

BARBADOS

SUPREME COURT OF BARBADOS

IN THE HIGH COURT OF JUSTICE

CV 1649/2017

BETWEEN:

SHIREENE MATHLIN-TULLOCH

FIRST APPLICANT

MICHELLE MELISSA RUSSELL

SECOND APPLICANT

**SHARON JULIET
EDGECOMBE MILLER**

THIRD APPLICANT

AND

THE CHIEF ELECTORAL OFFICER

FIRST RESPONDENT

THE ATTORNEY GENERAL

SECOND RESPONDENT

**ELECTORAL AND BOUNDARIES
COMMISSION**

THIRD RESPONDENT

Before the Honourable Sir Marston C.D. Gibson K.A., Chief Justice

2017: November 15

December 15

2018: January 29

February 26

Mr. Wilfred Abrahams in association with Mr. Brian L. Weekes for the First Applicant

Mr. Wilfred Abrahams in association with Ms. Alexandra Daniel and Mr. Gregory Nicholls for the Second and Third Applicants

Ms. Anika Jackson in association with Mrs. Deidre Gay McKenna and Ms. Kaila Headley for the Respondents

AND

CV 27/2018

BETWEEN:

EDDY DAVID VENTOSE

CLAIMANT

AND

THE CHIEF ELECTORAL OFFICER

RESPONDENT

Before the Honourable Sir Marston C.D. Gibson K.A., Chief Justice

2018: January 10

January 15

January 23

February 26

Mr. Elliot D. Mottley Q.C. in association with Ms. Faye Finisterre for the Applicant

Ms. Anika N. Jackson in association with Ms. Alison Burke for the Respondent

DECISION

Introduction

[1] In 1951 in Barbados, under the leadership of then Hon. Premier, later The Right Excellent Sir Grantley Adams, universal adult suffrage was finally ushered in. The process was begun by the enactment of the **Representation of the People (Amendment) Act 1950-40**, which was signed into law on 23 October 1950, and which itself amended the **Representation of the People Act 1901**, and completed by the enactment of the **Special Registration of Voters (General Assembly) Act 1951-1**, which became law on 16 February

1951. The long title of the 1951 Act was “An Act to make provision for the division of the Parishes and the City of Bridgetown into Registration Districts for the purposes of the preparation and revision in relation to each such parish and the City of Bridgetown as voters at an election of a member of the General Assembly for such parish and the City of Bridgetown for purposes connected therewith and incidental thereto.”

[2] Just over twenty years later, on 18 May 1971, while introducing for debate in the House of Assembly the Representation of the People Bill, which forms the substratum of our current law, the then Rt. Hon. Prime Minister, and later The Right Excellent Errol W. Barrow, described 1951 as “...a very significant year in the legislative history of Barbados, because in that year it was the very first election in which every man and woman over the age of 21 who was registered as a voter had the right to exercise his or her democratic privilege”, although, with characteristic bluntness, he also observed that

“Barbados regrettably, [was] the very last territory in the whole of the Commonwealth, even after St. Lucia, to introduce universal adult suffrage. Even though we had boasted of a common Parliament from 1629, it took us in our own slow, methodical way some 321 years before we could introduce universal adult suffrage, when we trusted the masses of this country sufficiently to do what was called at the time of the great Reform Act, 1848 ‘to take the leap in the dark to give the masses the vote.’”

(See, Official Report of the House of Assembly Debates, Hansard, Third Session 1966-1971, at p. 3041; emphasis added)

- [3] These two consolidated captioned actions do not involve the right of Barbadian citizens to vote but, rather, the right of Commonwealth citizens to vote in elections in Barbados and the conditions under which they can exercise this right. The four Applicants in these two matters claim that their qualification, and their eligibility, to be registered as voters, has been denied by the Respondent Chief Electoral Officer (“CEO”). As a result they have applied to this Court seeking relief pursuant to the provisions of the **Administrative Justice Act, Cap. 109B of the Laws of Barbados (“the AJA”)**.
- [4] They seek judicial review of the alleged “long standing” administrative policy or determination that the Electoral and Boundaries Commission (“EBC”), is only authorised to register as voters, Commonwealth citizens who are either citizens of Barbados or who are in possession of a permanent resident permit or an immigrant status permit.
- [5] Since both actions raise the same issues against, essentially, the same respondents, for the sake of efficiency and in the interest of judicial economy, the actions are consolidated (see, **Supreme Court (Civil Procedure Rules)**)

2008, Rules 26.1(2)(a) “the CPR”). CV 1649/2017 will be referred to as Action 1 and CV 27/2018 as Action 2.

The Parties

Action 1

[6] The First Applicant, Mrs. Shireene Ann Mathlin-Tulloch (“the First Applicant” or “Mrs. Mathlin-Tulloch”) was born in Guyana on 9 February 1968 and is a citizen of Guyana. She is also a citizen of Grenada by descent and has resided and worked in Barbados for sixteen years. She is a Commonwealth Citizen, as will become clear shortly.

[7] The Second Applicant, Ms. Michelle Russell, (“the second applicant” or “Ms. Russell”) is also a Commonwealth Citizen having been born in Jamaica on 9 April 1980, and she has resided and worked in Barbados for a period of fourteen years. The Third Applicant, Mrs. Sharon Edgecombe Miller, (“the third applicant” or “Mrs. Edgecombe-Miller”) was born on 6 November 1974 in the British Overseas Territory and Island of Montserrat. She is married to a citizen of Barbados and has two children who are also citizens of Barbados. Mrs. Edgecombe Miller has resided and worked in Barbados for seventeen years.

[8] All three Applicants possess Barbados Identification Cards with National Registration Numbers the last four digits of which demonstrate the fact that they are non-nationals.

[9] It should be noted that, initially, the action was commenced by Mrs. Mathlin-Tulloch, and later Ms. Russell and Mrs. Edgecombe Miller sought to be joined as applicants.

[10] The First Respondent is the CEO of the EBC, Ms. Angela Taylor, who was appointed on 1 September 2007. She is also the Chief Registering Officer by virtue of **section 12** of the **Representation of the People Act Cap 12 of the Laws of Barbados (“the ROPA”)**.

[11] The Second Respondent is the Attorney-General of Barbados and the Third Respondent is the EBC and is established under **section 41A** of the **Constitution of Barbados**. The EBC is responsible for the direction and supervision of the registration of voters and the conduct of elections in every constituency.

Action 2

[12] The Applicant, Prof. Eddy Ventose, is a Citizen of St. Lucia. He is over the age of eighteen years, having been born in the island of Martinique on and has resided and worked in Barbados for the last eleven and a half years. He has

been employed at the University of the West Indies since 2006 where he is a professor of law with some expertise in Public Law and Intellectual Property.

- [13] The First Respondent in this action is Ms. Taylor, the CEO of the EBC who, as noted before, is also the Chief Registering Officer, pursuant to **section 12** of the **ROPA** having been appointed on 1 September 2007.

Background

Action 1

- [14] The facts in relation to this action are gleaned from (i) the Affidavit in Support of the Application for Judicial Review sworn to by Mrs. Mathlin-Tulloch on 2 November 2017; (ii) the Affidavit in Support of the Application for Judicial Review and Joinder as a Party sworn to by Ms. Russell and filed on 10 November 2017; (iii) the Affidavit in Support of the Application for Judicial Review and Joinder as a Party sworn by the Third Applicant filed on 10 November 2017; (iv) the Affidavit in Response to that of the First Applicant sworn by the First Respondent filed on 1 December 2017; (v) the Affidavit in Response to that of the Second Applicant sworn by the First Respondent filed on 1 December 2017; (vi) the Affidavit in Response to the Affidavit of the First Respondent sworn by the First Applicant filed on 4 December; and (vii) the Supplemental Affidavit of the Third Applicant filed on 8 December 2017.

[15] Mrs. Shireene Mathlin-Tulloch stated that she went to the office of the EBC on 23 August 2017 and indicated that she was desirous of being registered as an elector. She presented her Barbados National Identification Card to the officer present, but was informed by the registering officer that she was not entitled to be registered as an elector, as she currently resides in Barbados under the status of CARICOM Skilled National. She was further advised that in order to qualify for registration she would need to hold the status of Immigrant, Permanent Resident or Citizen of Barbados.

[16] She thereafter sought the advice of Mr. Wilfred Abrahams, attorney-at-law, who sent a letter addressed to the Chairman of the EBC, dated 28 August 2017. Mr. Abrahams' letter indicated that on the afternoon of the 23 August 2017, the same day on which Mrs. Mathlin-Tulloch had visited the office of the EBC, he had called and spoken to the Deputy Chief Electoral Officer ("DCEO") to whose attention he had drawn the provisions of **section 7** of **[ROPA]** and highlighted the fact that Mrs. Tulloch had resided in Barbados for over 16 years, "was a citizen of Grenada and as such a Commonwealth Citizen and qualified under [ROPA] to be registered to vote." The letter continued that the DCEO had informed Mr. Abrahams "that the Department was only authorised to register, as voters, persons holding the status of

Citizen, Permanent Resident and Immigrant and that the Department did not have the authority to do otherwise without the permission of the [EBC].”

[17] After “advis[ing]” that “denying qualified applicants on the basis of the fact that they hold the status of a CARICOM Skilled National is unlawful and illegal and a breach of the rights of that individual under the law”, the letter “ask[ed] that proper instructions be given to those responsible for registering qualified applicants to be entered onto the voters list in Barbados to apply the law and not to seek to unlawfully disqualify those who are entitled to be registered as voters in Barbados.” Mr. Abrahams threatened to apply to the Supreme Court on behalf of Mrs. Tulloch and “on behalf of the entire class of persons affected by this misguided policy of the Department.”

[18] The CEO responded by letter dated 26 September 2017, stating that “I am directed to confirm that, on the matter of Registration to be an Elector, the Electoral Department is currently authorised to register as voters, persons who hold the status of citizen, permanent resident and immigrant.” She did not refer to the statute or regulations or explain the basis of her current authorisation.

The Proceedings

[19] By Fixed Date Claim Form filed on 2 November 2017, accompanied by a Certificate of Urgency, Mrs. Mathlin-Tulloch sought to challenge the policy

of the EBC. The Application was certified by this Court as urgent on 6 November 2017 and an Affidavit of in Support of the Certificate of Urgency was subsequently filed on the following day, 7 November 2017. The Certificate of Urgency was predicated on the fact that the date on which an election is to be held is determined solely by the Rt. Hon. Prime Minister and such an election could be called at any time.

[20] In the Fixed Date Claim Form, Mrs. Mathlin-Tulloch sought relief pursuant to **the AJA** on the following grounds:

- i. As a Commonwealth Citizen having legally resided in Barbados for a period of sixteen (16) years the Applicant is entitled to be registered as an elector pursuant to **section 7 of the Representation of the People Act Cap 12** of the Laws of Barbados.
- ii. The decision of the Respondent not to register the Applicant as an elector pursuant to **section 7 of the Representation of the People Act Cap 12 of the Laws of Barbados** is an administrative omission which is:
 - a. contrary to law;
 - b. a failure to satisfy procedures required by law;
 - c. an abuse of power;
 - d. executed on instructions from an unauthorised entity;
 - e. in conflict with the policy of an Act of Parliament;
 - f. predicated on an error of law; and/or
 - g. an omission to perform a duty.
- iii. The First Respondent took into account statutorily irrelevant considerations and misdirected herself in the purported exercise of her functions in refusing to register the Applicant as an elector in accordance with the

Representation of the People Act Cap 12 of the Laws of Barbados;

- iv. In taking into account statutorily irrelevant considerations the First Respondent acted outside the powers conferred upon her by the Representation of the Peoples Act Cap 12 of the Laws of Barbados;
- v. Unless the First Respondent is restrained by this Honourable Court from refusing to register persons as electors in accordance with the conditions stipulated in section 7 of the Representation of the People Act Cap 12 of the Laws of Barbados, the First Respondent will continue on her path of acting arbitrarily, unlawfully and unreasonably.

[21] On the basis of these grounds, she sought the following orders:

- i. A Declaration that the First Claimant having satisfied the conditions precedent as stipulated under **Section 7 of the Representation of the People Act, Cap 12 of the Laws of Barbados** is entitled to be registered as an elector;
- ii. An Order of Certiorari to quash the decision of the First Respondent to refuse to register the Claimant as an elector;
- iii. An Order of Mandamus mandating that the First Claimant be registered as an elector pursuant to **Section 7 of the Representation of the People Act, Cap 12 of the Laws of Barbados**;
- iv. An Injunction restraining the First Respondent whether by herself and/or her agents or otherwise howsoever from refusing to register persons as electors otherwise than upon the grounds and in accordance with the conditions stipulated under **Section 7 of the Representation of the People Act, Cap 12 of the Laws of Barbados**;
- v. An Order that the costs of and incidental to this Application be paid by the Respondents; and
- vi. Such further and/or other Relief as may be deemed fit.

[22] By Application filed on 10 November 2017, Ms. Russell and Mrs. Edgecombe Miller sought an order adding them as parties to the proceedings pursuant to **Rule 19.3 (1) of the Supreme Court of Barbados (Civil Procedure) Rules, 2008 (“CPR”)**, primarily on the basis that the issues to be considered and orders sought are similar to those of the First Applicant. In addition to the relief sought by Mrs. Mathlin-Tulloch, they sought the following orders:

- i. A mandamus injunction against the Respondents herein requiring the First Respondent and/or the servants and/or the agents of the First Respondent to amend the Registrar of Electors and include all such persons who qualify for registration as electors as prescribed by **Section 7 of the Representation of the People Act, CAP 12 of the Laws of Barbados.**
- ii. A mandamus injunction against the Respondents herein requiring the First Respondent and/or the servants and/or agents of the First Respondent to amend the Register of Electors and include the names of the Claimants.

[23] By Order made on 27 November 2017 at a Case Management Conference, (CMC), I directed that Ms. Russell and Mrs. Edgecombe Miller be added as parties in this matter, and that the EBC be added as the Third Respondent. At the same CMC, the Applicants had indicated that they wished the application to be certified as a class action so that the matter could be determined definitively for several others similarly situated. They were ordered to file and serve their Application for their appointment as representative parties

pursuant to **Part 21.1 of the CPR**. This Application was duly filed on 16 November 2017.

[24] In her Affidavit in support of her Application, the Second Applicant, Ms. Michelle Russell, deposed that she, being a Commonwealth Citizen over the age of 18, of sound mind, telephoned the Electoral and Boundaries Department on 31 October 2017, to inquire whether her name was present on the register of electors. She was advised that her name did not so appear. When she asked for an explanation, the officer on the telephone responded that only persons who held the status of permanent resident, immigrant or citizen could be added to the register. Ms. Russell stated that she was then transferred to the DCEO, who confirmed the policy of the EBC and indicated that nothing could be done about her complaint.

[25] The Third Applicant, Mrs. Sharon Edgecombe Miller, indicated in her affidavit in support that her interest in being registered had predated that shown by the other two applicants. She deposed that she is a Commonwealth citizen, being over the age of 18 and of sound mind. In 2012, she telephoned the EBC, and enquired whether she was registered to vote in the then upcoming elections which were slated to be held on 21 February 2013. Mrs. Edgecombe Miller was then told that she was not eligible to be registered, as per the policy of the EBC. She did not pursue the matter further at that time.

[26] However, recently, Mrs. Edgecombe Miller again sought to ascertain whether the EBC's policy remained as was previously stated in 2012, and she telephoned the EBC to enquire about the procedure to register as an elector to vote in the upcoming elections. She was again informed by an officer of the EBC that she was not eligible to be registered and vote, and that her status would have to be changed to permanent resident, immigrant or citizen, to enjoy the privilege of voting.

[27] In her affidavit in response, the CEO, Ms. Angela Taylor, stated the First, Second and Third Applicants are named in the National Register which is based on national registration under the **Statistics Act, Cap 192 of the Laws of Barbados** but they are not listed in the Register of Electors which is derived from the National Register which lists all duly registered electors. This distinction in the First Respondent's view is significant in that neither holding a Barbados Identification Card nor a CARICOM Skilled National Certificate, as the three applicants do, confers a right to be registered as an elector, or is evidence of being a duly registered elector.

[28] Ms. Taylor further stated that to date, none of the Applicants had submitted an application in the prescribed form, or at all, to the EBC in accordance with the established procedure for registration as an elector. Further, there was no

written request for information regarding registration status from the First, Second or Third Applicants to date.

[29] Ms. Taylor deposed that no decision had ever been made by or on behalf of the First, Second or Third Respondents to refuse to register the Applicants as electors, and that the remedies sought by the Applicants ought to be refused.

Background

Action 2

[30] By Fixed Date Claim Form accompanied by a Certificate of Urgency and Affidavit in Support, filed on 10 January 2018, the Applicant in this matter, Prof. Eddy Ventose, applied for judicial review and sought the following relief against the CEO:

- i. A declaration that any person who satisfies the conditions laid down in **section 7 of the Representation Act**, Cap 12 of the Laws of Barbados is qualified and, as such, is entitled as of right to be registered as an elector;
- ii. A declaration that the Applicant has satisfied the conditions laid down in **section 7** of the Act and as such, is qualified and entitled as of right to be registered as an elector;
- iii. An order of mandamus requiring the Respondent to register the Applicant as an elector pursuant to **section 7** of the Act since the Applicant has satisfied the conditions laid down by **section 7**;
- iv. Such further or other relief; and Costs.

[31] The grounds on which this relief was sought are as follows:

- i. That the decision or determination or administrative act of the Respondent or her agents is
 - a. contrary to law
 - b. fails to observe procedures required by law;
 - c. an abuse of power;
 - d. in conflict with an Act of Parliament i.e. the Representation of the People Act and/or Constitution of Barbados;
 - e. an error of law;
 - f. a breach of or omission to perform a duty under the Act.

[32] In his affidavit, the Applicant deposed that he is a Commonwealth Citizen, as he is a citizen of St. Lucia. He is over the age of eighteen years having been born on 28 December 1976. Prof. Ventose deposed that he had lawfully resided and worked in Barbados for the past eleven and a half years since 2006 as a Professor of Law at the Cave Hill Campus of the University of the West Indies. He further stated that he currently resides at 117 Husbands Heights in the parish of St. James within the constituency of St. James South and has resided there since 2010. He further deposed that he is a person of sound mind and not currently undergoing or has ever undergone a sentence of imprisonment in Barbados or in any other country.

[33] Prof. Ventose stated that on 8 October 2013 he attended the Electoral Office to apply for the replacement of his Barbados National Identification card. While there, he enquired of Mr. Charles Haynes, the officer present, whether he could register as an elector in Barbados. This request was refused, as Mr.

Haynes stated that a holder of a permit to reside and work in Barbados as a CARICOM Skilled National was not entitled to be registered and vote in Barbados. On 18 October 2013, Prof. Ventose's attorney-at-law, Ms. Faye Finisterre, wrote a letter to the CEO requesting a statement of the reason(s) for the refusal of her client's registration as an elector in Barbados.

[34] Approximately four years later, on 9 October 2017, Prof. Ventose attended the Electoral Office to register as an elector in Barbados. His request was refused and again, he was told by the officer present that a holder of a permit to reside and work in Barbados as a CARICOM Skilled National was not entitled to be registered to vote in Barbados. He was told that the only persons entitled to vote are Barbadian citizens, or permanent residents.

[35] On 4 January 2018, the Applicant returned to the Electoral Office seeking to be registered as an elector. This time, he was given a form, which he completed and submitted to the Electoral Office. To date, the Applicant has received no response to the letter of his attorney-at-law on 18 October 2013 or to his application.

The Contentions of the Applicants

Action 1

[36] Counsel for the Applicants argued that the administrative policy or determination of the EBC to register as electors only citizens of Barbados,

permanent residents, or immigrants, purports to impose a fetter or requirement on the issue of the eligibility of Commonwealth citizens to be registered as electors which is not imposed under the **ROPA**.

[37] Counsel contended that they all qualify under **section 7** of the **ROPA** to be registered as electors and are not disqualified by virtue of any characteristic stipulated under **section 8** of the **ROPA**.

[38] Counsel further contended that the administrative policy, determination or act of the EBC as it relates to the registration of Commonwealth Citizens on the register of electors in Barbados was unlawful in so far as it *inter alia*: (i) is contrary to law; (ii) is in conflict with the **ROPA**; (iii) is predicated on an error of law; (iv) took into account irrelevant considerations, (v) constitutes a fetter of discretion, and (vi) is an abuse of power.

[39] Additionally, counsel for the Applicants asserted that the said administrative policy, determination or act was amenable to judicial review pursuant to **Section 3 of the AJA** and that the Applicants have legitimate standing to bring this action before the Court under **section 6 of the AJA** either in their own right or in the public interest. According to counsel, the Court may therefore exercise its supervisory jurisdiction to review the said administrative policy, determination or act of the EBC.

[40] Counsel for the Applicants submitted that there is no provision in the **AJA** or in the rules of the Court that raises any jurisdictional bar so as to exclude an application of judicial review on the basis that an Applicant has an alternate means of redress. In any event, counsel maintained that any possible means of redress within the statutory framework of the **ROPA** would require an objection to the issue of non-registration of an applicant for registration to be heard by the Chief Electoral Officer, and not in relation to an application in relation to the said impugned policy by the Electoral Department which the Applicants contend is *ultra vires*.

[41] Counsel also contended that the issue of the Applicants qualifying to enter and work in Barbados as CARICOM Skilled Nationals, which status is endorsed in their respective passports, is irrelevant to the issue as to whether they, as Commonwealth Citizens, are qualified to be registered as electors in Barbados and more importantly the legality of the impugned policy of the EBC.

Action 2

[42] Counsel for Prof. Ventose submitted that an interpretation of **Section 7** of the **ROPA** suggests that, once a person satisfies the conditions laid down by that section, that person is qualified to be registered as an elector for the constituency and is entitled as of right to be so registered. Counsel cited the Eastern Caribbean Court of Appeal decision of **George Rick James v Ismay**

Spencer and Lorna Simon (Civil Appeal No. 27 of 2004) to support the submission that so long as the statutory requirements are met, no discretion exists on the part of the public authority.

[43] It was further submitted that the policy on which the Respondent sought to rely has no legal basis and usurped the position of Parliament. The **ROPA** confers no discretion on the EBC in respect of registration of qualified electors and therefore to import additional requirements such as possession of a permanent residence permit and an immigrant status permit, to determine the residency criteria, fetters the exercise of the statutory duty and is a derogation of the grant of this duty to the Chief Immigration Officer.

[44] In relation to this requirement based on the long standing policy of the EBC, counsel argued that any policy guidance, which is inconsistent with a statutory duty, cannot be upheld. Counsel distinguished the Jamaican case of **Thompson v Forrest (1967) 11 WIR 296** where the policy of the public body requiring the applicant to be photographed and finger-printed was expressly required in the statute and thus, unlike the EBC in this case, that policy had a statutory genesis.

[45] Counsel submitted that a declaration was an appropriate remedy as the authority was demonstrably unsure of its function and duty and counsel cited

Islington London Borough Council v Camp [2004] LGR 58 in support of this.

The Contentions of the Respondents

[46] Counsel for the Respondents made submissions in relation to both actions, which are similar to a significant degree and will be set out together. Counsel's main submissions were that (i) the Applicants have no *locus standi*; (ii) there was no act or omission by a public authority; and (iii) all remedies had not been exhausted by the Applicants. Therefore, counsel submitted that there are no grounds for judicial review and the claim before the Court is an abuse of process and should be struck out.

[47] Counsel made further submissions as it relates to the Applicants' status as CARICOM Skilled Nationals, as well as, on the issue of comity, identifying that there is no comity in relation to regional legislation on the issue of the free movement of skilled persons. This discourse however, in the Court's view, was of little relevance to the present litigation other than as noted below.

[48] Counsel for the Respondents addressed the issue of the policy and submitted that although the Applicants are Commonwealth Citizens, this fact does not, without more, entitle them to be registered as electors.

[49] The Respondents claim that the policy being enforced is legitimate, as the determination of residency for the requisite period of three years can only be

authenticated and/or determined by the Immigration authorities. Permanent residency and immigrant status has been used by the EBC to determine the three year residency requirement entitling Commonwealth citizens to vote.

[50] The premise underlying the EBC's policy is that holders of CARICOM Skilled National Certificates can relocate at will, and as such this category of persons has not been acknowledged as having an acceptable form of residency, to enable their qualification in respect of residency under **Section 7** of the **ROPA**. The respondents relied on **Sagnata Investments Ltd. v Norwich Corporation [1971] 2 Q.B. 614** that an authority may lay down a general policy, provided that it is reasonable, fair and just to apply.

[51] Further, counsel for the Respondents submit that the Applicants have not exhausted their administrative remedies and as such should not be permitted to invoke the remedy of judicial review. The procedure for registration as elector having not been utilised by the Applicants, rendered the process of judicial review as premature. Counsel further submitted that the procedure as set out in **Section 42** of the **Representation of the People (Registration of Electors) Regulations, 1990 (the Regulations)** should first be exhausted.

[52] It is the submission of counsel for the Respondents also, that the relief sought by the Applicants is improper as the role of the court in a judicial review proceedings is to ensure due observance of the law, and not to usurp the

authority's function by substituting the decision of the Court for that of the decision-maker.

Issues

[53] The following issues arise to be determined in both actions: (i) whether the Applicants have *locus standi* to bring an action for judicial review; (ii) the second issue concerns whether the Applicants are entitled to judicial review; and (iii) what remedies are appropriate in the circumstances, if any.

[54] The court must also determine if the Applicants in Action 1 are entitled to be appointed as representative parties pursuant so **CPR Part 21.1**.

The Applicable Law

[55] Before I launch into the discussion of the issues and the applicable law, it is important, in my respectful view, to give a little historical background to the right of Commonwealth Citizens to vote in elections in Barbados. This is because the CEO spoke of the 'longstanding policy' and I thought it best to examine the right to vote, at least since the dawn of universal adult suffrage in this nation.

[56] The right of Commonwealth citizens to vote in Barbados has existed since the enactment of the **Representation of the People Act 1950-40** which, as noted before in my prefatory remarks in this judgment, ushered in universal adult suffrage. **Section 3(1)** of the 1950 Act replaced **section 3** of the

Representation of the People (Amendment) Act 1943 and provided that “*every subject of His Majesty, his heirs and successors* of full age and not subject to legal incapacity, who has the requisite residence qualification, shall be entitled to be registered as a voter and, while so registered, to vote at an election of a member or members to serve in the General Assembly of this island for a parish or the City of Bridgetown (hereinafter in this section referred to as a ‘constituency’). . .” (Emphasis added)

[57] **Section 3(2)** of the 1950 Act provided that “a person, in order to have the requisite residence qualification for a constituency – (a) must, on the day on which he or she makes a claim to be registered, be residing in premises in such constituency; and (b) must, during the three months immediately preceding such day, have resided in the premises in such constituency.”

[58] The **Representation of the People Act 1957-50** provided, in **section 6(1)** that “the persons entitled to vote as electors at an election in any constituency shall be those ordinarily resident there on the qualifying date, who on that date and on the date of the poll are twenty-one years of age or over, and not subject to any legal incapacity to vote and *British subjects*. . .” (my emphasis). The section contained the proviso “that a person shall not be entitled to vote as an elector at an election unless registered in that part of the register to be used at the election. . .”

- [59] The current formulation of the right of Commonwealth citizens to vote in Barbados was first set out in **clause 6** of the **First Schedule, Part II** of the **Representation of the People (Amendment) Act 1969-17** under the rubric “House of Assembly Franchise and Registration of Electors: Qualification of Electors”. **Section 6(1)** provided that “a person is entitled to vote as an elector at any election in any constituency who on the qualifying date is – (a) a Commonwealth citizen; (b) eighteen years of age or over; (c) ordinarily resident in that constituency; (d) not subject to any legal incapacity to vote.”
- [60] **Clause 7** of the **Schedule** provided that “a person is disqualified from voting and is incapable of being registered as an elector and shall not vote or be so registered, who – (a) is a person found or declared to be a person of unsound mind or a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness by virtue of any enactment; or (b) is undergoing any sentence of imprisonment in Barbados; or (c) is under sentence of death imposed on him by a court in any part of the Commonwealth or under sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or under some sentence substituted therefor by competent authority and has not suffered the punishment to which he was

sentenced or received a free pardon therefor; or (d) is subject under any enactment to any incapacity to vote at an election.”

[61] **Section 8(1)** provided that “subject to the provisions of this Act and any enactment imposing any disqualification for registration as an elector, every person who is entitled to vote as an elector at an election in a constituency is entitled to be registered in the register of electors to be used at that election.” What is clear is that any Commonwealth citizen who was ordinarily resident in Barbados, and had been resident in a constituency for three months, was entitled to vote in an election in Barbados.

[62] Two years later, that formulation became **section 7** of the **Representation of the People Act 1971** which still forms the substratum of **Cap 12 of the Laws of Barbados**. It is interesting to note that, in introducing the Bill that subsequently became the 1971 Act, the then Prime Minister Rt. Hon. Errol Barrow stated, as a change to the 1969 Act “which will be in effect for the first time”, that “a Commonwealth citizen instead of being automatically entitled to be registered will have to be a resident in this country *legally* for a period of three years before he can be included on the register.” (See, Official Report of the House of Assembly Debates, Hansard, Third Session 1966-1971, at p. 3049; emphasis added). Hence, the one major change made to the new section 7 was the inclusion of a residency requirement for

Commonwealth citizens of three years residence in Barbados and which is now section 7(1)(b). The statute nowhere defines the type of residency required and other than the language of our National Hero, that the Commonwealth citizen must have been resident here “legally”, there is no other qualifier in the Act on the type of residency of such citizens. I turn now to set out the current law governing the right of Commonwealth citizens to vote in Barbados.

[63] The relevant provisions of the **ROPA** and the **Representation of the People Regulations** are as follows. **Section 6 (1)** of **ROPA** provides that:

“Subject to this Act, a person is entitled to vote as an elector at an election in a constituency if on polling day he is qualified to be an elector for that constituency and is on that day registered in the register of electors to be used at that election in that constituency.”

[64] A “qualified person” is defined under **Section 2** as any person who is qualified to be registered as an elector and entitled to vote as such. **Regulation 9 (1)** of the **Representation of the People (Registration of Voters) Regulations 1990** mandates that “a person who is qualified to be registered as an elector *shall* make application in the Form 1 set out in the First Schedule to the registering officer of the polling district in which he resides.” (Emphasis added)

[65] **Section 7 (1) of ROPA** outlines the qualifications which entitle a person to vote as an elector in Barbados as follows:

“Subject to this Act and any enactment imposing any disqualification for registration as an elector, a person is qualified to be registered as an elector for a constituency if, on the qualifying date he

- a) is a citizen of Barbados; or
- b) is a Commonwealth citizen (other than a citizen of Barbados) who has resided in Barbados for a period of at least three years immediately before the qualifying date and
- c) is 18 years of age or over; and
- d) has resided in that constituency for a period of at least 3 months before that qualifying date or, but for the circumstances entitling him to vote at a Mission, would have been resident at the address at which he was ordinarily resident in that constituency immediately before leaving Barbados.”

[66] **Section 8** sets the criteria which disqualifies a person from being registered as an elector. The section provides inter alia that a person is disqualified from being registered as an elector if he is (i) a person found or declared to be of unsound mind; or (ii) undergoing any sentence of imprisonment in Barbados; or (iii) under a sentence of death imposed on him by a court in any part of the Commonwealth; or (iv) under any enactment, disqualified for registration as an elector.

[67] The statutory framework also provides a mechanism for unsuccessful applicants to object to the refusal of their application in **section 16 (1) and (2)** of the **ROPA**. Those sections state that:

“(1) All claims for registration made by a person whose name does not appear in the register, the revised register of electors or the register for elections and all objections to the registration of persons whose names appear in the registers of electors and the register of foreign service electors, as the case may be, shall be determined in accordance with the regulations

by the appropriate registering officer acting with respect to the constituency to which the register in question relates.

(2) Notwithstanding subsection (1), when a claim thereunder had been disallowed, the registering officer may in accordance with the regulations refer the matter to the Commission whose decision shall be final.”

[68] The procedure for making any such claim or objection is laid out in **regulations 42 (1) and (2)** as follows:

“(1) A claim or objection, which may be in the Form 1 or 12 set out in the First Schedule, as the case may be, shall be in writing, shall state the name, occupation and address of the claimant, or, as the case may be, the objector, and, in the case of an objection, of the person objected to, and shall specify the claim or objection and give full particulars in support thereof.

(2) Claims and objections shall be made available for inspection at the address of the registering officer until completion of the determination of claims and objections pursuant to these Regulations.”

[69] The term residency is defined in **regulations 6 and 7** of the **Regulations. Regulation 6** provides:

“The place of ordinary residence of a person is, generally, that place which has always been, or which he has adopted as, the place of his habitation or home, whereto when away from there he intends to return. Specifically, when a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where the person sleeps.

[70] **Regulation 7** provides that

“Generally, a person's place of ordinary residence is where his family is; if he is living apart from his family in another place, the place of ordinary residence of such person is such other place. Temporary absence from a place of ordinary residence does not cause the loss or change of place of ordinary residence: Provided that any person who has more than one place of ordinary residence may elect in respect of which place he desires to be registered.”

[71] The Schedule under the **Commonwealth Countries Act Cap. 16A** which specifies the countries which are Commonwealth Countries includes the

United Kingdom. It is not disputed that all the Applicants in Action 1 are Commonwealth Citizens having been born in Guyana, and Jamaica respectively since those countries are named in the **Schedule to Cap 16A**. The Court notes that, with regard to Mrs. Edgecombe-Miller, Montserrat where she was born and of which she is a citizen remains under British Rule and as such is a British Overseas Territory. Accordingly, Montserrat being a territory of the United Kingdom, qualifies as a Commonwealth Country. Clearly she is a Commonwealth Citizen. There is also no dispute that the Claimant in Action 2, Prof. Ventose, being a citizen of St. Lucia is also a Commonwealth Citizen. Therefore, all of the Applicants have established that they are Commonwealth Citizens.

[72] It will be convenient to set out here, as well, the relevant provisions of the **AJA**. **Section 3** of the **AJA** provides that “An application to the Court for relief against an administrative act or omission may be made by way of an application for judicial review in accordance with this Act and with rules of court.” **Section 6** of the **AJA** provides that the Court may on an application for judicial review grant relief in accordance with this Act:

- a) to a person whose interests are adversely affected by an administrative act or omission;
- b) to any other person if the Court is satisfied that that person’s application is justifiable in the public interest in the circumstances of the case.

[73] The terms “act” and “administrative act or omission” are defined in **section 2** of the **AJA** respectively. The relevant parts of that section read:

“act” includes any decision, determination, advice or recommendation made under a power or duty conferred or imposed by the Constitution or by any enactment;

“administrative act or omission” means an act or omission of a Minister, public official, tribunal, board, committee or other authority of the Government of Barbados exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or by any enactment.”

[74] **Sections 5 (1) and (2)** of the **AJA** set out the remedies available on an application for judicial review. These remedies are as follows:

- (a) certiorari, for quashing unlawful acts;
- (b) prohibition, for prohibiting unlawful acts;
- (c) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.

(2) The Court may, having regard to the scope of the remedies mentioned in subsection (1), grant in addition or alternatively

- (d) a declaratory judgment;
- (e) an injunction;
- (f) restitution or damages in money; or
- (g) an order for the return of property real or personal.

[75] I turn now to consider the issues raised in this matter.

Discussion

A. The Applicants’ *locus standi*

[76] Judicial review is the mechanism by which courts are able to review acts or omissions of public officers or bodies which are challenged by an aggrieved person.

[77] In the text, **Principles of Judicial Review (1999, Sweet & Maxwell)** by **De Smith, Woolf and Jowell**, at p. 3, the learned authors articulated the importance of judicial review as follows:

“In all developed legal systems there has been recognition of a fundamental requirement for principles to govern the exercise by public authorities of their powers. These principles provide for a basic protection for individuals and prevent those exercising public functions from abusing their powers to the disadvantage of the public...Judicial review provides just one of a number of legal control of administrative action.”

[78] Counsel for the Respondents contend, in relation to Action 1, that no decision had been made by the Respondents and/or their servants/agents, to refuse to register the Applicants as electors, since the Applicants failed to submit an application in the prescribed form, and that accordingly, there was no adverse effect on the Applicants.

[79] In relation to Action 2, counsel for the Respondents argued that notwithstanding that Prof. Ventose, submitted a written application to the EBC, he failed and/or refused to await a decision from the EBC regarding his application and failed to make a written request for information regarding his registration status. As a result of this, no decision had been made in this action in which they considered to be premature.

[80] Counsel for the Respondent therefore argued in both actions that the applications of the Applicants for judicial review were premature and should not be entertained by the court. Accordingly, the question that arises is

whether there was an administrative act or omission made by the CEO and/or the EBC in this matter.

[81] At issue here is whether, at this stage, the applicants possess *locus standi* to bring on their applications. It should be observed here that, generally, discussion of *locus standi* has arisen in cases where the applicants seek declaratory relief. This is due to the reluctance of common law courts to give what can be perceived as advisory opinions. This was made clear in the celebrated decision of the House of Lords in *Gouriet v Union of Post Office Workers* [1978] AC 435. In the decision of the Eastern Caribbean Court of Appeal in *Francois v Attorney General of St. Lucia*, LC 2004 CA 3, Rawlins JA, as he then was (later Sir Hugh Rawlins CJ), noted, at para [147] of the decision that “a person who applies for declaratory relief must have a personal legal right or interest which the alleged illegal action or decision infringes or threatens to infringe. His Lordship then cited the *Gouriet* case for the proposition that “the jurisdiction of the Court is not to declare generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else.”

[82] In the present case, the Applicants in both actions attempted to register as electors, but officers of the EBC verbally communicated to them that they did

not qualify to be registered as voters. The reason for this refusal is captured in the CEO's response to the letter of Mr. Abrahams when she stated that "...on the matter of Registration to be an Elector, the Electoral Department is currently authorised to register as voters, persons who hold the status of citizen, permanent resident and immigrant."

[83] Therefore the EBC's policy precluded the Applicants from being registered as electors. Having regard to the provisions of **sections 2, 6 and 7** of the **ROPA** and **regulation 9(1)** of the **Regulations** it is noted that there are two requirements which must be met in order for an applicant to be entitled to vote. These requirements are (i) an applicant must qualify to be an elector and (ii) an applicant must be registered in the register of electors. Thus, although a person qualifies to be registered as an elector and is *prima facie* entitled to vote, that person is still required to make an application in the prescribed form in order to be registered on the register of electors.

[84] While it is true that the Applicants in Action 1 have not filed the mandatory Form 1 application, they have described their grievance not only in terms of the Respondents' refusal to register them as electors but the Respondents' refusal even to consider them eligible for registration as electors. The failure to make application notwithstanding, it is unassailable that the advice and decision given by the CEO and EBC, at the very least, threatened to infringe

the personal legal right or interest which the applicants rightfully claimed to be permitted to vote in Barbados. Hence, any declaratory judgement issued in this case will be no mere advisory opinion of the Court and so there can be no doubt that the four applicants possess standing to pursue administrative remedies and that the decision of the CEO and EBC constituted an “administrative act” under **section 2** of the **AJA** made by a public official purporting to exercise a power or duty imposed by the **ROPA**.

[85] Accordingly, the Court determines that the Applicants in both actions have *locus standi* as they were persons whose interests were adversely affected by an administrative act. Thus, the contention of counsel for the Respondents that there was no administrative act or omission and the claims of the Applicants were premature is rejected. I turn now to consider the nature of the relief to which the applicants are entitled since presence of *locus standi* only answers the question whether the applicants are entitled to be heard by the Court. What the Court should do and what orders it should issue, if any at all, after hearing them is an entirely different matter which must be separately considered.

Alternative Remedy

[86] Counsel for the Respondents contended that the Applicants lacked *locus standi* on another ground, namely that the Applicants have not shown that they exhausted all alternative remedies. Counsel argued that an application for

judicial review should not be made where an alternate remedy exists, especially where Parliament has provided a statutory appeal procedure. Counsel submitted that the requisite procedure for registration had not been utilised by the Applicants, but even if the procedure was followed, an alternative remedy exists under **section 16** of the **ROPA** and **regulation 42** of the **Regulations**.

[87] In *Judicial Remedies in Public Law (London, Sweet & Maxwell, 2000)*, para 11-045, Clive Lewis explains the *raison d’etre* of the exhaustion principle as follows:

“The rationale for the exhaustion of remedies principle is relevant to the scope of that principle. A two-fold justification has been put forward. First, that where Parliament has provided for a statutory appeals procedure, it is not for the courts to usurp the functions of the appellate body. The principle applies equally to bodies not created by statute which had their own appellate system. Secondly, the public interest dictates that judicial review should be exercised speedily, and to that end it is necessary to limit the number of cases in which judicial review is used. To these reasons can be added the additional expertise that the appellate bodies possess.”

[88] Applying these principles in *Divungula v The Attorney General CV 1032/2015*, when sitting as a judge of the High Court, I made reference to Lewis at para 11-0423 wherein he stated *inter alia* that a court has a discretion to refuse to grant permission to apply for judicial review at a substantive hearing if an adequate alternative remedy exists, or if such a remedy existed and the claimant failed to use it.

[89] Further, the learned author noted that courts have evolved a general principle that an individual should normally use alternative remedies where these are available rather than judicial review. This principle was confirmed by **Reifer J** in **Gaskin v AG; Hawkesworth v AG; and Scantlebury v AG, BB 2007 HC 16**, where the judge referred to “a basic principle of judicial review that it should not be invoked unless the Claimant has exhausted the adequate alternative remedies.”

[90] I must now determine whether there was truly an alternative remedy by way of a statutory procedure. I conclude there was not. **Sections 16 (1) and (2)** of the **ROPA** make provision for claims and objections to be submitted in respect of the registration or non-registration of persons on the register of the electors. **Regulation 42 (1) and (2)** of the **Regulations** sets out the relevant procedure to be used to make such claims or objections where a person shall make an application in writing in Form 1 or 12 setting out the relevant information and stating their objection as the case may be. The registering officer shall make lists of all claims and objections available for public inspection and shall also make available the date and time informing persons when the Chief Registration Officer proposes to hear their claims or objections. On the respective dates, the person aggrieved is given the right to appear and be heard before the Chief Registration Officer and this right

includes the right to make written representations. **Section 16 (2)** of the **ROPA** provides that when a claim has been disallowed, the registering officer *may* refer the matter to the Commission whose decision shall be final.

[91] In the *Divungula* decision, referred to above, I quoted the dicta of Archie J, as he then was, in *Saga Trading Ltd v Comptroller of Customs and Excise*, TT 1998 HC 132 at para 33 that the grant of judicial review will only be exercised in exceptional circumstances where there was an “effective alternative remedy.” While I note that the applicants in Action 1 have not filed the mandatory application in Form 1 of the Regulations, and only the applicant in Action 2 has done so, in my judgment, it is highly unlikely that a registering officer, who is a subordinate to the CEO and EBC, could be expected to come to a conclusion at odds with that of her or his superiors. To require the applicants to pursue a complaint as embodied in the Act and Regulations is to require an exercise in futility or, in the language of Chief Justice Archie, to seek a remedy which was not truly ‘effective.’

[92] Moreover, the administrative act of the respondents related to their decision refusing to acknowledge the applicants as being qualified to be electors. There was no statutory procedure to review such decisions of the CEO, and as such, in the case of Action 1, the argument of counsel for the respondents that an alternative remedy existed, but was not resorted to by the applicants must fail

because the alternative statutory procedure was not available to them. For these reasons, I reject the contention that an alternative remedy existed for any of the applicants. I turn now to consider the availability of declaratory relief.

Declaratory Relief

[93] Each of the applicants seeks a declaration that the CEO acted in violation of ROPA and *ultra vires* her authority as set forth in the Act. As noted before, Courts are generally reluctant to grant declaratory relief if, in doing so, they may be giving only advisory opinions. The Courts are also acutely aware that declaratory judgments have no coercive force or power of enforcement (see *Forbes v Attorney General of Jamaica*, JM 2006 CA 78, at paras 18-19). In *Forbes*, the Court of Appeal of Jamaica pointed out that there, as here, the remedies under the rubric ‘judicial review’ were the prerogative orders of *certiorari*, *mandamus* and prohibition, and observed that the declaration, though utilised in public law, was essentially a private law remedy. In fact, the Court of Appeal went on to note that even under **section 31 of the Supreme Court Act of the UK**, an application can be made for one or more of the prerogative orders, as well as, for a declaration or injunction, the idea being to spare the applicant the expense of two distinct sets of proceedings.

[94] A cursory look at the remedies available in the **AJA** as well as **Part 56 of the CPR** reveals this to be true in Barbados as well, for both in the **AJA** and **Part**

56, the declaration is included as an available remedy, along with the injunction, damages and even the return of property.

[95] Having reviewed the authorities, I conclude that in these Actions declaratory relief is appropriate and justified. Irrespective of the presence or absence of coercive force, it is appropriate for this Court to declare, as I do, that the assertion of the CEO and EBC that, as a precondition to being registered, a Commonwealth citizen who has been resident in Barbados as a CARICOM skilled national for a period in excess of three years must have the additional status of being either a permanent resident or an immigrant is in violation of the language of **ROPA** and seeks to insert conditions in the statute that do not exist. Only the Parliament of Barbados is empowered to insert such conditions.

[96] I am fortified in my conclusion by two additional, very relevant considerations. The first is the decision of the Court of the Appeal of the Eastern Caribbean in *George Rick James v Ismay Spencer and Lorna Simon*, (Civ App No. 27 of 2004). There the Representation of the People Act of Antigua and Barbuda contained terms *in pari materia* to **ROPA**. The Representation of the People Regulations also contained an application form which, like Form 1, required information regarding the occupation of the

applicant. Upon the failure of the applicant to include information as to this occupation, he was refused the right to register as an elector.

[97] The Court of Appeal affirmed the decision of the High Court that the applicant was entitled to be so registered. Writing for the Court, Saunders JA, as he then was, noted that the requirement of information regarding occupation was nowhere in the statute and as he stated simply, referring to the statutory language, “a person who fulfils these criteria is *entitled* to be registered.” Saunders JA affirmed that there was no discretion to include the additional requirement of such information simply because it appeared in the form.

[98] The Court distinguished the well-known Jamaican decision in *Thompson v Forrest*, (1967) 11 WIR 296, where the Jamaican statutory language required evidence of a thumb print. In the absence of such evidence, the Court quite rightly had little hesitation in holding that there had been no violation of the applicant’s constitutional rights.

[99] The second consideration arises from the discussion regarding the CARICOM Skilled National status about which much has been made during argument of both actions. But a close reading of **sections 3 and 4** of the **Caribbean Community (Movement of Skilled Nationals) Act, Cap 186A of the Laws of Barbados** also contradicts the position of the respondents. **Section 3(1)** provides that, “notwithstanding the provisions of any law, and subject to

subsection (2) and **section 8**, an immigration officer *shall* at a port of entry permit a Community national. . .and any dependant of that national to enter Barbados for a period not exceeding 6 months.” (Emphasis added). Moreover, **section 4(1)** provides that “an immigration officer *shall* permit a Community national to reside in Barbados *for an indefinite period*” provided the national obtains a certificate of recognition from the Minister of Education and, where applicable, has been permitted to practise or engage in a profession.” **Section 8(2)** permits the Minister to issue an exemption from the requirements of **section 8(1)** which deals with prohibited community nationals as set forth in the **Fifth Schedule to the Act**.

[100] So, a community national may reside and work in Barbados for an ‘indefinite period.’ In this case, the applicants, all community nationals have been here for periods in excess of three years, indeed, in excess of ten years. Accordingly, while the respondents may be right that the CARICOM Skilled National status does not, without more, entitle such a national to be registered as an elector in Barbados, the fact of being such a national obviates the necessity, as the respondents contend in error, for there to be a search of any immigration records to ascertain the status of such national, so long as the Community national is also a Commonwealth citizen.

[101] As noted above, **Cap 186A** removes from an immigration officer any discretion regarding the entry into Barbados of the Community national. Therefore, upon presentation of such a record to the EBC, the only questions should be whether the national is a Commonwealth citizen (given that all of the CARICOM countries are not also members of the Commonwealth, for example, Haiti) and how long has she/he resided in Barbados. Since nothing in **ROPA** or **Cap 186A** mandates permanent residence or immigrant status, such a question is otiose.

[102] For these reasons, I hold that it shall be declared that the determination of the respondents that, in the absence of evidence of permanent resident or immigrant status, a Commonwealth citizen is not entitled to be registered as an elector in Barbados violates **Cap 12 of the Laws of Barbados**. In making such a determination, the respondents acted *ultra vires* their authority under **Cap 12**. For these additional reasons, the applicants are entitled to declaratory relief.

[103] I should note, as well, that the applicants should be declared as representatives of a class of persons similarly situated, and so this decision shall apply to all Commonwealth citizens (not just, as in the present case, citizens of the Commonwealth Caribbean). I turn now to consider the last issue, namely,

whether the applicants are entitled to any of the prerogative orders under the
AJA.

The Applicants' entitlement to judicial review:

Mandamus, certiorari or prohibition

[104] On this final issue, the question is whether any of the applicants are entitled to a prerogative remedy. I will not repeat what has gone before in discussing declaratory relief, all of which is here relevant. However, the entitlement to declaratory relief is not, in my judgment, tantamount to or coextensive with entitlement to a prerogative order. The remedy of mandamus would require the Court to compel the respondents to register the applicants. This cannot be done in the case of the applicants in Action 1.

[105] It will be recalled that neither of the applicants in Action 1 ever filed an application to be registered as an elector, albeit each was qualified to be so registered. Indeed, apart from the letter written by Mr. Abrahams on behalf of Mrs. Mathlin-Tulloch, nothing was submitted to the respondents in writing showing that Ms. Russell or Mrs. Edgecombe Miller desired to be registered as electors. Only Prof. Ventose filed an application in the prescribed Form 1. **The Representation of the People (Registration of Electors) Regulations, 1990, clause 9(1)** provides that “a person who is qualified to be registered as an elector *shall* make application in the Form 1 set out in the Schedule to the

registering officer of the polling district in which he resides.” The language is mandatory. Accordingly, there is no basis upon which the Court can direct that the applicants in Action 1 must be registered in the absence of their application indicating their desire that this should happen.

[106] However, in the case of Action 2, counsel for the respondents, Ms. Allison Burke, conceded in argument before me that Prof. Ventose was entitled to the remedy of *mandamus*. She took the position, however, that since he had only filed his application on 4 January 2018, his suit was premature and that the respondent was still considering his application, along with the many others filed. Accordingly, it must be ordered that Prof. Ventose should be registered with dispatch.

[107] This is the more urgent because **section 13 (1)** of the **ROPA** enacts *inter alia* that the Commission shall cause to be prepared and shall publish not later than 31 January in every year a register of electors for each constituency. Prof. Ventose’s name likely had not been published in the register of electors in January 2018.

Disposal

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[108] In light of the foregoing, the court therefore declares that the decision not to register the Applicants in Action 1 was unlawful as it violated the provisions

of **Cap 12**. However, the Applicants are not entitled to any further relief since they have never applied to be registered as electors.

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[109] The Court therefore declares that the decision not to register the Applicant in Action 2 was unlawful as it violated the provisions of **Cap 12**.

[110] The Court mandates that the First Respondent shall register the Applicant as an elector to vote in Barbados within 14 days of today's date as he has satisfied the conditions precedent under *Section 7* of the **ROA**.

[111] The Applicants in both Actions are entitled to their costs to be either agreed or assessed.

[112] Liberty to apply.

Chief Justice