

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02114

**IN THE MATTER OF the Judicial Review Act Chap. 7:08
of the Laws of Trinidad and Tobago**

**IN THE MATTER OF an Application by TREVOR OTTO PERCIVAL ISAAC and PAULA DRAKES for
Judicial Review pursuant to Section 5 of the Judicial Review Act Chap. 7:08 of the Laws of
Trinidad and Tobago and Part 56.3 of the Civil Proceedings Rules 1998**

AND

**IN THE MATTER OF the delay by the Land Survey Board of Trinidad and Tobago and or its
continuing refusal and or failure to prescribe such matters as are required by the Land
Surveyors Act Chap. 58:04 of the Laws of Trinidad and Tobago and the Land Surveyors
Regulations for the assessment, examination and or registration of Land Surveyors in Trinidad
and Tobago**

AND

**IN THE MATTER OF the continuing refusal and or failure of the Land Survey Board of Trinidad
and Tobago to register TREVOR OTTO PERCIVAL ISAAC pursuant to Section 17(2) (b) of the
Land Surveyors Act Chapter. 58:04 of the Laws of Trinidad and Tobago for registration as a
Land Surveyor in the Engineering Category**

AND

**IN THE MATTER OF the continuing refusal and or failure of the Land Survey Board of Trinidad
and Tobago to register PAULA DRAKES pursuant to Section 17(2) (b) of the Land Surveyors Act
Chapter. 58:04 of the Laws of Trinidad and Tobago for registration as a Land Surveyor in the
Categories of Geo-Information Systems, Photogrammetry and Cartography**

BETWEEN

TREVOR ISAAC
PAULA DRAKES

Claimants

AND

THE LAND SURVEY BOARD OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madame Justice Mira Dean-Armorer

Appearances:

Ms.Elaine Green for the Claimants

Mr. Colvin Blaize for the Defendant

JUDGMENT

Introduction

1. This application for judicial review was instituted by two qualified land surveyors, who have been persistent in seeking registration by the land Survey Board, under the ***Land Survey Act*** Chap 58:04. Their failed applications for registration began in 1994. The Claimants renewed their efforts without success up to 2016, when they approached the Court seeking, inter alia, declarations that the Land Survey Board had delayed unreasonably and in so doing, had acted in conflict with the policy of the ***Land Survey Act***.

Procedural History

1. By Notice of Application filed on June 22, 2016, the Claimants, sought the Court's leave to apply for judicial review. Their application for leave was supported by the affidavits of both Claimants, Trevor Isaac and Paula Drakes¹.
2. On June 27, 2016, a supplemental affidavit of Ms. Drakes was filed, and thereafter, on June 30, 2016, the affidavit of Trevor Isaac was filed.
3. On July 07, 2016, the application for leave came up for hearing before The Honourable Justice Pemberton (as she then was), who directed that the Minister of Agriculture be joined as a party to the proceedings and that the proceedings were to be served on the Minister of Agriculture. The matter was adjourned to enable the parties to meet and discuss the issue, with a view to resolution.
4. Following the elevation of the Honourable Justice Pemberton to the Court of Appeal, this Claim was re-assigned to this Court and came up for hearing on January 19, 2017 when the Court granted leave to apply for judicial review.
5. On February 03, 2017, that the Fixed Date Claim Form was filed together with the affidavits of Trevor Isaac and Paula Drakes. The relief sought is set out below:
 - (i) *"A Declaration that the First-Named Intended Claimant had a legitimate expectation that once he had been awarded a Bachelor of Science degree in Land Surveying by the University of the West Indies or possessed academic qualifications equivalent thereto he would be registered as a Land Surveyor in the engineering category;*
 - (ii) *A Declaration that the continuing omission, refusal and or failure of the Intended Defendant to register*

¹ Affidavits of the Claimants were filed on June 22, 2016

- TREVOR OTTO PERCIVAL ISAAC pursuant to section 17(2)(b) of the LSA as a Land Surveyor in the engineering category is irrational and or unreasonable and in deprivation of his legitimate expectations;*
- (iii) *A Declaration that by virtue of his academic qualifications and practical and professional experience, his registration with the Chartered Institution of Civil Engineering Surveyors and the Institute of Surveyors of Trinidad and Tobago, and the certification of his good character, the First-Named Intended Claimant is entitled to be registered as a Land Surveyor in the Engineering Category;*
- (iv) *An order of mandamus directed to the Intended Defendant requiring it to register the First-Named Intended Claimant forthwith as a Land Surveyor in the engineering category and to cause his name to be entered as such in the Register of Land Surveyors for the year 2016;*

In relation the Second-Named Intended Claimant

- (v) *A Declaration that the continuing omission, refusal and or failure of the Land Survey Board of Trinidad and Tobago to register PAULA DRAKES pursuant to section 17(2)(b) of the LSA as a Land Surveyor in the categories of Geo-Information Systems, Photogrammetry and Cartography in which she is qualified and experienced is irrational and or unreasonable and in deprivation of her legitimate expectations;*
- (vi) *A Declaration that by virtue of her academic qualifications and practical and professional experience, her registration with Royal Institute of Chartered Surveyors and the Institute of Surveyors of Trinidad and Tobago, and the certification of her good character the Second-Named Intended Claimant is entitled to be registered as a Land Surveyor in the categories of Geo-Information Systems, Photogrammetry and Cartography and such other categories of surveying in which she is qualified and experienced;*
- (vii) *An order of mandamus directed to the Intended Defendant requiring it to register the Second-Named Intended Claimant forthwith as a Land Surveyor in the*

categories of Geo-Information Systems, Photogrammetry and Cartography and to cause her name to be entered as such in the Register of Land Surveyors for the year 2016;

In relation to both Intended Claimants:

- (viii) A Declaration that the Intended Defendant is in breach of its statutory duties under section 5(a) and (b) of the LSA by reason of its delay in prescribing and its continuing omission, refusal and or failure to prescribe such matters as are required under section 17(2)(a)(ii) and 17(2)(b) of the Land Surveyors Act Chap. 58:04 of the Laws of Trinidad and Tobago (the "LSA") within a reasonable time of the coming into force of the LSA on the 14th of March 1997;*
 - (ix) A Declaration that the delay by the Intended Defendant and its continuing omission, failure and or refusal to register Land Surveyors in any category of non-cadastral surveying other than hydrographic surveying since the LSA came into force on the 14th of March 1997 is contrary to law and in conflict with the policy of the LSA;*
 - (x) A Declaration that the delay by the Intended Defendant and its continuing omission, failure and or refusal to register Land Surveyors in any category of non-cadastral surveying except hydrographic surveying since the LSA came into force on the 14th of March 1997 is irrational and or unreasonable;*
 - (xi) An order of mandamus directed to the Intended Defendant requiring it to prescribe forthwith such matters as are required under section 17(2)(a)(ii) of the Land Surveyors Act Chap. 58:04 of the Laws of Trinidad and Tobago (the "LSA") in all categories of land surveying as the same is defined in section 2 of the LSA;*
 - (xii) Costs;*
 - (xiii) All necessary and consequential orders directions and such further and or other relief as this Honourable Court shall deem fit.*
6. At the first directions hearing, the Minister of Agriculture was removed as a Defendant, by the consent of the parties. Directions were given for the filing of affidavits and submissions.

Evidence

7. The evidence in these proceedings consisted of the affidavits filed on behalf of the parties. Affidavits were filed by:
- Trevor Issac²
 - Paula Drakes³
 - Kamal Sant⁴

Facts

8. The Claimants , Mr. Trevor Issac and Ms. Paula Drakes are both qualified land surveyors. The First Claimant, Mr. Issac was awarded a Technician’s Certificate in Engineering Surveying from the John Donaldson Institute, in the year 1982. Thereafter, Mr. Isaac began acquiring experience as an Engineering Surveyor. He worked at with Bi-Water Shella Bear Ltd., Coosals Construction Company, Seereeram Brothers, and has worked on projects including Southern Basin Consortium Project, the Jalousie Resort, in St. Lucia, West Coast Road Improvement Project, Trinidad and Tobago Plantations development project Lowlands. In 1985, Mr. Isaac was awarded a Diploma in Technology in Surveying Technology by the British Columbia Institute of Technology. In the year 2001, Mr. Isaac also attained a degree in Land Surveying from the University of the West Indies.
9. Ms. Drakes, the Second Claimant, was first awarded a Bachelor of Science Degree, in Land Surveying in the year 1991. She later attained her Master of Science in Geo-Information Systems for Cadastral Applications. Ms. Drakes is also a member of the Royal Institute of Chartered Surveyors (RICS). Ms. Drakes, has deposed that her academic qualifications and practical experience are recognised by the RICS, The Urban and Regional Information

² Four affidavits were filed on behalf of Trevor Isaac: they were filed on June 22, 2016, June 30, 2016, February 03, 2017 and January 15, 2018

³ Four affidavits were filed on behalf of Paula Drakes: they were filed on June 22, 2016, June 27, 2016, February 03, 2017 and January 15, 2018

⁴ One affidavit was filed by Kamal Sant on June 27, 2017

Systems Association (URISA), North American and the Caribbean; The Geographic Information Systems Society of Trinidad and Tobago (GISSTT), the Institute of Surveyors of Trinidad and Tobago (ISTT). Ms. Drakes, has years of experience, and has held eminent positions, including that of Consultant for the World Bank, Consultant for the South West Regional Health Authority, Consultant for National Spatial Data Infrastructure. Ms. Drakes was eventually appointed as Commissioner of State Lands in October, 2016⁵.

10. Based on their qualifications and experience, both Claimants applied to the Land Survey Board to be registered as land surveyors.

Mr. Isaac, the First Claimant

11. Mr. Isaac first applied to be registered with the Land Survey Board in in the year 1999. His application was rejected by a letter dated December 23, 1999 and signed by the Registrar/Secretary of the Board. The letter stated *“present qualifications were not accepted as equivalent to UWI degree In land surveying”*⁶. It was the evidence of Mr. Isaac, that he took this to be an assurance, that if he pursued a degree in Land Surveying at UWI, that he would be registered. In response to the rejection by the First Defendant, Mr. Isaac enrolled at the University of the West Indies and successfully completed a BSC in Land Surveying in July, 2001.
12. Having obtained his degree from the University of the West Indies, Mr. Isaac re-applied to be registered with the Land Surveying Board.

⁵ See paragraph 50 of the affidavit of Paula Drakes filed on February 03, 2017

⁶ The letter dated December 23, 1999 from the Land Survey Board was exhibited as “T.I.1” to the affidavit of Trevor Isaac filed on January 15, 2018

13. On this occasion, the Land Survey Board responded by letter dated March 22, 2002 and indicated that Mr. Issac's application , was deferred⁷. The letter was signed by the then Secretary to the Land Survey Board, Dr. Aldywn Philip. The contents of this letter are reproduced below:

"Dear Sir,

You are hereby informed:

1)That your application for registration as an Engineering Surveyor has been deferred until the relevant section of the Land Surveyor's Act, Regulations and Rules have been amended.

2) As regards the registration as a TTLA, the Board has accepted Messrs Paul Williams and Horace Achille as your proposers and your period of practical activities will run from July 1st 2001 to June 30th, 2003.

3) As a survey practitioner of many years standing, the Board will not stand in the way of your performing the non-cadastral survey activities, which you have customarily carried out."⁸

14. Mr. Isaac renewed his attempt in 2008, by way of a letter dated April 10, 2008. The application was also deferred. He was so informed by letter dated June 30, 2008, signed by the Secretary to the Land Survey Board. The contents of this letter are set out below:

⁷ See exhibit "T.I.4".

⁸ See exhibit "T.I. 4"

“Reference is made to your letter dated April 10, 2008, in which you have applied to the Land Survey Board of Trinidad and Tobago for registration as an Engineering Surveyor.

The Board has noted your application, and we are at present formulating rules and procedures which will guide registration in this area of land surveying. It is expected that this exercise will be completed by the end of this year (2008)...”

15. Mr. Isaac received no further information after the letter of June 30, 2008. He made a decision to revive his enquiries by letter dated March 23, 2009. Again, he received no response.
16. Observing that by June, 2015, no reviews had been undertaken, Mr. Isaac, requested an audience with the Registrar/Secretary of the Land Survey Board by a letter dated June 23, 2015⁹. In November, 2015, Mr. Isaac received a response from Mr. Glenn Wilkes, Registrar/Secretary of the Land Survey Board. Mr. Wilkes had this to say: :

“...We wish to advise that the Board is assiduously working on the process of implementing certain policies to register individuals in other categories (areas) of surveying and as soon as these policies and measures are in place, the secretariat shall contact you.”¹⁰

Mr. Isaac responded by letter dated December 09, 2015 where he expressed his grave dissatisfaction with the repetitive and negative responses over the years and questioned the registration process. Mr. Isaac noted that the response by way of the letter dated

⁹ See exhibit “T.I.9”

¹⁰ See exhibit “T.I. 9”

November 23, 2015 was similar to those which he received from the year 2002 and beyond.

Mr. Isaac then noted:

“I am sixty years old, and the opportunity for me as Registered Engineering Surveyor was taken away from me fifteen years ago by the unresponsiveness or the non-action of the Land Surveying Board of Trinidad and Tobago.

Given all the circumstances outlined above, I would like to know the following:

- 1. What is the process for registration*
- 2. At what stage we are in the process?*
- 3. When do we expect the process to be completed.”¹¹*

17. On January 12, 2016, the Registrar/ Secretary invited Mr. Isaac to meet with the Board and suggested that Mr. Isaac make contact with Ms. Drakes who, according to the Registrar/ Secretary, had been experiencing similar challenges. On January 19, 2016, the Claimants, in fact, met with the Board. Following the meeting, the Claimants wrote jointly to the Board, requesting their immediate registration.
18. Mr. Isaac alleged that he was denied countless and immeasurable opportunities. Mr. Isaac supplied broad particulars of such losses¹².

Ms. Paula Drakes

19. *Ms. Paula Drakes*, for her part first made an application in the year 1994 and received no response between the years 1997 and 1999. It was her evidence that the Land Survey Board had requested a meeting with her for registration as a Cadastral Surveyor. However, at that

¹¹See “T.I. 10”

¹² See paragraph 32 of the affidavit of Trevor Isaac filed February 03, 2017.

time she was based in the Netherlands, reading for her Masters of Science in Geo-Information Systems for Cadastral Applications. Ms. Drakes further deposed that it was upon her return, that she was informed by Mr. Philip, that the procedure for examinations had not been finalised.

20. By letter dated August 30, 2012, Ms. Drakes wrote to Mr. Andrew Bowles, the then Chairman of the Land Survey Board, in an attempt to apply for registration as a Land Surveyor in the category of Geo-information systems, engineering, aerial and hydrographic surveying¹³. No response was forthcoming.
21. Ms. Drakes again made another application on January 11, 2016 to the Registrar Secretary, Mr. Wilkes. On this occasion, Ms. Drakes applied for registration as Land Surveyor in the category of Geo-information systems, photogrammetry and cartography. In this letter, Ms. Drakes expressed the urgency of her need to be registered, as she had entered into an agreement with Survair International Limited to succeed Photogrammetrist, Paul Williams. The agreement was conditional on her being registered as a surveyor by January 31, 2016¹⁴. Mr. Wilkes also suggested to Ms. Drakes that she contact the First Claimant.
22. On February 16, 2016, Ms. Greene, attorney-at-law for the Claimants wrote to the Board.¹⁵ Ms. Greene received the letter of Glenn Wilkes by way of reply, dated February 18, 2016. Mr. Wilkes, Registrar and Secretary to the Board indicated that the applications of the Claimants had been discussed and that the Board needed a period of 21 days in order to seek legal advice.

¹³ See exhibit "P.D.5"

¹⁴ See exhibit "P.D 6"

¹⁵ See paragraph 39 of the affidavit of Trevor Isaac and exhibit "T.I.15"

23. Ms. Greene replied by a letter dated February 18, 2016. This was followed by a letter of March 03, 2016 from attorney-at-law, Marcia Murray who, on behalf of the Board, informed Ms. Greene that the Board had prescribed the criteria required, in respect of persons, wishing to be registered as Land Surveyors in the Engineering category. Mrs. Murray also indicated that the criteria had not as yet been prescribed for the specific categories of cartography and photogrammetry.

24. Mrs. Murray repeated the explanation which had been given to the Claimants over the years:

“Currently, the LSBTT does not have on its panel of examiners Assessors in the specific fields for which your clients have applied for entry. This position was also told to your clients”¹⁶

25. As a result, Ms. Drakes caused a request to be made, under the **Freedom of Information Act**¹⁷ by her attorney Ms. Kishma Belgrave. The request was sent by letter dated March 21, 2016, with regard to the registration of Dr. Neale and Dr. Cattermole¹⁸. By letter dated April 5, 2016, Mr. Glenn Wilkes provided the information which was required on behalf of Ms. Drakes. Mr. Wilkes wrote:

“Your request for information is acknowledged and is being addressed. It is however, complicated by the fact that Documents No 1 and 5 relate back to 1997. The first Registrar/Secretary of the Board was Malcolm Robertson. In a letter dated June 29, 1998, the ISTT [sic] informed members that he had resigned, and

¹⁶ See the letter of Marcia Murray exhibited as “T.I.17” to the affidavit of Trevor Isaac filed on February 03, 2017

¹⁷ Freedom of Information Act Chap 22:02

¹⁸ See exhibit “P.D.4”

requested nominations for his replacement. Mr. Robertson had functioned without staff or remuneration, and during the period before the Land Surveyors Regulations 1998 had been approved. In such circumstances, it is unclear how the responsibilities of the post had been carried out. No records have been found for this period.

There was no registration of surveyors under the Act for the years 1996, 1997 and 1998. Land Surveyors continued to practice based on their existing licence and this was validated by 16(2) of the Regulations when they were approved. It must be borne in mind that under the previous Land Surveyors Act, one was licenced as a Land Surveyor, with no distinction between different categories.¹⁹

26. Ms. Drakes referred to a notice dated July 11, 2016. The notice, issued “to all Land Surveyors”, indicated that the Board would be co-hosting a seminar on July 26, 2016. At paragraph 46 of her affidavit of February 3, 2017, Ms. Drakes deposed that she attended the seminar, which was held on July 26, 2016. At the seminar Mr. Wilkes, Registrar-Secretary to the Board, indicated that that there were proposals to have the Land Surveyors Act amended in order to confine surveying to categories of cadastral hydrographic, geodetic and engineering.²⁰

The affidavit of Kamal Sant

27. The Defendant, the Land Survey Board explained its dilemma through the affidavit of the Registrar-Secretary, Kamal Sant.

¹⁹ See exhibit “P.D.4”

²⁰ See paragraph 46 of the affidavit of Paula Drakes filed on February 3, 2017.

28. Mr. Sant answered allegations concerning Dr. Neale and Dr. Cattermole and stated that Drs. Neale and Cattermole had applied had applied in 1998 to be registered as Land surveyors in the Hydrographic category. In 2003, the Board approved their registration in the in the Hydrographic category. They were however listed is the year's annual list of registered persons as Trinidad and Tobago Land Surveyors.²¹
29. Mr. Sant stated that, in relation to the non-cadastral, surveyors, there were no locally registered members *who* are qualified to be examiners in that category. It is the evidence of Mr. Sant, that the Land Survey Board has been pursuing external persons who are qualified in those categories. In the year 2013, consultations were held with stakeholders and recommendations were made for amendments to the ***Land Surveyor Act***²².
30. Throughout his affidavit, Mr. Sant alluded to the fact that the Board lacked examiners necessary for assessing surveyors in specialised fields²³.
31. Mr. Sant alluded as well to consultations with stakeholders which achieved consensus that there should be significant changes to the ***Act***²⁴.
32. On August 5, 2016, an advertisement was published inviting individuals to apply to the Land Survey Board, for an Assessment for Registration as a Land Surveyor (Engineering Surveying). It was Mr. Sant's evidence that as at January 2017, three Land Surveyors have been registered, after having completed their assessments. It was the Board's position that

²¹ See paragraph 10 of the Affidavit of Kamal Sant filed on June 27, 2017.

²² See exhibit "K.S.1"

²³ See paragraphs 21, 26, 29 and 40 of the Affidavit of Kamal Sant

²⁴ See paragraph 30 of the affidavit of Kamal Sant

Mr. Issac is required to be subjected to the assessment, before he could be registered. This requirement according to Mr. Sant, is in-keeping with policy of the Board.

Law

Land Surveyor's Act Ch. 58:04 ("the Act")

33. The Land Survey Board is established as a body corporate by section 3 of the Act.
34. Section 4 of the **Act** provides for the composition of the Board, while section 5 sets out the duties and the functions of the Board in these terms:

"5. The duties and functions of the Board shall be to—

(a) register applicants who are fit and proper persons and possess the prescribed qualifications and experience;

(b) prescribe the qualifications necessary in respect of each class of surveyor and provide for the examination of applicants for registration under this Act;

...

(g) advise the Minister on amendments to the law relating to surveying as it considers necessary;

35. Board members are entitled to remuneration, as approved by the Minister²⁵. A registrar-secretary is appointed by the Minister upon the recommendation of the Director of Survey.
36. Part IV of the Act provides for the registration of persons as Land Surveying Graduate, Land Surveyor; Trinidad and Tobago Land Surveyor.

²⁵ The Minister is defined at section 2 as the Minister to whom responsibility for lands and surveys is assigned,

37. Section 17 prescribes the qualification required for registration of the three categories referred to at section 16(1). For the purpose of this Claim, sub-sections (2) and (3) are relevant and are set out below:

“17. (2) A person shall be registered as a Land Surveyor if he—

(a)

(i) is a person of good character and reputation and a fit and proper person to be so registered;

(ii) possesses the prescribed academic qualifications;

(iii) has gained such practical experience in a field of surveying as is prescribed; or

(b) is otherwise qualified as prescribed.

(3) A person shall be registered as a Trinidad and Tobago Land Surveyor if he—

(a) is a person of good character and reputation and is a fit and proper person to be so registered;

(b) has gained such experience in cadastral surveying as is prescribed; and

(c) is otherwise qualified as prescribed, and the Board shall issue a licence to the applicant authorising him to perform cadastral surveys.”

38. Section 64 empowers the Board to make regulations, subject to the approval of the Minister. Section 64 provides a non-exhaustive list of areas in respect of which the Board may exercise its power to make regulations. These include section 64(a) regulations to

“prescribe the professional qualifications and experience required for registration under the Act”.

The Regulations

39. Regulation 4 prescribes the following, as the qualifications required for registration as a land surveyor:

“4. (1) A fit and proper person of good character and reputation who has—

(a) been registered as a Land Surveying Graduate; or

(b) graduated, or passed an examination entitling him to graduate in a surveying degree accepted by the Board, which must be at least the equivalent of the degree offered by the UWI and has passed the subject in the category of surveying in which he is seeking registration;

(c) completed any professional assessment projects as prescribed;

(d) completed the practical experience as prescribed;

(e) passed any other written or oral examination;

(f) undertaken such additional practical experience as the Board may require; and

(g) satisfied any other condition specified in the Act or these Regulations, may be registered as a Land Surveyor.

(2) An application for registration as a Land Surveyor shall be in the form set out in Form 2 of the First Schedule and shall be accompanied with proof of payment of the fees prescribed in the Second Schedule”

Submissions

40. Extensive Written Submissions were filed by attorneys-at-law, Elaine Green and Colvin Blaize, on behalf of the Claimants and the Defendant respectively.
41. Hereunder, I have attempted to distil the essence of those submissions.²⁶ Learned counsel for the Claimant submitted that powers are conferred by the **Act** on the Defendant, for the development of regulations and procedures for the registration of land surveyors. In support of her submission, Ms. Greene has relied on ***Padfield v. Minister of Agriculture, Fisheries and Food* [1968] A.C. 997**. At page 1030 where Lord Reid stated:

“Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole, and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.”²⁷

²⁶ Written Submissions were filed on behalf of the Claimant on April 11, 2018. Written Submissions were filed on behalf of the Defendant August 2, 2018

²⁷ See *Padfield v Ministries of Agriculture, Fisheries and Food* [1968] AC 997 at page 1030

42. Learned Counsel also relied on ***M v. Scottish Ministries*** [2012] 1 WLR 3386 which was an appeal to the Supreme Court from the Extra Division of the Inner House of the Court of Session. On November 28, 2012, Lord Reed handed down a judgment with which the rest of their Lordships agreed.
43. The appeal was allowed, and it was held that the failure by the Ministers to draft and lay regulations under section 268(11) and (12) of the Mental Health (Care and Treatment Act) 2003 before the Scottish Parliament prior to May, 2006, and their continued failure to do so, was and is unlawful.
44. Learned Counsel also relied on the authority ***Alleyne v. Attorney General of Trinidad and Tobago*** [2015] UKPC 3 a judgment delivered by Lord Toulson. associations for the purpose of representing them.
45. Ms. Greene went to say that the right of the Claimants to practice their profession is a right afforded by the Constitution. In that regard, learned Counsel relied on the case ***Peter Jaglal v. Narine and Reeza Mohammed, the Minister of Agriculture*** HCA S-995 of 1998 where Justice Moosai (as he then was), held that the court was of the view that the fundamental right to liberty, security of the person and enjoyment of property enshrined in s.4[a] of the Constitution is broad enough to include the right to carry on a trade, business or profession.
46. It was further submitted that the Claimants expected that the power to make regulations should have been exercised within a reasonable time and that the failure of the Board to act with reasonable expedition raises the issue of irrationality.
47. On the issue of irrationality/unreasonableness, Learned Counsel argued that the issue which fell to be determined was whether it was reasonable for the Defendant to deny the

Claimants' applications for registration, on the basis of its failure to prescribe the matters required for their registration. Ms. Greene cited the renowned case, ***Associated Provincial Picture Houses Ltd v. Wednesbury Corp*** [1948] 1 KB 223 wherein Lord Greene M.R. stated:

43. Ms. Greene then went on to discuss the Board's duty which may have caused the Claimants to have an expectation that regulations would be made accordingly. Ms. Greene cited ***Lafarge Redland Aggregates Ltd. v. Scottish Ministries*** [2001] SC 298, a case which concerned the failure of a local authority to determine an application for planning permission within a period of seven years.
48. On the issue of legitimate expectation, Ms. Greene relied on the landmark decision of the House of Lords in ***Council of Civil Service Unions v. Minister for the Civil Service***[1985] AC 373 as well as ***R (on the Application of Nadarajah) v. Secretary of State for the Home Department*** [2005] EWCA Civ 1363 on the issue of legitimate expectation and good administration of justice. In ***Nadarajah*** Lord Justice Nelson shared the view that where a promise has been made by a public body the law will require that it be honoured unless there is good reason not to do so.
49. Mr. Blaize, in turn, addressed the Court and relied on ***On the application of National Association of guardians ad Litem and Reporting Officers) v. CAFCASS***²⁸. Lord Scott Baker stated that legitimate expectation:

“is a developing doctrine whose categories may not yet be closed. It is underpinned by the concept of fairness, that it may be unfair to permit a public

²⁸ [2012] EWCA Civ 853

authority to follow a different course from that which it has represented it will follow”

44. Mr. Blaize also cited ***R v. Inland Revenue Commissioners ex parte MFK Underwriting Agencies Ltd*** [1990] 1 WLR 1545, a judgment in which Bingham LJ expressed the following view:

“If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting a public authority should generally be in no better position. The doctrine of legitimate expectation is rooted in fairness. But fairness is not a one-way street. It imports the notion of equitableness, of fair and open dealing, to which the authority is as much entitled as the citizen.”²⁹

45. Mr. Blaize cited the authority ***Application of VASHTI Sampson, Rajh Basdeo, Indar Samaroo, Grantley Prescott and James Chinapoo*** Civil Appeal No. 96 of 2003. Justice of Appeal Nelson (as he then was), dismissed the Claimants appeal. The Claimants were squatters on lands belonging to the housing authority and had been served notices to quit. In the course of his judgment, JA Nelson stated:

²⁹ R v. Inland Revenue Commissioners ex parte MFK Underwriting Agencies Ltd [1990] 1 WLR 1545 at pages 1569-1570

“it is trite law that a decision maker cannot properly create a legitimate expectation that is beyond its statutory powers or in breach of the law...”³⁰

46. The Defendants also contend that no time frame has ever been set by the **Land Survey Act** for prescribing qualifications necessary in respect of each class of surveyor.

47. It was also submitted that this Court cannot order that the Claimants be registered as Land Surveyors. In that regard, learned counsel relies on **North Wales Police v. Evans** [1982] 3 All ER 141 at 154. In that case, Lord Brightman stated:

“Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.”³¹

His Lordship also went on to say:

“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”³²

48. The Defendant further contended that the Claimants are asking the court to make a decision mandating the Board to register the Claimants as opposed to reviewing a decision made by the Defendant. Learned Counsel submitted that the Court has a

³⁰ Application of VASHTI Sampson, Rajh Basdeo, Indar Samaroo, Grantley Prescott and James Chinapoo Civil Appeal No. 96 of 2003 at page 28 of the judgment

³¹ North Wales Police v. Evans [1982] 3 All ER 141 at page 154 of the judgment

³² Ibid at page 155

supervisory jurisdiction and not an appellate jurisdiction. In this regard, Mr. Blaize relies on *O'Brien v. Moriarty* [2005] IEHC 457.

49. Learned Counsel, Mr Blaize ended his its submissions by stating the Claimants have suffered no prejudice by being unregistered, as the Board has never been informed of any instances or any situation in Trinidad and Tobago where any job or contract, required registration as a Land Surveyor in the areas identified by the Claimants. The Claimants have not shown that their career progress has been adversely affected by their lack of registration.

Discussion

50. This application for judicial review was instituted by two Claimants, who were both land surveyors and who were specialists in areas other than cadastral surveying.
51. Trevor Isaac, the First Claimant is an Engineering Surveyor, while Paula Drakes, the second Claimant is qualified and experienced in the areas of Geo-Information, Photogrammetry and Cartography.
52. There is no dispute that both Claimants had applied many years ago to be registered as Land Surveyors with the Land Surveying Board.
53. In the case of Trevor Isaac, his first application was made in the year 1999, when he had been told by the Board that he did not possess the requisite academic qualifications.
54. Thereafter, Mr. Isaac obtained a degree from the University of the West Indies and renewed his application in 2002, 2008 and 2009, only to be told on each occasion that his application was being deferred.

55. Paula Drakes, first applied to be registered in the year 1994. Ms. Drakes received no response for some 3 years when she was invited to attend an interview. She was unable to accept this invitation because she was engaged in post-graduate studies in the Netherlands. Ms. Drakes renewed her attempt at registration in 1999, 2012 and 2016.
56. In response to her application in 1999, Mrs. Drakes was informed by the Registrar-Secretary, Dr. Aldwin-Phillip that the procedure for examinations had not been finalised.
57. Ms. Drakes received no response to her 2012 application. Her 2016 application was made with a tone of urgency, since she had entered into an agreement with a firm Survair International Ltd. to succeed the well-known photogrammetrist, the late Paul Williams. The agreement was conditional on her being registered as a Land Surveyor.
58. The Land Survey Board has not denied that the Claimants have been applying for registration over the years. It has been their position that they were unable, throughout the years, to procure suitably qualified persons to conduct examinations for the registration of non-cadastral surveyors.

Issues

59. The issues which have been canvassed in these proceedings concern firstly, the failure of the Board to prescribe academic qualifications for the registration of Land Surveyors, required by section 17 of the **Act**³³ and continuing failure of the Board to register Land Surveyors, in any category of non-cadastral surveying other than hydrographic surveying.
60. The specific issues which arise are:

³³ Section 17 of the Act set out at paragraph 37 above

- whether the delay on the part of the Board was in breach of their statutory duty; and in conflict with the policy of the **Act**
- whether the failure or delay on the part of the Board was irrational.

61. An issue also arose as to whether the first Claimant held a legitimate expectation that he would be registered as a land surveyor, as long as he obtained a degree in land surveying from the University of the West Indies.

62. These issues will be examined in the discussion which follows.

Conflict with the Policy of the Act

63. In ***M v. Scottish Ministries***³⁴, the House of Lords applied the principle in ***Padfield***.³⁵ They considered the plight of a mental patient who applied for a declaration that they were being held in conditions of excessive security. Whether or not a patient qualified to apply for a declaration that they were being held in conditions of excessive security were to be defined by regulations to be made Scottish Ministers under the Mental Health (Care and Treatment) (Scotland) Act 2003. The Petitioner was unable to apply for a declaration, since no regulation had been made. The Mental Health Act prescribed a date by which regulations should have been made.

Lord Reed, with whom the majority of their Lordships agreed, had this to say:

“If legislation vested a person or class of persons with a right which could only be exercised if regulations governing that exercise were in force, it would be assumed that Parliament intended that the person delegated with the relevant power

³⁴ [2012] 1 WLR 3386

³⁵ *Padfield v Minister of Agriculture Fisheries and Food* [1998] AC 997

*should make regulations so as to activate the right in practice: Singh (Pargan) v Secretary of State for the Home Department [\[1992\] 1 WLR 1052](#).*³⁶

*“Parliament would legislate only for the purpose of bringing about an effective result. Its intention can ordinarily be taken to be that an enactment, when brought into force, will not be futile but will have practical consequences for the life of the community.”*³⁷

64. On the issue of the discretion to make regulations, his Lordship went on to say:

*“42 It has long been a basic principle of administrative law that a discretionary power must not be used to frustrate the object of the Act which conferred it: see for example Padfield v Minister of Agriculture, Fisheries and Food [\[1968\] AC 997](#). If, as I have concluded, it was the intention of the Scottish Parliament that Chapter 3 of Part 17 of the 2003 Act should be in effective operation by 1 May 2006 at the latest, it follows that, although the Ministers had a discretion as to the manner in which they exercised their power to make the necessary regulations, they were under a duty to exercise that power no later than 1 May 2006.”*³⁸

Lord Reed continued at paragraph 47 in this way:

*47 The importance of Padfield’s case [\[1968\] AC 997](#) was its reassertion that, even where a statute confers a discretionary power, a failure to exercise the power will be unlawful if it is contrary to Parliament’s intention.”*³⁹

³⁶ At page 3391, paragraph 16 of the judgment

³⁷ At page 3396, paragraph 34 of the judgment

³⁸ See para 42, *ibid*

³⁹ At paragraphs 42, 43 and 47 of the Judgment.

65. The House of Lords upheld the appeal of the patient and held that the intention of the legislature was that provisions should be brought into operation on the specified date and not at an indefinite period after. Their Lordships held as well that the Scottish Ministers were under a duty to exercise their discretion no later than the specified date.
66. The authority of *M v. Scottish Ministries*⁴⁰ is distinguishable from the instant case, in that no date has been prescribed by the *Land Survey Act*⁴¹ for prescribing academic qualifications or for making provisions for examinations for the registration of Land Surveyors.
67. Nonetheless, it is unarguable that when a statute requires or authorises something to be done but does not prescribe a time within which it shall be done, the law shall be construed as requiring or authorising the thing to be done without unreasonable delay⁴².
68. In these proceedings, the Board has been established by the *Land Survey Act*⁴³, which had been passed in 1996. Since 1996, section 17 provided that applicants for registration should have academic qualifications as prescribed. The Board was invested with the discretion to make regulations to prescribe such academic qualifications by section 64, with no date being specified. By the *Interpretation Act*, such prescription ought to have been made without unreasonable delay. To date the regulations have not been made. A delay of 23 years cannot be described by any other term than unreasonable.

⁴⁰ Ibid

⁴¹ Ch 58:04

⁴² See section 23 Interpretation Act Ch 3:01

⁴³ Ch 58:04

69. In *Alleyne v Attorney General*⁴⁴, their Lordships again considered the failure of the Stationary Authorities' Service to make regulations. At page 6 of the decision, their Lordships had this to say:

“No satisfactory explanation was given by the state for the failure to make any regulations under section 60 of the Municipal Corporations Act regarding the governance of municipal police services, or in the meantime to make any of the Police Service Regulations applicable, contrary to the plain purpose of the statute. Although the section used the word “may” and not “shall”, it cannot be doubted that the Commission was under a duty to consider what regulations should be made and, if that involved any significant delay, what parts of the Police Service Regulations should be applied until such regulations were made.”⁴⁵

70. The proceedings before me are comparable to *Alleyne*, in that nothing has been done over the years. I borrow the words of their Lordships, in *Alleyne*, in describing the facts of this case as *“a lamentable and long standing state of affairs”*⁴⁶.

71. In my view the Board by its delay, acted in breach of its statutory duty to prescribe academic qualifications and to provide for the conduct of examinations under Regulations 4 (1) (d). In my judgment, such delay was also in conflict with policy of the **Act** to have Land Surveyors registered with the Board.

⁴⁴ [2015] UKPC 3

⁴⁵ [2015] UKPC 3 at paragraph 34

⁴⁶ *Ibid* at paragraph 35

Irrationality

72. A public authority acts irrationally if their actions may be described as being so outrageous in its defence of logic or of accepted moral standards that no authority which applied its mind to the matters, at hand could have acted in the way in which they did. See ***Council of Civil Services Union v Minister of the Civil Service*** per Lord Diplock.⁴⁷
73. By section 15 of the ***Judicial Review Act*** the concept of irrationality or unreasonableness has been applied to inaction or delay. It is my view that delay of 23 years is symptomatic of systemic necrosis. Such systems can be brought about only by complete neglect, of which no reasonable authority or Board would be guilty.

Legitimate Expectation

74. An issue of legitimate expectation arises as to whether Mr. Issac, the first Claimant, had conceived a legitimate expectation that he would be registered upon obtaining a degree from UWI. Learned Counsel for the Claimants argued that by virtue of the response of the Defendant by their letter of December 21, 1999, the Defendant had given to the first Claimant an assurance that upon obtaining a degree from the UWI, he would be registered.
75. It is my view that this argument for the first Claimant is based on an erroneous interpretation of the letter of December 22, 1999. This letter conveyed no assurance. It conveyed a simple indication that the first Claimant's academic qualifications were not equivalent to the UWI degree in land surveying.

⁴⁷ Council for Services Union v Minister for the Civil Service [1984] 3 ALL ER 935 at 951 a

76. It is well established that a legitimate expectation may arise where there is a regular practice or an express promise.⁴⁸ There was no allegation that the Board adhered to a regular practice of registering graduates from University of the West Indies. It is also my view that no express promise was made by the letter of December 23, 1999. I therefore hold that Mr. Isaac was not entitled to conceive a legitimate expectation on the basis of the letter of December 23, 1999.

Orders

77. It follows that there will be judgment for the Claimants. I proceed to consider the lengthy list of relief claimed in these proceedings, many of which the Claimants will be entitled to. Where I have refused any item of relief I will provide an explanation.

78. There will be declarations in terms of paragraphs (i), (ii) and (iii) of the Fixed Date Claim⁴⁹, these are general items of relief:

- (i) *A Declaration that the Defendant is in breach of its statutory duties under section 5(a) and (b) of the LSA by reason of its delay in prescribing and its continuing omission, refusal and or failure to prescribe such matters as are required under section 17(2)(a)(ii) and 17(2)(b) of the Land Surveyors Act Chap. 58:04 of the Laws of Trinidad and Tobago (the "LSA") within a reasonable time of the coming into force of the LSA on the 14th of March 1997;*

⁴⁸ See *CCSU v Minister of Civil Services* [1984] 3 ALL ER 935 per Lord Fraser at 944 a

⁴⁹ See the Fixed Date Claim Form filed herein on February 3, 2017

- (ii) *A Declaration that the delay by the Defendant and its continuing omission, failure and or refusal to register Land Surveyors in any category of non-cadastral surveying other than hydrographic surveying since the LSA came into force on the 14th of March 1997 is contrary to law and in conflict with the policy of the LSA;*
- (iii) *A Declaration that the delay by the Defendant and its continuing omission, failure and or refusal to register Land Surveyors in any category of non-cadastral surveying except hydrographic surveying since the LSA came into force on the 14th of March 1997 is irrational and or unreasonable;*

The Court also grants an order of mandamus directing the First named Defendant to prescribe forthwith such matters as are required under section 17 (3) (5) (i).

79. Specific items of relief were sought by each Claimant. In respect of the first Claimant I will grant the declaration sought in item (vii) of the Fixed Date Claim Form.⁵⁰

“a declaration that the continuing omission refusal and or failure of the Defendant to register Mr. Isaac pursuant to section 17 of the land Survey Act in the engineering category is irrational and/or unreasonable”.

⁵⁰ Ibid

I also grant a similar declaration in favour of the Second Claimant. For reasons stated above, I have excised references to legitimate expectation.

80. I have refused relief sought at (ix), (x), (xii) and (xiii). The question of the entitlement of the Claimants to be registered lies with the discretion of the Board, a discretion which must be exercised in accordance with the **Act**, generally and in particular in accordance with section 17 of the **Act** and Regulation 4 of the Regulations. Registration is a matter for the Board and should the Court grant relief in terms of items (ix) and (x), the Court will be usurping the functions of the Board.

81. Relief sought at (x) and (xiii) are requests for orders of mandamus, consequent upon the declarations at (ix) and (xii). This Court cannot direct the Board to register anyone. The Court may direct that the Board consider the applications in accordance with the statute. However, whether the Claimant will be registered or not remains within the discretion of the board.

Date of Delivery: July 9, 2019
Justice Dean-Armorer