

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.CV-2016-01567

In the matter of an application by Shevanand Gopeesingh for the construction and/or interpretation of the Legal Profession Act, Chap 90:03 and the Legal Profession (Eligibility for Admission) (No. 11) Order, 2015

SHEVANAND GOPEESINGH

Claimant

v.

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

and

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO

Interested Party

Before the Honourable Mr Justice James C. Aboud

Dated: 14 June 2018

Appearances:

- Mr Anand Ramlogan SC leading Mr Kent Samlal, Mr Varun A. Dabideen and instructed by Ms Jayanti Lutchmedial for the claimant
- Mr Michael Quamina instructed by the Chief State Solicitor represented by Ms Shanna Lutchmansingh and Ms Shivanangelie Ramoutar for the defendant
- Mr Rishi Dass instructed by Mr Antonio Emanuel for the interested party

JUDGMENT

Overview

- [1] Following the 2015 general elections in Trinidad and Tobago the claimant was one of six petitioners who challenged the election results in six constituencies by separate actions. To do so, the six petitioners retained the services of Mr. Timothy Derrick Straker QC, a well-known English Barrister, as lead counsel.
- [2] In retaining Mr Straker, the claimant's local attorneys had to facilitate Mr Straker's admission to practise in Trinidad and Tobago by obtaining a ministerial order and also making an application to the Registrar of the Supreme Court. In order to satisfy the provisions of the Legal Profession Act Chap 90:03 ('the Act') the Registrar must certify that the applicant has obtained a certificate of fitness from the Law Association of Trinidad and Tobago ('the Law Association') and paid all subscriptions due to it and, as well, made a contribution to the compensation fund set up under the Act. These are required for the issuance of an annual practising certificate. Once the practicing certificate is issued the applicant approaches the High Court seeking admission to our Bar. In short, a practising certificate is issued by the Registrar after a Commonwealth lawyer has been deemed eligible for admission by the Minister, has obtained a certificate of fitness from, and paid the fees stipulated by the Law Association, has paid the amount due to the compensation fund, and his petition to be admitted to the Bar has been granted by a judge of the High Court.
- [3] When the local attorneys applied to the Law Association, its council decided that Mr Straker would be charged six times for one practising certificate to represent the six petitioners in the six separately filed civil proceedings. They apparently treated each petition as a separate cause, requiring six payments. The Law Association construed its enabling legislation that way. The cost of an annual practicing certificate for a lawyer of Mr. Straker's standing as a silk is \$15,000 and the contribution to the compensation fund is the annual sum of \$1,200. The Law Association charged \$90,000 and \$7,200 respectively. Because of the urgency of the proceedings, the six petitioners separately made payments to their local attorneys in the requested sums and Mr. Straker appeared

as lead counsel on their behalves. The claimant was dissatisfied with the decision of the Law Association.

- [4] He caused his attorneys to file a Fixed Date Claim on 10 May 2016. It sought an interpretation of the enabling legislation. The claimant posed seven questions of construction for this court to determine and sought a declaration that the total amount payable to the Law Association and to the Registrar of the Supreme Court to procure a practising certificate for Mr Straker to represent the six petitioners was the sum of \$15,000 to the Law Association for the annual subscription, and \$1,200 for the annual contribution to the compensation fund.
- [5] During the course of these proceedings, the Law Association was added as an interested party with the consent of the other parties. The defendant filed an application on 19 July 2016 to strike out the proceedings on the basis that it should have been brought by way of judicial review and that the claimant did not have any standing to bring the claim for a construction of the legislation. Written submissions were filed, and oral hearings took place in early 2017. I disagreed with these preliminary objections and dismissed the application on 13 July 2017. I felt that the construction summons was an appropriate procedure and that the claimant had the necessary standing.
- [6] The issue now left to be determined is the proper interpretation of the relevant enabling legislation and the ministerial order.

Factual background

- [7] In the claimant's affidavit in support of his claim, he stated that he was the petitioner in civil claim 2015–03128, *Shevanand Gopeesingh v. Faris Al-Rawi and the Returning Officer for the Constituency of San Fernando West*. Five other individuals also filed representation petitions. The six petitions were based on identical grounds, namely, that the Elections and Boundaries Commission had no lawful authority to extend the time for voting on the day of the general election due to inclement weather.

- [8] Following the grant of leave to file the six petitions the State appealed. The hearing of the appeal was classified as urgent. The petitioners wanted Mr. Straker to appear at the hearing of the appeals in all six matters.
- [9] As part of their retainer agreement with Mr Straker, the petitioners were responsible for all costs related to his attendance, including the issuance of a practising certificate and his admission to the bar of Trinidad and Tobago. The absence of the retainer agreement as an exhibit to the claimant's affidavit does not prevent this Court in deciding the correct interpretation of the enabling legislation. I gave my reasons why in dismissing the strike-out application.
- [10] One of the petitioner's local junior counsel, Mr Gerald Ramdeen, wrote the then president of the Law Association on 23 October 2015 requesting that a certificate of fitness for a special case admission be issued pursuant to the Act. He also sought to clarify the amount of fees payable. The secretary of the Law Association responded by letter on 28 October 2015 advising that the fees payable totalled \$90,000 plus \$7,200 which represented \$15,000 in annual subscription fees per matter and \$1,200 annual contribution to the compensation fund per matter. The letter also stated that these sums were to be paid before the issuance of the certificate of fitness.
- [11] The claimant, under protest and with a sense of anxiety due to the fixing of the hearing of an urgent appeal, paid his portion of the monies to his instructing attorney. The local attorney collected all the funds and paid them to the Law Association, which issued a receipt to Mr. Straker.
- [12] On 31 December 2015 the claimant, through his local attorneys, wrote two pre-action letters to the Law Association and to the Registrar requesting the recovery of "excess funds" paid to facilitate the issuance of Mr Straker's practising certificate. At first the correspondence threatened judicial review proceedings. In order to facilitate the exchange of correspondence the claimant's attorneys sought and the Law Association gave an assurance that it would not object to the bringing such proceedings on the ground of delay. Eventually the claimant's attorneys decided to instead forewarn the

filing of a construction summons to obtain the true meaning of the relevant sections of the Act. This is what the claimant eventually did.

[13] Mr Kent Samlal, one of the junior counsel representing the claimant, also filed an affidavit in support of the claim. He gave the example of Mr Peter Carter QC, a British Barrister who represented litigants in five related matters. The Law Association had informed Mr. Samlal that the fees payable for applications by foreign counsel for certificates of fitness were payable per matter. Therefore, Mr Samlal concluded that what occurred in the case of Mr Straker “is not an isolated occurrence but rather this is a stance adopted by the Law Association in relation to all foreign counsel appearing in multiple matters.” He said that this matter “raises an important issue which bears upon the correct cost to claimants in this jurisdiction who wish to engage the services of foreign counsel.”

[14] As I mentioned in my decision in the strike-out application, this claim raises an important and perennial issue that needs to be resolved by an authoritative interpretation. Litigants have a right to be represented by counsel of their choice and any impediment to that right must be lawful.

The pleadings

[15] The Fixed Date Claim was filed on 10 May 2016. These are the reliefs that it seeks:

1. A determination of the High Court on the following issues and questions:
 - (a) Whether the words “on such terms and conditions, including but not limited to the duration of the admission, as the minister may specify in the Order” in section 15A of the Act are to be interpreted as providing the full and complete terms and conditions of the practitioner’s admissions such that he is admitted subject to the said terms and conditions contained in the Ministerial order declaring the practitioner eligible to practise;

- (b) Whether section 23(2) of the Act should be interpreted as limiting the sums payable to a single annual subscription to the Association and a single annual contribution to the Fund regardless of the number of cases in which counsel is seeking admission to advocate;
 - (c) Whether section 12(5) of the Act places a cap on the amount of the annual subscription payable by each member of \$500 or such sum as may be prescribed by resolution of a general meeting of Law Association of Trinidad and Tobago;
 - (d) Whether section 56(1) of the Act should be interpreted as providing that a practitioner is required only to pay to the Compensation Fund the prescribed sum once in each calendar year;
 - (e) Whether, pursuant to the terms and conditions of his admission, Mr Timothy Straker QC was liable to pay one annual subscription to the Association or one subscription per matter;
 - (f) Whether, pursuant to the terms and conditions of his admission, Mr Timothy Straker QC was liable to pay one contribution to the Fund or one contribution per matter; and
 - (g) Whether the demand for and subsequent payment by the Petitioners in the representation petition matters through their Attorneys, for and on behalf of their Counsel Mr. Timothy Straker Q.C. to be admitted to practice, of the sum of \$90,000 to the Association and \$7,200 to the Registrar of the Supreme Court, has resulted in an overpayment.
2. A declaration that the amount payable to the Association and the Registrar of the Supreme Court to procure a practicing certificate for Mr. Timothy Straker Q.C. was the sum \$15,000 to the Association by way of an annual subscription and the sum of \$1,200 by way of an annual contribution to the Fund.

3. Costs;
4. All necessary and consequential orders and directions and such further and/or other relief as the court might consider necessary or expedient or as the Court deems fit.

[16] No Defences to the claim were filed. After the strike-out application was dismissed I gave directions for the filing of written submissions to determine the substantive issues. The Law Association filed submissions, but the defendant elected not to do so.

Law and analysis

[17] The Act provides for the regulation of the legal profession including the qualification and enrolment of its members. Section 15A of the Act provides for special cases of admission to practise in Trinidad and Tobago. It reads as follows:

“Notwithstanding any law to the contrary the Minister, where he considers it necessary or expedient after consultation with the Chief Justice, may by Order provide that a Commonwealth citizen who has been admitted to practise in a Commonwealth country for at least ten years, is eligible to be admitted to practice law in Trinidad and Tobago on such terms and conditions, including but not limited to the duration of the admission, as the Minister may specify in the Order.”

[18] The Legal Profession (Eligibility for Admission) (No. 11) Order 2015 (‘the ministerial order’), made pursuant to Section 15A of the Act, provided that Mr Straker was eligible to be admitted to practice law in Trinidad and Tobago subject to the terms and conditions specified in Part II of the Schedule. Part II of the Schedule to the ministerial order says this:

“Mr Timothy Derrick Straker is eligible to be admitted to practise law as an attorney-at-law in relation to the following causes and any matters, suits or other proceedings arising out of or in connection with the following causes... [the six Election Petitions are listed].”

[19] Any attorney-at-law who intends to practise law must have a practising certificate. This is what section 23 of the Act provides:

- (1) An Attorney-at-law who desires to practise law shall apply to the Registrar for a certificate to be called a practising certificate.
- (2) On being satisfied that the Attorney-at-law has paid his annual subscription to the Association under section 12 and his annual contribution to the Fund under section 56, the Registrar shall issue to him a practising certificate.

[20] Section 12 of the Act provides particulars about the annual subscription in these subsections:

- (1) The amount of the annual subscription payable by members other than honorary members of the Association shall, subject to subsection (5), be fixed by the Council and shall be paid to the association through the Registrar.
- (2) The annual subscription is in respect of the period of twelve months commencing on the 1st October, in each year.
- (3) In fixing the annual subscription the Council may divide the members into classes and provide that different amounts shall be paid by different classes of members and for different periods and generally regulate and vary from time to time the subscription payable by members or by different classes of members as the Council may think fit.
- (4) The Council may fix levies payable by practitioner members for any of the purposes of the Association.
- (5) The annual subscription payable under subsection (1) and levies payable under subsection (4) shall not in any year exceed five hundred dollars per practitioner member or such greater sum as may be prescribed by resolution of a general meeting of the Association.

[21] Section 56 of the Act provides particulars about contributions to the Compensation Fund in these subsections:

- (1) Subject to such exemptions as may be prescribed by this Act every practitioner member shall pay an annual contribution to the Fund of such amount as may be prescribed by the Council.
- (2) The annual contribution under this section is in respect of the period of twelve months commencing on the 1st October in each year and shall be paid to the Registrar who shall forthwith pay it into the Fund.

[22] This action therefore challenges the interpretation of these sections by the Law Association. But the Law Association did not contest the claimant's challenge. In its written submissions it properly conceded that, in the absence of an alternative provision in the Act, an annual subscription and annual contribution to the fund is for a period of 12 months commencing on 1 October in each year. This, it submitted, applies to all practitioners, including special admission cases such as Mr Straker. No section of the Act provides for more than one annual subscription or contribution to the fund to be paid by any practitioner in a single year. Furthermore, it submitted, the special admission was subject to the terms and condition as imposed by the Minister. In this case, those terms and conditions were that Mr Straker could practice in respect of the six election petitions. However, this ministerial order could not alter the meanings of sections 12 and 56, which only refer to the payment of one annual subscription and one annual contribution to the fund in any given law term. In light of this, the Law Association indicated that it had decided to return the excess payments owed to Mr Straker.

[23] I agree with these submissions and I am pleased with the responsible stance taken by the Law Association with respect to the proper interpretation of the relevant sections. Mr. Ramlogan SC, for the claimant, made out a powerful and lucid case in his submissions. For the sake of clarity, and because there are declarations to be made, I must nonetheless formally construe the provisions of the Act. I do not share the view of the Law Association that, having elected to repay Mr Straker, the issues raised in the claim are now academic as a matter of law.

[24] The Court of Appeal has recently confirmed the primacy of the literal rule in construing statutes: see *Attorney General of Trinidad and Tobago v Devant Maharaj*, Civ. App. No. S-161 of 2017, per Mendonça JA at [23]. There are limited circumstances in which a court can depart from the literal rule of construction, as Mendonça JA recognized, but these do not apply here.

[25] It is clear that section 23(2) speaks of one practising certificate being issued after an annual payment. There is no reference to multiple payments.

[26] This interpretation was suggested in a transcript of the hearing of the Court of Appeal in *Angela Ramdeen v The Registrar of the Supreme Court*, (Civil Appeal No. 149 of 2008, court library, dated 13 May 2011). That was an appeal in judicial review proceedings. The issue was the litigant's *locus standi* to judicially review the Registrar's decision to refuse a reimbursement of fees said to be in excess of those chargeable under the Act. However, in relation to an interpretation of section 23 of the Act, Kangaloo JA made the following *obiter* remarks:

“Insofar as they are being made to pay it more than once every time they come and are admitted under section 15A, I think that is very wrong...23(1) and 23(2) in particular, talk about the money being an annual subscription to the Association and an annual contribution to the fund...It might probably be a wrong interpretation. If the Registrar is asking for it every single time they come, it might be a wrong interpretation...having paid for it the first time they come...and for him to come and pay it again in the same calendar year, I think, could be a wrong interpretation of section 23(2).”

[27] Stollmeyer JA shared these views with equal lucidity. The Court of Appeal's *obiter* remarks are plainly correct and should be followed. Section 23 speaks in the singular of “a practising certificate”. Section 12 also speaks in the singular of “the annual subscription” and section 56 refers singularly to “an annual contribution to the fund”. It is surely a wrong interpretation to have a foreign attorney-at-law pay more than one subscription fee and contribution to the fund within a single law term. This, in essence,

amounts to a penalty or deterrent imposed on litigants in same-issue or consolidated proceedings.

[28] By section 12(3) Parliament sanctioned a discretionary approach. It allowed the Law Association to divide its members into different classes and gave it power to charge each class different amounts for different periods. It seems to me that the long-standing interpretation of the Act by the Law Association allowed it to demand fees from Commonwealth counsel seeking admission to our bar on a wholly different basis from those charged to local counsel. Such an interpretation is in conflict with section 12(3) and infringes Mr Straker's right as counsel to equality of treatment from a public authority in the exercise of its functions. This is also unfair to the claimant.

[29] Litigants are entitled to be represented by counsel of their choice. Subject to meeting the requirements of the law in force at this time, counsel may appear in our courts whether they are Trinidad and Tobago or Commonwealth counsel. As I mentioned in the strike-out decision, medical patients have complete freedom to hire foreign doctors to attend to them in our hospitals. If the doctor cannot fly to Trinidad and Tobago the patient can fly to the foreign doctor's operating theatre in another country. The operating theatre in the realm of law is the local courthouse. A litigant cannot take his case to a foreign courthouse. It is therefore essential that, so long as the litigant has the legal right to retain foreign counsel, the law is correctly applied.

[30] In special case admissions for foreign counsel the Minister must make an Order as to their eligibility to be admitted to practice here. The Order may contain terms and conditions that are within the discretion of the Minister. Of course, like the exercise of other administrative discretions, this one may be subject to review by the courts. In these special case admissions, the Commonwealth counsel is coming for a specific and temporary purpose, the scope of which is reflected in the Order. However, the calculation of the annual subscription and the annual contribution to the fund is an issue unrelated to any terms and conditions that the Minister has specified in the Order. If the foreign counsel is seeking to represent litigants in another matter but within the same

year, a fresh Order from the Minister must be obtained, but the fees cannot rightfully become due a second time within the same law term.

[31] At the time of the passage of the Act the statute provided an annual subscription of \$500 but gave power to increase it by resolution of the general membership. Mr Ramlogan complained that the Law Association's imposition of subscriptions above the \$500 limit could not be justified in the absence of evidence of a resolution to that effect. I feel confident in saying that I can take judicial notice of the passage of several resolutions over the years that successively raised the subscriptions. I have no reason in this case to demand formal proof of the passage of such resolutions.

[32] In relation to the matters of construction, I therefore find as follows:

- (a) The words "on such terms and conditions, including but not limited to the duration of the admission, as the Minister may specify in the Order" in section 15A of the Act provide the full and complete terms and conditions of the practitioner's admission such that he or she is admitted subject to the terms and conditions contained in the Ministerial order declaring the practitioner eligible to practise;
- (b) Section 23(2) of the Act limits the sums payable to a single annual subscription to the Law Association and a single annual contribution to the fund regardless of the number of cases in which counsel is seeking admission to advocate within any given calendar year;
- (c) Section 12(5) of the Act places a cap on the amount of the annual subscription payable by each member of \$500 or such sum as may be prescribed by resolution of a general meeting of Law Association, and there is no reason to doubt that resolutions were passed by successive general meetings of the Law Association to raise the amounts above \$500;
- (d) Section 56(1) of the Act provides that a practitioner is required only to pay to the Compensation Fund the prescribed sum once in each calendar year;

- (e) Pursuant to the terms and conditions of his admission, Mr Timothy Straker QC was liable to pay one annual subscription to the Law Association and not one subscription per matter, and one contribution to the fund and not one contribution per matter;
- (f) The demand for and subsequent payment by the petitioners in the six representation petitions through their local attorneys, for and on behalf of their Counsel Mr Timothy Straker QC, of the sum of \$90,000 to the Law Association and \$7,200 to the Registrar, has resulted in an overpayment.

[33] With regard to the overpayment, the Law Association admitted that one was made, and refunded Mr. Straker the sum of \$75,000 (representing five overpayments of \$15,000 each). Interest on that sum was not paid. In all fairness it ought to. A reimbursement of \$6,000 has not yet been made by the Attorney General in relation to the contributions to the compensation fund (five overpayments of \$1,200 each). Again too, this overpayment should be repaid and with interest. I expect that the defendant and the Law Association will act responsibly in relation to these outstanding payments. It is not within the scope of the reliefs sought, nor do I consider it necessary, for me to make a formal order for the payment of these sums.

[34] Having construed the wording of the Act I therefore make the following orders:

- (1) A declaration is granted to the claimant that the total amount payable to the Law Association and the Registrar of the Supreme Court to procure a practising certificate for Mr Timothy Straker QC was the sum of \$15,000 to the Association by way of an annual subscription and \$1,200 by way of an annual contribution to the fund.
- (2) The defendant shall pay the costs of the claim to the claimant to be assessed by the Registrar in default of agreement certified fit for Senior and Junior Counsel.

**James Christopher Aboud
Judge**