearings had already passed. As a consequence, my Party complained to the Electoral Commission about these instances by letters dated May 19th and 25th 2001.

- 47. By letter dated May 24th 2011, we were invited to a meeting with members of the Commission on May 26th 2010. My Party Leader and certain other members of the CCM met with the Electoral Commission and officers from both the electoral office in St. Kitts and that in Nevis. The Supervisor of Elections, the second Respondent, was invited to the meeting but did not attend. The concerns of the CCM as set out in the letters dated May 19th and May 25th were discussed. After hearing the concerns of the CCM touching and concerning the fear of voter disenfranchisement, the Commission unanimously issued a written directive to the Supervisor of Elections dated 26th May, 2011 directing that persons who had reconfirmed their registration and had been issued with National Identification Cards should remain on the voters list as at January 2011.*
- 48 By letters dated June 2nd and 7th 2011, the second Respondent expressed the view that he was not bound to comply with the Commission's directive and that neither the Commission nor the Supervisor of Elections had the authority to interfere with the third Respondent in the exercise of her functions. Accordingly, he as of the view that the Commission had no authority to instruct that voters who had reconfirmed under the Act and issued with National Identification Cards were to remain on the voters list as at January 2011. The Second Respondent stated expressly that he was acting on the advice of Senior Crown Counsel in the office of the Attorney General. The Attorney General himself was a candidate in the said election for the NRP in the Constituency of St. James and an executive member of the NRP.*
- 49. In the meantime, by letter dated June 6th 2011, the Leader of the CCM informed the Chairman of the Electoral Commission that the third Respondent was bent on ignoring the Commission's directive on the ground that the letter dated May 26th 2011 was not addressed to her. He further informed the Chairman that the CCM's concerns regarding the removal of names from the Register still remained. The leader of the CCM pleaded with the Chairman to intervene.*
- 50. By letter in response dated June 17th 2011 to the second Respondent's letters dated June 2nd and 7th, the seventh Respondent informed the second Respondent that the Supervisor of Elections and the Registration Officer were indeed required to comply with the directions of the Commission and drew the second Respondent's attention to section 34(4) & (7) of the Constitution. The seventh Respondent called upon the second Respondent to implement the Commission's decision contained in its letter dated May 26th 2011.*

51. *Indeed, in a letter dated March 30th 2010, the second Respondent had asserted the power to direct a previous Registration Officer as to the manner in which his functions in relation to objections were to be exercised. The second Respondent had directed the then Registration Officer, one Godfrey David, to issue new notices to persons who had not received prior notice of the hearing of objections to their registration. When Mr. David failed to comply with the second Respondent's directive, the second Respondent terminated the services of Mr. David.*
52. *I had seen copies of these letters and I studied the relevant provisions of the Constitution. I fully expected that the Commission's decision would be implemented and I was not informed at any time before the election that the Commission's directive would not be carried out. As it turned out, it was not and in fact a large number of persons had their names taken off the list. I am advised that in so doing the second and/or the third Respondent failed to comply with the Election Commission's direction contained in the said letter dated May 26th 2011 contrary to section 34(7) of the Constitution.*
53. *Furthermore, despite being made aware that persons had received notices after the date fixed for consideration of objections, the second and/or third Respondent did not reverse any decisions already made, and/or take any steps to reschedule the hearings of the objections and issue fresh notices as the second Respondent had done on a previous occasion as evidenced by the said letter dated March 20th 2010 and the third Respondent had done in relation to objections made by the CCM at the hearing on 3rd March, 2011, and/or notify the persons listed in the First Schedule that the said objections had been upheld so that they could exercise their right of appeal to the High Court under the Act, but instead published the July 2011 Register which for the first time informed the persons affected that their names had been removed from the list. By that time it was already too late to exercise any right of appeal to the High Court.*

The late publication of the July 2011 Register

54. *Upon the publication of the July 2011 Register, the CCM assembled teams of persons to evaluate the register and to compare it to the January 2011 Register and additions by way of monthly lists. That comparison was completed on the morning of Monday 4th July, 2011. The results of that comparison were shocking. They showed that some 243 voters whose names appeared on the January 2011 Register had been removed from the list. Of those, 203 had been removed from the Nevis 2 constituency which was the seat being contested as between the first Respondent and me and which said seat has now purportedly been decided by 14 votes, with 14 spoilt or rejected ballots.*

55. *The July 2011 Register was published in the usual manner by posting same at the Electoral Office in Charlestown. Persons desiring to know whether their names were on the list or had been removed therefrom would have had no way of knowing that the list was published since the second or third Respondent did not inform the public whether by notice in the newspapers or otherwise that the July 2011 Register was available for inspection.*
56. *Up until June 30th 2011, I observed that the Electoral Office was still exhibiting only the January 2011 Register in its offices. Accordingly, persons who made enquiries at the Electoral Office prior to that date would only have that list to check. Mr. Denrick Liburd has sworn an affidavit in these proceedings that he made an enquiry in the week of June 26th as to whether he was still registered and he was referred to the January 2011 Register posted on the wall. Alexis Walters was similarly referred to the January 2011 Register by the Electoral officials on which his name appeared and has sworn an affidavit to that effect. No one could have known the result of any objections until the July 2011 Register was posted on July 2nd 2011.*
57. *July 2011 Register was published on July 2nd 2011, which was a Saturday and was a mere eight days or five working days before the date fixed for the election. Even if voters were aware that the list was available, they would not have been able to consult it until on July 4th 2011. Leaving them very little time to do anything about the removal of their names from the list. There was also insufficient time and opportunity for me to contact all the persons listed in the First Schedule for the purpose of taking proceedings to restore their names to the list, given that I was still in the middle of an election campaign.*
58. *By letter dated July 4th 2011, the leader of the CCM brought to the attention of the Electoral Commission the fact that a number of persons who were originally on the January 2011 Register were now excluded from the July 2011 Register and asked that, consistent with the Commission's letter dated May 26th 2011, steps be taken to rectify the list.*
59. *In the severely limited time available, the CCM was able to get a family of 5, the Palmer family, who had been hitherto registered in the constituency of District 9, St. Paul's and whose names had been on the January 2011 Register, to bring an application for judicial review and to seek an interim Order that their names be reinstated on the Voters List so as to enable them to vote in the elections of July 11th 2011. The claim was given the number Claim No. NEVHCV 2011. Their complaint was that they had received notices of hearing of objections against their registration after the purported dates for such hearings had already passed and had never been notified of any decision made by the Registration Officer in*

relation to them until they saw the July 2011 Register and realized that their names had been removed from the voters list.

60. The Palmer Application was successful and the learned Judge, Mister Justice Mario Michel ordered the restoration of the names of the 5 Palmer family members to the voters list so as to enable them to participate in the July 11th 2011 poll. The learned Judge found as a matter of law that the removal of the names of the Palmers was not pursuant to any objections made to their names and they had been improperly excluded from the voters list. The Court also gave leave to apply for judicial review of the decision to expunge the names of the Palmers from the voters list.
61. My Party simply did not have sufficient time to get additional persons to commence proceedings in the 5 working days available between the publication of the "Election List on the afternoon of July 2nd 2011, and the date of the election of July 11th 2011. I was still running my campaign and the last week of a campaign is always crucial. I, along with my entire campaign team, were therefore extremely busy canvassing and we did not have the time to spend trying to contact the other 238 persons affected and then to prepare legal proceedings on their behalf. However, we did ask the learned Judge to grant relief in relation to other persons who might be in the same situation as the Palmers but he declined to order all of the names restored to the voters list on the basis that he did not have the full facts of all 243 affected voters before him.
62. Further, by application for judicial review in Claim No. NEVHCV 2011/0125, the leader of the CCM, Mr. Vance Amory, commenced proceedings in his own name to challenge the exclusion of the names of the persons listed in the First Schedule to the petition from the July 2011 Register on the ground that the Electoral Commission's directive dated May 26th 2011 had not been carried out by the Second and Third Respondents. That application was dismissed on the ground that Mr., Amory lacked locus standi to institute the claim since his name was on the July 2011 Register.
63. By letter dated July 8th 2011 Mr. Amory brought to the attention of the Electoral Commission the judgment of the Honourable Michel J delivered on July 8th 2011 that it was unlawful to exclude from the list of eligible voters persons who had not received proper notice of the hearing of objections to their registration and asked the Commission to ensure that persons excluded from the July 2011 Register be allowed to vote on July 11th 2011.
64. In breach of their duties under section 33(4) of the Constitution, the Sixth, Seventh and Eight Respondents failed to take any steps to ensure that the persons listed in the First Schedule were allowed to vote at the said election and

in particular failed to ensure that the Second Respondent took steps to do so, despite all the above. The Commission did nothing to ensure that their Directive of 26th May 2011 was followed.

Arbitrariness

65. *It appears to me that second and third Respondents have acted in an arbitrary manner in dealing with complaints that persons did not receive any or any timely notice of objections made against their registration. On the one hand, I note that, as deposed above, the third Respondent adjourned objections made by the CCM because she had heard on the radio that persons were having difficulties with the receipt of notices on the representations of Minister Hector of the NRP. In addition, I note that after Mr. Amory wrote his letter dated June 20th 2011 complaining that he received his notice late, he received no response but his name was not removed from the list. I note on the other hand from the affidavits sworn in these proceedings in support of my petition that a number of persons whose names were removed from the list either did not receive any notice at all or the notices were received late. No explanation has been proffered by the second or third Respondent as to why voters in the identical position were treated differently.*
66. *Further, I am aware that one Sheryl Stapleton of Brown Hill in St. Johns travelled from the United States and was a registered voter in Nevis 2 St., John's. She arrived in Nevis on July 5th and discovered on the evening of July 6th that her name had been removed from the voters list in Brown Hill without any objection notice having been sent to her and without her ever being aware that there was an objection to her name or any hearing to determine such objection. She visited the electoral office in Charlestown on or about Thursday the 7th day of July, 2011 and remonstrated strongly with the officer in charge, Beulah Mills. Immediately upon such remonstrations, Mrs. Stapleton's name was restored to the voters list and she was permitted to vote and did vote in the July 11th 2011 election. An affidavit from Mrs. Stapleton is filed in support of this Petition.*
67. *I am also aware of one Orville Manners. His name was objected to and he received a Notice to objection hearing after the date of the hearing. Mr. Manners became very angry upon being told by Ms. Beulah Mills at the electoral office that his name had been removed from the voters list in St. Johns. He travelled to the Registration Officer's home and the following day to her office and remonstrated harshly with her and the staff at the electoral office. He was immediately told that his name would be restored to the voters list and it was in fact restored so that he was able to vote in the July 11th 2011 election. An affidavit from Mr. Manners is filed in support of this Petition.*

68. *Mr. Manner's case is to be compared with the cases of the two Arthurtions and the Palmers whose circumstances were referred to in the letter dated May 25th 2011 sent to the Commission. It was pointed out in that letter that they received their notices late. While Mr. Manners' name was restored to the list after his vociferous complaint, the Arthurtions and the Palmers were removed from the list by the third Respondent.*
69. *Further, by decision communicated by letters dated May 30th 2011, the third Respondent disallowed objections to the registration of Aderian Quegon Elgin, Patricia Gloria Tyson and Michael Shane Liburd. Nevertheless, these persons were still excluded from the July 2011 Register and accordingly were deemed not entitled to vote at the said election.*
70. *In addition, on or about the 9th of July, 2011 just 2 days before the said election the second Respondent made a public announcement on VON radio that the cut off period for the List of Voters was 20th April, 2011. If this statement was accurate then persons purportedly tried in absentia by the third Respondent in May of 2011 and whose names were removed from the Voters List should not in fact have had their names removed as their names must still have been on the Voters List as April 30th 2011.*
71. *Further the OAS Observer Mission, an independent Observer team sanctioned by the Government to observe the said election, reported that:*
- "On election day, the observers detected that a modified voter registration list had been produced for several districts on July 9th, while other districts maintained lists published on June 29th and July 1st. The Mission confirmed that voter names had been both added and subtracted to form the updated lists, thereby altering the eligibility for voting in certain areas two days prior to the election. This situation contributed to the atmosphere of confusion about and mistrust of the voter registration list that was observed during the process.*
72. *This observation suggest that the second, third, sixth, seventh and eighth Respondents had made adjustments to the Voters Lists up to just 2 days before the said election and could therefore have restored the disenfranchised voters to the List in Nevis 2 St. Johns if they so desired consistent with the 26th May 2011 directive.*
73. *The OAS Report and the Report of a local NGO team also sanctioned by the Government to observe the said election are exhibited hereto . Both chronicle serious concerns with the said election including the inability of persons to vote due to the removal of their names. I rely on the content of such independent Reports.*

74. *In the premises, the Second, Third, Sixth, Seventh and Eighth Respondents determined the composition of the list of persons who were to be permitted to vote at the said election in an arbitrary and wholly unlawful manner and unlawfully disenfranchised the person listed in the First Schedule.*

Bad Faith

75. *Further, in all of the above premises, and having regard to the matters deposed hereafter, the Second and/or the Third Respondent acted in bad faith and/or committed misfeasance in public office in deliberately or recklessly excluding the names of the persons listed in the First Schedule from the list of persons entitled to vote at the said election.*
76. *I have considered the following facts which lead to the inexorable conclusion that the Supervisor of Elections and the Registration Officer conspired with each other to deny hundreds of voters the right to vote and ensured that they were for all practical purposes locked out and could not obtain redress in the Courts in the time permitted:*
- i. objections that were made to the Register, if any, had to have been made by 7th February, 2011 being 10 days after the publication of the Annual List on 28th January, 2011. The third Respondent therefore must have had such objections, assuming they were duly made, by 7th February 2011 at the latest;*
 - ii. the last Nevis Island Assembly elections having been on 10th July, 2006, it was well known that an election was most likely to be called on or before July, 2011;*
 - iii. the third Respondent did not act **immediately** as required by the regulations to notify voters objected to nor did she publish any List of Objected Voters in 2 conspicuous buildings in the constituency nor did she send Notice of hearings to affected voters so as to give them 5 days notice of the hearing or any notice at all, as the affidavits in these proceedings attest;*
 - iv. the third Respondent waited for several weeks before purporting to send out Notices of hearings with the effect that she ensured that most of these hearings were set in April and May, 2011, just mere weeks before the election was likely. Again, this can be gleaned from the affidavits filed in support of this Petition;*
 - v. the third Respondent failed and/or refused to advise affected voters of decisions arrived at by her at the purported hearings or*

even whether the hearings any had in fact occurred. This refusal effectively deprived the affected voters of their right of appeal under the Act. Again the absence of advice of the outcome of the objections can be gleaned from the affidavits;

- vi. the second Respondent caused the July 2011 register to be published a mere 5 working days before polling day, thereby ensure that affected voters who would only learn of their removal from the list at earliest on July 4th 2011 on or actual polling day had absolutely no realistic prospect of taking steps to protect their rights by Court process;*
- vii. the second and third \Respondents both ignored the express directive of the Electoral Commission that names on the January 2011 Register should remain.*

77. The practical effect of the actions of the second and third Respondents was that 203 voters in Nevis 2 were disenfranchised. This had a significant effect on the outcome of the poll and was calculated to have an effect. The historic statistical data since 1992 suggest that such a large number of voters would be decisive in any election in Nevis 2. . Specifically:

- i. In 1992 in the Nevis Island Assembly election contest between Malcolm Guishard of the CCM and Simeon Daniel of the NRP, Malcolm Guishard won Nevis 2 by 29 votes.*
- ii. In a Federal Election in 1995 between Malcolm Guishard of the CCM and Hensley Daniel of the NRP, Malcolm Guishard won the St. Johns portion of District 9 by 175 votes.*
- iii. In the 1997 Nevis Island Assembly elections between Malcolm Guishard of the CCM and Hensley Daniel of the NRP, Malcolm Guishard won Nevis 2 by 214 votes.*
- iv. In the Federal Election of 2000 between Malcolm Guishard of the CCM and portion of Hensley Daniel of the NRP, Malcolm Guishard won the St. Johns District 9. by 81 votes.*
- v. In the 2001 Nevis Island Assembly elections between Malcolm Guishard of the CCM and Hensley Daniel of the NRP, Malcolm Guishard won St. Johns by 147 votes.*

- vi. *In the Federal Election of 2004 between Malcolm Guishard of the CCM and Hensley Daniel of the NRP, Malcolm Guishard won the St. Johns portion of District 9 by 123 votes.*
- vii. *On 10th July, 2006 in a Nevis Island Assembly election contest between Malcolm Guishard of the CCM and Hensley Daniel of the NRP, Hensley Daniel won Nevis 2 by 28 votes.*
- viii. *On 27th August, 2007 in a Federal bi-election, occasioned by the passing of Malcolm Guishard, between Mark Brantley of the CCM and Hensley Daniel of the NRP, Mark Brantley won Nevis 2 by 88 votes.*
- ix. *On 25th January, 2010 in the Federal Election between Mark Brantley of the CCM and Hensley Daniel of the NRP, Mark Brantley won the St. Johns portion of District 9 by 178 votes.*

78. *The defiance of the Electoral Commission by the second d and third Respondents was also done in bad faith. I say this based on the following evidence:*

- i. *the leader of the NRP the Honourable Joseph Parry had on or about the 15th day of February, 2011 on a public broadcast stated the "120 something" persons were registered who did not belong to St. Johns and "they better get them off". He also stated that several persons were in Nevis illegally and were registered in St. Johns and "they better get them out". A transcript of the statement made by Mr. Parry will be made available at trial of this petition. It was therefore part and parcel of the NRP political strategy to remove voters from the Voters List and to specifically target St. Johns.*
- ii. *the second Respondent sought advice from the Attorney General' office deciding not to comply with the Commission directive. The attorney General is in the Honourable Patrice Nisbett, an Executive member of and candidate for the NRP in the July 11th, 2011 elections. The second Respondent therefore ought to have appreciated the danger that advice from his office would be calculated to serve the political ambitions of the NRP and be tainted with obvious bias.*

iii. the second Respondent misrepresented his understanding of his authority when he claimed in his letter of 7th June, 2011 that he had no power to direct the third Respondent. The letter dated 30th March, 2010 exhibited above demonstrates that he considered that he did have the power to direct the Registration Officer in circumstances almost identical to that which occurred in this occasion, that is, the late receipt of notice by voters.

79. At a public rally held by the NRP on 22nd June, 2011 at Brick Kiln, Nevis when Premier Parry announced the election date of July 11th, 2011 he addressed the issue of voter names potentially being off the list and said "The people who are trying to confuse you don't let them confuse you. Do not let them confuse you. They must learn to respect the law. They must learn to respect the Court, and they must also learn to have clean Electoral List. They must also learn to have clean Electoral List. Then there will be no problem with the office and no problem with the Court. Let me leave that there. The Electoral Office has its job to do and we have ours. If anybody come to you and say they can't vote for NRP because of the list they are not NRP and they don't intend to vote for NRP. They just out to confuse and create confusion in your mind and you need to ignore them" (Emphasis added)
80. The public statement by Premier Parry as leader of NRP was clearly meant to convey and was understood to convey the message that the persons to be removed from the Voters List were not NRP supporters and had no intention of voting for the NRP. The inescapable inference therefore is that the persons to be removed from the Voters List were CCM supporters or likely to vote for the CCM. There was therefore a concerted effort to purge the Voters List of CCM supporters or persons perceived by the NRP to be CCM supporters and to focus such efforts primarily on the battleground seat of Nevis 2.

Unequal media access

81. The Nevis Island Administration, of which the Fifth Respondent, Joseph Parry, is the Head, operates a nightly segment from 6pm to 10pm on Channel 8 of the Caribbean Cable Company, including a nightly news programme called the Nevis News Cast. The nightly segment is funded out of the public purse.
82. During the election period, commencing with the dissolution of the Nevis Island Assembly on June 22nd 2001, the Nevis News Cast was used by the Nevis Island Administration as a propaganda instrument for the ruling Nevis Reformation Party, of which the first Respondent is a member, in that only political events

organized by the NRP were given coverage and no political event organized by the Concerned Citizens Movement of which I am a member, was given coverage.

Particulars of political events (date and venue) organized by the NEVIS REFORMATION PARTY during the election period which were carried on the Nevis News Cast programme.

June 22nd - Bricklin Village - Announcement of the election date (Aired on NNC on

June 26th - Brown Hill

June 27th - Cherry Gardens

June 28th - Hanleys Road

June 29th - Charlestown (This was aired during the NNC's newscast on June 30th)

June 30th - Craddock Road

July 2nd - Charlestown - Manifesto Launch (This was aired on NNC on Monday July 4th)

July 4th - Hanleys Road – This was nomination day. (Only the NRP candidates were shown on NNC as they were nominated and also had interviews after they were nominated).

July 5th - Cherry Gardens - (This was aired on NNC on July 6th)

July 6th - Newcastle - (This was aired on NNC on July 7th)

July 7th - Cotton Ground - (This was aired on NNC on July 8th)

July 8th - Several meetings including the Flats.

July 9th - Butlers

July 10th - Charlestown - (This was aired on NNC on July 11th).

Particulars of political events (date and venue) organized by the CONCERNED CITIZENS MOVEMENT during the election period which were not carried on the Nevis News Cast programme.

June 23rd - Jessups

June 25th - Ramsbury - Manifesto Launch

June 27th - Hanleys Road

June 28th - Newcastle
June 29th - Church Ground
June 30th - Cotton Ground
July 1st - No Meeting (Weather)
July 2nd - Butlers
July 3rd - Bath Village
July 4th - Stoney Grove and also Nomination Day
July 5th - Pancho Shop
July 6th - Hardtimes
July 7th - Brown Hill
July 8th - Boco Park
July 9th - Bricklin
July 10th - Cherry Gardens.

83. *In the premises, candidates for the said election were not allowed to campaign on equal terms and the state media, resources and facilities (in the form of the Nevis News Cast) were misused and abused by the First and Fifth Respondents by ensuring that only the political events organized by the NRP were covered on the Nevis News Cast.*
84. *In the premises, my constitutional rights guaranteed to me by sections 12 and 15 of the Constitution of Saint Christopher and Nevis to freedom of expression and to not be treated in a discriminatory manner by reason of his political opinions or affiliations have been contravened in relation to me.*

And I make this affidavit in support of the relief claimed in the Petition filed herein conscientiously knowing it to be true in every respect.

SWORN at Charlestown, Nevis)
this 15th day of September)
Before me.

Mark A. G. Brantley"

OTHER WITNESSES

Some 46 witnesses testified on behalf of the petitioner inclusive of eleven (11) overseas witnesses whose affidavits were accepted without cross examination. Their names are listed hereunder:

Arthurton Jeneal	Arthurton, Rubylette	Balkaran, Chandrika
Bartlette, Nabrisca	Berry, Ornette	Bhagwadeen, Shiv
David, Sheldon	Dore, Laurel	Edney, Jo-Ann
Farrell, Cecil	George, Patricia	Greenidge, Patricia
Hamilton, Jatron Omari	Hanley, Sevil Joseph	Huggins, Charlene
Hull, Elton Marcus	Hyman, Kendieya Lee Andrea	Jailall, Esherdai
Javis, Davidson	Jeffers, Alexis	Liburd, Denrick
Liburd, Latoya	Liburd, Milissa Anne	Liburd, Michael Shane
Liburd, Nekesha	Liburd, Osborne	Manners, Orville
Mohammed, Sabrena	Morton, Janelle Corrine	Morton, Juanita
Newton, Catherine	Persaud, Shanta	Phillip, Elvis Julian
Ramsarrnm, Savitri	Singh, Rajkumar	Singh, Vishnu
Vigo, Rupert Ohania	<u>Walters, Alexis</u>	Walters, Oscar
Walwyn, Stephen	Weekes, Jaemou	Wilkinson, George
Winter, Shell Ann	Theodore, Hobson	Singh, Nalini

Out of this list, I have recited in full the evidence of Elton Marcus Hull as he has been relied on to support the claims by the petitioner that the 3rd named Respondent was associated with the NRP.

AFFIDAVIT OF ELTON MARCUS HULL

I Elton Marcus Hull of Hamilton Estate in the island of Nevis being duly sworn make oath and say as follows:

- 1. I am a citizen of St. Kitts and Nevis and a registered voter in District 9 in the parish of St. Paul's. I am a musician, tennis instructor and radio commentator.*
- 2. I resided in Canada from 1970 – 2004. I returned to Nevis in 2004 and took residence in Hamilton Estate with my family.*
- 3. In or about 2005 I became very actively involved in the politics of the island of Nevis principally by calling into various radio programmes on the island and voicing my views and opinions on diverse political matters. I advocated a change in Government, from the then Concerned Citizens Movement (CCM) Government to the then Party of my choice the Nevis Reformation Party (NRP). I advocated very strongly for a change in Government and became a regular caller on various talk shows.*
- 4. As a result of my activism on the radio, I was approached by one Dwight Cozier who advised that he was Secretary to the NRP and who invited me for lunch and who asked me to join the Executive of the NRP. That was prior to the Nevis Island*

Assembly Elections of July 10th, 2006. I did not join the NRP Executive at that time but I became actively involved in the planning and execution of the NRP campaign for 10th July, 2006. My role for the 2006 campaign was coordinator on Election Day for all 5 constituencies in Nevis for the NRP. I was also intimately involved in the launching of the candidate for the NRP in St. Paul's, the Honourable E. Rebelto Hector,

- 5. The NRP won the Nevis Island Assembly elections of 10th July, 2006 capturing 3 of the 5 seats on offer and formed the Nevis Island Government. Shortly after forming the Government, the Honourable E. Rebelto Hector publicly announced in Parliament that I was one of his advisors. I was throughout this period actively and intimately involved with the inner workings at the highest levels of the NRP and regularly gave political advice as a trusted insider.*
- 6. After the 2006 election, I formally started to attend Executive meetings of the NRP. I met one Bernadette Lawrence who also attended such Executive meetings as part and parcel of the Executive of the NRP. The Executive is the controlling mind and management of the NRP and directs the political strategy of the party. I am not sure what formal position if any Bernadette Lawrence held in the Executive of the NRP but she attended Executive meetings of the NRP Party with me and often gave me a lift home in her vehicle after such meetings. Bernadette Lawrence and I became friends as a result of our interactions.*
- 7. It came to a point where the NRP was supposed to be having a Party Convention and many of us who attended Executive meetings including me were disgruntled with the then Chairman of the NRP Party, Herman "Bobby" Liburd, and were actively looking for a new 'Chairman of the Party. A group of Party supporters including me proposed Bernadette Lawrence as the new Party Chairperson for the NRP.*
- 8. Leading up to the Convention, Bernadette Lawrence was formally offered the Executive post of Treasurer by the leadership of the NRP Party but turned it down owing to her disappointment at not being considered and approved for the position of Chairperson or Deputy Chairperson. The Convention was in or about 2009.*

9. *At Executive meetings of the NRP attended by Bernadette Lawrence and me, she was very active in those meetings and made her contributions as to how we could ensure that the NRP continued in Government. She was very vocal and forceful in her suggestions and was actively involved in the Executive of the NRP for all of 2007, 2008 and up to the Party Convention of 2009 when she declined the post of Treasurer as previously set out. I stopped attending NRP Executive meetings some time in 2009 and I do not know if Bernadette Lawrence continued to attend such meetings after 2009. During the period 2007-2009, we had regular meetings of the executive of the NRP and Bernadette Lawrence was a regular attendee at such meetings with me.*
10. *Sometime in 2011 I became aware that the name Bernadette Lawrence was named as Registration Officer to hear objections to voters and related duties as part of the electoral process. I made a statement on the radio that Bernadette Lawrence used to be my friend but that I could not condone her involvement with the process knowing her history with the NRP party. Shortly thereafter, Bernadette Lawrence saw me outside the High Court building in Charlestown and told me she wanted to speak to me as a result of what I had said on radio. I spoke to her and voiced my concern that she was not a fit and proper person to sit in judgment about voters when she had been actively involved in the NRP 'Executive with me for so many years. Inasmuch as the objection to voters and the hearings of such objections are as a practical matter a contest between NRP and CCM, I thought it improper then and still think it improper that a former member of the NRP Executive and someone known to me to be a political activist for the NRP should adjudicate on such matters. Bernadette Lawrence's response to me was to point to the fact that one Myrna Walwyn was selected by the Federal Leader of the Opposition (a member from the CCM) as a member of the Electoral Commission.*
11. *I was the coordinator for the bi-election held on 27th August, 2007 for the NRP in the St. Paul's portion of District 9, As a result I was actively and closely involved with that election. I know that consistent with her activism for the NRP, Bernadette Lawrence was a poll agent for the NRP in that bi-election at the polling station at Figtree Church in the Parish of St. Johns in*

electoral District 9. That set was contested by Mark Brantley for the CCM and Hensley Daniel for the NRP, Bernadette Lawrence therefore worked at the Polling Station for Hensley Daniel of the NRP.

12. I am no longer a supporter of the NRP and I consider having Bernadette Lawrence an activist for the NRP, former Executive member of the NRP and former poll agent for Hensley Daniel and the NRP sitting in judgment over voter registration hearings as a clear attempt to ensure results which are in favour of the NRP at such hearings. I was saddened and surprised when I saw the List of Voters for the July 11th, 2011 Nevis Island Assembly elections published on July 2nd 2011, just 5 working days before polling day, which showed that over 250 voters had been removed from the voters List in the battleground constituencies of St. Paul's, St. James and St. John's. Indeed in St. John's over 190 voters were purged from the Voters List all at the hands of Bernadette Lawrence

And I make this affidavit knowing it to be true in every respect.

SWORN at Charlestown)
in the Island of Nevis this)
14th day of September, 2011)

Elton Marcus Hull

Before me

CROSS- EXAMINATION OF MARCUS HULL

By Mr. A Astaphhan

Question: Well Mr. Hull, when did you decide to move from the NRP to the CCM?

Answer: Could you please repeat that question for me Sir,

Question: Were you ever a member or supporter of the NRP?

Answer: Am I answering that question or the first one?

Question: You take your time and you answer whatever you see fit.

Answer: I used to support the NRP party, yes.

Question: And precisely when did you switch allegiance?

Answer: The specific date, I don't know, it would have to be I think sometime around 2009 running into 2010.

Question: And which constituency are you in?

Answer: I live in 'St. Paul.

Question: St. Paul's, Now, you were at one time part of the NRP constituency for St. Paul's, Mr. Huss?

Answer: Yes, Sir.

Question: And is it not true that you were expelled or thrown out, whichever way you prefer?

Answer: Neither, Sir.

Question: Did you leave?

Answer: Yes, Sir.

Question: So you leave you were not thrown out?

Answer: I was not thrown out.

Question: Do you understand the difference in political language between a member of an executive and someone who is a resource person giving advice and assistance to a political executive?

Answer: Could you repeat that question again for me so I am fully understand?

Question: Do you know what is resource person is?

Answer: No.

Question: You don't?

Answer: No.

Question: Do you assume that any and everybody who attends a meeting of executive of a party is an executive?

Answer: Are you asking me for my opinion?

Question: Yes.

Answer: Well if somebody attends more than one meeting two meetings, let's say five meetings, I would say that they are a member of the executive.

Question: Whether they are elected or not?

Answer: Whether they are elected or not.

Question: So if an executive decides to bring an Economist in for three executive meetings to advise the party on a major economic policy program you would deem that person by the frequency of his visits to be an executive member of the party?

Answer: No, I would not. I would deem it if the chairman says this is an Economist coming in to inform you on certain things then I would deem that person as you just said.

Question: Now, Mrs. Lawrence is a highly trained and educated person to your knowledge isn't she? She was the treasurer of the Nevis Island Administration and the CCM.

Answer: That would be knowledge that I would not have had prior to certain things.

Question: Okay, do you have any personal knowledge of the professional training of Mrs. Lawrence?

Answer: Only what I was told.

Question: So you have no personal knowledge whatsoever?

Answer: I've never seen her educational papers, Sir.

Question: Do you have any idea where she worked, where she used to work before her present position?

Answer: Before I met her at the executive meeting, Sir.

Question: Yes.

Answer: No, I have no idea, Sir.

Question: Did you know at one time that she worked at Four Seasons before the hurricane?

Answer: Is that before the executive meeting, Sir?

Question: Well you work it out; you're the one making the complaint.

Answer: No, we are talking about the executive meeting. If you're saying do I have knowledge of what she did, prior to that, I do not. When I met her at the executive meeting, Sir it's after that I may have found out some information but what she did prior to that, I have no knowledge of that.

Question: It is a fact, is it not, that Mrs. Lawrence was never elected to any position of the executive of the NRP?

Answer: That's a question you're going to have to ask Mrs. Lawrence, Sir.

Question: No, I asking you.

Answer: You're asking me if I have knowledge of that?

Question: Yes.

Answer: No. I have no knowledge of that.

Question: Mrs. Lawrence has never been a candidate for the NRP in any election, has she?

Answer: That I do not know.

Question: You have never seen Mrs. Lawrence on the platform speaking next to Carlisle or Parry or someone like that?

You have not, and I am positive you have not seen any minutes of the NRP indicating that Mrs. Lawrence was ever elected a member of the executive?

Answer: You're asking me that question, Sir?

Mr. Mendes: My Lord, the question was, "I am positive". So I can't understand how the witness can answer as to whether Mr. Astaphan is positive.

Mr. Astaphan: My Lord, that's why I can simply tell you that when we went to school in Barbados, My Learned Friend came first or second and I came last.

Mr. Mendes: My Lord, My Learned Friend keeps repeating this story and it is not true and I keep saying it is untrue. I did not come first or second.

Mr. Astaphan: And this is about the third time that he has given that reply and for the fifth time I'll say I did come last. My friend My Lord, my

friend, not just my learned friend. Where was I again? My Lord, if you don't have a moment of humour in life, you will go mad and I don't plan on going mad in an election case

By Mr. A. Astaphan:

Question: Are you familiar with the constitution of the NRP?

Answer: Somewhat, Sir

Question: Is it not a fact that specific organization which specific organs, well are you aware that only specific organs can nominate persons to be appointed or elected at the council meeting for the executive?

Answer: I think I'm aware of that.

Question: You have to be either a constituency branch, a member of Parliament or some other grouping; correct?

Answer: Could you repeat.

Question: Are you familiar with the NRP?

Answer: Are you aware that only specific persons or organs of the party could nominate people for the election post?

Answer: Okay, yes, I know that; yes.

Question: And in fact, would you say, if you can remember somewhat, that the executive members of the NRP are actually proposed by the general counsel?

Answer: I don't know now about that

Question: I suggest to you, Mr. Hull, that your evidence Mrs. Lawrence ----

Mr. A. Astaphan: My Lord, that is on page 115. Can you have a look at page 115?

The Witness: Sir, I hope page 114, 114 and 116.

Mr. A. Astaphan: Okay, before I asked you the question, I missed your answer.

The Witness: Of what?

Mr. A. Astaphan: *Well, let me tell you first.*

By Mr. A. Astaphan:

Question: *Can you recall specifically when you left the NRP?*

Answer: *I think I said towards the end of 2009 going into 2010.*

Question: *And you were a member of the St. Paul's constituency?*

Answer: *Yes, Sir*

Question: *Mr. Hull, let's not delay this much longer. I'm suggesting to you that Mrs. Bernadette Lawrence was never formally offered the executive post of NRP, never.*

Answer: *Can you say that again, please, you're looking down and I rarely hear clearly?*

Question: *Well let me see if I can be of assistance to you. While I look I'll hold the mic. I'm putting it to you that leading up to the convention of 2009 that Mrs. Bernadette Lawrence was never the executive post of treasurer by the leadership of the NRP?*

Answer: *I wouldn't know that, Mrs. Bernadette would have to probably have that in writing. I never saw that.*

Question: *You never saw that?*

Answer: *No, because remember you said a word in there formally so I think there would have been a formal letter to her, I never saw such letter.*

Question: *I'm also suggesting to you that Mrs. Lawrence did not turn it down because of a disappointment at not being considered and approved for the position of Chairman, Chairperson or Deputy Chairperson?*

Answer: *Is that formally, Sir?*

Question: *I'm suggesting that she never turned it down because it was not formally offered to her; correct?*

Answer: *I don't know if that's correct because if she turned it down and she told me she turned it down I would have to accept that.*

Question: *So she told you she turned it down?*

Answer: Sorry?

Question: Is that what you're saying now?

Answer: In a conversation, yes.

Mr. Astaphan: My Lord, just bear with me let me get my --I'm just going to put our case to him, My Lord.

By Mr. A. Astaphan:

Question: I am suggesting to you that in August 2008, you had a private conversation with Mrs. Lawrence when you asked her if she would be interested in the post of chairman of the NRP.

Answer: I don't recall me ever asking Bernadette if she was interested in the post of chairman of the NRP.

Question: Okay, Alright, fair enough. And I am also suggesting to you that there was never any conversation about appointments to post in the NRP at any executive or political meeting.

Answer: Not that I know of, I know we had a splinter group of the NRP and I know that was proposed there.

Question: A splinter group?

Answer: Yes.

Question: What is a splinter group?

Answer: A splinter group was of some discounted people in the NRP --, can I finish Sir?

Question: No, no, take your time, please, please.

Answer: There was a splinter group of the executive that in a meeting d propose Bernadette to run for the chairman. I'm done, Sir.

Question: Okay, a splinter group did that. But I still want to put my case to you. Mrs. Lawrence told you in this private conversation she had with you that she could never entertain such a thought as 1. She was not interested, and that 2. That I still work for the Government and that she was never aware that you made any proposals whatsoever or to whom.

The Court: Where are you reading from Mr. Astaphan?

Mr. A. Astaphan: Oh, I'm sorry, Page 13 of trial bundle part "C". You have it now, My Lord, paragraph 33.

By Mr. A. Astaphan:

Question: I suggest that you, Mr. Hull, that Mrs. Lawrence said to you that she was not interested.

Answer: Could you read that again, for me please?

Question: I suggest to you that Mrs. Lawrence said to you in the course of the private conversation that she was not interested.

Answer: Could you read the entire thing, because you're reading it half way and I'm not getting the jest of what you're trying to ask me?

Question: Let me read what she actually said "I told Mrs., Lawrence that I could not entertain such a thought, Mr. Hull that I could entertain such a thought as 1, I was not interested.

Answer: And what question is that in answer to?

Question: That you had asked her in private conversation whether she was interested in the post of the chairman of the NRP.

Answer: I ask her if she was interested in the post of becoming chairman of the NRP?

Question: Yes.

Answer: I don't recall asking Bernadette that, Sir.

Question: You don't recall asking her that question?

Answer: No,

Mr. A. Astaphan: Thank you very much. My Lord no more questions for the splinter group Mr. Hull no disrespect, thank you very much for coming and assisting the Court.

What follows is the affidavit of the Third named Respondent, Mrs. Bernadette Lawrence, the Registration Officer.

Third Respondent's Affidavit in Answer to the Petition

AFFIDAVIT OF THIRD RESPONDENT – BERNADETTE LAWRENCE

I Bernadette Lawrence, Certified General Accountant, of Clifton's Estate, Nevis, hereby make oath and say as follows:

- 1. I am the 3RD Respondent and the Registration Officer for Constituency 9 which includes the Parishes of St. Johns and St. Paul's*
- 2. Where the matters to which I depose are within my knowledge they are true. Where the matters are not within my own knowledge, the information contained in this affidavit is true to the best of my knowledge, information, and belief and is based upon the facts herein.*
- 3. I intend to respond specifically to the paragraphs in which allegations are made against me. If I do not refer specifically to any paragraph or allegation I must not be taken to have made any admission. I reserve my right to cross-examine and make submissions.*
- 4. I have read the Amended Petition filed by the Petitioner herein along with the affidavit in Support of Amended Petition filed on the 3rd August 2011 and save as otherwise expressly stated, I deny each and every allegation contained in the said Amended Petition and Affidavit in Support.*
- 5. I have also read the Affidavit of Mark Brantley in Support of Petition filed on the 15th September 2011 and the affidavits of Alexis Jeffers, Elton Marcus Hull, Sheryl Stapleton, Orville Manners, Chandrika Balkaran, Ornette Berry, Marcia Campbell, Tishana Collins, Sheldon David, Shanta Deocharran, Joann Edney, Cecil Farfrell, Patricia George, Patricia Greenidge, Jaron Omari, Hamilton, Sevil Joseph Hanley, Charlene Huggins, Deborah Huggins, Esherdai Jailall, Davidson Jarvis, Sidanna Jones, Elvis W. Liburd, Mekissa Anne Liburd, Michael Shane Liburd, Orborne Deniff Donald Liburd, Carol Rawlins, Franklin Earl Morton, Janelle Corrine Morton, Juanita Morton, Damien Pemberton, Elvis Julian Phillip, Linden Patrick Seymour, Vishnu Singh, Leroy V. Sturge, Rupert Ohania CVigo, Glen Byron, Stephen Walwyn, George Vincent Wilkinson, Shelly Ann Winter, Janeal Arthurton, Rubylette Arthurton, Nabrisca Bartlette, Laurel Dore, Denrick Liburd, Latoya Liburd, Sabrina Mohamed, Catherine Newton, Bharat B. Persaud, Shanta Persaud, Savitri Ramsarran, Rajkumar Singh, Oscar Walters, Shiv Bhagwandeem, Alexis Walters, Nydia Walters, Kendieya Lee Andra Hyman, Chleo Daniel, Calette James, Nekesha Liburd, Jaemou Weeks and Chad James filed between the 13th and 15th September 2011 and save as otherwise expressly stated, I deny each and every allegation contained in these affidavits.*

Personal Information

6. *I am a trained teacher. I was a teacher for some 21 years. I have taught at primary school level up to tertiary level in Nevis and elsewhere.*
7. *I hold a Diploma in Teaching Science and a Bachelors of Science Degree in Economics and Accounting from Cave Hill Campus, University of the West Indies. I have been a Certified General Accountant (CGA) for over 10 years.*
8. *I was the Treasurer of the Nevis Island Administration from January 1996 to mid July 1997. The CCM, the Petitioner's party, was the Political Party of power in Nevis at the time. The Premier was Honourable Vance Amory, current leader of the CCM.*
9. *I left around 1997 and went to work at the Four Seasons Resort. I was the Credit Manager at the Four Seasons. I left the Four Seasons after Hurricane Lenny in January 2000. I became the Manager/Accountant of the St. Kitts & Nevis Development Bank/Nevis Branch up to May 2002. I then became the General Manager of the St. Kitts Nevis Lottery Company until September 2005.*
10. *In or about October 2005 to July 2007 I was the Chief Financial Officer of St. Christopher Air and Sea Ports Authority. From October 2007 I became the Marketing Director of the Nevis Financial Services Department and continue to hold the post.*
11. *I was appointed Registration Officer in May 2010 by the Supervisor of Elections. At the time of my appointment there were no complaints whatsoever by any one or any allegation of bias.*

The legislative context and practice

12. *As Registration Officer I am interested in three lists namely;*
 - (a) *The Register of Voters published 31st January of each year;*
 - (b) *The Monthly lists. These are published on the 15th of the succeeding month; and*
 - (c) *The Revised List. These are published not later than the 30th of the month after publication of the Monthly list.*

The procedure of objections

13. *It has always been the case that persons have the right to object to any name on the Annual Register published in January of each year. Once the Register of Voters is published on the 31st January persons have within 10 days to object. These notices of objections are lodged at the Electoral Office in Nevis. I check the deadline for objections and pick up all of the objections at the close of business on the deadline date. After review of the objections, I prepare notices to be sent to the objectors and objectees. These notices are generally made out in my hand writing, signed and dated by me.*
14. *After I prepare the notices I give them to the office manager of the Electoral Office who then prepares a posting list. Once the posting list is completed it is stamped and dated by the Electoral Office as well as the notices. The posting list and notices are thereafter delivered to the General Post Office by one of the Clerks of the Electoral Office with instructions that the notices be sent out to the objectees by Registered Post.*
15. *The posting list and notices are delivered to the Registered Postal clerk at the Post Office. On most of the occasions the posting lists are stamped by the Post Office either on the same day or whenever convenient to them. But there are times for circumstances beyond our control the lists may not be stamped by the Post Office.*
16. *This requirement for service by Registered Post was introduced by SRO 5 of 1984 made under the National Assembly Elections Act. I met this practice of service by Registered Post in existence when I became the Registration Officer.*
17. *My understanding of the registered posting system is as follows:*
 - (i) *The Electoral Office takes the Notices to be registered in bulk. These Notices are recorded on "Posting Lists" by the Electoral Office.*
 - (ii) *These Notices and Posting Lists are then presented to the Registered Postal Clerk over the counter at the Post Office who then verifies that what is listed on the "Posting List" is received. A number is then assigned to the Notices to be registered and the same number is recorded on the Posting List(s);*

- (iii) *The Postal Clerk would then stamp and date the Posting List to acknowledge receipt.*
- (iv) *The Post Office then places a duplicate copy of the "Registered Postal Packet" in the Letter Boxes of those persons who have their mail delivered to a Post Office Box; the Postman would deliver the duplicate "Registered Postal Packet".*
- (v) *The actual Notice is kept at the Post Office until it is uplifted by the addressee or someone on their behalf;*
- (vi) *Where any person is collecting a Registered Mail on behalf of an addressee that person must present a photo ID and a letter from the addressee requesting that the mail be delivered to the bearer of the letter;*
- (vii) *A person then uplifts his or her Notice from the Post Office upon presentation of the duplicate n "Registered Postal Packet";*
- (viii) *If the addressee cannot be found or has not picked up his duplicate "Registered Postal Packet" from his Post Office Box, the duplicate is then placed in the "Not Known Showcase" in the customer service area of the Post Office for six to eight weeks after which, the Notice is not claimed it is returned to the Electoral Office.*

Notices and the Third Respondent

- 18. *Prior to sending out notices in respect of the Register of Voters I would schedule appropriate hearings. In relation to the monthly list, I could send the notices by at least the next day or two after the deadline for objections because of the small number of objections. I would ensure that the posting list and notices are sent as quickly as possible to the Post Office well in advance of the scheduled hearings to ensure that any affected person would receive sufficient notice an certainly more than five days notice.*
- 19. *However, very different considerations arose with the objections to the January 2011 Register of Voters. There were 600 objections to names on Constituency 9 and more specifically 400 of these were made to names in the St. Johns Parish. Of the 400 objections, CCM had filed 198 and the*

NRP 202. Added to this extraordinary work were February 2011 transfers which I had to deal with. This made it impossible for me to send out all of the notices at the same time and to schedule hearings for all of the objections at the same time.

20. In view of the sheer volume of the objections made in relation to the Register of Voters, I decided that the only practical way I could deal with all of these notices was to send them out in batches for different hearings at different times. Each batch had a schedule date for hearings. When I set out the procedure for sending out the notices in batches, I followed the same procedure in relation to the hearings. Once the posting lists were completed they were stamped and dated by the Electoral Office as well as the notices. The posting lists and notices were delivered to the General Post Office by one of the Clerks with instructions that the notices were to be sent out by Registered Post. True copies of the Posting Lists sent to the Post Office are now produced and shown to me and are exhibited herewith.

The hearings and decisions

21. I scheduled the hearings of the objections to the names on the Register of Voters to ensure that the 500 odd notices would be sent by Registered Post well in advance of the 5 day notice required before the hearings. If the objector and objectee are present, there is no difficulty. I will proceed right away to hear the evidence. If however, an objectee is not present, I believe that I was obliged by law to hear whatever evidence the objector may have. But I remained open to hear what any objectee may say on oath prior to any decision and its transmission to the Electoral Office in Basseterre.
22. I can say that of the 600 or so notices which were sent out by Registered Post at least 80% were returned by the Post Office.
23. After I have heard the evidence of the objector I do not give a decision right away. Thereafter, I would review the reports from the Post Office to ascertain whether or not the notices were uplifted by the addresses or returned. This would assist me in making my decision because if the reason for the return was "unknown" "Does not reside here", "not living at that address" or the like the chances were that the objectees did not reside at the addresses shown in the Register of Voters.
24. In relation to Part A of the First Schedule to Mr. Brantley Petition, the records showed that 41 of 44 of the notices sent to the persons named

therein were returned by the Post Office for a variety of grounds including –

- a. Not known;*
- b. Unable to locate*
- c. Wrong address*
- d. Does not reside here*
- e. Not living at that address.*

True copies of the returned notices from the Post Office in relation to the persons mentioned in Part A of the 'First Schedule to the Petition are now produced and shown to me and are exhibited herewith.

- 25. With regard to Part B, I was able to uplift copies of the duplicate "Registered Postal Packet" for some of the persons listed therein. .*
- 26. Further, I address the Affidavits of the persons listed in the First Schedule of the Petitioner's Petition in my exhibit. I was obliged to do so otherwise I would have had to prepare 5\60 plus affidavits or make this one much too long.*
- 27. In relation to Part C of the First Schedule to Mr. Brantley Petition, the records showed that 96 out of 122 of the notices sent to the persons named therein were returned by the Pot Office for a variety of grounds including -*

- a. Not known;*
- b. Unable to locate*
- c. Wrong address*
- d. Does not reside here*
- e. Not living at that address*

True copies of the returned notices from the Post Office in relation to the persons mentioned in Part C of the First Schedule to the Petition are now produced and shown to me and are exhibited herewith.

- 28. Further, I would make inquiries in the various constituencies to ascertain whether the objectees existed or resided in the district I did so personally in the electoral district of St. Johns. I went to various parts of the*

electoral district asked persons who I met if they knew any of the objected persons by name or where they lived. I will also go to shops or people hanging around on the blocks or walls.

The allegations against me-

29. *I intend to address first the specific allegations made against me by the Petitioner and various persons who swore affidavits in support of the Petition before I deal with the other allegations made by the Petitioner.*

Elton Marcus Hull

30. *In relation to the allegations made against me that I am an activist or an executive member of the NRP I wish to say as follows;*

- a. I deny that I have ever been an activist or executive member of the NRP;*
- b. I am not and never have been a paid up or card carrying member of the NRP;*
- c. I have never sought election, been elected to or ever been a member of the NRP;*
- d. I was invited to attend some executive meetings as a resource person to advise them on financial matters. This was sometime in 1997-2000;*
- e. The next time I was invited to attend an executive meeting of the NRP was in September, 2007;*
- f. I was also invited to attend meetings in 2008 to April 2009. At these meetings I would, as a resources person, express my views mainly on finances and accounting.*
- g. I had no vote whatsoever at any meeting;*
- h. I have never campaigned, gone house to house or on the platform*

31. *I became a poll agent for Hensley Daniel in the 2007 election but this was not planned or part of any team effort. I was not the originally scheduled polling agent. Mr. Daniel agent called him at the very last*

minute to say she would not make it. He therefore asked if I would have any problem in assisting him. Mr. Mark Brantley was the CCM candidate. He came into the polling station on at least 5 occasions and saw me there.

32. *Sometime in August 2008, Mr. Elton Marcus Hull asked me in a private one on one conversation whether I would be interested in the post of Chairperson of the NRP. This conversation never took place at my executive or other political meeting.*

33. *I told Mr. Hull that I could not ever entertain such a thought as (i) I was not interested, and that (ii) I still worked for the Government. I am not aware that Mr. Hull made any proposal or to whom the proposal was made. But I must confess my surprise that Mr. Hull would do such a thing as I had told him that I was not interested at all.*

34. *I refer to paragraph 10 of Mr. Hull's affidavit and will respond as follows*

a. *I never heard the entire statement of Mr. Hull on radio concerning my alleged involvement with the NRP. All that I heard was that the "lady used to be my friend" or words to that effect. The woman in the store, where I heard the broadcast, told me that Mr. Hull was earlier referring to me;*

b. *I met Hull outside the Court Building, I went up to him to tell him "so what happened Elton we are not friends again? He was very evasive and did not want to talk. I went on to tell him that if he does not want to be friends with me so be it, but I was very surprised and disappointed with him.*

Alexis Jeffers

35. *I have read the affidavit annexed to the affidavit of Alexis Jeffers and say as follows;*

a. *I refer to paragraph 5 of the affidavit and say the allegations are not true. I had sent out notices for the objection hearings for the 12th May 2011 in relation to Alexis Jeffers;*

b. *Mr. Jeffers attended the hearing on the 12th May 2011. One of the persons he had objected was Mr. Dwight*

Cozier, a Minister in the NRP Government. Mr. Cozier came to the objection hearing first. As Mr. Cozier was present I suggested we deal with him first, and this was done After the Cozier hearing Mr. Jeffers asked for an adjournment.

- c. I complained about this request for the adjournment. Mr. Jeffers insisted that he was unwilling or unprepared to continue because he did not have his notes and papers with him for the other objections. I told him that we should try to proceed and I would call our names. After calling some 10 names it became clear to me that he was not prepared or willing to continue at all.*
- d. I adjourned the meeting but Mr. Jeffers stayed on because he said he had to give evidence in another matter in which an objection was made by the NRP.*

- 36. On the 31st May, 2011 I met Mr. Jeffers outside the "Electoral Office and I explained to him that I had telephoned him on a few occasions before the 31st May 2011 but could not get him. I then told him that I would continue the hearings on the 2nd June 2011.*
- 37. Mr. Jeffers came to the rescheduled hearings on the 2nd June 2011. One of the objectees, Ms. Trishna Jeffers was also present at the hearing. At these hearings Mr. Jeffers told me about the letter from the Electoral Commission. Mr. Jeffers read the letter to me. He never attempted to give me the letter. I had a copy of the letter and already knew of its contents. He then said that he was not going to pursue any matter of the January 2011 Register.*
- 38. I did not entertain the question of the letter from the Commission for three reasons;*
 - a. The letter was not addressed to me;*
 - b. I had not received any instructions from the Supervisor of Elections; and*
 - c. I believe that what I was doing was in conformity with the law.*
- 39. Notwithstanding the above, Mr. Jeffers and I proceeded to deal with the objections to the April 2011 Monthly List filed by Mr. Jeffers. He presented his evidence on the objectees. The basis of the challenge was*

that the objectees were not citizens. At the conclusion, I told him that he had not provided me with evidence to support the objection that the objectees were not qualified on the ground that they were not citizens. I went on to tell him that I had the supporting documentation to which he responded "I have my own sources". He did not ask to see the documents, which I had or had mentioned to him.

40. *I also told Mr. Jeffers that as he was not prepared to pursue or give evidence on the January 2011 objections, his objections will be disallowed. It is my understanding of the law that if an objector refuses to proceed or give evidence on his objections then they should be dismissed. That is the manner in which I have operated since assuming duties as a Registration Officer in 2010.*

Allegations against me by Mark Brantley

41. *I have read the affidavit of Mr. Mark Brantley filed on the 15th September 2011. For present purposes, I will deal with the allegations made against me in paragraphs 41 to 45 of his affidavit first and then deal with the remainder of this affidavit.*
42. *In relation to paragraphs 41 to 45 I wish to respond as follows:*
43. *The Petitioner Mr. Brantley and other Attorneys for CCM appeared before me in the year 2010 without complaint. In 2010 I made decisions against the CCM. There was then no appeal save for the matter concerning one George "Weekes. The objection to George Weekes was withdrawn but the CCM subsequently appealed. The appeal had to do with a disputed boundary line.*
44. *I refer to paragraph 42. The first point I would make is that Mr. Brantley client was not Oscar Browne but Michael Perkins.*
45. *At this hearing, Mr. Brantley said to me that he has been told I am or was a member of the executive of the NRP.*
46. *I did not respond to Mr. Brantley because I felt Mr. Brantley was being mischievous. I thought so because Nevis is a small place and Mr. Brantley knew or ought to have known that I was not. Also, and if indeed he had any real concerns about my impartiality he ought first to have written me or the Supervisor of Election before the objection hearing. Mr. Brantley knew from at least 2010 I was the Registration Officer in Nevis. But I did tell Mr. Brantley that he was a lawyer and*

should know what to do if he felt that I was not impartial and wanted me disqualified or removed.

47. *I absolutely deny being hostile. Indeed the person who was being hostile was Mr. Brantley. He became increasingly agitated and raised his voice at me. He demanded in a most arrogant tone that I must answer his question. At this time, I said to him, that I was not here to answer questions but that if he really wanted an answer to his question, I had a question for him, and I said why don't you answer this question, "how is it you never voted for a particular candidate of the CCM but now you are running on a CCM ticket in that same candidate's constituency".*
48. *Mr. Mark Brantley literally blew his top and shouted at me "you are tainted, you are not fit to be here". There was anger written all over his face. It was at this time I told him to leave the office. He refused and I asked the Police Officer to remove him from the room. Mr. Brantley told the police that he cannot move him as he has a right to be here. At this time I left the meeting in order to allow the matter to settle down.*
49. *When I returned to the meeting Brantley and Perkins were still present. Michael Perkins was present from the beginning. The Officer continued to call the names of the objectees. After about 5 names Mr. Perkins asked whether I intended to reply to Mr. Brantley's question. I responded by saying that it appears that he too wanted to disrupt the proceedings. I said so because my sole purpose was to continue with the objections. Brantley and Perkins then walked out. At this time I was dealing with objections made by Michael Perkins in St. Paul's.*
50. *Mr. Mark Brantley subsequently returned and took part in the hearings of objections in relation to St. Johns. The hearings proceeded in an orderly fashion without further disruption.*
51. *I deny categorically that I told Mr. Brantley any of the following as alleged or at all -*
 - a. *"who the hell you think you are? I woke up in a good mood and don't get me angry"*
 - b. *"no one should question me and you should go elsewhere if you upset about me sitting".*
 - c. *"no one should ask me any question".*
 - d. *"all aryu in CCM are liars".*

52. *I refer to paragraph 43. Paragraph 43 is misleading because it gives the impression that I granted an adjournment solely on the basis of an application of Mr. E. Robelto Hector of the NRP. Hensley Daniel was also present. This is not true at all. I was reluctant to grant any adjournment but agreed to it because Mr. Brantley and Collin Tyrell agreed to the adjournment.*
53. *Once the adjournment was agreed, Mr. Brantley suggested the 10th as an alternative day. Mr. Daniel said that this date was not convenient. Mr. Brantley then suggested the 14th and I informed the hearing that the 14th to 16th were not convenient for me. Following the meeting, and after text communications with Colin Tyrell, the hearing date was eventually settled for the 9th March, 2011. Theodore Hobson and Vance Amory of the CCM attended the meetings on the 9th March, 2011.*
54. *I must state that on the 3rd March, 2011, the night before the hearing I was listening to the "On the Mark Show" on Von Radio when I heard the Petitioner Mark Brantley calling out names of persons whom I had sent notices to, stating that the notices to those persons were returned to the Electoral Office.*
55. *I had sent these Notices to the Post Office on the 35th February 2011 and I found this to be odd, that the Petitioner would know to whom notices were sent and also that the notices were returned to the Electoral Office.*
56. *On the morning of the 3rd March, 2011 I enquired of Ms. Mills, office manager, whether there was any report from the Post Office in relation to the Notices that were sent out and Ms. Mills thereupon informed me that on the 1st March 2011 most of the notices were returned to the Electoral Office by one Ms., Brandy. Ms Mills further informed me that she made contact with the Post Office and was informed that an investigation would be carried out.*
57. *I now return to the remaining paragraphs of Mark Brantley's Affidavit filed on the 15th September, 2011.*
58. *I admit paragraphs 1 to 9 of this affidavit.*
59. *I do not accept the allegations in paragraph 10 of Mr. Brantley's affidavit. In my view the election was carried out in accordance with the laws and practice of the Federation and I therefore put him to strict proof thereof.*

60. *I admit paragraph 11 of the affidavit in so far as the date of the Writ and publication is concerned. However, I am advised by Counsel and verily believe the same to be true that the question whether the nomination of candidates was less than seven (7) is a question for interpretation by this Honourable Court.*
61. *I am advised by Counsel and verily believe to be true that paragraphs 12 to 16 are not pleaded in the Petition and therefore the Petitioner Mr. Brantley ought not to be allowed to adduce this evidence in any way or at all.*
62. *The Petitioner alleges in paragraph 17 that the 'Register of Voters was published on the 28th January, 2011. It was not. It was published on the 31st January, 2011.*
63. *There is no Nevis 2 January Register as alleged in paragraph 18. I accept that the names on the Register of Voters published on the 31st January 2011 were, subject to any objection and removal following any objection, entitled to vote.*
64. *Further, some of the persons listed in the First Schedule were objected to by persons who I know to be supporters and agents of the Petitioner and the Concerned Citizen's Movement (CCM) Party – of which the Petitioner is the Deputy Leader. Some of these supporters and agents of CCM and the Petitioner include Shirley Glasgow, Collin Tyrell, Jonathan Liburd and Oscar Browne. Copies of the objections made by the CCM are now produced and shown to me and collectively marked and exhibited herewith.*
65. *Paragraph 19 is admitted save and accept that there is no Electoral District 9 but rather Constituency 9.*
66. *I believe that the allegations made in paragraphs 20 and 21 by the Petitioner are misleading. To my knowledge the revised monthly lists have never been published in Nevis and Mr. Brantley knows this. He participated in two (2) Federal Elections in which revised monthly lists were not published. The practice in Nevis has always been that if any person wants a copy of this or any other list or document they could apply for it. Despite his contesting two previous elections and winning, the Petitioner knew that no Revised Monthly Lists were published but he did not make any complaint in the earlier elections.*
67. *There is no Nevis 2 January 2011 Register as alleged in paragraph 22 or at all. The Register of Voters is in respect of Constituency 9. The*

- b. *When I went to the Electoral Office on the 27th July 2011 I received three letters from Mr. Brantley. I received the letters I believe dated July 25th, 26th and 27th 2011;*
- c. *I spoke to the Petitioner via a telephone on the 27th July 2011 when I happened to have been in the Electoral Office. He told me he had requested inspection and can come at 10 am to inspect. I told him that it would not be possible for me to get all the documents ready in such a short period of time. He then asked when could he come and I told him that I would have to inquire of the staff when they could get the documents ready;*
- d. *After speaking with the staff at the office I telephoned his office on Thursday the 28th July and spoke to his secretary, Mrs. Daniel. I told her to kindly let Mr. Brantley know he could come to the Electoral Office on Thursday 4th August at 10 am;*
- e. *I followed up with Mrs. Daniel on Wednesday the 3rd to ensure that Mr. Brantley had received my message and Mrs. Daniel assured me that Mr. Brantley had received my message;*
- f. *The Petitioner showed up at 10.15 am on the 4th August. 2011 Mr. Brantley was provided with the 83 notices. I told him that the information he provided made it impossible for us to locate the persons listed by him. The information did not contain information on the voters list. Any request must be in identical terms to the information on the voters lists otherwise we would not be able to locate them;*
- g. *Subsequently, the Petitioner provided the corrected information for the other persons. I was not in the Office when the Petitioner turned up on Friday the 6th August. The staff telephoned me and I spoke to Mr. Brantley on the telephone. He told me he was in the Office and wanted to inspect the documents now;*
- h. *I told Mr. Brantley that I was at work and it was not possible for me to come to the office now. His response*

Register of Voters for Constituency 9 is only divided into lists for Electoral Districts Nevis 1 and Nevis 2 for the Nevis Island Assembly elections. If no elections are held the list for Constituency Nevis 9 is not divided.

68. *Also, the Register of Voters which is used for any local or general election includes the Register of Voters published in January 2011 (comprising Electoral Districts Nevis 1 and 2) minus the names of the persons who have been successfully objected to by objectors in accordance with the objections regulations and procedure and persons who have either transferred or died. This has always been the case.*
69. *Once decisions on objections have been made by me the decisions on objections are sent to the Central Office in Basseterre where the changes are made. Therefore, the Register of Voters published in January would not and has never been used without modifications once persons have been successfully objected to by an objector or have transferred or become deceased.*
70. *The dates on the voters lists referred to in paragraph 23 of the affidavit would have been stamped by the Electoral Office in Basseterre. The name which was added to the list was Sheryl Stapleton.*
71. *I accept that the names of the persons on the May Monthly list were not on the list as alleged in paragraph 24. But the May monthly list could not be and was not used for the purposes of compiling the Voters List for the Election. I accept that the names on Mr. Brantley's First Schedule were not listed. But this was because they were removed following objections and hearings which I conducted. Persons who transferred or died were also removed from the Register.*
72. *I make no admission in relation to the allegation of any assertion by the NRP as alleged in paragraph 25 as I do not know of any assertions or if they are true. But I can say that all objections to the January 2011 were received by the Office in Charlestown within the time prescribed by law. I collected them myself on the final day prescribed for objections and did not receive or consider any objections after the expiration of the time permitted by law.*
73. *I refer to paragraphs 25 to 323 of the Petitioner's affidavit and respond as follows:*
 - a. *I do not have an office at the Electoral Office. I work elsewhere Mr. Brantley knows where I work;*

was that he did not know where I worked. This surprised me . After some further discussion I considered the conversation over and hung up the phone;

- i. I telephoned Mr. Brantley on the 10th August, and spoke again to Mrs. Daniel. She told me he was either out or unavailable. I left a message for him that he could inspect on the 12th August,2011;*
- j. I received a letter from Mr. Brantley's Associate Miss Dahlia Joseph to advise me that he could not come on the 12th but that he would come the week of the 22nd August. I wrote Miss Joseph to inform her that I would be unavailable during the week of the 22nd August, but that I would be available on the 5th September, 2011.*
- k. I did not hear anything further from Mr. Brantley, Ms. Joseph or Mrs. Daniel.*

- 74. In relation to paragraphs 34 and 35 all of the objections were filed within the ten (10) days of the publication of the Register of Voters. The Register was published on the 31st January 2011. There were however five objections which were not dated but as I stated earlier, they were filed within the ten (10) days since I gathered all the objections on the 10th February, 2011. I should add that one of the five objections which were not dated was made by the CCM.*
- 75. Further, true copies of the objections made by the NRP in relation to Parts A, B, and C of the First Schedule to the Petition are now produced and shown to me and exhibited herewith.*
- 76. I accept that there is no log or book in which objections are recorded as alleged in paragraph 36 of the Petitioner's affidavit. But this has always been the case. I am sure that when Mr. Brantley or any other agent or officer of the CCM filed any objections they were not required to sign any log or book. However, I told the Petitioner how the objections are lodged and that on the final day for objections I collected all of the objections.*
- 77. As I explained earlier in my affidavit, at paragraphs 19 and 20, it was impossible for me to have sent out all of the 600 objections which were received by the 10th February 2011 at the same time. I had no*

alternative but to send out the notices in batches so that I could properly arrange for hearings to be held.

78. *I accept that the lists of persons objected to were not posted as alleged in paragraph 37. But it has not been the practice to do so. Objections were to be notified by Registered Post. The persons who make the objections were always advised of the hearings and could have made inquiries at any time. All of the objectors were notified of the decisions in late May and early June 2011. I also rely on my paragraphs 19 and 20 above.*
79. *I cannot admit or deny whether the Petitioner spoke to any one or as to what he was told as alleged in paragraph 38 of his affidavit. Regulation 19 gives me the authority to serve the notices by Registered Post and this is what I did. Also, as indicated earlier the records from the Post Office showed that the vast majority of notices were returned for the reasons stated in my paragraphs 24 and 27 above.*
80. *The Petitioner complains in paragraph 39 about the non-publication of the lists of voters objected to. I have already accepted that the lists were not published and I explained it was not the practice to do so. The Petitioner was well aware of this. Therefore, if he wanted to know who was objected to all that he had to do was make a request to the Office in Charlestown or Basseterre. He did not.*
81. *The allegations made in paragraph 40 are not true. I know Mr. Oscar Walters very well. I never told Mr. Walters that I was under no obligation to inform him of the "outcome" as alleged or at all.*
82. *I was at a meeting on the 12th May 2011 with my Attorney at Law when I received a telephone call from him. He told me that he had just received the objection and understood that I had conducted the hearing earlier. I told him that I could not speak with him in detail. I did tell him that I had heard evidence and no decision had been made but will call him back.*
83. *Following my return to Nevis I telephoned Mr. Walters on two occasions on the voice message for him. I also tried calling him from my office number again without success. Sometime later Mr. Walters approached me while I was at the Marriott Hotel in St. Kitts. He said he never heard from me and I told him that was not true and that I had left a voice message for him. In the course of the conversation I told him that if he had any evidence or anything to say he must come and do so under*

oath. He said to me that I should leave things as they were. He never came to the Office.

- 84. I have already dealt with the allegations of bias made by the Petitioner in paragraphs 41 to 45 of his affidavit in my paragraphs 41 to 56 above.*
- 85. I am advised by Counsel and verily believe the same to be true that paragraph 49 does not support any allegation pleaded in the Petition and in any event the matters stated therein are neither admitted nor denied as I have no knowledge of those matters.*
- 86. In relation to paragraphs 46 to 53 of the affidavit I say that I did not receive any directive or instructions from the Supervisor of Elections.*
- 87. I refer to the allegations in paragraph 53 and say that the names were removed from the January 2011 Register after objections by CCM, the Petitioner's Party and the NRP.*
- 88. In relation to paragraph 54 of his affidavit, I do not have any knowledge of what the Petitioner did but 203 persons were removed from the list. This included 5 transfers to other constituencies, 12 within the constituency, 12 deaths and 174 objections.*
- 89. The allegations made in paragraph 55 are misleading. The Voters List for the elections was published as required by law after the proclamation for the election. There has never been any practice of informing the public by notice in the newspaper or elsewhere.*
- 90. Also, the people and voters of Nevis knew or might to have known that the Voters' List for the election must be published after the proclamation by the Governor General.*
- 91. In relation to paragraphs 56 and 57 of the affidavit, I accept that the Voters' List for the elections was given to all political parties including CCM on the 2nd July and was published on the 4th July 2011.*
- 92. I make no admission in relation to paragraph 58 as I do not know whether the allegations are true or not.*
- 93. I refer to paragraphs 59 to 64 and I am advised by Counsel and verily believe to be true that –*
 - i. the decision of Mr. Justice Michel was premised solely on evidence adduced by the claimants and that the respondents were not able to file or serve any evidence*

adduced by the claimants and that the respondents were not able to file or serve any evidence in reply;

ii. the applications have not been heard on their merits, and;

iii. the issues raised in that judicial review proceedings are by and large duplicated in these election petition proceedings

94. *The allegations of arbitrariness on my part in paragraphs 65 to 74 are similar to or mere repetitions of the allegations of bias and are also denied because they are not true. More specifically in relation to paragraph 65 I deny that I granted any adjournments for the reasons alleged and say that the adjournments referred to were agreed to by the Petitioner and CCM.*

95. *I do not know what the Petitioner means by "No explanation has been proffered by the second or third defendants as to why voters in the identical position were treated differently".*

96. *In relation to Sheryl Stapleton I was present at the Electoral Office when Mrs. Beulah Mills came to me and explained that one Sheryl Stapleton was present in the office and that she (Stapleton) had indicated that her name was not on the list.*

97. *I thereupon checked the List with Mrs. Mills and realize that the name was left out due to an administrative error on the part of the Electoral Office in Basseterre since the Lists are prepared in the Basseterre Office and sent to the Charlestown Office for publication. I immediately made contact with the office in Basseterre and one Mr. Oliver Knight, the Manager at the said Office explained to me that a mistake was made and that the name would be reinstated.*

98. *I explained to Mrs. Stapleton what had transpired and told her that her name would be reinstated and I also apologized to her for the mistake. At no time did I witness any remonstrance or threats from Ms. Stapleton.*

99. *In relation to paragraphs 67 and 68 of the affidavit I say that –*

a. Mr. Orville Manners name was never taken off the list;

b. I never saw or met Mr. Manners at my home at all;

- c. *Mr. Manners came to my workplace, and not the Electoral Office, and I spoke to him there. I told him he was objected to because he lived in Clay Ghaut, Gingerland. I also told him I had not made any decision and that if he wished to say anything he must do so under oath;*
- d. *I asked Mr. Manners how is it that the objector stated that he resides in 'Clay Ghaut. He then gave me evidence on oath and said that he spends a lot of time at his girlfriend's place in Clay Ghaut. He also told me he lived at Stoney Grove and showed me correspondence. I decided that he ought not to be removed from the list.*
- e. *There was absolutely no hard remonstrations as alleged or at all; however –*
- f. *I have read his affidavit filed in this case and I noticed Mr. Manners said that he is "currently residing at Clay Ghaut". Clay Ghaut is not in the St. John's constituency;*
- g. *I spoke with Janelle Arthurton. She admitted to me she resided in the Parish of Saint Thomas although registered in St. John's. St. Thomas is not in the St. John's constituency;*
- h. *The Palmers were not registered in the St. John's constituency at all.*

100. *In relation to paragraph 69 I say that the allegations are false. Both the CCM and the NRP objected to the persons mentioned in paragraph 69. Mr. Colin Tyrell withdrew CCM's objections. However, the NRP proceeded with the objections to the persons mentioned filed on its behalf at the hearing scheduled for them. The persons mentioned did not attend. I heard the evidence and decided that they did not reside in St. John's and therefore should be removed from the Register of Voters.*

101 *Further, Nykeisha Liburd's name was not removed from the Register and Ionie Tyson was deceased since 2010. The Notices in relation to the other persons listed were returned to the Electoral Office.*

102. *In relation to paragraph 70 I say that I did not hear the alleged t. Statement.*

103. *I am advised by Counsel and verily believe to be true and that the allegations made or referred to in paragraphs 71 to 73 are entirely hearsay and inadmissible. In any event I say that I have not seen the report referred to by the Petitioner. However, I am aware of the following adjustments to the voters lists –*

- a. *The Palmers were added because of a decision of the High Court;*
- b. *Sheryl Stapleton was added because she was removed in error;*
- c. *The Honourable Minister Mr. Dwight Cozier who was objected to by the CCM was removed from the lists because I upheld the objection; and*
- d. *Miss Oslyn Michelle Warner who was objected to by the CCM was removed because I upheld the objection.*

104. *The allegations of bad faith and misfeasance in public office made against me in paragraphs 75 to 76 are denied because they are false and say as follows:*

- a. *All objections were received within the time prescribed by law;*
- b. *I had no idea when the Premier would advise His Excellency to dissolve the Assembly and proclaim the date for the elections;*
- c. *I did not publish the list of objections and have already explained why I did not. I deny that I did not send out notices as alleged and refer to the earlier parts of my affidavit where I stated that I sent all notices in time by Registered Post as authorized by law;*
- d. *the CCM made 198 objections and the NRP made 202 in relation to St. John's and I had to schedule dates for all of these objections. In any event, having received the objections on the 10th February I started hearing. objections on the 3rd March 2011 What is also very important to note is that I began hearing the majority of the CCM's objections on the 8th March 2011. See the Decision Sheets exhibited hereto.*

105. *As I indicated earlier, the objectors were advised of the decisions as required by law. On the facts on this case, the vast majority of the objectees did not turn up and the records of the Post Office showed that the notices were returned for the reasons already given. Also, the Decision Sheets were submitted in a timely manner to the Electoral Office and could have been inspected by the Petitioner or by his Party the CCM. Further, I am advised by my Counsel and verily believe the same to be true that only a claimant or objector has right of appeal under the Act.*
106. *The Voters' List were prepared by the Electoral Office in Basseterre on the 29th June and sent over to Nevis on the 2nd July, 2011. Copies were immediately given to CCM and the NRP. The election was held on the 11th July, 2011.*
107. *I received no instructions or directives from the Commission or Supervisor of Elections.*
108. *I make no admission in relation to paragraph 77 as I do not know whether the allegations are true. I am advised by Counsel and believe that the matters referred to therein were not pleaded. In any event, these matters even if true were never thought of or considered by me at all.*
109. *In so far as the allegations made in paragraphs 78 to 80 of the Petitioner's affidavit were intended to refer to me I deny them,. I deny that I was in defiance of the Commission, and I was not and never have been part of any plan, collusion, conspiracy or concerted effort with the Premier, Attorney General or the NRP as alleged or at all and say further*
- a. I never heard the alleged statements referred to in paragraph 78(i) of the affidavit;*
 - b. I cannot speak to paragraph 78(ii) of (iii);*
 - c. I did not hear Mr. Parry make the alleged statements referred to in paragraph 79 of the affidavit.*
110. *I have no knowledge of the contents of paragraphs 81 to 84 of the affidavit.*

And I make this Affidavit honestly and conscientiously believing that the contents herein are true and correct to the best of my knowledge, information and belief.

Sworn to the Court Office)
Charlestown, Nevis this 6th) Bernadette Lawrence.
day of October, 2011)

THE CONSTITUTIONAL RIGHT TO VOTE

The issues that arise in this case impact on several aspects of the electoral process. The petitioner alleges that several irregularities and breaches of the Election laws took place so that viewed cumulatively, the election was so affected that it should be invalidated and declared void.

Like in most if not all Caribbean nations, the right to be registered as a voter and the right to vote at any election is guaranteed by the Constitution of St. Christopher and Nevis. The relevant provisions are set out hereunder –

Section 29(1)

- (2) Every Commonwealth citizen of the age of eighteen years or upward who possess such qualifications relating to residence or domicile in Saint Christopher and Nevis as Parliament may prescribe shall, unless he is disqualified by Parliament from registration as such, be entitled to be registered as a voter for the purpose of electing Representatives in one (but not more than one) constituency in accordance with the provisions of any law in that behalf and no other person may be registered as such.*
- (3) Every person who is registered under subsection (2) in any constituency shall, unless he is disqualified by Parliament from voting in any election of Representatives or of members of the Nevis Island Assembly be entitled so to vote in that constituency in accordance with the provisions of any law in that behalf and no other person may so vote.*

Similarly, it is the Constitution that establishes the Electoral Commission, the body whose function it is to supervise the Supervisor of Elections, the official whose duty it is to exercise general supervision over the registration of voters in elections of Representatives and over the conduct of such elections - vide sections 33 and 34 of the Constitution, the material parts of which are quoted hereunder.-

Section 33:

- (1) There shall be for Saint Christopher and Nevis an Electoral 'Commission (hereinafter in this section referred to as the Commission).*
- (2)*
- (3)*

- (4) *The function of the Commission shall be to supervise the Supervisor of Elections in the performance of his functions under sections 34(1), 38(9) and 113 (5).*
- (5) *The Commission may regulate its own procedure and, with the consent of the Prime Minister, may confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.*
- (6) *The Commission may, subject to its rules of procedure, act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.*

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

Supervisor of Elections

- Section 34.*
- (1) *There shall be a Supervisor of Elections whose duty it shall be to exercise general supervision over the registration of voters in election of Representatives and over the conduct of such elections.*
 - (4) *For the purposes of the exercise of his functions under) subsection (1) the Supervisor of Elections may give such directions as he consider necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom any such directions are given shall comply with those directions.*
 - (5) *The Supervisor of Elections may, whenever he considers it necessary or expedient to do so and shall whenever so required by the Commission, report to the Electoral Commission on the exercise of this functions under subsection (1); he shall also submit every such report to the Minister for the time being responsible for matters relating to the election of Representatives; and that Minister shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the Assembly together with such comments thereon as he may have received from the Commission.*

Apart from the Constitution, the National Assembly Elections Act Chap. 2:01 and the Regulations made thereunder provide inter alia for the overseeing of elections and the various activities which go hand in hand with the holding of elections.

In my view, a proper analysis of these statutory provisions reveals that central to their focus is the voter whose role is a critical part of any democratic system.

The legislation also spells out the role and functions of the senior officials, all of whom must be aware of their responsibilities in the electoral process and therefore accountable under the law for their actions.

The focus on the voter in the scheme of things is further illustrated in various cases.

A similar provision to section 29 of the Saint Christopher and Nevis Constitution is section 27 of the Constitution of St. Vincent and the Grenadines in respect of which Sir. Vincent Floissac, In the case of Randolph Russell and the Attorney General of St. Vincent and the Grenadines (1995) 50 WIR. 127 had this to say at pg. 139.

"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 eighteen years and upward, if he possesses the prescribed qualification relating to residence or domicile in St. Vincent and is not disqualified by Parliament from Registration as a voter. The second is theright to vote in the appropriate constituency.

That constitutional.....right is granted to every citizen who is entitled to the basic right.

Thatright is the right to vote in accordance with the provision of any law in that behalf. This means that although the manner of voting is statutory or customary, the right is inherently constitutional"

In Suave v. Canada (2002) 3 SCR 519, the Supreme Court of Canada said, in relation to the right to vote –

"In a democracy such as ours, the power of lawmakers flows from the voting citizens and lawmakers act as the citizens' proxies. This delegation from voter to legislators gives the law its legitimacy or force. Correlatively, the obligation to obey the law flows from the fact that the law is made by and on behalf of the citizens. In such, the legitimacy of the law and the obligation to obey the law flow directly from the right of every citizen to vote. As a practical matter, we require all within our country's boundaries to obey its laws, whether or not they vote. But this does not negate the vital symbolic, theoretical and practical connection between having a voice in making the law and being obliged to obey it. This connection, inherited from social contract theory and enshrined in the Charter, stands at the heart of our system of constitutional democracy....

Denying a citizen the right to vote denies the basis of democratic legitimacy. It says that delegates elected by the citizens can then bar those very citizens, or a portion of them, from participating in future elections. But if we accept that governmental power in a democracy flows from the citizens, it is difficult to see how that power can legitimately be used to disfranchise the very citizens from whom the government's power flows.

Reflecting this truth, the history of democracy is the history of progressive enfranchisement. The universal franchise has become, at this point in time, an essential part of democracy. From the notion that only a few meritorious people could vote (expressed in terms like class, property and gender), there gradually evolved the modern precept that all citizens are entitled to vote as members of a self-governing citizenry

The right of all citizens to vote, regardless of virtue or mental ability or other distinguishing features, underpins the legitimacy of Canadian democracy and Parliament's claim to power. A government that restricts the franchise to a select portion of citizens is a government that weakens its ability to function as the legitimate representative of the excluded citizens, jeopardizes its claim to representative democracy, and erodes the basis of its right to convict and punish law-breakers".

Now, to consider the several issues raised –

THE LIST REQUIRED TO BE USED FOR THE JULY ELECTION

The Petitioner has in essence argued that the list used for the July 2011 elections did not comply with the requirements of the National Assembly Elections Act Chap 2:01. He contended that pursuant to section 43(1) of the National Assembly Election Act Chap 2:01, the 2nd Respondent is required to publish the annual Register of Voters for the island of Nevis and in particular Electoral District 9 no later than the 31st of January of each year.

Section 43 - Register of Voters

(1) *The Chief Registration Officer shall cause to be prepared and shall publish not later than the thirty-first day of January in every year a register of voters for each constituency.*

(2) *The register of voters required by subsection (1) shall consist of*

(a) *all persons who were registered in the register of voters last published for that constituency;
and*

(b) *all persons whose names appear in the revised monthly list of voters prepared and published under section 46 for the constituency since the date of publication of the registers mentioned in paragraph (a),. and qualified*

under this Act as voters, but shall not include any person who, in the opinion of the Chief Registration Officers since the publication of the registers mentioned in paragraphs (a)and (b) –

(i) *to have died; or*

(ii) *to have become ordinarily resident in another constituency*

This list will accordingly comprise of all the additions occurring in the previous year. This list can for present purposes be referred to as the "Master List". After the 31st of January, the second Respondent is expected to publish monthly lists. Section 44 quoted out hereunder, spells out what is included in those lists –

Monthly List

44 (1) *The Governor-General shall, by Notice published in the Gazette, appoint a day in every month (hereinafter called "the appointed day") for the purposes of subsection (2).*

(2) *Not later than the appointed day in every month in each year, the Chief Registration Officer shall cause to be prepared and shall publish as soon as possible thereafter (and in any case not later than the fifteenth day of the next following month) a list of voters for each constituency which shall consist of all persons.*

(a) *whose names appeared on the register for another constituency who have notified the Chief Registration Officer of a change of address in accordance with the regulations and who appear to be ordinarily resident in the constituency.*

(b) *whose names appeared in the register for the constituency who have effected a change of address within the constituency and have notified the Chief Registration Officer in accordance with the regulations;*

- (c) *who have reached the age of eighteen years and who appear to the Chief Registration Officer to be otherwise qualified; and*
 - (d) *who have otherwise become qualified to be registered as a voter and entitled to vote as such.*
- (3) *The names of those persons referred to in subsection (2) shall, if possible appear.*
- (a) *in the case of those persons mentioned in paragraphs (a) and (b), in the monthly lists prepared for the month in which the notification was;*
 - (b) *in the case of those persons mentioned in paragraphs (c) and (d), in the monthly lists prepared for the month in which a claim to be registered has been made.*

This list is further *revised by the 25th* of the following month but no later than the end of the month - vide section 46.

Revised monthly lists

- "46. *The Chief Registration Officer shall make all additions to the appropriate monthly lists and shall make removals therefrom in consequence of any action taken under section 39 or 45 and shall publish as soon after the fifteenth day of the next succeeding month (and in any case not later than the last day of each such month) the corrected monthly lists as the revised monthly lists of voters.*

This Revised Monthly List is also to be published by the Second Respondent. In the instant case the monthly lists were published for the months of January, February, March, April and May 2011, but there was no further publication for the year 2011. So far as the Revised Monthly Lists are concerned, there was neither issue nor publication for the year 2011.

To support his submission that the July 2011 List was defective, Mr. Mendes explained the process whereby the "election list" is arrived at. He referred to section 43 which mandates the Chief Registration Officer to prepare and publish a Register of Voters for each constituency. That Register is to consist of all persons whose names appeared on the Register of Voters published in the previous year and all persons whose names appear in the Revised Monthly Lists of Voters which is also required to be prepared and published since the publication of the last Register excluding persons who might have died or who have become ordinarily resident in another constituency.

Reference was made to section 39 which would upon application affect that Master List. The reasons why persons could be removed are set out at section 39. Section 39 is quoted herein.

Right to remain registered-

- 39(1). *A person registered pursuant to this Act shall remain registered unless and until his or her name is deleted from the Register because –*
- he or she has died;*
an objection to his or her registration has been allowed;
he or she has become disqualified for registration as a voter under this Act or any other enactment imposing disqualifications for registration;
he has failed or neglected to confirm his registration in accordance with PART VIII of the Act.”
- (2) *Notwithstanding subsection (1), a person who is registered as a voter for a constituency pursuant to this Act and who has not voted at two consecutive elections, shall have his or her name deleted from the register of voters for that constituency, without prejudice to that person’s right to make a new application for registration under this Act;*
- (3) *Notwithstanding subsection (1), a Commonwealth citizen (not being a citizen of Saint Christopher and Nevis) who is registered as a voter for a constituency pursuant to this Act shall have his or her name deleted from the register of voters for that constituency where the Chief Registration Officer is satisfied that that person is no longer resident in Saint Christopher and Nevis without prejudice to that person’s right to make a new application for registration under this Act.”*

The Register would be further affected by the application of section 44 (supra).

Section 45 deals with the procedure for the determination of claims by persons seeking to be registered and objection to the registration of persons already registered. Section 45 provides as follows:

“Claims and objections:

45. *All claims for registration made by a person whose name does not appear in the register or the appropriate monthly list and all objections to the registration of persons whose names appear in the registers of voters and in the monthly lists, as the case may be, shall be determined in accordance with the regulations by the appropriate registration officer acting with respect to the constituency to which the register or list in question relates.*

When a claim thereunder has been disallowed or an objection thereunder has been allowed, the registration officer shall transmit a record of his or her determination to the Chief Registration Officer.

Submission to the Chief Registration Officer permits him to record the *removal from the list of any person who has been successfully objected to in the Revised Monthly List.*

Section 48 therefore provides for the list of voters for any election to be held since the last Register of Voters, to comprise that Register i.e. in this case the January 2011 Register and the Revised Monthly Lists.

"48. Register and supplementary register to constitute the register for any election.

- (1) The register of voters and the revised monthly lists of voters published for each constituency under sections 43 and 45 respectively in any year shall constitute the register of voters for that constituency and shall be used for any election held in that constituency after the publication thereof until it is superseded by the register of voters published and constituted for that constituency in the next succeeding year in accordance with this Act.*
- (2) Whenever a writ is issued between the publication of the last revised monthly list and any other revised monthly list, the last revised monthly list shall be used for the purposes of the conduct of the Poll."*

Since by virtue of section 48, the Register of Voters and the Revised Monthly List of Voters published in each constituency under sections 43 and 45 shall constitute the Register of Voters for that constituency and shall be used for any election held in that constituency, the Petitioner submitted that in this case where there was no publication of the Revised Monthly Lists, it would follow that the List for the election should be the Annual Register of Voters, that is, the Master List of January 2011

A list dated 2nd July 2011 was circulated as the list for the elections. When compared with the January 2011 Master list it was discovered that the persons listed on the First Schedule of the petition, although their names appeared on the Master List, they were all omitted from the July 2011 list. Accordingly, those persons some 122 of them were not permitted to vote on election day.

In essence, Mr. Mendes was submitting that-

The January 2011 list therefore would normally contain the names of persons who were entitled to vote at the next election in St. Kitts and Nevis. Any changes to this list can occur only if the provisions of section 39 of the Act were invoked and in particular if there had been objections to the registration of

persons and those objections had been allowed - vide section 39(1)(b) . Also, if there had been any additions which would have been recorded in the Revised Monthly Lists.

Had the Registration Officer not complied strictly with the provision for objections and the Chief Registration Officer had failed to publish the Revised Monthly Lists, then any list produced would have been defective. In other words the July 2011 List failed to meet the criteria set out at section 48.

A further point made was that the Chief Registration Officer appears to have included in the list of voters for the election, names of persons appearing on the Monthly Lists published for the months of January, February, March and April 2011. He did not however, include the names of persons on the May Monthly List. His explanation was that once Parliament is prorogued on June 22, 2011 all registration processes come to an end. There is no legal basis for the position taken by the Chief Registration Officer. Once there were no objections to any name on the May Monthly List by the 25th of May, the names of the persons there listed ought to have been included on the July Elections List. Since the Chief Registration Officer took it upon himself to cease processing all registration matters on 22nd June, 2011 when the Governor General's proclamation was published, all the persons on the May Monthly List were omitted from the July 2011 list. The List was therefore not complete and the persons omitted therefrom were all disenfranchised.

Attorneys for the 1st, 2nd, and 3rd Respondents submitted that this complaint by the Petitioner was misconceived since it conflicted with the decision of the Court of Appeal of the Eastern Caribbean in Radix v. Gairy (1978) 25 WIR 553.

In that case the appellant presented a petition to the High Court on January 10, 1977, questioning the return of the Respondent as the person duly elected for the constituency of St. David in Grenada at an election held on December 7, 1976.

Sections 4, and 5 of the House of Representatives (Amendment) Act, Cap. 160, of the Laws of Grenada provide that the list of electors shall be revised annually and that an enumeration shall take place quinquennially.

An enumeration was conducted between 1971 and 1972 and a list compiled thereafter. There were no subsequent revisions until 1975. A further revision was made in 1976 based on the 1975 list.

At the trial it was submitted by learned counsel for the appellant that numerous persons who were entitled to be registered to vote were precluded from so doing while others whose names appeared on the list of electors for the 1972 elections were improperly omitted from the list of voters for the 1976 elections, that the election was held contrary to the Constitution and therefore null and void.

The appellant appealed from the decision, one of the main grounds argued being –

(a) That the 1975 revision was not conducted in accordance with the provisions of Cap.160 and thus could not form the basis of the 1976 revision.

In dismissing the appeal, Davis C.J said (at p. 556).

*"In my view, the election of a candidate can be avoided only upon proof of an election offence committed by the candidate, or upon proof of some irregularity during the conduct of the election which affects the results, or that the election was conducted so badly that it was not substantially in accordance with the law as to elections. **The validity of the list is a separate question and surely the time to raise the issue of the electors' list is sometime before it is proclaimed by the Governor General.** When it is so proclaimed, it becomes conclusive as to the persons who were entitled to vote at the next election or by election as the case may be. In the absence of any authority on the point-none has been cited to the court, and I have been unable to find any – I cannot accept that the legal position is that a candidate who enters the contest on an existing list of electors may be allowed to accept the list as a valid list if he wins, but would be allowed to argue that the list is invalid when he loses."*

To hold Radix v Gairy up as the answer to any and every complaint about the integrity of an election list after the election is held is wrong. To do so leaves the way open for unscrupulous officials to manipulate the system and release at the last moment lists satisfactory to them for whatever reason.

Radix v Gairy like all decisions must be viewed against its own facts and surrounding circumstances. There was in that case ample opportunity for legal action to be taken by the appellant before the elections which were held in December, 1976. The complaint was in respect of a revision in 1975 which was made effective in October, 1976.

In the instant case the confirmed election list was published a few days before the election with very little opportunity to pursue legal action. Five persons were able to approach the court and Michel J. At a hearing on the 7th and 8th July, 2011 ruled that the names of those persons were improperly removed from the list and ordered their restoration – vide NEVHCV 2011/ 0125

In McAllister Hanchell v Noel Skippins, Stanley Williams, David Bowen Action CL No 25/03 Ground C.J in dealing with the question of the finality of the election list said.

"26. *Is the finality conferred on the Register by s 78 proof even against irregularity? I do not think so. I have been shown no law on this. However, it is one thing to say that the Supervisor having taken a decision on qualification, it cannot be*

reopened on an election petition. It is quite another to say that if he contravenes the statute, or the duties placed upon him by the statute, that contravention should be immune from correction. Different considerations of both sense and policy apply. It is a very sound public policy that, a decision having been made as to qualification in the registration process, it should not thereafter be open to repeated question. But the public interest in ensuring that the law is applied properly is much greater.

27. *What would amount to an irregularity for these purposes? I think that a failure to implement a decision made on the claims and objections process is in a different category from a mere error of judgment. Once a decision has been made through the statutory process it should be implemented. If it were otherwise the Supervisor could, either by deliberate intent or carelessness, negate the whole claims and objections process. Similarly, a failure to make or announce a decision on a claim or objection, is irregular, because it deprives those concerned of their right of appeal. I think, therefore, that such matters, which strike at the root of the process, can be questioned on an election petition notwithstanding the finality of the Register on the question of qualification".*

The Respondent's contention is that the names omitted were as a result of compliance with the same section 39(1)(b) to which Attorney for the Petitioner has alluded.

THE OBJECTION PROCESS

This brings into focus whether the relevant sections of the Act and the Regulations were complied with by the Registration Officer in the performance of her duties with respect to objections.

This is one, if not the most critical of the issues in this case.

There has already been reference to some of the provisions to which I will now refer but it is necessary for the sake of clarity to repeat them here.

Section 45

Claims and objections

- (1) *All claims for registration made by a person whose name does not appear in the register or the appropriate monthly list and all objections to the registration of persons whose names appear in the registers of voters and in the monthly lists, as the case may be, shall be determined in accordance with the regulations by the appropriate registration officer acting with respect to the constituency to which the register or list in question relates.*

- (2) When a claim thereunder has been disallowed or an objection thereunder has been allowed, the registration officer shall transmit a record of his or her determination to the Chief Registration Officer.

Section 46

Revised Monthly Lists.

The Chief Registration Officer shall make all additions to the appropriate monthly lists and shall make removals therefrom in consequence of any action taken under section 39 or 45 and shall publish as soon after the fifteenth day of the next succeeding month (and in any case not later than the last day of each such month) the corrected monthly lists as the revised monthly lists of voters.

Section 48

Register and supplementary register to constitute the register for any election.

- (1) *The register of voters and the revised monthly lists of voters published for each constituency under sections 43 and 45 respectively in any year shall constitute the register of voters for that constituency and shall be used for any election held in that constituency after the publication thereof until it is superseded by the register of voters published and constituted for that constituency in the next succeeding year in accordance with this Act.*
- (2) *Whenever a writ is issued between the publication of the last revised monthly list and other revised monthly list the last revised monthly list shall be used for the purposes of the conduct of the Poll.*

The Regulations

11. Regulation 14

Notice of Objection to Registration.

Any person whose name appears on the Register of Voters or monthly List for a constituency may object to the registration of any person whose name is included in those lists by sending to the Registration Officer notice of objection in the form set out as Form No. 8 in the Schedule or such other form as may be prescribed.

12. Regulation 16

Date for Making Objections.

The objection to any name included in the Register of Voters or Monthly List shall be sent not later than ten days after the posting of such Register of Voters or Monthly List.

13. Regulation 19

Notice to Persons Affected by Objection

The Registration Officer shall immediately after receiving any notice of objection send by registered post or in writing of which there is evidence that it has been received by the addressee, a notice in the form set out as Form No. 12 in the Schedule to the person in respect of whose registration the notice of objection is given and a notice in the form set out as Form No. 13 in the Schedule to the person making the objection.

14. Regulations 21 and 22

Publication of Objections to Registration.

It shall be the duty of the Registration Officer not later than fifteen days after the posting up of the Register of Voters or Monthly List to cause to be affixed on each of two conspicuous buildings in the polling division in the constituency in the form as set out as Form No. 15 in the Schedule, a list of names of persons for the polling division to whose registration notice of objection has been given and such list shall remain posted for a period of five days.

Publication of Objections to Claims

It shall be the duty of the Registration Officer, not later than ten days after the posting up of the list of claimants in accordance with Regulation 20 to cause to be affixed on each of two conspicuous buildings in the polling division in the form set out as Form No.16 in the Schedule, a list of names of persons for the polling division to whose claims notice of objection has been given and such list shall remain posted up for a period of five days.

15. Regulation 23

Consideration of Claims and Objections.

- (1) The Registration Officer shall consider all claims and objections of which notice has been given to him or her*

in accordance with these Regulations and for that purpose shall give at least five days notice in writing, of which there is evidence that it has been received by the addressee, or notice by registered post, to the claimants or objectors and the persons in respect of whose registration or claims notice of objection has been given of the time and place at which the claims or objections will be considered by him or her.

- (2) Agents of political parties or candidates shall be entitled to be present at any consideration of claims or objections.

16. Regulations 29

Publication of Documents.

- (1) Where the Chief Registration Officer is by these Regulations required to publish any document he or she shall publish the document by making the proper entries in the prescribed forms and a copy of the document shall be made available for inspection by the public in his or her office, and if he or she thinks fit in any manner which he or she considers desirable for the purpose of bringing the contents of the document to the attention of the public.
- (2) Any failure to publish a document in accordance with these Regulations shall not invalidate the document.

17. Regulation 32

Inspection of Copies of Claims and Objections.

The Registration Officer shall on the application of any person allow that person to inspect and take extracts from the list of voters for any polling division, any constituency and any claim or notice of objection made under these Regulations.

18. Regulation 33

Mode of Sending Notices, etc.

Claim or notice of objection which is under these Regulations to be sent to the Registration Officer may be sent to him or her

postage-free addressed to him or her at his or her office by registered post or delivered to him or her by hand.

19. Regulation 34

Hearing of Claims and Objections.

- (1) Any person who has made a claim in the prescribed form for inclusion or in correction to the Register of Voters, Monthly List or Revised Monthly List or whose claim has been objected to and any person who objects to the inclusion of any name or claim of any person shall appear in person before the Registration Officer to show cause why the claimant's name or the name of the person whose inclusion has been objected to should be included therein or deleted therefrom.*
- (2) The Registration Officer shall disallow the claim of any person to be included in the Register of Voters or Monthly List or Revised Monthly List or the inclusion of any person in the list whose inclusion has been objected to, if the person so claiming or objected to has not appeared personally before the Registration Officer for the consideration of the claim or objection.*
- (3) Where the Registration Officer is satisfied from the evidence available to him or her that any person is entitled to remain registered, even if the person objected to or making the claim does not appear at the hearing, the Registration Officer may determine the matter accordingly.*
- (4) Agents of political parties or candidates or a representative of any person required to attend any hearing shall be entitled to attend any hearing and to make representation thereto.*

The above provisions are in effect a statutory manual for the use of not only the Chief Registration Officer and Registration Officers but also voters who qualify to file objections to the registration of persons whose names are included on the Register of Voters or Monthly Lists.

Regulation 19 mandates the Registration Officer immediately upon receipt of a notice of objection to send by registered post or in writing of which there is evidence that it has been received by the addressee, a notice to the person in respect of whose registration the notice of objection is given and to the person making the objection.

Regulation 23 imposes on the Registration Officer a duty to consider all claims and objections of which notice has been given to him or her and is required to give at least five days notice in writing of which there is evidence that it has been received by the addressee or notice by registered post, to the claimants or objectors and the persons in respect of whose registration or claims notice of objection has been given of the time and place at which the claims or objections will be considered by him or her.

It is convenient at this stage to give consideration to the question of the method of postage stipulated in the above mentioned Regulations. Before considering the arguments advanced on this issue, I wish to make some observations of my own. There is no dispute that by Regulation 19 the Registration Officer shall "send by registered post or in writing of which there is evidence that it has been received by the addressee a notice.....

The Regulation clearly gives a choice to the Registration Officer to select one or other of the methods. Either choice, having regard to the obligation on the Registration Officer, the intention must be that the addressee receives the notice. In modern society, there are a number of methods that can be used in communicating with persons other than oneself. The choice made would inevitably be the one which in the senders view would achieve that purpose. Registered mail provides a chain of custody and more control than regular mail. Should registered mail not serve the purpose, there are always alternative methods. The Registration Officer should therefore choose the method which would give effect to the fundamental right to vote, that is one which ensures receipt by the voter. The Regulation gives the officer a discretion only where the two methods are likely to produce a similar result. Where there is one that will produce a result favourable to the voter and the other a result unfavourable to the voter, there is no discretion.

The contention of the second and third Respondents is that the Electoral Office has chosen to use registered mail in their communications to objectors as well as objectees. The Registration Officer, Mrs. Bernadette Lawrence holds the view and has been emphatic in her response that sending by registered mail requires no more from her than delivering the mail to the Post Office. She claims to have no further responsibility in the matter. The rest is in the hands of the Post Office. In other words, it is not her duty to ensure or be satisfied that the mail had reached the intended recipient. An extract of her cross-examination by Mr. Mendes for the Petitioner is set out here –

Question: You knew that in relation to the objections to the register that there were scores of persons who could not have received their notices in time for your hearing on the 29th of April?

Answer: I wouldn't know that. Even if it is stamped on the 27th of April, I do not know if they did not get it on the 29th because in relation

to that same hearing that you are mentioning on the 3rd of March, people had gotten their notice in one day

Question: Mrs. Lawrence, haven't we already agreed that they were entitled to 5 days notice?

Answer: I have stated -

Question: In your affidavit -

Answer: - it is incumbent on me to ensure I take the documents a minimum of five days before the hearing.

Question: You said in your affidavit that you were aware that people were entitled to 5 days notice. And you already told us – all I am doing is repeating what you have already said. You are aware that in relation to those notices stamped on the 27th and 28th of April and those stamped on the 4th of May that you are aware that those persons could not have received the five days notice of the hearing on the 29th. You were aware of that

Answer: The requirement, Mr. Mendes, is that I ensure that I take those documents to the Post Office a minimum of five days before the hearing. I have fulfilled my obligations.

Question: Could you listen to my question?

Answer: Yes.

Question: You knew that they could not have received those notices 5 days before the hearing of 29th. Did you not know that?

Answer: Why I would have to assume if it stamped on the 27th that they could not have?

Question: A fortiori if they are stamped on the fourth of May –

Dr. Browne: Can my learned speak in English, My Lord?

By MR. MENDES SC:

Question: If it was clear, Ma'am, that they could not receive five days notice of those which were stamped on the 27th and the 28th then it's even clearer that they could not have received those which were stamped on the 4th of May.

Answer: You are saying that they could not have received five days notice. My requirement to give five days notice is the requirement to take them to the Post Office in a minimum of five days.

Question: I understand that is your position and you are sticking to it, Okay, but you must listen to my question. You knew that they receive and I am emphasizing receive; I am talking about you taking it to the Post Office. I am talking about those objectees receiving, you knew that they could not receive those notices in time for the 29th.

Answer: Taking the notices to the Post Office constitutes receipt for my part because I have delivered them. So I am still within my five days minimum.

Question: Ms. Lawrence, you understand what I am saying, I am talking about when I use the word "received". I am talking about the objectees having the notices in their hand. You understand me now.

Answer: The law does not require me to ensure that objectees have the notice in his or her hand.

Question: I understand that is your position, Ma'am but for the purposes of my question when I use the word "received" I am using it in the sense that they actually have it in their hands. You understand?

Answer: Yes.

Question: Now, I don't have to define it again right. You understand it clearly. That's what I mean when I say received.

Answer: Okay.

Question: Good, You knew that in relation those notice stamped 28th, 27th, and 4th of May that the objectees could not have received the notice in the requisite five days before the hearing, did you not know that?

Answer: You are making a statement you said requisite five days before hearing which means that you are implying that it is required of me to ensure that the objectee has that notice in his hand five

days before hearing. So I cannot answer that question yes or not, Mr. Mendes.

Question: Okay, I will remove the word requisite. I am going to ask it again and I am not going to use the word requisite. Ready?

Answer: Ready.

Question: When you re-adjourned the hearings did you send out fresh notices?

Answer: No.

Question: Was there anything preventing you in relation to those batches which we have identified, if I may call them the 27th the 28th of April and 4th of May batches; I am identifying them by the Post Office stamps? Was anything preventing you in relation to those batches sending out fresh notices for fresh dates of hearing?

Answer: Yes

Question: What was preventing you from doing that?

Answer: At the time the volume of objections and then it would also necessitated me finalizing with the Credit Union on another date.

Question: Wow! Those are insurmountable obstacles. I can see what was preventing you. Having to get another date and there were so many. Are those the reasons you giving the Court why you could not have issued fresh notices to person who you knew could not have gotten those in hand before the date. Those are the reasons, Ma'am, are those your reason you giving the Court/

Answer: Mr. Mendes -

Question: Are those your reason or do you have any other/

Answer: My other reasons? The law does not require the objectee to be present at an objection hearing.

Question: I am putting it to you that you knew that an election was coming and you knew if you were issuing more notices you couldn't remove those notices from the list in time for election. That is the other reason.

Answer: I have no idea when an election would be called.

Question: All right. Now, despite being aware of what we just spoke about you nevertheless proceeded and took these persons name off the list

Answer: Could you be specific because you have spoken about a lot of things

Question: I am talking about being aware that people weren't getting the notice in hand you nevertheless decided to remove people's name off the list, right"

Answer: Yes.

This extract of Ms Lawrence cross examination puts into clear perspective the conduct of the 3rd Respondent in the performance of her duties with respect to the determination of objections to the registration of voters. To state that delivery to the Post Office is receipt by the voter is illogical and defies common sense. To hold such a view shows total disregard for the rights of voters and their entitlement to natural justice. In the exercise of her functions, the Registration Officer is expected to act in a procedurally fair manner. She chooses not to send fresh notices when it is obvious that the first notices were out of time. The reason given was that the law permits her to hear matters in the absence of the objectees.

On the evidence some 114 persons could not have received their notices five days before the hearing.

Both Mr. Astaphan and Dr. Browne made the point that a number of persons had moved out of the constituency and cannot be considered since they could not have voted in St. John. Similarly, where notices of hearing were returned by the Post Office it was contended that that arose only because the persons no longer lived at the addresses they gave at registration and therefore not eligible to vote in St. John. The short answer is that a person who registers pursuant to the Act shall remain registered unless and until his or her name is deleted because of among other reasons, an objection to his or her registration had been allowed.

In this case the names of a number of persons were removed from the list following an unlawful process conducted by the Registration Officer. The decisions taken were therefore null and void.

It is not unlawful to vote in a constituency in which one does not reside unless there had been a successful objection to one's registration. In the circumstances, there was nothing to prevent those persons from voting in the constituency in which they were registered. But the facts show also that a number of persons had not removed. But in any event even if they had not changed residence, the result would have been the same; the notices could not have reached them before the date fixed for the hearing.

A number of authorities have been cited in respect of the interpretation of legislation relating to "sending by post".

In Browne v.Black (1912) 1 K.B. 316 the head note reads as follows.

"By s.37 of the Solicitors Act, 1843 no solicitor shall commence any action for the recovery of any fees, charges, or disbursement "until the expiration of one month after such ...solicitor Shall have delivered unto the party to be charged therewith, or sent by the post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such fees, charges, and disbursements."

By s. 48 "month" means calendar month.

Held (by Vaughn Williams L.J and Kennedy L.J., Buckley L.J dissenting), that a bill is not "sent by the post" to the party to be charged one month before action unless it was posted at such a time that it would in the ordinary course of post be delivered to the party to be charged one clear calendar month before the commencement of the action."

Decision of Divisional Court (1) affirmed.

The next authority was Retail Dairy Co. Ltd v. Clarke (1912) 2 K.B. 388.

"By s.20 subsection 1. Of the Sale of Food and Drugs Act, 1899, "a warranty or invoice shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person". –

Held, that in the absence of any words in the sub-section indicating that the word "sent" is used with any other than its ordinary meaning of "dispatched" it must be construed as bearing that meaning, and that if a copy of the warranty with the written notice is posted to the purchaser within seven days from the issue of the summons it is "sent" in compliance with the requirement of the sub-section although it does not reach him till after the expiration of the seven days".

Both authorities focused on "sending" as opposed to "receipt."

The case of Regina v. County of London Quarter Sessions Appeals Committee ex parte Rossi (1956) 1 Q.B. 682 I find more appropriate for the issue we need to resolve. The facts are as follows:-

The Clerk of the Peace to a quarter session appeals committee gave notice pursuant to section 3(1) of the Summary Jurisdiction (Appeals) Act, 1933 of the date, time and place fixed for the hearing of an appeal by the mother of an illegitimate child from the dismissal of her summons against a man whom she alleged to be the father of the child. The respondent attended in person on the day stated, but was not present when the case was called on, mentioned to the court, and adjourned sine die for the convenience of the appellant. Another date was fixed, and the clerk of the peace gave notice of the date fixed for that hearing, sending the notice to the respondent, as section 3(1) permitted, by post "in a registered letter addressed to him at his last or usual place of abode." The letter was returned to the sender marked "Undelivered No response." The respondent did not appear on the date fixed for the hearing. Undelivered letter was before the court, but the court accepted the evidence of the appellant that the respondent was evading service, heard the appeal in his absence, and made an order against him. The respondent applied for an order of certiorari to quash the proceedings held:-

(1) that the word "hearing" in section 3(1) included "hearings"; that the duty of the clerk of the peace was accordingly (orally or otherwise) to give notice of the date, time and place fixed not only for the original hearing but also for an adjournment sine die; and that the clerk of the peace had correctly sought to serve notice of the adjourned hearing..

(2) That in the context of legislation designed to give parties to an appeal time and opportunity to prepare for and appear at proceedings which were in substance a rehearing of the original matter the primary obligation under section 3(1) to "give notice" "in due course" a had not been satisfied by adopting the permissive method of sending the notice by post in a letter which was proved never to have been received by the party interested. The words imported the requirement that the notice given should be received by the party interested within a reasonable time; and interpreted in the light of section 26 of the Interpretation Act, 1889 (as to effecting service of a document by sending it by post), the service of this notice could not be "deemed to be effected" in the ordinary course of post, because it was proved never to have been effected in time or at all. Accordingly, there had been a defect in procedure and an order of certiorari should be granted to quash the proceedings.

Per Denning L.J. Evading service would be a ground for ordering personal or substituted service, but not for dispensing with service altogether. Quarter

sessions has the same power as the Queen's Bench to set aside its own orders where these have been regularly obtained in the absence of an interested party, or where they have been irregularly obtained without proper service.

Decision of Divisional Court reversed.

The relevant section of the Summary Jurisdiction (Appeals) Act, 1933 section 3(1) is set out hereunder together with section 26 of the Interpretation Act, 1889.

1. Summary Jurisdiction (Appeals) Act, 1933. S. 3(1) (as amended):. |: In the case of an appeal which this Act applies, on receipt of any notice of appeal required by rules made under section 125 of the Justices of Peace Act, 1949, to be sent by a Clerk to justices to the clerk of the peace, the clerk of the peace shall enter the appeal, and shall in the course give notice to the appellant, to the other party to the appeal, and to the clerk to the court of summary jurisdiction as to the date, time and place fixed for the hearing of the appeal. A notice required by this subsection to be given to any person may be sent by post in a registered letter addressed to him at his last or usual place of abode."

2. Interpretation Act, 1889. S. 26: "Where an Act passed after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or the expression "give" or "send" or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Also set out is an extract from the Interpretation Act of St. Christopher and Nevis Chap. 1:22.

"service by post", where any law authorizes or requires any document to be served by post whether the expression "serve", or the expression "give" or "send" or any other expression is used, then, unless a contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post;

In ex-parte Rossi Denning L.J who gave the lead judgment in the Court of Appeal said, inter alia:

"Mr. Rossi appeals to this court. The case raises questions as to what is proper service on appeals to quarter sessions. This is governed by section 3(1) of the Summary Jurisdiction (Appeals) Act, 1933, which states that "the clerk of the peace Shall in due course give notice to the appellant, to the other party to

the appeal, and to the clerk to the court of summary jurisdiction as to the date, time and place fixed for the hearing of the appeal. A notice required by this subsection to be given to any person may be sent by post in a registered letter addressed to him at his last or usual place of abode".

*The clerk of the peace acted on that footing. He sent a letter by registered post to Mr. Rossi telling him the date, time and place of the adjourned hearing; but it was returned to him unopened and undelivered. In those circumstances was the Act complied with? Did the clerk of the peace "in due course give notice" to Mr. Rossi? It is argued that it is sufficient to comply with section 3(1) if he sends a registered letter to the respondent, even though it is not received by him, and known not to be received. I do not think this is correct. When construing this section, it is to be remembered that it is a fundamental principle of our law that no one is to be found guilty or made liable by an order of any tribunal unless he has been given fair notice of the proceedings so as to enable him to appeal and defend them. The common law has always been very careful to see that the defendant is fully apprised of the proceedings before it makes any order against him. In the old days the common law went so far as to compel the defendant to appear in person in court. It did this by a writ of *capias* directing the sheriff "to take the body of the defendantand him safely to keep, so that he may have him in court on the day of the return, to answer to the plaintiff". See *Blackstone's Commentaries* 111,282. That has all been done away with, but the law still insists in most cases that the defendant shall be served personally so as to be sure that he knows of the proceedings against him. In modern times there have been a few statutes and rules which allow service by registered post, and this is one of them. The merit of registered post in this regard is that the postman will only deliver the letter to the person to whom it is addressed or to someone who will take responsibility for seeing that he gets it. Otherwise he will return it to the sender. Who will thus get to know, sooner or later, if the letter is not received.*

In the present case, therefore, when the case was called on for hearing on September 28, 1954, and Mr. Rossi did not appear, it was essential for counsel for Mrs. Minors to prove service of the notice in accordance with section 3(1) of the Act. He had to prove that the clerk of the peace had in due course given Mr. Rossi notice of the date, time and place of the hearing. This could be done by proof that a notice had been sent to him in good time by post in a registered letter which had not been returned, for it could then be assumed that it had been delivered in the ordinary course of post; see section 26 of the Interpretation Act, 1889. But once it appeared that the letter had been returned undelivered, then it was quite plain that he had not been given notice at all of the date, time

and place of the hearing. In short, service had not be effected; and the court should not have entered upon the hearing at all.

At quarter sessions the suggestion was made by counsel for Mrs. Minors that Mr. Rossi was evading service. I do not think that this suggestion was substantiated by the evidence. There was no reason why Mr., Rossi should seek to evade service. He had succeeded before the magistrate and would presumably wish to contest the case before quarter sessions, as he did before the magistrate. He had attended quarter sessions on the first day. August 13, 1954. Why should he seek to avoid attending on the second day, September 28, if he knew of it? All the evidence was quite consistent with the view that he was away from his home on September 22, 1954, when the postman called. There was no evidence whatever that he knew of the second date for the hearing. In any case, even if he was evading service, it does not help Mrs. Minors. Evading service would be a ground for ordering personal service or substituted service, but not for dispensing with service altogether.

In my opinion, therefore once it appeared that the registered letter was returned undelivered, quarter session ought not to have proceeded with the case, because there was no proper service. The order made by quarter sessions was obtained irregularly and should be set aside. Certiorari should issue to bring up the proceedings to be quashed.

Mr. Astaphan submitted that the Court must decide whether an obligation was imposed on the Registration Officer to effect personal service or whether under the Regulations, properly construed, sending the notices by registered post constituted a sufficient fulfilment of the obligation under the regulations.

It seems to me that this authority answers Mr. Astaphan's question. It makes it abundantly clear that the Registration Officer had not understood the importance of sending by registered mail, according it a lower status than sending the notice in writing of which there is evidence that it has been received by the addressee. Furthermore, in this case the requirement was that the notice should not only be received by the objectee, but it must reach him five days before the date fixed for the hearing. I hold, therefore that the hearings held by the Registration Officer in respect of the 24 persons who had received no notice, the 14 persons who received notices after the date of hearing and the 76 persons whose notices were stamped April 26th, 27th, 28th and May 4th and 5th who even if they had received notices would also have received the notices after the date fixed for hearing; a total of 114 persons were disenfranchised, their names having been removed from the Register without being afforded a hearing and without due process.

Notification to a person affected by any decision is also a fundamental tenet of natural justice. The House of Lords decision in Regina (Amefrigeva) v. Secretary of State for the Home Department and another (2004) A.C. 604, highlights the principle. The Head note reads as follows:

"In 1998 the appellant claimed asylum on her arrival in the Kingdom from Lithuania and was awarded income support benefit. In accordance with the immigration rules contained in the Statement of Changes in Immigration Rules (1994) (HC 395), as amended by the Statement of Changes in Immigration Rules (1996) (Cm 3365) the Immigration Officer granted her limited leave to enter and referred her claim to the Secretary of State. On 20th November, 1999 a Home Office official noted on an internal departmental file that for reasons set out in a draft letter "refusal is appropriate. Case hereby determined". From that date the Home Office treated the appellant as a person whose claim had been "recorded by the Secretary of State as having been determined ... on the date on which it is so recorded" within the meaning of regulation 70(3A)(b)(i) of the Income Support (General) Regulations 1987, as inserted, and who, in consequence, ceased to be an asylum seeker and was therefore disentitled from further income support. The Home Office communicated the contents of the file note to the benefits agency which, on 9th December, 1999, terminated further payments. Although the appellant learned from the agency that her asylum claim had been refused she received no notification to that effect from the Home Office and the immigration officer resumed examination of her case under the immigration rules to determine whether she should nevertheless be granted leave to enter. Following unsuccessful attempts to interview the appellant, the immigration officer refused leave and, on 25th April 2000, sent written notice of refusal to the appellant together with the letter on 20th November 1999 which set out the reasons for the Secretary of State's refusal of her asylum claim. In judicial review proceeding the appellant challenged the decisions to treat her asylum claim as determined before she was notified of it and to withdraw income support from 9th December, 1999. Concluding that the court was bound by authority to hold that for the purposes of regulation 70(3A)(b)(i), as inserted, she had ceased to be entitled to income support from the date on which her claim was recorded as determined on the internal file note, even though she had not yet been informed of it, the judge refused her application and, on appeal, the Court of Appeal dismissed her appeal.

On her appeal –

Held, allowing the appeal (Lord Bingham of Cornhill dissenting), that constitutional principle required an administrative decision which was adverse to an individual to be communicated to him before it could have the character of a determination with legal effect, thereby enabling him to challenge it in the courts if he so wished; further that, in the absence of express language or necessary implication to the contrary, general statutory words could not override fundamental rights and would be presumed by the court as intended to be subject to them; that since Parliament had not legislated to such contrary

effect, since the decision in question, in determining the appellant's status, involved a fundamental right, and having regard to the immigration rules which clearly envisaged notification of an adverse asylum decision, regulation 70(3A)(b)(i), required that, before the Secretary of State's decision took effect, it should be communicated to the person affected by it and that in the absence of such notification there was no operative determination for the purposes of the regulation; and that accordingly, the appellant was entitled to recover income support until proper notification of the determination on 25th April, 2000.

Mr. Astaphan has cautioned against considering or applying this decision which he submits turned on specific and different legislative provisions. He warned that –

- i. The case was not an election case;*
- ii The House of Lords was clear,.... in the absence of words to the contrary, general statutory words could not override fundamental rights and would be presumed by the court as intended to be subject to them ...” Therefore, if there are specific words to the contrary the reasons or ruling in Anufrijeve ought not to be not applied;*
- iii It is a principle of law that the election laws are peculiarly within the jurisdiction of the Parliament especially as there is and has been no constitutional challenge to the laws;*
- iv It is a basic principle of construction that in the absence of any ambiguity, the Court is obliged by law to give effect to the words of the Parliament;*
- v. It is clear that the Court ought to construe the specific words used in the Act or Regulations. The Election Court cannot seek to rewrite or override the words used by Parliament or import words which were neither used nor intended by the Parliament;*

But the House of Lords here was pointing out in clear terms that “general statutory words could not override fundamental rights and would be presumed by the Court as intended to be subject to them.

UNLAWFUL DETERMINATION OF OBJECTIONS – CONTRIBUTING FACTOR

There was a number of factors which contributed to the unlawful determination of objections by the Registration Officer. The late posting of notices of objections has been considered earlier. Regulation 19 mandates the Registration officer to send out the notices immediately after receiving any notices of objection. The Petitioner has complained that the Registration Officer had not acted with the type of dispatch required and this was a main contributor to the difficulties she experienced. The Registration Officer had complained about the large volume of objections lodged on this occasion. However, while one can be sympathetic where constitutional rights are involved, there can be no excuses. There are

compelling reasons why the exercise should receive the highest priority. Depending on the terms of the objections, objectees must prepare themselves, having available all requisite material, documents etc. to allow them to answer the allegations.

Regulation 21 quoted above mandates the Registration Officer, not later than fifteen days after the posting up of the Register of Voters or Monthly List to cause to be affixed on each of two conspicuous buildings in the polling division in the constituency, a list of names of persons for the polling division to whose registration notice of objection has been given and such lists shall remain posted for a period of five days.

The intention of Parliament is obvious. Voters would become aware that their registration had been objected to in advance of the hearing whether or not a notice had been received by mail. In a small country like Nevis, relatives and friends who have viewed the publication will inform their friends and relatives about it so that they are forewarned of a pending hearing. Political parties will also be made aware of any developments affecting their constituents.

Mr. Astaphan for the 2nd, 3rd, and 4th Respondents has stressed that the candidates for election must be vigilant so that they can take appropriate action. That cannot be denied but more importantly the publication of the objection list is a sure way in which voters can be made aware of what affects them. Mr. Astaphan was, however, pointing in another direction, that is, to the availability of the information from the Electoral Office. I will return to this when I deal with the request made to the Electoral Commission to intervene by directing the Chief Registration Officer to restore certain names that had been removed from the January 2011, Master List.

Section 46 which mandates the Chief Registration Officer to make all additions to the appropriate monthly lists and shall make removals therefrom in consequence of any action taken under sections 39 and 45, requires the Chief Registration Officer to publish as soon after the fifteenth day of the next succeeding month and in any case not later than the last day of each such month the corrected monthly lists as the revised monthly list of voters. That is also an avenue by which voters can be made aware of what is happening and permit persons who are of the view that their names were wrongly removed from the lists to lodge appeals – vide *Ms Allistair Hanchell v. Noel Shippings and Ord.* – Turks and Caicos Island, Action CL. No. 25 of 2003.

It is to be noted that Revised Monthly Lists are not published in Nevis contrary to section 48 of the National Assembly Elections Act Chap. 2:01. To suggest that there are other avenues from which the information can be obtained flies in the face of the Parliamentary intention for the enactment of that provision.

Before moving on, I will like to make special mention of the plight of the eleven overseas voters who had been denied the right to vote in the July 2011 elections. These citizens of St. Christopher and Nevis were struck off the Register of voters by the Registration officer after objections to their registration ostensibly on the ground of non-residence. The National Assembly Elections Act Chap 2.01 makes provision for citizens of St Christopher and Nevis who reside overseas to be able to vote in the

Federation in the constituency in which he or she had been registered prior to leaving the Federation—vide section 42.

No notice of objection was received by anyone of them and furthermore because of the non-publication of the list of objections and the Revised Monthly Lists, there was no way they could have become aware that there were objections against them. It is not known what evidence was adduced against them, but they for obvious reasons could not have appeared at the hearings.

On election day, they were turned away at the polling stations, having travelled all the way to Nevis from their respective abodes for the purpose of exercising their franchise.

To say that they too are subject to the objection process, is to oversimplify what is in effect a matter of considerable importance in a country that allows overseas voters.

Maybe the time has come to put in place special rules for dealing with these special citizens and so avoid the unfortunate experience of July 2011.

I return now to a topic I had mentioned earlier in this judgment. That relates to the position of persons who had grasped the opportunity to confirm their registration during the 2007 – 2008 period pursuant to the provisions of the National Assembly Elections (Amendment) Act 2007 intended to reconstruct a new Register of Voters.

Several persons who had confirmed their registration and had voted in the 2010 Federal Elections were removed from the list in 2011 and were deprived of the right to exercise their franchise. Those who gave evidence including the overseas voters expressed their dismay at this development.

At the time of the exercise the Supervisor of Elections, the 2nd Respondent made a statement at an interview on VON Radio. This is what he said:-

“Remember, those names are not going out into the general public until the 15th of next month. Its gonna be out there for about 9 to 10 days so that people can see whose names were being registered. If there objections raised against your name, the Registration Officer will have to send you a summons, uhm, he will have to try the case to ascertain whether the claim against you is right or wrong then that may take another couple of days so you will see it is going to be taking about a 2-month period. Whereby if you reconfirm, while you do not change your name, change your address or change you’re your occupation, you will be confirmed immediately because there will be nothing to say that you would have done anything differently and so we advised that it is far better for you to reconfirm than to register anew because that is what is going to happen to all, that is what is happening to all persons who register for the first timer even though that they may not be aware. It is going to be that.

So if there is an election in the period when you register and the time factor has not come up for your name to go out in the general public your name will not be on the

register list of the Registered List of Voters. So we're saying to you, while it is very simple, make use of it because it is a shorter period of time".

In January 2010 at the time of the Federal Elections the 2nd Respondent again addressed the question of the reconfirmed voters. On 12th January on VON Radio he said:-

"Please be advised that wherever you were confirmed or registered there is where you are suppose to vote on polling day. Let me say that again. Please be advised that wherever you were confirmed or registered there is where you are suppose to vote on polling day. Kindly be advised that nobody is going to put you in prison for voting where you are registered, even if you have since moved to another location. Let me explain what I am referring to.

For many years I lived in Sandy Point up to 1993. In June of that same year I moved to Basseterre. In December of 1993 there was a General Election. Not because I was living in Basseterre at that time meant that I could vote in Basseterre. I had to drive back to Sandy Point in Order to vote thereby participating in the Elections and nobody lock me up and that is still the law. So do not let anyone mislead you that you cannot vote where you register because you have moved".

On this occasion by drawing attention to his own experience, the 2nd Respondent who is the Supervisor of Elections made it plain that persons who were confirmed were entitled to vote in the constituency where they confirmed even if they no longer resided there. The statement was open ended with no indication that the voters were open to objections in the normal way. His attempt in answer to Mr. Astaphan that he had implied that he went back to his registered address since there was no objection to his name there, I totally reject. The statement was clear and unambiguous.

The names of the persons who reconfirmed their registration appeared on the January 2010 list and they voted in the Federal Elections of that year. No doubt comforted in the accuracy of the statement by the Supervisor of Elections, the 2nd Respondent. There also appeared to have been an "undeclared amnesty" as no objections were taken by anyone challenging their registration.

Those names also appeared on the January 2011 list but were removed before the publication of the July list. So it is no wonder that some persons who got late notices did not go into the Electoral Office or otherwise raised a hue.... and cry about being objected to. The 2nd Respondent had assured them that they can vote where they no longer reside. This experience reemphasizes the importance of publication of the Revised Monthly Lists and publication of a list of objections and steps should be taken to fulfill the legal obligation in that regard. It is troubling the relaxed way in which non compliance of the law is regarded. Non compliance has never been a method of repeal. I have read the decision of Belle J in Eugene Hamilton and Robert Charles and Joseph Edmeade – Claim No. SUBHCV 2009 /0246 – 0256 and I agree entirely with his reasoning, but the question here is whether proper procedures were followed with respect to the objections process, not whether persons who had reconfirmed can be the subject of objection on the ground of residence or otherwise.

There is as well the de-registration of eight persons whose names were on the January 2011 Master List although objections to their registration were disallowed by the Registration Officer. Their names were nevertheless unlawfully omitted from the July list thereby denying them the right to vote.

Those persons are named hereunder:-

Aderian Quegon Elgin	Patricia Gloria George
Daniel M. Fordyce	Janelle Corrine Morton
Rhonda Althea George	Ionie Tyson
Michael Shane Liburd	Nykesha Liburd

BIAS ON THE PART OF THE THIRD RESPONDENT

On the question of bias, Mr. Astaphan has objected to the petitioner raising the issue since he submitted that that issue was not properly raised in the petition. He said that allegations of bias, bad faith or misfeasance must be clearly and expressly pleaded, particularized and proved. He went on to suggest that there is a difference between bias and apparent bias and the petitioner must be specific in what his contention is. I do not think Mr. Astaphan is correct on that point. The test of bias has always been whether the fair minded and informed observer, having considered the facts would conclude that there was a real possibility that the person accused was biased. This test applies whether the allegation is actual bias or apparent bias.

I hold in the circumstances that bias was properly pleaded. The question however, is whether the petitioner has produced compelling evidence from which a conclusion could properly be arrived at that there was a real possibility that the 3rd Respondent was biased.

The petitioner contended that –

- (1) *the 3rd Respondent was an executive member of NRP, the party to which the 1st Respondent belongs;*
- (2) *the 3rd Respondent was an activist of that party up until 2009;*
- (3) *the 3rd Respondent was recently a polling agent on behalf of the 1st Respondent;*
- (4) *Upon objection being taken to the 3rd Respondent adjudicating on objections brought by the NRP, she declared that all members of the CCM, the Petitioner's Party were liars;*
- (5) *the vast majority of the objections determined and allowed by the 3rd Respondent were lodged by the NRP.*

Mr. Astaphan has submitted:

- (i) *There is no evidence that the Respondent was ever an Executive Member or activist of the NRP.*
- (ii) *There is no post 2009 or 2010 appointment allegation concerning the NRP or First Respondent;*
- (iii) *There is no evidence of any political interference post 2010 appointment or at all by the First Respondent or the NRP;*
- (iv) *The Respondent was a poll agent in 2007 but there was absolutely no objection in 2007 or 2010 when she was appointed a Registration Officer. In any event, much time has elapsed since 2007;*
- (v) *On the assumption that the Respondent was in March 2011 allegedly hostile or called all CCM liars, which is denied, there was no judicial challenge or injunction sought. Instead, the Petitioner relied on the Electoral Commission;*
- (vi) *Further, the undeniable evidence is that the Petitioner's agents and those of the CCM continued to attend objection hearings until at least June 2011. Indeed, the Third Respondent has not been removed and continues today to conduct hearings; and;*
- (vii) *The post list for the last three elections complaint of CCM dated 4th July 2011 was premised solely on the fact that persons who had confirmed or registered and were on the January Register had been removed.*

With respect to the petitioner's contention that the 3rd Respondent was an executive member of the NRP, the party to which the 1st Respondent belongs, the petitioner relied on the evidence of Elton Marcus Hull. He claimed to have met the 3rd Respondent at Executive meetings of the NRP which they both attended. He said that at one stage the 3rd Respondent was proposed as the new Party Chairperson after some disagreement with the then party chairman one Herman (Bobby) Liburd. The 3rd Respondent, he said was also offered the position of Treasurer of the party but she also turned that down owing to her disappointment in not obtaining the position of Chairperson. The 3rd Respondent he said, attended Executive meetings during the period 2007 to 2009 and was a party activist.

Under cross-examination by Mr. Astaphan, Mr. Hull was shifty, extremely vague and unreliable. It also turned out that it was a splinter group in the NRP that proposed the 3rd Respondent to be Chairman of the party not the party Executive. I have set out Mr. Hull's evidence in full.

The Third Respondent has denied being a member of the Executive of the NRP. She did attend some meetings but in the capacity of a resource person, an adviser on financial matters, she being qualified in that field. She has, however, admitted that she is a supporter of the NRP.

I found Mr. Hull to be an unreliable witness and I attach no weight to his allegation that the 3rd Respondent was an executive member of the NRP, neither was she an activist of the NRP.

I accept her evidence that she attended meetings in the capacity of a financial adviser and did so even when she was employed by the CCM Government. I also accept her evidence that she is a supporter of the NRP. I accept also that she was a polling agent on behalf of the 1st Respondent for the 2007 election and the circumstances under which she performed in that capacity.

There is also no doubt that the vast number of objections adjudicated on by the 3rd Respondent, in her capacity as Registration Officer were lodged by the NRP.

The question, however, is whether the 3rd Respondent acted in a biased way against the CCM in the performance of her duties. Her support for the NRP cannot per se, be a basis for a finding of bias against her. Removal of names from the January 2011 list of voters was done under the watch of the *Supervisor of Elections and the 3rd Respondent*. In fact she was the official who held the objection hearings. The complaints against the 3rd Respondent centered around the issue of notices to the persons against whom objections were lodged and her determination in the absence of those persons.

What is clear to me is that the 3rd Respondent and her supervisor, the Supervisor of Elections both held the view that once notices were sent out by Registered Mail and delivered to the Post Office, the job of the Registration Officer was complete. It seems to me that that understanding had been established as a policy position of the Electoral Office and that the main reason for choosing Registered Mail was that there would be no need to ensure delivery or receipt by the addressee as opposed to using the regular mailing service where there must be evidence that it had been received by the addressee or some other available method.

It is unfortunate that that view prevailed and moreover where the law requires the notice to reach the addressee at least five days before the hearing. The 3rd Respondent was firm in the view that that meant that all she was required to do in such a case was to deliver the mail to the Post Office within five days of the hearing.

Even assuming there was a misunderstanding or wrong interpretation of the process of sending by registered mail, the statistics taken from records produced by the 3rd Respondent reveals that in the case of some (114) voters, notices were deposited at the Post Office just before, that is, less than 5 days before, on or after the dates of hearings. It would have been obvious that persons who received notices in such circumstances could not have attended. However, the 3rd Respondent, notwithstanding, proceeded to hold hearings on the scheduled dates and made determinations thereat in the absence of the voters. It is difficult to comprehend that a person of the status and intelligence of Ms. Lawrence would proceed in that fashion. This was no accident nor negligence on the part of the 3rd Respondent. This was deliberate disenfranchisement. These decisions benefited the NRP of which the 3rd Respondent was a supporter and any reasonably well informed and fair minded observer would conclude that there was a real possibility that she acted with bias.

Whether or not Ms Lawrence was actuated by bias, the result of her actions was the disenfranchisement of a number of voters and that in my view was crucial to the outcome of the election.

Similarly the allegations by the petitioner of bad faith and misfeasance do not take the matter much further except to identify the nature of the conduct of the 2nd and 3rd Respondents. The result was the same i.e. by their actions and inaction contrary to the regulations a considerable number of voters were disenfranchised.

FAILURE TO COMPLY WITH DIRECTIONS FROM THE ELECTORAL COMMISSION

Over a period of time in early 2011, there were numerous reports circulating that persons against whom registration objections had been lodged were receiving notices after the dates fixed for hearing. The CCM raised the matter with the Electoral Commission.

By letter dated May 25th, 2011, Mr. Vance Amory, Leader of the CCM Party wrote to the Chairman of the Electoral Commission in these terms: This letter followed upon an appointment made by Mr. Amory to meet with the Commission on the 26th May, 2011.

*Mr. Hesketh Benjamin
Chairman, Electoral Commission
Electoral Office
Central Street
Basseterre
St. Kitts*

I thank you for your letter dated 24th May, 2011 and for the audience afforded me and my team on 26th May, 2011, to inform that meeting I wish to set out the following concerns:

- 1. When the electoral reform legislation was debated in the National Assembly, the Honourable Prime Minister made it pellucid that the intent of the legislation was not to disenfranchise any voter. While many can vassed for a fresh enumeration exercise where the old voters list would be abandoned and a completely new list created, the majority of Parliament opted for a system, of confirmation. That system of confirmation expressly permitted voters to confirm their registration in the constituency in which they were registered at the date of confirmation. Section 9, of the National Assembly Elections (Amendment) Act 2007 (No. 22 of 207) provides:*

"The Act is amended by inserting immediately after Part VII the following new Part VIII;

PART VIII - SPECIAL PROVISIONS FOR RECONSTRUCTION OF VOTERS LIST.

107. (1) The Minister may by Order publish in the gazette declare a registration periodduring which all persons registered as voters for a constituency pursuant to this Act at the commencement of the registration period and whose names appear in the register of voters, the monthly lists and the revised monthly lists of voters published for each constituency shall be required to confirm their registration and be issued with a national identification card in the manner prescribed;

(2)

(3) Notwithstanding subsection (2), the register of voters, monthly lists and revised monthly lists published for each constituency under section 43E, 43F and 43H immediately prior to the commencement of the registration period, shall be used as the official record for the purpose of confirming the registration of voters and issuing of national identification cards to voters pursuant to this Act.

108 (1) The Chief Registration Officer shall cause to be prepared and shall publish within 14 days of the end of the registration period, a new register of voters reconstructed in accordance with this Part.

(3) The reconstructed register of voters shall consist of:

- (a) all persons who have confirmed their registration and have been issued with a national identification card under this Act; and
- (b) all persons whose names appear in the monthly lists and the revised monthly lists for a constituency prepared and published under section 43F and 43H and to whom national identification cards have been issued.

Section 8 of the National Assembly Elections (Amendment) Act 2008 (No. 2 of 2008) replaces section 108(2) set out above and provides:

(2) The reconstructed Register of Voters shall consist of the names of-

- (a) all persons who have confirmed their registration and have been issued with a national identification card under this Act;
- (b) all persons whose names appear in the revised monthly list for a constituency prepared and published under section 43F and 43H and have been issued with a national identification card under this Act;
- (c) all persons who have transferred to another constituency and have been issued with a national identification card under this Act;

(d) *all persons who have requested any other changes which have been confirmed by the Chief Registration Officer and have been issued with a national identification card under this Act".*

1. *It seems from the above clear that the process of confirmation allowed voters to do exactly that, "confirm" their registrations. There was no requirement by law that they effect any transfer of their registration and the voters list published under law is accordingly reflective of the voters properly registered.*

2. *There have been a number of objections being made in Nevis against people who were duly confirmed and/or otherwise registered, issued with and still holding valid national identification cards and properly on the voters list. While these objections can be made, it is incumbent on the Registration Officer hearing those objections to do so fairly, impartially and in accordance with law.*

3. *I wrote to the Supervisor of Elections (with copy to you?) on (date?) raising some serious concerns about the fairness of the hearing process in Nevis on account of the fact that it had come to light that the Registration Officer Mrs. Bernadette Lawrence was formerly an Executive Member of the Nevis Reformation Party (NRP) and in addition had as recently as the bi-elections held on 27th August 2007 in Nevis acted as a poll watcher for the NRP. Her activism for and on behalf of her party is well known and while that is her right, it must disqualify her from sitting in judgment as a Registration Officer in these matters which by their nature are political. The Supervisor of Elections has not to date responded to my letter or addressed the concerns raised in it. I therefore reiterate those concerns that Mrs. Lawrence is disqualified from sitting as a hearing officer on the basis of bias whether actual or perceived. I believe it to be a truism that none of us can be a judge in our own cause. In addition, Mrs. Lawrence has been openly hostile to agents and representatives of my party including making the unfounded statement on 3rd March 2011 at a hearing when the issue of her perceived bias was raised that "CCM people are liars".*

4. *In addition to the above, I am gravely concerned that objection hearings are being held without the voters being objected to knowing anything about such hearings. I attach for your perusal several Notices of Objections (Form 12). These are but a sample of scores of such Notices All of which got to the voter objected to AFTER the date of the hearing. It must be wrong that these and numerous others have not been afforded a right to be heard:*

i. *Kayill Pemberton of Craddock Road. Hearing scheduled for 12th May, 2011. Notice received by the voter on 20th May, 2011.*

ii. *Steve Reid, Jr. of Craddock Road. Hearing scheduled for 12th May, 2011. Notice received by the voter on 18th May, 2011.*

- iii. *Rubyllette Arthurton of Bath Village. Hearing schedule for 11th May, 2011. Notice received by the voter on 13th May, 2011.*
- iv. *Janeal Arthurton of Bath Village. Hearing schedule for 12th May, 2011. Notice received by the voter on 11th May, 2011.*
- v. *June Smithen of Craddock Road. Hearing schedule for 12th May, 2011. Notice received by the voter on 20th May, 2011.*
- vi. *Angis Palmer, Efigenia Palmer-Valdespin and Fernando Palmer of Main Street, Charlestown. Hearings schedule for 12th May, 2011. Notice stamped as received by the Post Office on 13th May, 2011.*
- vii. *Evelyn Palmer of Lower Stoney Grove. Hearing schedule for 12th May, 2011. Notice received by the voter on 19th May, 2011.*
- viii. *Cresencia Palmer and Santo Val-Palmer both of Crosses Alley, Charlestown. Hearings schedule for 12th May, 2011. Notice stamped as received by the Post Office on 13th May, 2011 and received by the voters on 19th May, 2011.*
- ix. *Sonia Pemberton of Craddock Road. Hearing schedule for 12th May, 2011. Notice received by the voter on 13th May, 2011.*
- x. *Ken Pemberton of Craddock Road. Hearing schedule for 12th May, 2011. Notice received by the voter on 13th May, 2011.*
- xi. *Orville Manners of Morning Star. Hearing schedule for 11th May, 2011. Notice received by the voter on 12th May, 2011.*

I have taken the time to set out some of the actual dates so that you may get a sense of what is happening. Several of the affected persons are being told by officials at the electoral office in Charlestown that there is nothing that can be done as the hearing has gone. I confirm that all of the persons mentioned and several others who have come to my attention are duly registered voters in Nevis with valid national identification cards still in their possession. They are therefore eminently within the provisions of the law set out at paragraph 1 above.

5. *Lastly, I raise the issue of the publication of Revised Monthly Lists. The law seems clear that such publication is mandatory as the Revised Monthly Lists are a critical basis for the compilation of the final list. I refer you to sections 46, 48 and 108 of the National Assembly Elections Act. I am deeply concerned that we have seen no evidence of the Revised Monthly Lists being published as required by law and ask that this matter be rectified urgently.*

Sincerely,

Vance W. Amory
Member of Parliament
Leader of CCM Party

After the meeting with the Commission, on the 26th May 2011, the Commission by letter of the said date wrote to the Supervisor of Elections as follows:

ELECTORAL COMMISSION
Central Street
Basseterre, St. Kitts

26th My, 2011

Mr. Leroy Benjamin
Supervisor of Election
Electoral Office
Central Street
Basseterre, St. Kitts

Dear Mr. Benjamin

We write to advise that at a meeting held by the Electoral Commission with Mr. Vance Amory, Leader of the Concerned Citizens Movement, Theodore Hobson, Legal Advisor of the Concerned Citizens Movement, Michael Perkins, of Concerned Citizen Movement, Mr. Oliver Knight of the Electoral Office, St. Kitts and Ms. Beulah Mills of the Electoral Nevis on the 26th day of May 2011 at the Speaker Chambers, Government Headquarters, Basseterre, regarding complaints received from the Concerned Citizens Movement in connection with the removal of names by the Registration Officer Ms. Bernadette Lawrence of Voters who have reconfirmed and having heard the said complaints. The Commission in accordance with the National Assembly Election Amendment Act 2007) as amended has determined that names of Voters who have been reconfirmed and issued with appropriate National Identification Cards (NID) shall remain on the Voters List as at January 2011.

Mr. Hesketh Benjamin	Mr. William Dore	Ms. Myrna Walwyn
Member	Member	Member

The Supervisor of Elections bluntly refused to carry out the directions of the Commission.

By letter of the 7th June, 2011, the Supervisor of Elections responded to the Chairman Electoral Commission inter alia in these terms.

SAINT CHRISTOPHER AND NEVIS

*Electoral Office
Central Street
Basseterre, St. Kitts*

7th June, 2011

*Mr. Hesketh Benjamin
Chairman,
Electoral Commission
Basseterre*

Dear Mr. Benjamin,

The Electoral Commission's letter of 26th May, 2011, our meeting on 30th May, 2011, and my letter to you dated 2nd June, 2011 refer. For ease of reference a copy of my letter to you dated 2nd June 2011 is attached hereto.

Following our meeting on the 30th May 2011 and your indication that the Commission will withdraw its letter of 26th May, 2011 I have decided to reduce my position in writing due to the fact that, up until this morning (7th June 2011) I did not receive any response from the Commission. Please note that I have sought and received advice in this matter from Mr. Arudranauth Gossai, Senior Crown Counsel.

I have read sections 33 and 34 of the Constitution. You may rest assure that I am fully aware that the Commission shall supervise the Supervisor of Elections in the performance of his functions. But the operative word or duty is supervise and not the giving of directions.

In view of the provisions of the constitution it is my position, supported as it is by the legal advice I have received, that neither the Electoral Commission not the Supervisor of Elections has any authority whatsoever to interfere and/or direct the functions of the Registration Officers in the exercise of their functions under the National Assembly Elections Act Chap. 2:01 and/or the Regulations made thereunder, to hear and determine claims and objections made to the Register of Voters and the Monthly Lists respectively.

I am therefore of the opinion that the Electoral Commission has no authority to decide and instruct that "names of Voters who have been reconfirmed and issued with appropriate National Identification Cards (NID) shall remain on the Voters List as at January 2011". The Registration Officers must exercise, and continue to exercise their functions in accordance with the provisions of the Act and Regulations.

Further, I am advised by Counsel and verily believe to be true that it is most unfair if not inappropriate for the Commission to give an audience with members of one political

party in relation to alleged complaints without also hearing from members of the other political party and other interested parties or persons

In the circumstances, I am advised that your directions are manifestly unlawful. Accordingly, I am unable to accede or give any effect to your directions. My position remains that the Registration Officer must give full and fair effect to the laws prescribed by the Parliament.

Kindly be advised accordingly

I remain Your Humble Servant.

Leroy Benjamin

Supervisor of Elections

c.c The Honouable Prime Minister, Dr. Denzil Douglas

The Honourable Premier, Mr. Joseph Parry

Leader of the Nevis Reformation Party (NRP)

The Honourable Leader of the Opposition, Mr. Mark Brantley

The Leader of the Concerned Citizens Movement (CCM) Mr. Vance Amory

Mrs. Bernadette Lawrence, Registration Officer

Section 34 of the St. Kitts and Nevis Constitution Order 1983 provides inter alia as follows:

34 (1)

(2)

(3)

(4) *For the purposes of the exercise of his functions under subsection (1), the Supervisor of Elections may give such directions as he consider necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom any such directions are given shall comply with those directions.*

(5) *The Supervisor of Elections may, whenever he considers it necessary or expedient to do so and shall whenever so required by the Commission, report to the Electoral Commission on the exercise of his functions under subsection (1); he shall also submit every such report to the Minister for the time being responsible for matters relating to the election of Representatives; and that Minister shall, not later than seven days after the National Assembly first meets with such comments thereon as he may have received from the Commission.*

(6)

(7) *In exercise of his functions under subsection (1), the Supervisor of Election shall act in accordance with such directions as he may from time to time be given by the Electoral Commission, but shall not be subject to the direction or control of any other person or authority"*

The functions of the Supervisor of Elections are set out at subsection (1) of section 34. Section 34(4) stipulates that the Supervisor of Elections may give directions that he considers necessary or expedient to any registration officer relating to the exercise by that officer of his functions regulating the registration of voters or the conduct of elections, and any officer so directed must comply with those directions.

Section 34(7) mandates the Supervisor of Elections to act in accordance with such directions as he may from time to time be given by the Electoral Commission, but shall not be subject to the direction or control of any other person or authority.

The Petitioner contends that since it was in the public domain that the procedure under the Regulations was not being followed i.e. persons were being wrongly removed from the List i.e. the January 2011 list, then by virtue of the Constitutional provisions (supra) the Commission acted properly in directing the Supervisor of Elections to restore the list and the Supervisor was obliged to carry out the Commission's directions.

Mr. Astaphan did not agree. He summarized his submission as follows:

(1) The Functions of the Supervisor of Elections

Section 34(1) of the Constitution makes it clear that the Supervisor shall exercise general supervision over the registration of voters in elections of Representatives and over the conduct of such election. No other function is conferred by the Constitution. Section 34(5) of the Constitution provides that "The supervisor of Elections shall exercise such other functions in relation to elections whether to the National Assembly or to local government authorities as may be prescribed by or under any law enacted by Parliament". The question therefore is, what other functions were conferred on the Chief Elections Officer by Parliament?

(2) 34(4) Directions to Registration Officers

Section 34 of the Act places the obligation to prepare the lists of voters for particular districts on the Registration Officers. Section 43(1) provides that the Chief Registration Officer shall cause to be prepared and shall publish a register of voters. These words do not mean or ought not to be construed as meaning that the Chief Registration Officer must micromanage the detailed preparation of the register. Indeed, the words shall cause to be prepared and shall publish mean or ought to mean prepare and published on his instructions.

Alternatively, there is no prohibition on members of staff preparing and publishing the lists on his behalf. Parliament could not have intended that the Supervisor must perform all of his functions under the Act and Regulations personally.

(3) *Section 43(2)(a) speaks of the Chief Registration Officer having the authority to remove names from the register and lists. But the Chief Registration Officer could not do so without or prior to the determination of the objection process.*

(4) *Section 44(2) of the Act says –*

“Not later than the appointed day in every month in each year, the Chief Registration Officer shall cause to be prepared and shall publish as soon as possible thereafter (and in any case not later than the fifteenth day of the next following month) a list of voters for each constituency which shall consist of all persons”.

(5) *As submitted earlier, the words shall cause to be prepared and shall publish mean or ought to mean prepared and published on the instructions of the Chief Elections Officer. Section 45 of the Act says that the Chief Registration Officer shall make all additions to the appropriate monthly lists. But as the objections are dealt with by the Registration Officers, the Chief Registration Officer’s role has to be purely administrative. Section 45(2) requires the Registration Officer to transmit his decision to the Chief Elections Officer.*

(6) *Further the substance of the Petitioner’s pleaded case is that the Third Respondent was hearing objections and removing names from the Register notwithstanding that these voters had confirmed or re-registered and has been issued with ID cards. But as submitted above, voters had the right to object to names despite the fact that persons on the Register had confirmed, re-registered and been issued with ID cards. Consequently, any such direction would have conflicted with the law and previous judgments of Justice F. Belle.*

As I understand, his submission he is saying that the process for removing a person’s name from the voting list is statutory in that it involves a hearing by the Registration Officer of an objection raised against the registration of an individual be it on the ground of residence or otherwise. Any person aggrieved with the decision of the Registration Officer has recourse to the Courts for redress. That is the only avenue in such circumstances.

The Petitioner as I understand him is not questioning Mr. Astaphhan’s view of the law but is making a distinction. The Petitioner’s case is that a number of persons had been complaining that their names were being removed from the January 2011 Register without being allowed a hearing. All this was taking place behind closed doors. There was no publication of the Revised Voters Lists nor the list of objections or was there in some cases receipt of notices of objection from the Registration Officer. The

majority of the persons affected it would appear were persons who had reconfirmed their registration during that exercise, hence the reference to them in the letter from Mr. Amory. If these persons were in fact removed from the list without being heard, then the decision of the Registration Officer was a nullity. In such circumstances it was open to the Electoral Commission under its Constitutional mandate to direct the Chief Registration Officer to put his house in order. Let us do the right thing as it were. Restore the List as it was at January 2011. This does not prevent objections being raised thereafter. They must now be considered with due process, allowing a right to be heard.

It seems to me that there is nothing improper in the Commission taking the step it took in these special circumstances. The Supervisor's refusal to correct what was clearly a wrong is evidence of a deliberate aim to subvert the rights of voters. He was therefore wrongly advised.

It must be remembered as well that it was not before July 2nd that there was concrete evidence that names were removed from the list. Up to June 30th 2011, the unaltered January 2011 list was still being exhibited. Mrs Lawrence admits that the Election List was only completed on the 29th June. After the publication of the July list five voters were persuaded to approach the Court. Michel J. in NEVHCV2011/0123/0126 ruled in their favour and ordered that their names be restored to the List.

Mr. Astaphan had questioned the lack of vigilance on the part of the Petitioner to take advantage of the opportunity provided by the regulations to inspect and take extracts of the revised monthly lists and list of objections. He contended that had he done so he would have been made aware of changes to the lists so that he could give notice to his constituents to take court action where appropriate. Instead of so doing he relied on the Commission to give directions to the Supervisor of Elections. It is also open to any member of the public to inspect any document at the office of the Registration Officer.

The Constitution gives the right to vote to every person who is registered in any constituency, unless that person is disqualified by Parliament from voting in any election.

The right is not given to the candidate and political parties to ensure that their constituents have the information necessary for the protection of that right. The law does not place an onus on the candidate and political party to inform their constituents of objections taken to their registration and other matters affecting them. Of course it is in the interest of the candidates and political parties to be aware of anything that might affect constituents.

But Parliament has mandated the Registration Officer to publish lists of objections, to notify voters of objections made against them and inform them of dates of hearing. The Chief Registration Officer must also publish Revised Monthly Lists so that voters can inform themselves of matters affecting their registration.

The Electoral officers took it upon themselves to restore two names to the list after the persons affected had complained directly to the Registration Officer that their names had been improperly removed. There was no court ruling in those cases. Those two persons were allowed to vote in the July 11th election. This was a clear demonstration of the arbitrary nature in which the Electoral Officials carried out their functions.

It is the Electoral Officials to whom Parliament has given the mandate to publish important information for the benefit of voters.

It seems to me therefore that the duty of the Registration Officer to publish lists and send notices cannot be excused by pointing to the availability of the records at the Electoral Office. It is the voter who when he is wronged, has the right to take steps to protect his constitutional right to vote and this does not preclude the candidate from *challenging the results on the basis of widespread irregularity of the elections*. The constitutional right of a voter must be recognized, respected and protected. Electoral Officials cannot shift their responsibility to have the voter informed to the Post Office or indeed to candidates or political parties.

Candidates or political parties are not agents of the voters. The obligation of Electoral Officials towards voters is not satisfied by pointing to the access to information available to candidates and political parties or even the voters themselves who are not expected to go into electoral offices from time to time to see whether or not there are objections to their registration. The law will not impose on every elector the practically impossible and certainly arduous duty of eternally watching electoral lists in order to guard against official decision against them at peril of being disfranchised vide Keane and Kirby (1920) 27 CLR449 at p.

RIGHT TO FREE EXPRESSION

52. Sections 12(1 and 15(2)&(3) of the Constitution provide as follows:

12(1) *Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication is to the public generally or to any person or class of persons) and freedom from interference with his correspondence.*

15(2) *Subject to subsections (5), (7), (8) and (9), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.*

(3) *In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place or origin, birth out of wedlock, political opinions or affiliations, colour, sex or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such descriptions.*

The Nevis Island Administration operates a nightly segment from 6:00p.m. to 10:00p.m. on Channel 8 of the Caribbean Cable Co. including a nightly news programme called "Nevis News Cast. This programme was aired by the State using public funds to broadcast political events organized by the NRP. No event by the Opposition CCM was ever given coverage. The Petitioner in his affidavit listed some thirty-two (32) events during the period June 22nd to July 10th 2011, all on behalf of the NRP that were carried on the News Cast.

This the Petitioner claims was in breach of his constitutional rights guaranteed under sections 12 and 15 of the Constitution and may well have or probably would have affected the outcome of the election.

I must confess that I had my reservations whether such a claim can be pursued in an election petition. In Framptors v. Pinard Domit CV 2005/00149, Rawlins J. as he then was, endorsed the principle of freedom of expression being enforceable in an election petition. He said:-

"A State owned and operated broadcasting media is not the preserve of the political party which forms the government. It is a service that is dedicated to the use and benefit of the people of the State. It should promote and enhance the constitutional guarantee of freedom of expression which include the right to communicate and receive ideas freely".

In Jayantha Adikair Edoqanale and Others v. Commsision of Elections and Others (2002) 3 LRC the Supreme 'Court of Sri Lanka "inter alia" pronounced as follows:-

- (1) *A fundamental rights application and an election petition were legal proceedings which were completely different in character, in respect of both the disputes and the remedies involved. Any citizen could file a fundamental rights application, seeking redress for his own benefit, in respect of the executive violation of his constitutionally guaranteed fundamental rights: such redress could extend to the quashing of impugned acts, directions to perform acts, and the award of compensation. However, an election petition could be filed only by a candidate and on limited grounds: the only redress which the court could grant was to hold that an election in a particular district was void, that a successful candidate had not been duly elected and that some other candidate had been duly elected. In the instant case, the petitioners had asked the court to declare the poll void and order a repoll at certain polling stations – relief which could not have been granted in an election petition. It followed that an election petition under Part VII of the Act was not an exclusive remedy for the fair or effective determination of election disputes and that the petitioners had been entitled to proceed with their fundamental rights application (see pp. 29-30, post).*

The evidence of the former Permanent Secretary to the Premier under whose portfolio the Department of Information fell, is to the effect that the role of that department was to promote the information of Government. The News Cast presents the vision of the Government. It is a Government Information Service.

It was clear, therefore that the Information Service had no interest in the activities of the Opposition Party and failed to include them in its news reporting.

Judged on the basis of the statement of Rawlins J. as he then was in the Pinard case, the State run News Casts of the 'Government Information Service must exist for the use of all political parties and not limited to the activities of the ruling party alone.

In the premises, the Petitioner's right to free expression and the freedom to campaign on equal terms and without reasonable restrictions were infringed.

I must now consider submissions by Dr. Browne on behalf of the 1st Respondent who was the successful candidate for Nevis 2 at the July 2011 elections. I attempt here to summarize his arguments –

- (1) *a claim for constitutional relief is not one that can be determined by an Election Court and is therefore wholly misconceived and impermissible in law;*
- (2) *the relief sought at 3 of the prayer in the petition..... is misconceived since it does not relate to any occurrence during the course of the election itself;*
- (3) *the right to vote is a right of the voter and not that of the Petitioner to treat as having been cast in his favour. A declared presumption that a voter intended to vote for the petitioner is not a fact, it is as best a political statement. Those individuals who expressed that they intended to vote for the petitioner were not entitled to vote as their names were not on the Register on polling day;*
- (4) *it was never in the contemplation of Parliament that an investigation into the accuracy of the Register of Voters is an issue to be ventilated in the election court;*
- (5) *the avenue for redress of a person who wishes to challenge the compilation and accuracy of the Register of Voters used on polling day is the High Court under section 52 of the Act;*
- (6) *None of the individuals whose names were removed from the January 2011 list of voters is a party to these proceedings. The amended petition is not a class action;*

- (7) *the fact of non-publication of revised Monthly List in no way precluded the petitioner from deploying the knowledge about the said revised lists. Long before 2010, the Petitioner did not depend on the publication of any lists to inform his decisions. He relied on himself and his closely knit group. Failure to publish Revised Voters Lists not fatal. The duty to publish is not mandatory but directory;*
- (8) *refers to section 99 – noncompliance not necessarily invalidates election. Failure to publish does not invalidate the document;*
- (9) *no evidence that failure to publish invalidated election;*
- (10) *pleading that it be determined that the said Hensley Daniel was not duly elected or returned and that the said election “is void” is bad in law uncertain, imprecise and equivocal, unsupported by material facts;*
- (11) *Court bound by decision of Radix v. Gairy (1978) 25 WIR 533.*

Some of these issues have already been considered and no further mention will be made of them.

The contention at(2) above that only matters arising during the course of the election itself with the exception of bribery and corruption and matters of that nature that can be the subject of an election petition, is not supported by the authorities. In McAllister Henschell and Noel Skippings, Stanley Williams and David Bowen action CL NO. 25 of 2003, a case which arose out of the election held in Electoral District No. 5 (South Caicos, North) as part of the general election held on 24th April, 2003 to which I have already made reference, Ground C.J said:

“What would amount to an irregularity for these purposes? I think that a failure to implement a decision made on the claims and objections process is in a different category from a mere error of judgment. Once a decision has been made through the statutory process it should be implemented. If it were otherwise the Supervisor could, either by deliberate intent or carelessness, negate the whole claims and objections process. Similarly, a failure to make or announce a decision on a claim or objection, is irregular, because it deprives those concerned of their right of appeal. I think, therefore, that such matters, which strike at the root of the process, can be question on an election petition notwithstanding the finality of the Register on the question of qualification.”

A similar case which involve matters not arising on election day itself is McDonald v. Mac Neil (1990) 95 NSR (2nd) 137 where the following statement is reported”.

“It is also argued by Mr. Davis for the first Respondent, that rule of irregularity is limited to things occurring on the day of the election and not the process leading up to it. However, I reject that argument. Election is not just an event of the day but is the whole process leading up to the actual poll and there is no reason in

principle to distinguish between irregularity and the preparatory acts leading up to the day itself.

With respect to (3) the claim by the Petitioner is that a number of persons were wrongly prevented from voting. Many of them on oath stated that it was their intention to vote for the Petitioner. In Kean v. Kerby (1920) 27 CLR 449 the High Court of Australia ruled on a similar point. Under Australian legislation unlike the English position which is similar to the legislation in St. Christopher and Nevis, to declare an election invalid a higher threshold is required i.e. no election shall be avoided on account of the error of any officer which shall not be proved to have affected the result of the election. In St. Christopher and Nevis the matter is left so that the mistake may have affected the result.

In deciding that evidence of voters who were denied the right to vote, that they had intended to vote for a particular candidate, was held admissible. At page 457 Isaac J.A reasoned as follows:

"The task therefore, which the Legislature has expressly set the Court in such a case is to require, before avoiding an election on the ground of official error, proof that the error actually affected the return of the candidate. The error of refusing a vote to a qualified elector, if it is to have any weight at all, must be accompanied with proof as to how the elector intended to vote. In England, the mere refusal to permit qualified electors to vote would – if the numbers were sufficient – raise a possibility enabling the Court to act (Rogers, 19th ed. P. 109). I do not assume to say how the Court there would feel itself called upon to decide if evidence of intention negating that possibility were offered. But with respect to our own Act it is plain that, unless some paramount purpose of the Legislature to exclude evidence of the elector's intention can be deduced by implication from the Act, sec. 194 requires the Court to receive that evidence. The case of Bridge v. Bowen shows that, in view of the onus, unless the fact of intention is proved, the election, so far as it depends on the refusals I have mentioned, cannot be disputed. The matter must be determined on principle. The fundamental common law principle is that "elections ought to be free". That basic principle was reaffirmed and enforced by the Statute 3 Edw.I.c.5. It lies at the root of all election law. For centuries parliamentary elections were conducted by open voting. Freedom of election was sought to be protected against intimidation, riots, duress, bribery, and undue influence of every sort. Nevertheless it was found necessary to introduce the ballot system of voting. The essential point to bear in mind in this connection is that the ballot itself is only a means to an end, and not the end itself. It is a method adopted in order to guard the franchise against external influences, and the end aimed at is the free election of a representative by a majority of those entitled to vote. Secrecy is provided to guard that freedom of election. It is common ground, however, that in some cases, which need not be particularized, the Court is at liberty to inquire how a person voted. Sec. 190 provided that "the Court ... may inquire into the identity of persons, and whether their votes were improperly admitted or rejected,

assuming the poll to be correct". Reading that section with section 194 (already quoted), it cannot be doubted that in my opinion, impossible to contend that a person who was refused a ballot-paper altogether is in a worse position to defend his right of voting than if he had received a ballot-paper and his vote had been wrongly disallowed. And in such a case how is he to protect his right of franchise, which is the most important of all his public rights as a member of a self-governing community? The ballot, being a means of protecting the franchise, must not be made an instrument to defeat it. When a vote is recorded in writing, no doubt the writing itself is the proper evidence of the way the elector intended to vote. When it is not recorded, the only means of establishing that intention is the evidence of the elector himself. That is the only mode of protecting the right which an elector has endeavoured to exercise and has been prevented by official error from exercising. That the right of voting is a legal right sustainable in a Court of law is beyond doubt (*Ashby v White* [8] and *Pryce v. Belcher* [9]). But, though technically remediable at law, not only is the remedy there for malicious refusal alone, but it is in any case practically worthless. It gives no real or effective protection to the elector's right politically: it gives no security that his political opinions will not be disregarded. A shilling damages is no compensation for improper representation in Parliament. This Court of Disputed Returns is the only tribunal that can afford real and effective protection to electors in maintaining their right of franchise. The Legislature has provided, by sec. 185, that the petition may be signed – as it is in the present case – by a "person who was qualified to vote" at the election. This indicates that the elector is afforded a means of protecting his right of franchise and representation. It was the common law doctrine that a voter whose vote was at issue as regarded for the purposes of evidence as a party, and at a period in our law when interested persons were incompetent witnesses on their own behalf, such a voter was precluded from substantiating his vote by his evidence (*Rogers on Law and Practice of Election Committees* (1852), 4th ed. P. 91) His declarations or admissions against himself, however made before the election were admissible (*ibid.*). And see *The Middlesex Case* [10] and, per Keogh J. in the *Tipperary County Case* [11]. The importance of that allusion is that it shows how strongly the law regards the issue of a challenged vote as affecting directly the right of the elector himself. And as the Legislature has required by sect. 194 proof of actual affecting of the result as a condition of protection of the right of voting, it appears to me to be an inescapable conclusion that the elector may prove his intention, where he has been prevented from voting altogether. By no other means can he, or those who think with him, if in the majority, be protected against representation by the votes of the minority. If, for instance, candidate A be re-turned by a majority of 10 votes, while 50 persons who desired to vote for candidate B are refused ballot-papers, how are the majority, of the constituency if the intentions of the 50 are not to be proved? In the absence of express

prohibition of such evidence I think it is admissible because its admission is in accordance with the general, well recognized principles of evidence, with which the Legislature must be presumed to be acquainted; because it supports the central principle of the Act, namely, representation by the votes of the majority of the electors; because it does not violate any ballot actually cast; and because to exclude the evidence on a supposed analogy to maintaining the secrecy of the ballot would be to proceed, not upon a real analogy, but on a contradiction. Its exclusion would exalt the means above the end; it would defeat the franchise instead of protecting it. I therefore decide that the evidence is admissible.

I endorse the reasoning of Isaac J.A and hold that the evidence of the 39 witnesses who claim that they intended to vote for the Petitioner is admissible.

The importance of section 52 of the National Assembly Elections Act is recognized. In fact resort was had to that provision by five electors before Michel J. in July 2011. It is, however, of utmost importance that the person approaching the Court (the voter) must be fully aware of the decision taken in order to pursue legal action. In this case up until the 30th of June, the Jan 2011 master List was still being exhibited. The Election List showing the changes was only available on July 2nd 2011.

VALIDITY OF ELECTION

Section 99 of the National Assembly Elections Act Chap. 2:01 provides as follows:

“99. Non-compliance with rules, etc., when not to invalidate election.

Notwithstanding anything in the Provisions of this Act no election shall be declared invalid by reason of non-compliance with the provisions of this Act or of the rules thereto or of the regulations made thereunder, or any mistake in the use of the forms prescribed under this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance or mistake did not affect the result of the election.

A good starting point in consideration of section 99 so far as the facts of this case are concerned is a reference to the case of Woodward v Sarsons (1875) WR 10 CP 733, and the passage at pages 743-744 cited by Rawlins CJ in the recent decision of the Court of Appeal in Quinn Leandro v Dean Jonas, John Maginley v Charles Henry Fernandez Winston Baldwin Spencer v St. Clair Simon HC v AP 2010/018/019/020. The Courts of Common pleas stated:-

“....we are of opinion that the true statement is that an election is to be declared void by the common law applicable to parliamentary elections, if it was so conducted that the tribunal which is asked to avoid it is satisfied, as matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws. As to the first, the tribunal should be so satisfied, i.e. that there was no real electing by the constituency at all, if it were proved to its satisfaction that the

constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be some, if a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as, by polling stations being demolished, or not opened, or by other of the means of voting according to law not being supplied or supplied with such errors as to render the voting by means of them void, or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think the same result should follow if, by reason of any such or similar mishaps, the tribunal, without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred. But, if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think that the existence of such mishaps would not entitle the tribunal to declare the election void by the common law of Parliament.

The Respondents contend that for the Petitioner to succeed he must establish that either -

- (a) The election was conducted so badly that it was not substantially in accordance with the law as to elections, so that it was invalid, whether the result was affected or not. In other words, was the election a sham or not an election at all. In Morgan v Simpson (1975) QB 151 Lord Justice Stephenson at pg.168 said:

“For an election to be conducted in accordance with the law there must be a real election ballot and no such departure from the procedure laid down by parliament as to make the ordinary man condemn the election as a sham or travesty of an election. Instances of such a substantial departure would be allowing voters to vote for a person who was not in fact a candidate on some legal ground or disenfranchising a substantial portion of qualified voters “

He made reference to the following:

- (i) For example see The Hackney case, Gill v Reed (1874) 2 O'M & H 77; in that case 2 out of 19 polling stations did not open (disenfranchising some 4,900 out of 41,000 voters, about 12%). The election was declared invalid.
- (ii) (See also the judgment of Belle J in Lindsay Fitzpatrick Grant (Tab 3 Vol. 1 at paragraph (51) and the judgment of the Court of Appeal in Quinn Leandro v Dean Jonas CA, No. 2011/018 (Tab 2 Vol.3)).
- (iii) Or, that there were irregularities by the Respondents and that these irregularities affected the result of the election (See Quinn Leandro v Dean Jonas CA, No. 201/018 (Tab 2 Vol. 3).

- (b) The Respondent contended also that there was a free and fair election and that the allegations in this case, even if accepted by the Court, do not make the election a sham or travesty. The question therefore; were there irregularities which affected the result of the election.
- (c) The Respondents submit that even if the Election Court finds that there were irregularities by the Second and Third Respondents, which is not admitted, the results were not affected. In relation to this submission the Respondents emphasize that there has been no practice of publishing the lists of objections or monthly revised lists. In fact, the evidence is that in 2007 and 2010 the Petitioner succeeded without the publication of these lists. Therefore, mere non-publication of the lists does not affect the election. Much more is required.
- (d) Further, the Respondents maintain that the Election Court ought to consider not only the conduct or omission of the Post Office but those of the voters who gave evidence to the effect that they had not resided at the postal addresses in St. John's in the year 2011 when the notices were sent by registered post. In addition, the undisputed evidence that the vast majority of the notices were returned by the Post Office regardless of the date when they left the Post Office ought not to be ignored by the Election Court. Voters who failed to notify the Electoral Office of a change of address within or outside St. John's cannot be heard to complain that they did not receive notices or were denied a right to be heard and vote.
- (e) In the alternative, the Respondents submit that in any event, the Election Court ought not, in view of the Petitioner's conduct, to set aside the election of the First Respondent.

I have already pointed out that there was reckless disregard by the Registration Officer of the importance of observing the rules of natural justice. The names of the voters who were removed from the list only occurred after hearings which were clearly in breach of the rules. The dates on which notices were lodged at the Post Office as gleaned from the date stamped on the Posting Lists places blame for late deliver not on the Post Office but on the Registration Officer. A notice registered at the Post Office on a date after the date fixed for the hearing can under no circumstances be expected to reach the voter 5 days before the hearing. To point to a change of address by the voter as the contributing factor is a proposition too extreme to maintain

Furthermore, to point to the conduct of the petitioner as I understand the submission, that he had contested elections in the past when there was as now no publication of list of objections and no publication of Revised Monthly Lists is to suggest that this somehow raises some type of estoppel or that non-compliance with election laws is common and accepted in Nevis has only to be stated to be rejected.

Mr. Mendes for the petitioner submitted:

- (i) That the election was conducted in violation of one of the basic principle of the Act i.e. that persons duly registered to vote must be permitted to vote, unless they have been removed from the list in accordance with the provisions of the Act.

- (ii) Two hundred and seven (207) voters were taken off the list in an election where the margin of victory was fourteen (14).
- (iii) Thirty eight witnesses have testified that if allowed to vote they would have voted for the petitioner, a number sufficient to overhaul the margin of victory. Twenty nine (29) of those witnesses resided in St. John's or resided abroad but entitled to vote in St. John's.

It cannot be seriously disputed that a number of irregularities took place in the period leading up to the election so that the electorate did not have the opportunity of electing the candidate of their choice. Furthermore, the fact of a narrow margin is obviously irrelevant to the question whether an irregularity affected the result - vide *Camnsell et al v. Rebecca et al* 1987 NWTR 186 (NWTSC).

The irregularities can be listed as follows:-

- (a) Failure to publish Revised Monthly List;
- (b) Failure to publish the list of objectors;
- (c) Failure to send notices to electors in time or at all for hearings;
- (d) Failure to observe the rules of natural justice in the determination of objections;
- (e) Failure to notify voters of the results of objection hearings;
- (f) Omission from the list of eight voters against whom objection had failed.

All the above are governed by the National Assembly Electors Act Chap. 2:01 and the Regulations.

The test Courts have applied in determining whether statutory provisions are mandatory or directory have been gleaned from a number of cases. In *Liverpool Borough Bank v. Turner* (1860) 29 LJ (CL) 827, Lord Campbell, Lord Chancellor said:

"in relation to the issue of implied nullification for disobedience of a statute, that the duty of the courts was "to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed". And in the well known case of *Howard v. Bodington* (1877) 2 PD 203 at 210 Lord Penzance observed that he was not sure that the language of mandatory and directory was the most fortunate language that could have been adopted to express the idea that it was intended to convey. He continued:

"Still, whatever the language, the idea is a perfectly distinct one. There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end."

And a little later at 211, after citing from *Liverpool Borough Bank v Turner* (supra) Lord Penzance said:

“...in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.”

This Court must therefore apply the test to determine whether the provisions applicable to the issues above were such that the intention of Parliament must have been that if they were not complied with the result would be a total failure to protect the constitutional right of voters.

I hold that there had been non-compliance with the mandatory provisions of the law. I think the short answer to this petition is whether by the action and/or inaction of the Supervisor of Election and the Registration Officer so substantial a section of the electorate was disenfranchised.

Are the claims of bias, bad faith and misfeasance a relevant consideration? Assuming the 3rd Respondent had done all she had done in good faith, would not the resulting disenfranchisement of so substantial a number of voters inevitably affect the outcome of the election...”

Lord Denning in *Morgan & Ors. -v- Simpson* (1974) 3 All ER 722 at 728 said:

“Collating all these cases together, I suggest that the law can be stated in these propositions: (1) If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected or not. That is shown by the Hackney case where two out of 19 polling stations were closed all day, and 5,000 voters unable to vote. (2) If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls – provided that it did not affect the result of the election. That is shown by the Islington case where 15 ballot papers were issued after 8 p.m. (3) But, even though the election was conducted substantially in accordance with the law as to elections, nevertheless if there was a breach of the rule or a mistake at the polls – and it did affect the result – then the election is vitiated. That is shown by *Gunn v. Sharp* where the mistake in not stamping 102 ballot papers did affect the result.”

Whether the 3rd Respondent acted in good faith or otherwise, the principal effect of her conduct was to produce this undesirable result. At the end of the day, the 2nd and 3rd Respondents had statutory duties which they either did not carry out or carried out in disregard of the fundamental obligation to protect and advance the right of the elector to vote. Should the result of the election stand in those circumstances? I think not.

It is clear to me and I am satisfied that a majority of the electors had been prevented from electing the candidate they preferred. The numbers speak for themselves. More than 200 voters were removed from the list and the margin of victory was 14. Additionally 38 voters have testified that had they been permitted to vote they would have voted for the petitioner. I have found that such evidence was admissible and that number alone was sufficient to exceed the margin of victory of the First Respondent.

In the *Quinn Leandro* case (*supra*) Rawlins CJ said at paragraph 128:-

- (128) "The decided cases show that an election Court will not invalidate an election on the ground that there was substantial non-compliance with electoral law if the breach of election s procedure stipulated by law is trivial. There must be such a substantial departure from election s procedure stipulated by law that would cause an ordinary person to condemn the election as a sham or travesty. A considerable departure is required. Accordingly, an election court would usually only invalidate an election on this ground if the judge is really satisfied that the breach is serious. The rationale is that the return of a member of the legislature by the electorate should only be invalidated in a clear case where the court has serious doubt that the election was a manifestation of the wishes of the electorate."

This case fits squarely into the category of case where there was a substantial departure from election procedures and I am satisfied that the breaches are serious.

THE PRAYER

At item 2 of the prayer, the petitioner seeks a declaration that the Electoral Commission acted in contravention of section 33(4) of the Constitution in failing to take steps to ensure that the persons listed in the First Schedule of the petition were allowed to vote and also failed to ensure that the 2nd named Respondent took steps to do so. The directive from the Commission to the Supervisor of Elections was set out in the letter dated the 26th May, 2011. The directive was in these terms:-

"The Commission in accordance with the National Assembly Elections (Amendment) Act 2007 as amended has determined that names of voters who had been reconfirmed and issued with appropriate National Identification Cards (NID) shall remain on the Voters List as at January 2011."

There is nothing in this directive that suggest that the Commission intended the names to remain on the list and the persons be allowed to vote at the July elections, the date for which had not been announced at that stage. The fact that the Supervisor of Elections had refused to follow the directive and this resulted in the persons on the First Schedule not being able to vote, in my view, cannot be attributed to the Commission.

It is my view that the Commission's directive was clear and only extended to restoring names to the list as it stood on the 31st of January, 2011. There was no directive that none of those persons could thereafter be objected to and removed once the proper procedure was followed. Furthermore, while the Supervisor of Elections is obligated to comply with the directions of the Commission, there is nothing in the Constitution relating to how those directions can be enforced.

The Petitioner has included in his prayer at Item 5 - "that the Petitioner may have such further or other relief as may be just". He has asked the Court on the basis of that prayer to order that the names of the voters who were unlawfully removed be restored. I agree with Mr. Astaphan that no such relief was pleaded

Such a prayer in the context of an election petition is much too general. It is not open to the petitioner to make such a general statement and at the end of the case seek to use it to support some specific relief

The petitioner has taken the unprecedented course to ask that costs be awarded against the Second and Third Respondents due to their conduct in the matter which he describes as egregious, inexplicable and reckless visitation of the law resulting in the disenfranchisement of hundreds of voters. While I share the view that the conduct of the 2nd and 3rd Respondents must be deprecated I do not wish to set a precedent in this case for the very reason why costs were not previously awarded.

In the premises,

- (i) The Nevis Island Assembly Election for the Constituency of Nevis 2 (Parish of St. John) held on the 11th day of July 2011 is hereby declared invalid and void;
- (ii) The order sought declaring that the Electoral Commission acted in contravention of section 33(4) of the Constitution in failing to take steps to ensure that the persons listed in the First Schedule of the petition were allowed to vote and also failed to ensure that the 2nd Respondent took steps to do so is refused.
- (iii) The order sought that the Court should order that the names of the voters who were unlawfully removed from the list be restored is refused.
- (iv) I declare that the petitioner's right to freedom of expression and his right not to be treated in a discriminatory manner by reason of his political opinions guaranteed under sections 12 and 15 of the Constitution of Saint Christopher and Nevis have been contravened by the failure of the Nevis Island Administration on its nightly Nevis News Cast to cover any of the political events organized by the Petitioner's political party during the campaign leading up to the election of July 11, 2011.
- (v) With respect to costs, I order that all parties should bear their own costs.

Lionel Jones.
Judge.

21 March, 2012

