

PAPER ON ASPECTS OF ELECTORAL REFORM

This paper addresses the following issues relating to the electoral process. These are in our opinion the key issues to the establishment of an improved electoral process which deters and limits the abuse now commonplace.

- A. Qualification for registration as a voter
- B. The registration process
- C. The dispute resolution process

A. QUALIFICATION FOR REGISTRATION AS A VOTER

The current law establishes as the qualifying criteria any of the following:-

1. Citizenship, age and residence in a constituency
2. Citizenship, age and domicile in a constituency
3. Commonwealth citizenship, age and residence in the Federation for 12 months or domicile and residence in the Federation at the date of registration

1 is hereafter referred to as the 'residence qualification'

2 is hereafter to as the 'domicile qualification' or 'the overseas voter qualification.'

3 is hereafter referred to as the 'Commonwealth citizenship qualification.'

1. RESIDENCE QUALIFICATION

Ordinary residence of a person is defined in the current law as "generally that place which has always been, or which he has adopted as, the place of his habitation or home, whereof when away from there he intends to return." That definition leaves the question to the subjective determination of the applicant for registration. There are a myriad of scenarios which we could outline to show how this definition can be abused and everyone agrees that it has been abused. Residence is a question of fact to be determined not only on the intention of the voter but on actual existing factual circumstances.

While therefore the definition must of necessity be general the rules governing the registration process must be tight enough to produce a proper determination of the question.

We recommend the Antigua provision in respect of 'ordinary residence' which is "Any question as to a person's residence on the dates for application for registration shall be determined in accordance with the general principles applied in determining questions as to a person's residence and, in particular, regard shall be had to the purpose and other circumstances, as well as to the fact, of his presence at, or absence from the address in question."

2. DOMICILE QUALIFICATION

The domicile qualification was introduced by the 1983 amendment to the electoral law. Regulation 6 of the Election Registration Regulations 1984 (SRO No. 5 of 1984) states that for purposes of registration, domicile means domicile of origin or domicile of choice. These are complex legal concepts and result in the expressions “ordinary residence” and “domicile” not being synonymous.

A domicile of origin is attributed to all persons at birth by operation of law and (in St. Kitts-Nevis where illegitimacy has been legally abolished) is the domicile of one’s father, or of one’s mother if one’s father is deceased at birth.

After attaining adulthood, every person is free to acquire a domicile of choice in substitution for that which he/she possessed immediately prior to such choice. There is no limit to the number of times a person may change their domicile of choice. Domicile of choice is acquired, and can be changed, by a person actually taking up residence at a particular place, coupled with the intention to live there permanently. Once there is the simultaneous existence of residence and intention to permanently remain, the law does not require such factual residence to be for any particular period. In addition, temporary absences from the address of one’s domicile of choice would not result in loss of one’s domicile of choice.

It will therefore be appreciated that use of the concepts of domicile of origin and domicile of choice as qualifying persons for registration to vote result in the franchise or right to vote being no longer rooted in residence.

The continued retention of these domicile concepts or principles in our electoral law will perpetuate precisely the mischief and “serious consequences” which the late Sir Lee L Moore Q.C. argued against as described in the The Labour Spokesman editorial of 2nd November 1983. Continued use of the domicile qualification in our electoral law would have the undesirable effects described by Sir Lee L Moore QC in 1983:

- “... the people living in St. Kitts-Nevis could find their wishes overruled by people living abroad.”
- “... subvert democracy, making the exercise of the franchise of no effect and giving rise to instability in the country.”

As Mr Moore put it: there are “differences between citizenship and the franchise, citizenship being concerned with allegiance and protection, the franchise being related to place of residence”, (Labour Spokesman editorial, 2 November 1983).

From his quoted comments in The Labour Spokesman, it is clear that Mr Moore expected that the changes made to the 1983 amending Act would have preserved actual residence as being a requirement for voter registration. The final wording of the 1983 amendment, coupled with the wording in the Election Registration Regulations, 1984 (see Regulations 5 and 6) frustrated such expectation and undermined

fundamental principles. It is necessary to examine the fundamental principles as they relate to this issue.

Domicile was, and continues to be, an inappropriate criterion for registration as a voter because of the tenuous connection with St. Kitts-Nevis, far less any particular constituency, that it requires. This weakness of connection is further exacerbated by Regulation 6 which appears to permit one to rely upon either domicile of origin or domicile of choice.

The concept of domicile is principally used in law to determine which territory's laws apply to regulate an individual's personal status, applicable inheritance rules and such like. For these purposes, under the general (ie. non-electoral) law:-

1. Nobody shall be without a domicile.
2. A person cannot have two domiciles. Domicile signifies connection with what has conveniently been called a "law district", ie. a territory subject to a single system of law.

We strongly recommend that the overseas voter qualification be abolished and that qualification be restricted to the residence qualification and the Commonwealth citizenship qualification. If however it is felt that the horse has already bolted the awful concept of domicile should be replaced by allowing citizens of St. Kitts-Nevis resident abroad to register in a constituency with which they have a 'real connection' such as place of birth (which can be verified from a birth certificate) or the last place of residence in St. Kitts-Nevis for more than 12 months as verifiable by documentary proof as in the case of the residence qualification. In addition, such residence should be verified by an affidavit of a person resident in St. Kitts-Nevis and on the voters list for that constituency. The questionnaire attached as Appendix A can be modified to suit this form of application. The applicant should himself/herself also swear an affidavit as to the truth of his/her answers to the questionnaire.

B. THE REGISTRATION PROCESS

In his judgment in the Lindsay Grant election petition Mr Justice Belle said at paragraph 57 "After listening to the submissions of counsel, reviewing the law and the various factual accounts, I am convinced that the process of registration of voters in St. Kitts and Nevis is seriously flawed. Indeed when a person registers as a voter to have their name placed on a voters list there appears to be no request for evidence of identity."

In our opinion the current regulations governing the process are lax and totally unsatisfactory. The registration officer is given wide latitude including the power to determine whether or not to ask for any supporting documents as to the residence or domicile of an applicant or whether to require the applicant to make a statutory declaration to support his claim. The absence of documentary evidence makes an absurdity of the review process, especially as the first adjudicator of claims and objections is the registration officer himself. Not only is there an appeal to Caesar from Caesar but there are no rules governing either stage of the process. This process is tailor-made for abuse.

We make the following recommendations to be included in new regulations:

1. There should be a standard questionnaire which each applicant claiming a residence qualification must complete at the registration office. An applicant should be allowed to bring with him/her one person to assist in completing the questionnaire. The questionnaire would impose a standard for all applicants. A model questionnaire is attached as Appendix A.

The purpose of questions 12 to 16 on Appendix A is to provide a deterrent to false statements of the applicant's address in 4. If he states an address in 4 but answers no to question 12 he could be exposed to a perjury charge if it is proven on objection that he does spend more than [36] hours per week at an address other than that in 4. It will also enable the registration officer to determine which of 2 addresses is the ordinary residence of an applicant who genuinely spends substantial time at more than one address.

2. The applicant should verify the truth of his/her answers to the questionnaire by an oath taken before the registration officer. Registration officers should for the purpose be made Commissioners for Oaths. This would be an incentive for accurate information to be provided with the deterrent of a charge of perjury for any applicant who lies in his answers to the questionnaire.

3. Each applicant should produce the following documents to the registration officer who should make copies of them for the applicant's file:

- a) Passport
- b) Driver's licence
- c) Latest utility bills for electricity, water, cable tv and fixed line telephone.

If the applicant does not produce any of these documents the registration officer should record that fact on the file and any reason proffered by the applicant for not having these documents. If he pays for utilities supplied to more than one address he should disclose this fact.

4. The registration officer should create a file for each applicant with the completed questionnaire and all supporting documents. The registration officer should write his determination of the application on a standard form. He should state his reasons if he refuses the application.

5. The file should be available to any person who pays a search fee of \$10. Fees collected in this way would assist in meeting the costs of the process.

6. In the event of an objection being made to the qualification of the applicant the person objecting should have the right to apply to the Court for an order requiring the Passport Office, the Social Security Board, or any of the utility providers to produce its records relating to the address of the applicant and if there are none, to so state.

The registration process should take place entirely within the Federation. Our reasons for this proposal are cost considerations for the public purse, transparency and public confidence.

C. THE DISPUTE RESOLUTION PROCESS

Disputes arise in one of two ways:

1. An applicant is refused registration by the registration officer and challenges that decision.
2. Any third party objects to the registration of the applicant.

Because of the standard and more thorough registration process than presently applies there should be no need for the registration officer to hear claims and objections. These should go directly to the High Court. The Judge should conduct a full hearing on the facts and law and should have available the file made by the registration officer and any affidavits filed and written submissions made by the parties to the claim or objection. The parties should appear before the Court in person and should have the right to Counsel, to call or subpoena witnesses and to cross examine the other party and his witnesses. Evidence in chief should be provided by way of affidavit. The parties should also file written submissions. These requirements would reduce the time taken by the Court to hear each claim or objection. The current rules of the High Court contain a workable process to facilitate speedy hearings of claims and objections via fixed date claim forms.

3. There should be an appeal to the Court of Appeal on a point of law only.

In the event of a re-registration for the completion of a new voters list the Government should request that the Chief Justice assign a High Court judge to sit exclusively for the hearing of claims and objections. This would facilitate the speedy resolution of disputes.

In this event also the period for filing claims and objections should be at least 30 days after initial publication of the list. Once a list is established the period for filing claims and objections can be reduced.

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CHARLES WILKIN, Q.C.

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J EMILE FERDINAND

21 August 2007

APPENDIX A

QUESTIONNAIRE

(Residence Qualification)

1. Full Name of applicant:

2. Age of applicant:

3. Citizenship(s) held by applicant:.....

4. Address of residence of applicant:.....

5. How long have you lived at that address:

6. Do you own the property/apartment/room at that address:

.....

7. Do you rent the property/apartment/room at that address:

8. If you do not own or rent, with whose permission do you occupy the property/apartment/room:

.....

9. What is your relationship to that person:

10. Do you pay for any of the following utilities provided to your above address - \checkmark or **X** as applicable.

Electricity -

Water -

Cable TV -

Fixed line telephone -

11. Are you registered with the Social Security Board? If so, what is your address as provided to the Social Security Board?

12. Do you have a valid St Kitts-Nevis Passport? If so, what is the number?

12. Do you spend more than [36] hours per week at any other address. If so, state that address:

13. Do you own or rent the property/apartment/room at that address?

14. If not, with whose permission do you stay at that address:

15. What is your relationship to that person?

16. Do you pay for any of the following utilities provided to that address:

Electricity -

Water -

Cable TV -

Fixed line telephone -

I _____ do solemnly swear that all answers and ***Name of Applicant***

information provided by me in the above questionnaire are true and correct and that I have not withheld or failed to disclose any information in answer to any of the above questions.

WARNING: Applicants are warned that any false answers and/or information included on this questionnaire can result in CRIMINAL PROSECUTION and the imposition of severe penalties, including fines and/or imprisonment.

Sworn by)
at) Signature of Applicant
this day of 2007)
Before me:

.....
Commissioner for Oaths

