

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2007-04461

BETWEEN

BALLIRAM ROOPNARINE

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO

Defendant

Before Hon. Madame Justice C. Pemberton

Appearances:

For the Claimant: Mr. K. Thompson

For the Defendant: Mr. C. Sieuchand



JUDGMENT

Introduction:

[1] Sometime in the year 1992, Mr. Roopnarine joined the Prison Service of Trinidad and Tobago (P.S.T.T.) as a Prison Officer I. On the 15th of February 2003 the Claimant, Mr. Balliram Roopnarine, was charged with the following offences:

1. making use of obscene language;
2. wilfully and obscenely exposing his person in a public place;
3. performing an act with the intent to commit an arrestable offence;
4. malicious damage; and

5. assaulting a police officer with the intent to prevent lawful apprehension.

[2] On the 24th of July 2003, Mr. Roopnarine appeared before the Siparia Magistrate's Court, when he was reprimanded and discharged. He was required to keep the peace for three years and bonded for \$5,000.00. Mr. Roopnarine's claimed that he received an unfair and unjust hearing in the Magistrate Court.¹ As a result of this hearing, he claims that his constitutional rights to property, protection of the law and a fair hearing were violated by the decision of the Public Service Commission (P.S.C.).² Mr. Roopnarine now brings this action.

[3] By letter dated 19th May, 2006, Mr. Roopnarine was dismissed from the P.S.C. He received this letter on the 2nd of June 2006. The P.S.C. stated that his dismissal was "in accordance with the provisions of Section 129 of the **CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO** [the Constitution], as amended by the **CONSTITUTION (AMENDMENT) ACT NO. 43 OF 2000**"³.

[4] Mr. Roopnarine brought this action, which was filed on November 26th 2007. It was an omnibus claim. His claims were that:

- 1) the provisions of Section 3 of the **CONSTITUTIONAL (AMENDMENT) ACT OF 2000** are unconstitutional since the required Act was not passed in accordance with Section 13 of the Constitution;
- 2) the Amendment Act infringed his enshrined rights to the enjoyment of property, protection under the law and a fair hearing;

¹ Affidavit of Balliram Roopnarine, Para 9-12. (Nov. 26 2007).

² Written Submissions on Behalf of the Claimant. Para (b)(c)-(g). (Nov. 18 2008).

³ Id.

- 3) the Amendment Act deprived him of his right of appeal against his dismissal as provided for by Section 132(1) of the Constitution;
- 4) the dismissal, pursuant to the Amendment Act contravened his “aforesaid” rights;
- 5) the dismissal in itself was unconstitutional, void and of no legal effect;
- 6) an Order directing the P.S.C. to reinstate him with no loss of pay or seniority.

In the alternative, Mr. Roopnarine sought:

- 1) a declaration that in dismissing him where no evidence was adduced against him in the Magistrates Court he was denied natural justice, and therefore Section 20 of the **JUDICIAL REVIEW ACT of 2000** was contravened, as well as his “aforesaid fundamental rights to property and protection under the law”, and;
- 2) monetary compensation.

I prefer to deal with this case in its entirety, so I will not adopt my usual style.

[5] At the CMC of the 25th February 2008, I made certain observations on this claim and asked that Mr. Roopnarine reconsider his position. The Attorney General was given an opportunity to file and serve an affidavit in response and a further CMC was scheduled. At the adjourned hearing, I extended the time for the Defendant to file and serve that affidavit and extended an invitation to Mr. Roopnarine to answer. I also ordered the parties to file and exchange written submissions and authorities. A further extension was granted to both sides and it was on the 23rd December

2008 that all written submissions and authorities were received. I place on record my apologies for the unavoidable delay in rendering this decision.

- [6] The issues raised for consideration in this matter are:
- (a) Whether Section 129(5) of the Constitution is unconstitutional;
 - (b) Whether the Attorney General is the proper Defendant to this action;
 - (c) Whether Mr. Roopnarine's claim is an abuse of process;

In order to address (a) I shall look at two broad headings:

- A) Nature and Effect of Section 129(5)
- B) Procedure for Bringing Section 129(5) into Law

A) NATURE AND EFFECT OF SECTION 129(5)

Whether Section 129(5) of the Constitution, which gives the P.S.C. power to dismiss without the institution of disciplinary proceedings, is unconstitutional:

- [7] Mr. Roopnarine claims that he was deprived his right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations."⁴ Mr. Roopnarine also claims that Section 129(5) also violated his fundamental rights to: enjoyment of property and the right not to be deprived thereof except by due process of law and the protection of the law.⁵ Section 129(5) provides:

(5) Notwithstanding subsection (4), where an officer is convicted of a criminal charge in any court and the time allotted for an appeal has elapsed or, if the officer has appealed, the appeal process has been completed or an order has been made in the matter under section 71 of the Summary Courts Act, a Service Commission may consider the relevant proceedings on such charge and if it is of the

⁴ CONSTITUTION OF TRINIDAD AND TOBAGO. Chap 1, Part 1, S.5 (2)(e) (1967).

⁵ Id. at s. 4(a)-(b).

opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the conduct which led to his conviction on the criminal charge or to the making of the order, the Commission may thereupon dismiss or otherwise punish the officer without the institution of any disciplinary proceedings⁶.

[8] *Right to a Fair Hearing*

The paramount issue is, “are disciplinary proceedings a right conferred on an individual and one amounting to a fundamental right as enshrined in the Constitution?” Mr. Roopnarine’s submissions highlight disciplinary proceedings as falling within the realm of a right to “a fair hearing”. Mr. Roopnarine submits:

35. The Commission and the state of Trinidad and Tobago made adequate provisions for the investigation, prosecution and trial of disciplinary offences committed by police officers.

36. These provisions are contained in the aforesaid Public Service Commission Regulations. If the Commission was of the view that the Claimant had committed a disciplinary offence... then it was at liberty to charge him with the relevant disciplinary offence pursuant to the provisions of Regulation 84 of the said Regulations. Had the Commission done so, the Claimant would have been tried by a tribunal appointed by the Commission pursuant to the said provisions. Such a tribunal is headed by an attorney-at-law and the Claimant would have been entitled to be represented by counsel. The Claimant’s rights would have been adequately protected and there would have been due process.⁷

Mr. Roopnarine submits that he was denied a fair hearing because he was not afforded access to disciplinary proceedings and an appeal to the Appeal Board.

[9] In response to this, the Attorney General reminded the Court that Mr. Roopnarine “was afforded all procedural safeguards”⁸. The Attorney General also put to the Court that a fair hearing includes only the

⁶ Constitution (Amendment) Act No. 43 of 2000.

⁷ Written Submissions on Behalf of the Claimant. Para 35-6.

⁸ Submissions of the Defendant in Reply. Para. 13 (Dec 23, 2008).

opportunity to put forward one's side either in writing or orally.⁹ In support of these submissions the Attorney General guided the Court to the cases of Mahon v. Air New Zealand Ltd. and Commissioner of Police v. Mitchell.¹⁰ The Attorney General claims that the P.S.C.'s request for written representations to the charges and the consequential action taken was part of a fair hearing for Mr. Roopnarine. The submissions of the Attorney General support the view that the amendment to the Constitution should not be construed as infringing upon the rights of a public officer, but as "merely amend[ing] the procedure whereby public officers may be subjected to punitive action by the PSC in certain cases¹¹".

Analysis and Conclusion:

[10] The Court is not convinced by the argument that the inclusion of disciplinary proceedings as a provision within a Regulation categorizes it as a fundamental right. The fundamental right bestowed is that of a "fair hearing", before an impartial tribunal, not the right to "your choice of the type of hearing". The Attorney General's submissions reminded the Court that Mr. Roopnarine, through the **CONSTITUTION (AMENDMENT) ACT** was afforded the opportunity to plead his case to the P.S.C. and show cause as to why he should not be dismissed.¹² This avenue of ensuring a "fair hearing" was not taken by Mr. Roopnarine.

Right to the Enjoyment of Property:

[11] Mr. Roopnarine claimed that his right to the enjoyment of property was violated when he was dismissed by the P.S.C., resulting in a denial of his salary and allowance. He also attempted to show that it was determined

⁹ Id. at Para 14.

¹⁰ Id. Mahon v. Air New Zealand Ltd. [1948] A.C. 808. and Commissioner of Police v. Mitchell Civ App. No. 1 of 1992

¹¹ Submissions of the Defendant. Para 51. (Nov. 18 2008).

¹² Constitution of Trinidad and Tobago. Chpt 1, Part 1, s.129(7) (1976).

in the Lawrence matter that, “the right to hold an office constitute property. More than that, it is settled law that salary constitutes property.”¹³”

- [12] The Attorney General submitted that Mr. Roopnarine breached the implied terms of his contract of employment when he was found guilty of criminal behaviour by the learned Magistrate. In The Attorney General of Trinidad and Tobago v. Suresh Rampersad, Honourable Mme. Justice of Appeal Warner stated, “the respondent should do nothing to bring the Public Service into disrepute.”¹⁴”

Analysis and Conclusion:

- [13] It is trite law that salary and allowances are not considered property and does not attract protection under the law.¹⁵ The reasoning in Hood-Ceasar is based on section 4(a) of the Constitution, stating that money is property when it is “a debt owed to the Applicant from the Government”¹⁶. In that case it had been determined by the Industrial Court that there was debt due to the plaintiff. It is therefore impermissible to argue that after Mr. Roopnarine brought disrepute to the P.S.C. and was consequently dismissed, that a debt was owed to him for time he did not serve. It cannot be said that the Mr. Roopnarine was denied a right to the enjoyment of property, his salary, since his salary does not constitute property.

Right to Protection of the Law and Due Process:

- [14] Mr. Roopnarine claims he was denied “protection under the law” as he was dismissed under the **CONSTITUTION (AMENDMENT) ACT**. Mr. Roopnarine stated that the protection afforded to Public Servants under Section 132(1) is effectively removed by the enactment of the

¹³ Written Submissions on Behalf of the Claimant. Para 34.

See also Attorney General of St. Christopher and Nevis v. Lawrence (1983) 31 WIR 176.

¹⁴ The Attorney General of Trinidad and Tobago v. Suresh Rampersad CA No 186 of 1997.

¹⁵ Bernadette Hood-Ceasar v. The Attorney General of Trinidad and Tobago et al. HCA 3015 of 1987, 21.

See also Sonia Williams, Conrad Charles and Mervin Anthony v. The Attorney General of the Commonwealth of Dominica, DOMHCV 434 of 2003.

¹⁶ Id.

CONSTITUTION (AMENDMENT) ACT¹⁷. Mr. Roopnarine also claims that as a result of this action he was unable to appeal the decision of the P.S.C.

[15] The Attorney General argued that the Mr. Roopnarine was not deprived of his right to “protection of the law.” In support of this they referred to the Honourable Mr. Chief Justice Sharma. The Honourable Mr. Chief Justice Sharma was of the opinion that “protection of the law” included access to the Court. The Attorney General relied on a passage from **THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO V MCLEOD**¹⁸ in support of their submission. The Attorney General also submitted to the Court that Mr. Roopnarine’s right to appeal the decision of the P.S.C. was never infringed upon as his circumstances did not qualify him under section 132(1) of the Constitution.

[16] Mr. Roopnarine rebutted this submission, stating that the circumstances of **MC LEOD** distinguished it from his matter. He submitted that **MC LEOD** was a matter claiming that Parliament was wrong to pass an Act, whereas this matter is concerned with an “Act [which] was passed contrary to Section 13 of the Constitution¹⁹”.

ANALYSIS AND CONCLUSION:

[17] The material issue in this matter is that of Mr. Roopnarine’s “protection of the law”. It is evident that both **MC LEOD** and Mr. Roopnarine received “protection of the law”. Section 132(1) of the Constitution was constructed specifically for appeals of the P.S.C. in disciplinary proceedings and

¹⁷ Written Submissions on Behalf of the Claimant. Para 31-33.

¹⁸ **THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO V. MC LEOD**, (1984) 1 WIR 522, 531.

¹⁹ Further Written Submissions on Behalf of the Claimant. Para 7(b). (Dec. 19 2008).

should be applied strictly²⁰. As to the submission by Mr. Roopnarine that “the right of the individual to the protection of the law can be contravened where he is deprived of a right which he enjoys under the general law”,²¹ the Court as already determined that the Claimant was not denied his rights under the general law. The Court is also of the view that for this right of appeal to have been taken away, the **CONSTITUTION (AMENDMENT) ACT** would have had to remove all avenues and access which would have permitted the Mr. Roopnarine to appeal his matter. This however is not that case; as the Judicial Review route was still available to Mr. Roopnarine it cannot be said that his rights were breached.

[18] The Rt. Hon. Mr. Justice Michael de la Bastide highlighted the fundamental change which occurred with the **CONSTITUTION (AMENDMENT) ACT 43 of 2000**. He stated that the **CONSTITUTION (AMENDMENT) ACT** does not give the P.S.C. power to summarily dismiss an individual without disciplinary proceedings; instead what it does do is widen the range of complaints being made to the P.S.C. through the Judicial Review process.²²

[19] This change would ultimately raise the question “does Judicial Review as opposed to the appeals procedure stymie, or adversely affect the fundamental right or protection under the law?” The answer to that is obviously no. The cases of **SEEROMANI MARAJ-NARAYNSINGH V. THE DIRECTOR OF PUBLIC PROSECUTIONS** and **THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** and **CHANDRESH SHARMA**

²⁰ Section 132(1) states: “An appeal shall lie to the Public Service Appeal Board from any decision of a Service Commission, or of any person to whom the powers of the Commission have been delegated, as a result of disciplinary proceedings brought against a public officer.”

²¹ Further Written Submissions on Behalf of the Claimant. Para 7(c).

²² The Rt. Hon. Mr. Justice Michael de la Bastide. T.C. Judicial Supervision of Executive Action in the Commonwealth Caribbean. P. 5-6. 31st Mar. 2006. The Rt. Hon. Mr. Justice Michael de la Bastide, T.C. gave this lecture in a series of lectures in memory of The late Honourable Philip Telford Georges.

V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO²³ reminds the Court that the right conferred to the individual is that of “due process”. “Due process” does not guarantee an individual a justice system which is infallible; it only guarantees a system which is “fair”.

[20] After reviewing the rights in accordance with **CONSTITUTION (AMENDMENT) ACT 43 of 2000** it is clear that the Act did not violate the Constitution so as to offend the rights of Mr. Roopnarine. In looking at the case of **SHARMA V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**, Mr. Martineau, S.C. for the Attorney General supports the view that Section 13(1) of the Constitution cannot be invoked as long as it is shown that the Act does not infringe upon an individual’s fundamental rights²⁴. Like in **SHARMA**, the Act in this matter does not offend the Constitution so as to require the application of Section 13(1). The Court has determined that the nature and effect of the statute is not one that infringes the Constitution. In fact none of the issues advanced brings Mr. Roopnarine in the fundamental rights provisions.

[21] The Court is also not convinced that by choosing to exercise the discretion bestowed upon on it by **CONSTITUTION (AMENDMENT) ACT 43 of 2000**, the P.S.C., has offended Mr. Roopnarine’s fundamental right of “due process”. Mr. Roopnarine’s argument seems to be steeped in circular reasoning; as he chastises the P.S.C. for exercising its statutory powers under the Constitution and then claims he was denied his “due process” simply because he was not afforded his preferred method of resolving his matter. As Mr. Roopnarine was afforded all the methods of redress

²³ **SEEROMANI MARAJ-NARAYNSINGH V. THE DIRECTOR OF PUBLIC PROSECUTIONS AND THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO CV 2005-00655 and CHANDRESH SHARMA V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO CV2005-00150.**

²⁴ **CHANDRESH SHARMA V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. CV 2005-00150.** Para 10.

available he was not denied “due process”. This access to the Court would, in turn, be a part of Mr. Roopnarine’s “due process”.

B) PROCEDURE FOR BRINGING SECTION 129(5) INTO LAW

[22] Since the **CONSTITUTION (AMENDMENT) ACT 43 of 2000** is not in violation of Sections 4 and 5 of the Constitution, there is no need to consider the alleged procedural defects which may have occurred, had the **CONSTITUTION (AMENDMENT) ACT** been found to be void, unconstitutional and of no legal effect.

Whether the Attorney General is the Proper Defendant to the Action:

[23] The Attorney General began defending this motion by stating that they were the inappropriate party to be sued in this matter. In support of this argument, the Attorney General highlighted the difference between a “public authority” and the State. It is this difference which the Attorney General relied upon to show that the appropriate party that should have been sued in this claim was the P.S.C.

[24] The Attorney General refers to the case of **THORNHILL V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**.²⁵ This matter involved the retention and arrest of a young man who was initially denied access to his attorney by police officers²⁶. The Attorney General echoes the sentiments of Lord Diplock who made a point of defining a “public authority”. Lord Diplock states, “In this context ‘public authority’ must be understood as embracing local as well as central authorities and including any individual officer who exercises executive functions of a public

²⁵ **THORNHILL V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO. [1979] 31 WIR 498.**

²⁶ *Id.*

nature²⁷.” The Attorney General then addressed the reasons why the P.S.C. would qualify as a “public authority” and thus should be sued separate and apart from the State.

[25] The Attorney General’s submissions noted the distinct functions of the P.S.C. and the State; while the Commission is responsible for disciplinary proceedings regarding members of the Public Service, the State is responsible for fulfilling employers’ obligations to members of the public service²⁸. These distinct functions are necessary to preserve the independence and integrity of the Commission. The Attorney General highlighted the importance of the independence of these Commissions by referring to the case of **ENDELL THOMAS V THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**²⁹. In this landmark case, Lord Diplock declared that the purpose for the ‘Public Service’ section in Chapter VIII of the Constitution to:

*[V]est in autonomous commissions to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service. These autonomous commissions, although public authorities, are excluded by s. 105(4)(c) from forming part of the service of the Crown.*³⁰

This solidifies the intention of the framers of the Constitution; to maintain a clear distinction between a “public authority” and the State.

[26] Mr. Roopnarine attempts to discredit the Attorney General’s contention that they are the inappropriate party in this suit, by submitting that all constitutional matters are to be defended by the State. Mr. Roopnarine argues that because the matter involves declaring an act of Parliament

²⁷ Id. at 516.

²⁸ Written Submissions of the Defendant.. Para 17.

²⁹ **ENDELL THOMAS V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**. [1981] 35 WIR 375.

³⁰ Id. at 381-82.

“unconstitutional, null and void and of no legal effect” the Attorney General must be the defendant³¹. He also declares that because the Attorney General is the Legal Officer of the State, and an essential member of Cabinet it has always been the Defendant in such matters. Mr. Roopnarine directed the Court to the cases of **NORTHERN CONSTRUCTION LIMITED V THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**³², **TRINIDAD ISLANDWIDE CANE FARMERS’ ASSOCIATION INC. V SEEREERAM**³³, and **THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS V LAWRENCE**³⁴.

ANALYSIS AND CONCLUSION:

[27] Having decided that the real issue lay with the P.S.C., the cases quoted by Mr. Thompson are easily distinguishable. In **NORTHERN CONSTRUCTION LIMITED V THE ATTORNEY GENERAL**, the complaint is against the actions of officers within the public service. The appropriate defendant is the Attorney General. The matter of **TRINIDAD ISLANDWIDE CANE FARMERS’ ASSOCIATION INC. V SEEREERAM** is also different from the current matter in that, the actions of the Accountant General were being questioned. In **THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS V LAWRENCE**, a matter on appeal, the original Defendant, the Attorney General, was the appropriate party because the action was against the acts of the Minister of Finance who is legally represented by the Attorney General. The P.S.C. is an entity that can be sued separately from the State. This should have been Mr. Roopnarine’s initial course of action.

³¹ Further Written Submissions on Behalf of the Claimant. Para. 6.

³² **NORTHERN CONSTRUCTION LIMITED V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**. (HCA No. 733 of 2002).

³³ **TRINIDAD ISLANDWIDE CANE FARMERS’ ASSOCIATION INC. V. SEEREERAM**. [1975] 27 WIR 329.

³⁴ **THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS V. LAWRENCE**. [1983] 31 WIR 176.

[28] Alternatively, it is important to note Mr. Roopnarine needed to join the P.S.C. in the action in order for the matter to continue. The rules and procedure for joining or substituting a party is found in Part 19 of the **CIVIL PROCEDURE RULES 1998**³⁵. Mr. Roopnarine did not however utilize this avenue when the opportunity was available to him and it is now too late to adopt this course.

Whether Claimants' Claim is an Abuse of Process:

[29] On the question of abuse of process the Court examined all the evidence brought before it. It was then dealt with in two areas; "Alternative Remedies" and "Delay".

Alternative Remedies:

1) Judicial Review:

[30] The Attorney General noted that Mr. Roopnarine was abusing the process of the justice system by bringing an action to Court which could have been resolved through alternative remedies. The Attorney General directed the Court to the case of **RAWLE GIFT**³⁶, an originating motion, in which the Honourable Mr. Justice Smith determined that the Applicant abused the process by filing a constitutional motion, when he could have sought alternative remedy through judicial review. The Attorney General also brought the case of **ANSARIE MOHAMMED V THE COMMISSIONER OF PRISONS**³⁷ to the Courts' attention. In this matter the claimant in a judicial review matter was awarded damages for breach of her constitutional rights. This helps bolster the Attorney General's position for judicial review, as constitutional matters regarding the rights of an individual have been previously addresses in these forums.

³⁵ Civil Procedure Rules 1998. Part 19.2 and 19.5

³⁶ **RAWLE GIFT V THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO ET AL.** HCA No. 1885 of 1983

³⁷ **ANSARIE MOHAMMED V. THE COMMISSIONER OF PRISONS** HCA S-2089 of 2003

[31] The Attorney General highlights section 5(1) and (2) of the **JUDICIAL REVIEW ACT 2000 (the JR Act)** which ensures that individuals have the ability to apply for judicial review from a decision of, “an inferior court, tribunal, public body, public authority or a person acting in the exercise of a public duty...³⁸”. Mr. Roopnarine at all times had the opportunity to seek judicial review instead of filing a constitutional motion. The remedies available through the judicial review process include, an order of mandamus, prohibition or certiorari, a declaration or injunction, an injunction under section 19 of the **JR Act** or any orders, directions or writs as the circumstance may warrant³⁹. The Applicant may also receive an award of damages.

2) Appeal the Magistrate Courts' Decision:

[32] Mr. Roopnarine claims that the decision of the Magistrate Court was taken without permitting him the opportunity to state how he wanted to be tried; summarily or indictably, and “no evidence was adduced in respect of the charges”⁴⁰.

[33] The Attorney General addressed the possibility of Mr. Roopnarine utilizing his rights to “a fair hearing” by appealing the decision of the Magistrate Court⁴¹. The Attorney General repeatedly highlights the availability of “procedural safeguards” to ensure that Mr. Roopnarine received justice. Ultimately, Mr. Roopnarine did not avail himself of the opportunity to appeal the Magistrate’s decision.

[34] In defence of this abuse of process arguments, Mr. Roopnarine did not produce any evidence to the Court to support his submission. Mr. Roopnarine stated, “Claimant is asking the Court to void an Act of

³⁸ Judicial Review Act of 2000 s. 5(1)

³⁹ Id. at s. 8(1).

⁴⁰ Written Submissions on Behalf of the Claimant. Para 3-6.

⁴¹ Submissions of the Defendant in Reply. Paras. 13, 17.

Parliament. This being the case the Claimant could not have proceeded by way of judicial review or any other procedure. It was mandatory for the Claimant to bring his claim under Section 14 of the Constitution.⁴² This point was addressed in the Attorney General's submissions and was supported by the case in **RAWLE GIFT** as previously discussed.

ANALYSIS AND CONCLUSION:

[35] The Court is not of the opinion that the language of Section 14 prevents Mr. Roopnarine from seeking Judicial Review to his substantive matter. The language of the section is not of a mandatory nature as it uses words like "may apply", leaving room for Mr. Roopnarine to seek and utilize alternative remedies which ultimately permits the Court to be more efficient in other matters. The Court is perplexed as to why Mr. Roopnarine would attempt to have the **CONSTITUTION (AMENDMENT) ACT** declared unconstitutional, instead of seeking redress through the Judicial Review. The Court is in agreement with the Attorney General that Mr. Roopnarine could have chosen to resolve his matter through Judicial Review or appeal the decision of the Magistrate. These were remedies he also opted not to utilize.

[36] Further, it is noteworthy that Mr. Roopnarine believing he was wronged by the decision taken in the Magistrates Court, sought no recourse through appealing the Magistrates' decision. The Attorney General rightfully stated, "if the Claimant fails to avail himself of the right to appeal the decision of the Magistrate, it does not detract from the ability of the procedure of appeal to him."⁴³ Mr. Roopnarine failed to utilize his rights to appeal the Magistrates' decision and will not be permitted to claim he was breached of his constitutional rights when he made the decision not to utilize those rights.

⁴² Further Written Submissions on Behalf of the Claimant. Para. 9.

⁴³ Submissions of the Defendant. Para 70.

DELAY:

[37] The Attorney General also claimed that Mr. Roopnarine abused the process through his delay in filing of the originating motion. Mr. Roopnarine was informed of the P.S.C.'s decision in June 2006, however, the originating motion was not filed until November 26, 2007. The Court considered the case of **FELIX AUGUSTUS DURITY V THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**⁴⁴, used by the Attorney General to highlight the Court's opinion on the delayed filing of the originating motions. The Applicant in **DURITY** applied for constitutional relief more than seven (7) years after his cause of action occurred⁴⁵. Like in **DURITY**, the cause of action for the constitutional motion occurred a long while prior to the filing of the motion. According to the Attorney General, Mr. Roopnarine was attempting to avoid the consequences of being out of time for filing⁴⁶ a judicial review application, by filing a constitutional motion.

[38] Mr. Roopnarine provides the Court with no explanation as to the delay for the filing of the action.

ANALYSIS AND CONCLUSION:

[39] Mr. Roopnarine has provided no explanation as to his delay in filing the action, therefore the Court can only state that which is obvious. Mr. Roopnarine sat on his rights and lost the opportunity to have a Judicial Review. I therefore deem this as an abuse of the Court's process and I so find.

CONCLUSION:

[40] In conclusion, I find that I cannot grant any of the reliefs prayed for by Mr. Roopnarine.

⁴⁴ **FELIX AUGUSTUS DURITY V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO.**
PCA No. 52 of 2000.

⁴⁵ Id. at para 14.

⁴⁶ Judicial Review Act 2000 s. 11(1).

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Fixed Date Claim Form filed on the 26th November 2007 be and is hereby dismissed as an abuse of the Court's Process.
2. The Claimant to pay Defendant's cost assessed in the sum of \$10,500.00

Dated this 5th day of November 2009.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE