TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA 393 OF 2005

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF THE GUARANTEES OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS PART 1 OF THE SAID CONSTITUTION

AND

IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS PURSUANT TO SECTION 14 OF THE CONSTITUTION AND ORDER 55 OF THE RULES OF THE SUPREME COURT

BETWEEN

GEORGE DANIEL

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before: The Hon. Mr. Justice Bereaux

Appearances: A. Ramlogan for Claimant
C. Hamel Smith S C, C. Soverall & R. Jodhan for Defendant

JUDGMENT

1. The claimant seeks the following reliefs:

   (a) A declaration that the rights of the Applicant under sections 4(a) and 4(d) of the Constitution have been denied by reason of his disability in relation to the State and its services;

(b) A declaration that the Applicant's access to the Hall of Justice has been impeded because the Applicant, as a disabled person has been denied equality of treatment by the State in relation to access to the building and the services therein;

(c) A declaration that the Applicant's freedom of movement in relation to access to the Hall of Justice has been impaired contrary to section 4(g) of the Constitution which provides for freedom of movement.

2. The Claimant is President of the Trinidad and Tobago Chapter of Disabled Peoples International. He has lost both legs and must use a wheelchair. The Hall of Justice, situated at Knox Street, Port of Spain houses the Supreme Court of Judicature of Trinidad and Tobago. It also houses the probate registry.

3. The respondent has readily conceded that the Hall of Justice as the building is known, does not provide suitable access or facilities for a person with disabilities and in particular one who is confined to a wheelchair. The building was constructed in the mid 1980s and no thought was given to persons with disabilities such as the Applicant. It can only be accessed publicly by steps. There is no ramp or elevator for persons confined to wheelchairs or persons such as the elderly, for whom climbing steps may be a challenge.

4. The Claimant alleges that the failure to provide facilities for persons such as he whose disabilities require the use of a wheelchair is a breach of his rights under sections 4(a), (d) and (g). The relevant grounds as I have deduced from the notice of motion are:

(a) The Applicant, as a physically impaired litigant, is entitled to access to the Hall of Justice and the State is

obliged to provide such reasonable facilities as to permit the Applicant to do so in the same manner as any able bodied litigant is able to;

(b) The denial of access to the Applicant and other physically impaired persons who are unable to use the steps of the Hall of Justice has resulted in the virtual exclusion of disabled persons from being able to serve on criminal juries in Trinidad and Tobago and is discriminatory and unconstitutional and contravenes the right to equality of treatment.

(c) The reliance on and use by the State of section 5(b) of the Jury Act as an absolute bar or general disqualification of disabled persons serving on juries is illegal and unconstitutional.

(d) The *"infirmity of body or mind"* referred to in section 5(b) of the Act must be interpreted as meaning an infirmity of body or mind that renders the person incapable of performing the functions of a juror.

(e) The fundamental rights and freedoms expressed in the Constitution impose a duty upon the State to take such legislative, executive or judicial action as will ensure the enjoyment by all people including disabled people of the said rights and freedoms.

5. Items (c) and (d) were not pursued by Mr. Ramlogan in light of evidence on behalf of the respondent that the State has never invoked the provisions of section 5(b) of the Jury Act to disqualify persons with disabilities from serving on juries.

6. **The evidence**

Mr. Daniel, in his affidavit in support of his notice of motion, deposed as follows:

> ***"I have suffered and am at present suffering from the absence of provision in the building for disabled people. I am obliged to use a wheelchair being unable to walk on my own. I have lost both legs. I have had numerous complaints from other members of my organisation over the years about the fact that they are denied physical access to the nation's Supreme Court. I am unable to attend court in the same way as people who are not disabled. I have litigation pending and I wish to be able to attend court, but I have to secure assistance which I cannot afford to enable me to get into the court building and to pass through the security barrier where security checks are done in respect to members of the public going to court. As a result of ill treatment during a protest I have a pending action in the High Court.***
>
> ***The absence of facilities for the disabled to enter the court has adversely affected the disabled community in many ways. Disabled people cannot attend court to listen to or observe the proceedings in a case. They cannot access the court to file a case in the event they wish to act for themselves. It is very rare to see a disabled person serving as a juror because of the lack of infrastructure to accommodate disabled persons on the jury. The witness box in the courtrooms are also not accessible to persons in wheelchairs. The public toilets in the Hall of Justice do not cater for persons with disabilities. The disabled community has been virtually excluded from the jury service in the criminal justice system on account of the lack of facilities for disabled persons.***

Over the years I wanted to attend court to listen to or observe certain cases that were of interest to me. I could not do so because the Hall of Justice is not accessible via wheelchairs and the toilet facilities would not accommodate me. Loss of securing assistance by having able bodied persons accompanying me to assist me is more than I can afford. I need the help of two (2) persons on each occasion.

To date no action has been taken to rectify this problem in consequence of which disabled persons have been and continue to be discriminated against by the judicial arm of the State as against persons not disabled when they wish to attend public hearings in the court within the Hall of Justice.

As a result of my disability I have been stripped of my dignity as a human being and I feel an alienation from those in the society who are not disabled."

7. The defendants responded with three (3) affidavits in reply. The main deponent is Court Executive Administrator, Mr. Gary Kelly, the senior civil servant in the Hall of Justice and who is in charge of the administrative affairs of the judiciary. The other deponents are Ms. Lianne Lee Kim, Senior Magistrate and Mr. Howard Cayenne, Chief Election Officer. The thrust of both their evidence is that the State has never invoked section 5(b) of the Jury Act, Chap. 6:53 which sets out grounds for disqualification of persons whose names appear on the jurors' list, by reason of physical disability. That choice is left to the individual himself.

8. Mr. Kelly's evidence addresses the lack of facilities. It is necessary to refer to it in some detail. He States:

"The Hall of Justice, Knox Street, Port of Spain, was constructed in the mid-1980s. As designed and constructed, it does not provide suitable access or facilities for a person with disabilities

who is confined to a wheelchair, such as the applicant. Members of the public gain access to the front entrance of the Hall of Justice from the street level via a set of stairs and there is no ramp which can be used by a person in a wheelchair to access that entrance. However, once a disabled person gains access to the entrance to the building there are adequate elevators at various points in the building that will permit him access to and from each of the public floors. The witness boxes in the courtrooms at the Hall of Justice also do not provide suitable access to persons in wheelchairs. Also the jury boxes in the courtrooms at the Hall of Justice are not suitable for use by persons in wheelchairs. Moreover, the construction and layout of the building, as well as the various courtrooms therein, pose very significant challenges to any attempt at modification in order to cater for persons with disabilities who are confined to wheelchairs.

Efforts have been made by the judiciary to mitigate some of the difficulties posed by the design of the Hall of Justice for persons who are confined to wheelchairs. For example, because of the absence of a ramp to allow access to the front entrance of the Hall of Justice from the street level, persons who are confined to wheelchairs are permitted to gain access to the Hall of Justice through the car park in the basement to an elevator, upon application through their attorneys or by themselves. Further, public toilets (both male and female) on each of the ground, first and third floors of the Hall of Justice have been modified to cater for persons with disabilities.

Because of the significant deficiencies at the Hall of Justice insofar as access and uses by persons with disabilities are concerned and the difficulties associated with satisfactorily

modifying the building to remedy this situation, the Judiciary issued a tender invitation for suitably qualified parties to:

(i) conduct an analysis of the building and facilities at the Hall of Justice insofar as they cater for the needs of persons who are physically, visually and audio challenged; and

(ii) provide architectural solutions to provide access to the Hall of Justice to persons who are physically, visually and audio challenged, such recommended solutions to include access to:

(a) the building
(b) public conveniences;
(c) court rooms;
(d) witness boxes;
(e) jury boxes and facilities; and
(f) parking.

Pursuant to this, an architectural firm has been engaged and it has already submitted a project brief which I have approved. Currently, the architectural firm is in the process of doing the necessary analysis in order to provide the judiciary with a comprehensive design with a view to providing the physically challenged with access to the building, public conveniences, court rooms, witness boxes, jury boxes and facilities and parking.

Given the nature of this exercise, it is likely that implementation of the recommendations that are expected from the architectural firm engaged by the judiciary will necessarily take some time to

be implemented. Nevertheless, the judiciary is committed to addressing all recommendations provided by the architectural firm it has engaged within the shortest time that is feasible.

The judiciary is also committed to ensuring that all new court buildings erected are designed, constructed and outfitted in a manner which adequately addresses the needs of persons with disabilities and that older buildings are modified to achieve this objective so far as possible whenever they are being refurbished. This commitment of the judiciary is reflected, for example, in the Family Court at NIPDEC House, Port of Spain where considerable effort was made to create a building and facilities that cater for persons with disabilities, including those confined to wheelchairs, the visually impaired and the hearing impaired and in the San Fernando Supreme Court which was outfitted with facilities to cater for persons with disabilities when it was refurbished in the early 1990s."

(9) Mr. Ramlogan, on behalf of the Applicant, founded his case on the following three (3) human rights provisions of the Constitution:

(a) the right of the individual to liberty - section 4(a);
(b) the right of the individual to equality of treatment from a public authority in the exercise of its functions - section 4(d);
(c) the right of the individual to freedom of movement - section 4(g).

As to the right to liberty under section 4(a), Mr. Ramlogan submitted that the concept of liberty embraces and includes the right to pursue legitimate activities including activities lawfully pursued by others. It is within Mr. Daniel's capacity

to serve as a juror, file and pursue legal proceedings, appear in person and listen to trials. These are lawful activities which the State must ensure are equally possible for him as it is for able bodied people.

[10] As to the applicant's right to freedom of movement under section 4(g), Mr Ramlogan submitted that the right of freedom of movement in Trinidad and Tobago embraces a right of mobility that would include the right of physically impaired citizens to freely enter, use and leave the Hall of Justice and to participate in the criminal justice system.

[11] Mr. Ramlogan's submissions on the section 4(d) right were extensive in light of the conflicting decisions of the Court of Appeal in **Attorney General v K.C. Confectionery Ltd 1985** 34 WIR 387 and **Central Broadcasting Services Limited and The Sanatan Dharma Maha Sabha v Attorney General** Civil Appeal #16 of 2004. The **K.C. Confectionery** decision requires that in order to succeed the Applicant must establish:

(1) that he was in a similar position to persons of comparable circumstances (the comparator test);
(2) that he was treated differently from those other persons;
(3) the different treatment was actuated by malice.

[12] He conceded that on the facts of this case there was no *mala fides* directed at the claimant but he submitted that on the current State of the law in Trinidad and Tobago, having regard to the judgments of the Court of Appeal in the **Central Broadcasting Services** decision, *mala fides* did not have to be shown.

He went on to add that:

(a) in the K C. Confectionery decision, the Court of Appeal was wrong to apply *mala fides* as a factor in interpreting

sections 4(b) or (d). There is no place for *mala fides* when dealing with section 4(d).

(b) once a *prima facie* case of unequal treatment was made out the onus shifted to the State to justify the difference in treatment meted out to the claimant and to show that it was reasonable.

(c) where the motive of the decision-maker is not predominant, the court should adopt an objective test consistent with the decision of the House of Lords in **James –v- Eastleigh Borough Council** [1990] 2 A.C. which was a decision concerning discrimination under various anti-discrimination legislation.

(d) the true comparator test might not be appropriate to this case which concerns discrimination against a group or class of persons. The concept of discrimination is much broader than the comparator test envisages.

[13] Mr. Hamel-Smith on the other hand submitted that the law as Stated by Mendonca J.A. in the **Central Broadcasting** decision following the decision in **K C Confectionery** was still applicable and *mala fides* by the public official (in the exercise of his or her functions) needed to be established. In **Central Broadcasting Services** there appears to have been a divergence of views among judges of the Court of Appeal. Mendonca J.A. held to the traditional **K.C. Confectionery** position, that being that an aggrieved person, in order to successfully establish a breach of his right to equality before the law and equal treatment, must establish unequal treatment when compared with a party similarly circumstanced. He must also show *mala fides* in the administrator's conduct. This requires at least proof of an intentional and purposeful or irresponsible act, or

"some element of deliberateness in the selection of a person for different treatment" per de la Bastide C J in Cv 102 of 1999 **Boodhoo and Jagram v The Attorney General** at page 11.

[14] He held that the trial judge's approach at first instance was wrong. It was not the law that once inequality was shown the onus shifted to the State to explain the inequality. Evidence of inequality without more was not sufficient to shift the onus. The onus was on the aggrieved party to establish *mala fides*. But, in his judgment, such *mala fides* need not be expressed but may be inferred from overt acts. If someone else is singled out for different, albeit favourable treatment, that may be evidence from which *mala fides* may be inferred since such conduct is *ex facie* arbitrary and may evidence *mala fides*. The evidence does not have to be that the aggrieved party was selected or targeted for victimization. He went on to find that *mala fides* was proven on the facts before him. This approach by Mendonca J.A. significantly reduces the burden placed on an applicant who seeks to establish a breach of section 4(d).

[15] Hamel Smith J.A., while agreeing with Mendonca J.A. that there had been a strong case of unequal treatment, opined that not all cases required proof of *mala fides*. He held that to so require would place a fetter on the right itself, since discrimination can be, and usually is practiced by stealth. He sought to rely on the judgment of Persaud J.A. in **K.C. Confectionery** to support the view that proof of *mala fides* was not always necessary to displace the presumption of regularity by stealth. He supported the approach of the House of Lords in **James v Eastleigh Borough Council** (supra) in which it was held that discrimination could be proven even though the respondent council had not intended to discriminate. He put the onus squarely on the State to justify any evidence of unequal treatment.

[16] Warner J A. favoured a similar approach to that of Hamel-Smith J.A. She was not prepared to find that on the evidence *mala fides* was made out, but relying on the

dictum of Persaud J.A. in **K.C. Confectionery**, held that *mala fides* does not always have to be proven if the allegation is that the public official has contravened the law in the discharge of his functions. All that needs to be proved is *"the deliberate and intentional exercise of the power … which results in the erosion of the complainant's right"…* She went on to find that there was a breach of the section 4(a). However, she was not prepared to apply the **Eastleigh** approach because in that case the legislation defined what discriminatory treatment was.

[17] As I understand the judgments of the members of the Court of Appeal, therefore, Mendonca J.A. was of the view that *mala fides* had to be proven by an applicant for constitutional relief who alleges breach of section 4(d), while Hamel-Smith and Warner JJA felt that **K C Confectionery** did not establish that such proof was always necessary and that an applicant could succeed by showing an erosion of his rights which was the result of a deliberate and intentional exercise of power. Hamel-Smith J.A. was further prepared to place the onus on the State to justify any unequal treatment shown to an applicant. I turn then to an examination of the rights alleged by the applicant to have been infringed. In my judgment there has been no breach of section 4(d) or section 4(g) but there has been a breach of the applicant's right to liberty under section 4(a).

[18] **Section 4(d) – unequal treatment**

There is considerable merit in the submission that placing a burden of proof of *mala fides* on the citizen who alleges unequal treatment may be too onerous a burden, moreso against a State machinery which has many resources at its disposal by which to conceal it. The dictum of Lord Nicholls of **Birkenhead in Nagarajan v London Regional Transport** [2000] 1 A C 501 is quite apt at pages 511 – 512 where he said:

> ***"All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. Many people are unable or***

unwilling to admit even to themselves that actions of theirs may be racially motivated."

Ferreting out evidence of discrimination in those circumstances may be difficult and it may be far better for the State to produce evidence to justify the action in question. Mendonca J.A. in the **Central Broadcasting Services** sought to ameliorate the harshness of this requirement by holding that inferences of *mala fides* can be drawn from the facts, moreso where the evidence is that the act complained of was irresponsible or *ex facie* arbitrary. An additional criticism made of the **K.C. Confectionery** approach is that, as this case demonstrates, the comparator test may not always be an appropriate basis for judging equality. But, in my judgment, that may not of itself be a sufficient basis for its removal, as it still represents a very plausible basis by which to judge inequality of treatment. It may be that the exceptional case, such as this, may have to be judged on its own facts. Moreover, finding a suitable and more appropriate test is fraught with difficulty.

[19] The matter requires review by the Court of Appeal or by the Judicial Committee of the Privy Council. But, in my judgment, whether you apply the **K C Confectionery** approach or the **Eastleigh** approach favoured by Hamel Smith J.A., or the Persaud J A approach favoured Warner J.A. there has been no unequal treatment of the applicant by the State, such as offends section 4(d). Quite apart from the lack of a comparator, there is certainly an absence of *mala fides* and in any event the State has sufficiently explained the reasons for the lack of appropriate facilities.

The Executive has recognised that the Hall of Justice is deficient in the provision of facilities for persons who are confined to wheelchairs and has made and continues to make efforts to correct it. The lack of provision of such facilities was initially inadvertent, an omission which occurred during planning of the building's construction in the early 1980s. Courts which have been constructed subsequently have provided for the physically impaired. Mr. Kelly deposed that

the primary difficulty to the physically impaired is immediate access into the building but once inside there are adequate elevators to permit access to and from each public floor. He also deposed that the public toilets on each level of the building have been modified to cater for persons with disabilities.

[20] From Mr. Kelly's evidence it can be deduced that three (3) problems remain to be resolved. The first is the construction of a ramp or an elevator to permit easy and direct access by the applicant to the Hall of Justice from the street, the second is to provide suitable witness boxes in the courtrooms and the third is to provide jury boxes which can accommodate someone in a wheelchair. He adds that the layout and design of the building provides significant challenges to modification. There has been no challenge to that evidence by Mr. Ramlogan. Mr. Kelly's evidence demonstrates that there is no *mala fides* and even applying the **Eastleigh** test has sufficiently explained why wheelchair bound citizens cannot access the Hall of Justice directly off the street. There was no provision made for them at the time of the building's construction and the building's design poses challenges to modifying it to accommodate changes. It is not a wholly satisfactory explanation but for the purposes of section 4(d), (as opposed to section 4(a)), there is no question of discrimination or unequal treatment. It is the desire of the executive to correct the situation but the logistics have been a challenge.

[21] **Section 4(g) – freedom of movement**

I also do not consider that there has been any breach of the applicant's right to freedom of movement. Freedom of movement is very much a subset of the right to liberty and its scope is therefore not as wide. In light of the conclusion to which I have come it is unnecessary to examine its full purport. In this case the State has placed no deliberate or mandatory restriction on the applicant's right to move about as freely as he wishes even to coming to the Hall of Justice. His ability to freely access the Hall of Justice may be restricted but through no direct impediment imposed by the State. Moreover, there is no evidence that his

freedom of movement is otherwise restricted or curtailed in respect of his other activities or endeavours.

[22] **Breach of section 4(a) – right to liberty**

I come then to section 4(a). Mr. Hamel Smith, in his written submissions Stated that the evidence in this case in no way suggested that any right under section 4(a) (or 4(g) for that matter) might have been infringed as a result of the applicant's complaints concerning the inadequacy of the Hall of Justice. Such a submission puts a restricted interpretation on the meaning of *"liberty"* and of *"due process"* In **The Minister of Home Affairs v Fisher** 1980 A.C. 319 Lord Wilberforce Stated that a constitution must be treated as:

> ***"sui generis calling for principles of interpretation of its own, suitable to its character … without necessary acceptance of all the presumptions that are relevant to legislation of private law …***
>
> ***A Constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with that and with the recognition that rules of interpretation may apply, to take as a point of departure from the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms with a Statement of which the Constitution commences.***
>
> ***That is an approach which has consistently guided the courts in the interpretation of the provisions of sections 4 & 5.***

Jackson J.A. in **Inland Revenue Commissioner v Lilleyman & others** (1964) 7 W.I.R. 506 had described the constitutional approach in this way:

> ***"a Constitution must not be construed in any narrow or pedantic sense. The words used are necessarily general and their full import and true meaning can often only be appreciated when considered as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes but changing circumstances illustrate and illuminate the full import of that meaning."***

[23] A more recent Statement of that approach was made by Lord Bingham of Cornhill in **Hinds v Attorney General of Barbados** [2002] 1 A.C. 854 at 864 when in construing the Constitution of Barbados he said:

> ***"The Constitution is to be read not as an immutable historical document but as a living instrument, reflecting the values of the people of Barbados as they gradually change over time."***

It is with this approach in mind that I have addressed the applicant's complaint that his rights under section 4(a) have been infringed. The liberty provision of section 4(a) encompasses a wide and all embracing concept and in this regard the jurisprudence of the United States of America provides helpful guidance. I am mindful however that helpful though they may be, the decided cases of that jurisdiction are not to be transported and applied inflexibly without regard to the cultural and developmental differences of both our countries. In **Neinast v Board of Trustees of Columbus Metropolitan Library, 346 F.3d 585, 2003 Fed. App. 0363P (C.A.6 Ohio, 2003)** it was held that liberty under the law extends to the full range of conduct which an individual is free to pursue, and extends to the basic values implicit in the concept of ordered liberty and to basic civil rights and that it includes liberty of the mind as well as liberty of action. In

Allgeyer v the State of Louisiana 163 US 578 Justice Pechkam, delivering the judgment of the court said:

> ***"liberty" was held to mean not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but also to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will to earn his livelihood by any lawful calling; to pursue any livelihood or vocation; and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes abovementioned."***

[24] In **Meyer –v- Nebraska** 262 U.S. 390 (1923), the court interpreted *"liberty"* to mean not merely the freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience and generally to enjoy those privileges long recognised at common law as essential to the orderly pursuit of happiness by free men.

In **Ransom -v- Barker** (1982) 33 W.I.R. 183, the Court of Appeal of Guyana cited with approval definition of *"personal liberty"* as including *"the power of commotion, of changing situation, or removing one's person to whatever place one's inclination may direct without imprisonment or restraint, unless by due process of law"*.

In **Peter Jaglal –v- The Attorney General of Trinidad and Tobago** HCA 1276/2000, I stated that:

> ***"Liberty primarily connotes freedom from bodily restraint but it is more than that.***

It also means freedom to conduct and to pursue ones occupation of choice subject of course to the law of the land. As a concept therefore liberty is capable of the widest definition. There can be no complete or exact meaning moreso as constitutional norms adjust to changing times and values. What amounts to a breach of liberty will differ from case to case…"

[25] There exists today, the need for heightened scrutiny with respect to the rights of the physically impaired, this being necessary in light of the history of unfair and sometimes grotesque mistreatment meted out to them. Such a need was recognised as far back as 1975 (prior to the construction of the Hall of Justice) in the United Nations Declaration on the Rights of Disabled Persons proclaimed by General Assembly resolution 3447 (xxx) of 9th December, 1975, in which the rights of the physically impaired were recognised and proclaimed; among them was the declaration that:

"Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of same age which applies first and foremost to the right to enjoy a decent life as normal and full as possible."

There is no doubt then that the rights of the physically impaired are to be recognised and enforced. Ventour J., in **Mathews -v- The Transport Commissioner of Trinidad and Tobago and Another,** #HCA 972 of 1999, expressed a similar view (See page 22 of his judgment)**.** The respondent has taken note of these rights and in the construction of more recent court buildings has done so with disabled persons very much in mind. The State has also chosen not to apply section 5(b) of the Jury Act Chap. 6:53 which disqualifies persons

who are blind or *"afflicted with any other permanent infirmity of body"* from being a juror. In my judgment such a position, however commendable, may not be sufficient absent an amendment of the Act itself.

[26] Mr. Kelly adds that efforts are being made to adapt the Hall of Justice but there are significant challenges. He has however provided no further details of when these changes are to be effected but States that, in the meantime, persons in wheelchairs can access the Hall of Justice, by being wheeled through the underground car park and through the private entrances reserved for Judges and up the elevators. Underground access is not open to members of the public. It requires that security officers be notified and special arrangements be set up for admission. It is unacceptable that our physically impaired citizens, moreso those who are wheelchair bound, must suffer the inconvenience and indignity of being wheeled into the Hall of Justice in so roundabout a manner.

[27] Our Constitution mandates that they be treated in a far more civil and dignified manner. It is in the Hall of Justice that our citizenry come to pursue and enforce their rights. Physical access to it is an important part of their right to the protection of the law and ultimately to due process. They must be able to pursue their remedies and to witness proceedings, the latter of which is an important part of the legal process. It allows the litigant and the public the opportunity to view and to assess the fairness of the legal process. Without actual physical access to witness the process, credibility of the legal system will be undermined. Such access must be readily available to all. It is not sufficient that one's attorney can access it. The physically impaired must themselves have easy and direct access to the Hall of Justice to personally pursue the upholding of their rights and to witness proceedings if they so choose. *"Liberty"* requires that they have that option. A lack of unimpeded access can act as a disincentive to the legitimate pursuit of one's legal rights. Such access may be, to able bodied persons so routine as to seem trivial but for persons who are physically impaired such

physical access is neither trivial nor routine. It can be a daily challenge. But such access is a right not an option and is indelibly part of due process of law.

[28] I accept that there are very significant challenges posed to the modification of courtrooms of the Hall of Justice so as to accommodate wheelchair bound members of our society in jury boxes in the courts of the Hall of Justice and to allow them to serve as jurors. But I certainly do not accept that ramps or even elevators to allow for the public conveyance of motorised or manually operated wheelchairs could not already have been constructed at the entrance of the Hall of Justice on Knox or Abercromby Streets. It is quite unacceptable that even a time frame for such a construction has not yet been set. It is not that we do not possess the resources.

[29] I shall grant the applicant a declaration that the non-provision by the State of direct public wheelchair access through the public entrance to the Hall of Justice, Knox Street, Port of Spain, is a breach of the applicant's right to liberty under section 4(a) of the Constitution. Pursuant to the provisions of section 14, I shall direct that the State take such immediate steps as are necessary to provide within eighteen (18) months, direct access through the public entrance of the Hall of Justice, Knox Street, Port of Spain, to the applicant and other members of the physically challenged who are wheelchair bound. The defendants shall pay the claimant's costs certified fit for two (2) junior counsels.

NOLAN P.G. BEREAUX
Puisne Judge

20th July, 2007