

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2018-02605

IN THE MATTER OF THE VALUE ADDED TAX ACT CHAP. 75:06

IN THE MATTER OF THE LEGAL PROFESSION ACT CHAP. 90:03

IN THE MATTER OF THE INTERPRETATION OF THE

VALUE ADDED TAX ACT CHAP. 75:06

BETWEEN

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO

Claimant

AND

THE BOARD OF INLAND REVENUE

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Alvin Fitzpatrick SC leading Mr Kerwyn Garcia and Mr Anil Maraj instructed by

Mrs Nicole de Verteuil-Milne for the Claimant

Dr Claude Denbow SC leading Ms Anne Merise Duncan and Ms Lisa Singh-Dan for

the Defendant

Date: 27 June 2019

JUDGMENT

1. This case involves differing opinions on whether subscriptions paid by members of the Law Association of Trinidad and Tobago (Law Association) to the Law Association is subject to Value Added Tax (VAT) to be paid to the Defendant, the Board of Inland Revenue. The Law Association is a body corporate established under Section 3(1) and (2) of the **Legal Profession Act Chap. 90:03** (LPA). The Defendant (the Board) is the principal tax collecting agency in Trinidad and Tobago.

2. By Fixed Date Claim Form filed on 19 July 2018 supported by the affidavits of Theresa Hadad, Treasurer of the Law Association, filed on 19 July 2018 and 19 October 2018, the Claimant applied to the Court for:
 - 1) A Declaration or otherwise to determine or interpret provisions of the **Value Added Tax Act Chap. 75:06** (VAT Act).

 - 2) An order that the Board repay all monies the Law Association remitted to the Board in VAT charged on the Law Association's subscription fees paid by the Law Association's members.

3. On 29 April 1999 the Law Association was registered for VAT purposes and a Certificate of Registration was issued. However, at a meeting of the Council of the Law Association on 29 July 1999 to consider the issue of registration, the Association received advice from Counsel on the issue of registration. The Association was advised that it should cancel its registration for VAT.

4. By letter dated 10 August 1999, the Association wrote to the Board seeking cancellation of its VAT registration. The application was acknowledged by the Board in a letter dated 30 August 1999. Subsequently, a formal application was submitted by the Association on 14 September 1999, to cancel registration.

5. By Notice dated 26 November 2002, the Board cancelled the Association's registration with effect from 1 December 2002. From that date until 2015, the Association was not a registered entity for VAT purposes.

6. In 2014, the Association purchased a building on Frederick Street which it rented out and the proposed rental income exceeded the VAT threshold of \$360,000.00. By letter dated 15 January 2015, the Association applied to the Board for re-registration "in respect of rental income only". The

Association was then re-registered by the Board with effect from 25 February 2015, and VAT was paid, inter alia, on the rental income, but not on the annual membership subscriptions which continued to be treated as not liable to VAT.

7. However, in September 2016, the Association was informed by Mr Nayak Ramdahin, Tax Commissioner, that the Association would be liable to pay VAT on the annual membership subscriptions and therefore was required to pay VAT. The Association provided two cheques amounting to TT\$1,132,430.00 and TT\$110,009.00 in purported settlement of outstanding VAT and tax liabilities and Mr Ramdahin signified receipt of the cheques.

8. However, the Association continued to receive conflicting advice in respect of the applicability of VAT to the subscriptions.

9. The Board has not responded to the background put forward by the Association and maintains that the subscription fees are liable to VAT. Furthermore, the Board has asked the Court to:

1) Declare that the annual membership subscription fees paid by members of the Law Association are subject to VAT under the provisions of the VAT Act.

2) Declare that the Association is not entitled to any order for repayment or refund of all monies paid to the Board in respect to VAT on the subscription fees paid by its members.

ISSUES

The issues submitted by the parties for determination are:

- 1) Whether the Law Association has identified a cause of action upon such a claim for repayment.
- 2) Whether the High Court has jurisdiction to hear the matter.
- 3) Whether the annual subscriptions paid by members to the LATT are subject to the VAT Act and payment of VAT?
- 4) Whether the said annual subscriptions are a commercial supply and thus chargeable to VAT?

- 5) Whether the said subscription fees are paid by members for the supply of services in the course of, or furtherance of, a business within the meaning of the VAT Act?

ISSUE 1

Whether the Claimant has identified a cause of action upon such a claim for repayment.

LAW

10. Part 62.1 and 62.2 of the **Civil Proceedings Rule 1998** as amended, provides for applications to the Court for an interpretation of a statute:

62.1 This Part deals with the procedure to be followed—

(a) when any enactment (other than the Constitution) gives a right to apply to the court; and

...

62.2 (1) The general rule is that applications to the High Court may be made by—

(a) an application under Part 11 where the terms of the particular enactment exclude the need for notice of the application to be given; or

(b) a fixed date claim in Form 2 where—

(i) an enactment requires an application to be by originating summons, originating application or originating motion; and

...

11. The Association submitted at a hearing on 29 March 2019, that the Board has been unjustly enriched by monies paid by the Association under a mistake of fact. The evidence by the Association alluded to this mistake of fact regarding payment. The Board, therefore, has no right to keep the money.

12. The Board disputed this submission in its written submission stating that the Association's pleadings do not sufficiently set out that the payment was made under a mistake of fact or law. Therefore, the Association has no cause of action.

ANALYSIS

13. The intitlement of the Fixed Date Claim Form and Statement of Case, stated that the matter is one of statutory interpretation. Part of the relief the Claimant sought was the determination and interpretation of the provisions of the VAT Act. Such interpretations are provided for under Part 62 of the **Civil Proceedings Rule 1998** as amended. This is not in the nature of a cause of action to claim for a specific sum of money. The Association seeks the court's interpretation of the law. It is expected that once the parties accept the Court's interpretation, in the sense that there is no appeal and stay, certain actions would necessarily follow. It would be inconceivable that if the decision on the applicability of the VAT Act goes against the Board that it would not make arrangements to return what was paid. If they did, then a cause of action would arise.

ISSUE 2

Whether the High Court has jurisdiction to hear the matter.

LAW

14. Section 3(4) of the **Tax Appeal Board Act Chap. 4:50**, provides:

(4) The Appeal Board shall have jurisdiction to hear and determine—

*(a) appeals from the decision of the **Board of Inland Revenue upon objections to assessment under the Income Tax Act;***

*(b) appeals from such other decisions of the **Board of Inland Revenue** or of any other person under the **Income Tax Act** as may be prescribed by or under that Act;*

(c) such other matters as may be prescribed by or under this Act or any other written law.

15. Section 40(1) of the VAT Act provides:

*A person disputing an assessment, or the amendment of an assessment, under section 39 **may apply to the Board** by notice of objection in writing delivered to the Board to **review and to revise the assessment** and—*

(a) sections 86 and 97 of the Income Tax Act apply, with such modifications as are necessary and subject to subsections (2) and (3), for the purpose of enabling the application to be dealt with and the objection to be determined; and

(b) section 87 of the Income Tax Act and the provisions of the Tax Appeal Board Act apply, with such modifications as are necessary, for the purpose of enabling the making of, and the hearing and determination of, appeals from decisions of the Board upon objections under this section.

16. In the matter of ***Harley Development Inc v Commissioner of Inland Revenue and related appeal [1996] STC 440***, the Court held:

*Where a statute laid down a comprehensive system of **appeals procedure against administrative decisions**, it would only be in exceptional circumstances, typically an abuse of power, that the court would entertain an application for judicial review of a decision which had not been appealed. The two decisions in the instant case involved no such unfairness and hence no abuse of power and it would therefore not be appropriate to determine the first issue by way of judicial review.*

17. Submissions on this issue was also made at the hearing on 29 March 2019.

The Association submitted that the Tax Appeal Board's primary jurisdiction is to deal with assessment, in that, if a taxpayer objects to the quantity of the assessment, then the Tax Appeal Board can deal with the objection. However, in this matter the Association has already paid money to the Board and the Court is entitled to interpret the statute.

18. The Board submitted that the procedure to be adopted is set out in Section 40 of the VAT Act. Additionally, the Board submitted that the jurisdiction of Tax Appeal Board is set out in the *Tax Appeal Board Act (supra)*. The Board also submitted the Privy Council decisions of *O'Neil and others v Commissioner of Inland Revenue [2001] UKPC 17* and *Harley Development Inc v Commissioner of Inland Revenue and related appeal [1996] STC 440* regarding the exceptional nature of the High Court's jurisdiction in the matter.

ANALYSIS

19. There are two considerations that are raised here. First, as raised by the Association, this matter concerns the taxes already paid to the Board and not an assessment. Section 40 of the VAT Act refers to disputes regarding assessments.

20. Under section 3(4) (a) and (b) of the *Tax Appeal Board Act*, the Tax Appeal Board hears appeals with regard to the *Income Tax Act Chap. 75:01*.

21. The cases referred to by the Board were matters where judicial review applications were filed by the taxpayers bypassing the statutory appeal process. This circumstance is different. It is one seeking the opinion of the High Court on the applicability of VAT to subscriptions. It is primarily an issue of statutory interpretation and the High Court's jurisdiction to deal with this cannot be fettered in the manner contended by the Board. The High Court will always have the jurisdiction to interpret any statute that affects the rights of a person or entity. The Tax Appeal Board's functions are specified under the relevant acts. In exercising its powers to deal with tax appeals it will be required from time to time to interpret and give effect to the governing legislation. This does not mean that the High Court's jurisdiction can be affected in any way by these powers of the Tax Appeal Board. Put another way, the conferring of powers of the Tax Appeal Board do not in any way take away the High Court's power to give an opinion or to interpret the meaning or applicability of the legislation to an entity or individual. I hold that the High Court has the appropriate jurisdiction to consider the issues raised in this claim. Alternatively I conclude that the circumstances here are exceptional in nature such that the High Court ought to exercise jurisdiction to give its opinion on the issues raised. There

is a clear divergence between the parties on the interpretation of the law requiring construction of not only the tax statutes but also of the governing legislation for the legal profession as a whole.

ISSUES 3 and 4

Whether the annual subscriptions paid by members to the Board are subject to the VAT Act?

Whether the said annual subscriptions are a commercial supply and thus chargeable to Value Added Tax?

LAW

22. **Tolley's Value Added Tax 2019-20** paragraph 1.5, defines VAT as:

*... a tax on consumer expenditure and is collected on **business transactions and imports.***

***The basic principle is to charge VAT at each stage in the supply of goods and services (output tax).** (emphasis added)*

23. Section 3(1) of the VAT Act provides:

3. (1) In this Act—

“commercial supply” means a supply that is a commercial supply in accordance with section 14;

24. Section 6(a) and (b) of the VAT Act provides:

Subject to this Act, a tax, to be known as value added tax, shall be charged in accordance with this Act—

(a) on the entry of goods imported into Trinidad and Tobago; and

*(b) on the **commercial supply within Trinidad and Tobago of goods or prescribed services by a registered person**, where that entry or commercial supply takes place on or after the day appointed for the purposes of this section by Order made by the President, being a day that is the first day of a calendar month and is not less than three months after publication of the Order.*

25. Under Section 14(1) of the VAT Act a commercial supply is:

14. (1) A supply of goods or prescribed services that is made in the course of, or furtherance of any business is a **“commercial supply”** for the purposes of this Act.

...

26. Section 15(1) of the VAT Act provides:

15. (1) Schedule 3 applies for determining what is, for the purposes of this Act, to be included as a supply of goods or services.

...

27. Schedule 3, section 1 of the VAT Act provides:

1. The term **“supply”** includes all forms of supply and, in relation to services, includes the provision of any service.

28. Section 4(2) of the VAT Act provides for the taxing of activities of an association:

For the purposes of this Act—

...

(b) the activities of a club, association or organisation, other than a trade union registered under the Trade Unions Act, in providing, for a subscription or other consideration, facilities or advantages to its members; or

...

shall be regarded as a business. (emphasis added)

29. Section 4(1) of the VAT Act provides:

4. (1) In this Act “**business**” includes any trade, profession or vocation.

30. **Tolley's** paragraph 15.1, describes the VAT liability of the subscription fees of a club, association or organisation, under the United Kingdom’s tax laws.

... if a 'club, association or organisation' provides facilities or advantages to its members in return for a 'subscription or other

*consideration', it is deemed to be carrying on a business activity ...
Such a body must therefore register for VAT ... and account for
VAT on its subscription income...*

31. The Association's statutory roles and purposes are significant in understanding this issue. Section 3(1) and (2) of the LPA provides:

3. (1) *There is hereby established a body corporate known as the Law Association of Trinidad and Tobago.*

(2) *The Association shall consist of practitioner members, non-practitioner members and honorary members.*

32. The purposes of the Law Association as per Section 5 of the LPA are clearly set out:

5. *The purposes of the Association are—*

(a) *to maintain and improve the standards of conduct and proficiency of the **legal profession** in Trinidad and Tobago;*

(b) *to represent and protect the interests of the **legal profession** in Trinidad and Tobago;*

*(c) to protect and assist the **public** in Trinidad and Tobago in all matters relating to the law;*

*(d) to promote good relations within the **profession**, between the **profession and persons** concerned in the administration of justice in Trinidad and Tobago and between the **profession and the public** generally;*

*(e) to promote good relations between the **profession and professional bodies** of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member thereof;*

(f) to promote, maintain and support the administration of justice and the rule of law;

*(g) to do such other things as are **incidental or conducive** to the achievement of the purposes set out at (a) to (f).*

(Emphasis supplied)

33. As the body that maintains, represents, and protects the legal profession and promotes the administration of justice in Trinidad and Tobago, Section 6(1), (2) and (3) of the **Legal Profession Act** sets out requirements for its members to maintain their membership with the Association:

(1) Every Attorney-at-law to whom a practising certificate is issued is a member of the Association and shall remain a member for so long as his practising certificate has effect.

*(2) Subject to this Act, a **practising certificate ceases to have effect where the practitioner member to whom it relates fails to pay—***

(a) his contribution to the Fund for one year; or

(b) his subscription to the Association for three successive years.

(3) Every Attorney-at-law who is a member of the Association by virtue of subsection (1) is in this Act referred to as a “practitioner member”.

34. Therefore, members pay an annual subscription as provided under Section 12(1) through (5) of the LPA:

*(1) The amount of the annual subscription payable by members other than honorary members of the Association shall, subject to subsection (5), **be fixed by the Council and shall be paid to the Association through the Registrar.***

(2) The annual subscription is in respect of the period of twelve months commencing on the 1st October, in each year.

(3) in fixing the annual subscription the Council may divide the members into classes and provide that different amounts shall be paid by different classes of members and for different periods, and generally regulate and vary from time to time the subscription payable by members or by different classes of members as the Council may think fit.

(4) The Council may fix levies payable by practitioner members for any of the purposes of the Association.

(5) The annual subscription payable under subsection (1) and levies payable under subsection (4) shall not in any year exceed five hundred dollars per practitioner member or such greater sum as may be prescribed by resolution of a general meeting of the Association.

35. Under section 20(2) of the LPA:

20. (1) *Every person whose name is entered on the Roll in accordance with this Act shall be known as an Attorney-at-law and—*

...

(2) *No person may practise law unless— (a) his name is entered on the Roll in accordance with this Act;*

...

36. Under section 23(1) and (2) of the **LPA** the Registrar of the Supreme Court issues a practicing certificate:

(1) *An **Attorney-at-law** who desires to practise law shall apply to the Registrar for a certificate to be called a practising certificate.*

(2) *On being satisfied that the Attorney-at-law **has paid his annual subscription to the Association under section 12** and his annual*

contribution to the Fund under section 56, the Registrar shall issue to him a practising certificate.

37. The Association submitted that in order for the Court to determine whether the subscriptions are subject to VAT, there must be a determination of whether the services supplied by the Law Association are in the nature of a commercial supply as provided under section 3(1), 6(b), 14, 15, and Schedule 3 of the **VAT Act**. The Association submitted that the supply of services is not made for consideration as per section 14 of the **VAT Act**. Under sections 12, 20(2) and 23 of the **LPA**, there is an obligation by law for members to pay the subscription fees to be able to practice law.

38. The Association submitted learning extracted from *Halsbury's Laws of England (Volume 22 (2012) paragraph 309* to define consideration:

Valuable consideration has been defined as some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other at his request. It is not necessary that the promisor should benefit by the consideration. It is sufficient if the promisee does some act from which a third person benefits, and which he would not have done but for the promise.

The Association argued that there is no direct link between the services provided and the subscriptions paid. In the case of ***Apple and Pear Development Council v Customs and Excise Commissioners (1988)2 CMLR 634***, the Court held that the annual charge paid by members of the Association in the matter could not be consideration in return for the general activities of the Council. Similarly, members of the Association must pay annual subscription fees as mandated by statute and this bears no relation to any services provided by the Association to its members. Any services provided to members by the Association are incidental to its statutory purposes.

39. The Board submitted that benefits are derived for the members of the Association upon paying the subscription. One such service or benefit received by members of the Association is provided under Section 5 of the LPA which is to represent and protect the interest of the legal profession.

40. Such service or benefit, the Board contends, is in contrast to the facts in the ***Apple and Pear Development Council*** case where members receive no benefit as they are mandated to pay the fee. Additionally, as the Association is the gate keeper of the profession, whereby members are accorded the right to practice law, there is a direct link between the

subscription fees paid and the services received by the members. In further support of its submission, the Board submitted several cases.

41. In the case of ***Eastbourne Town Radio Cars Association v Commissioners of Customs & Excise [2001] UKHL 19; [2001] STC 606*** the activity of the association (linking customers to privately hired vehicles) and the subscription fees paid by members was seen as a transaction where consideration passed and the Court considered the activity a business. The subscription in that matter was therefore subject to VAT.

42. The Board also submitted the case of ***Canterbury Jockey Club v Commissioner of Inland Revenue [2018] NZHC 2569 paragraphs 30 to 40*** to show that fees or subscriptions for a person to gain access to the services, facilities or advantages of that organization whether created under an Act of Parliament or otherwise is to be treated as consideration for a taxable supply. That case considered whether the club was eligible for Goods and Services Tax (GST) input tax deductions for stakes payments. The Court ruled that the stakes payments were “consideration” because for any services supplied by GST registered trainers and jockeys in horse races conducted by the club. Similarly, in the case of ***Turakina Maori Girls College Board of Trustees v Commissioner of Inland Revenue (1993) 15 NZTC 10,032***, which was analysed in the ***Canterbury case***, the Court stated at paragraphs 51 and 52:

In Turakina Maori Girls College Board of Trustees v Commissioner of Inland Revenue, the Court of Appeal determined that it was not necessary for there to be a contract between the supplier and the person providing consideration, in order for there to be services provided, which attracted GST.

The issue before the Court was whether payments made by parents for “attendance dues” to the proprietors of integrated schools ought to attract GST. The dues related to the proprietors’ obligations for payment of debt, capital works and improvements and other charges associated with land and buildings. The operation of the schools, including teacher’s salaries and educational materials, was funded by the State and was free of charge to students. The proprietors’ obligations were not conditional upon the payment or non-payment of attendance dues. The Commissioner argued GST was payable on the attendance dues.

ANALYSIS

43. From the law and authorities submitted by both parties there is a clear difference of opinion in both viewpoints. The Association submits that

there is a difference in the subscriptions paid and the other activities by the Association. The Board argues that there is no distinction and the subscriptions fees paid for services provided is taxable. To fully deal with these issues the final issue can be addressed.

ISSUE 5

Whether the said subscription fees are paid by members for the supply of services in the course of, or furtherance of, a business within the meaning of the Value Added Tax Act?

LAW

44. The word business is defined under Section 4(1) of the **VAT Act**.

45. Further to this, in *Halsbury's Laws of England (Volume 99 (2018))*, at paragraph 883, the word **business** for tax liability purposes includes:

... the making of supplies over an appreciable tract of time and with such frequency as to amount to a recognisable and identifiable activity of the person on whom the liability to tax is to fall.

46. With respect to clubs and associations, **Halsbury's** at paragraph 884 states:

For the purposes of the ..., the provision by a club, association or organisation (for a subscription or other consideration) of the facilities or advantages available to its members, ... , are deemed to be the carrying on of a business.

47. As to the meaning of supply, **Halsbury's** at para 886 states and at the first footnote:

For the purposes of the Value Added Tax Act 1994, 'supply' includes all forms of supply, but does not include anything done otherwise than for a consideration.

There has been extensive judicial consideration of the meaning of 'supply'. 'Supply' is the passing of possession in goods pursuant to an arrangement under which the supplier agrees to part with possession and the recipient agrees to take possession; and by 'possession' is meant in this context control over the goods, in the sense of having the immediate facility for their use ...

48. The Association made two submissions with regard to this issue. First, the subscriptions paid by members do not fall within the definition of consideration as put forward earlier. For the Association to be considered a business, consideration is not just an important consideration, it is a pre-condition. Second, the charging of subscriptions does not amount to the Association carrying on a business because the work of the Association is not done in the form of economic activity. In the case of *Institute of Chartered Accountants in England and Wales v Commissioners of Customs and Excise [1999] STC 398* the Court found that the activity by the Institute in carrying out a regulatory function on behalf of the State was not in the nature of an economic activity.

49. The Board submitted that based on the affidavits of the Association, a building was purchased and rented out for an annual rent in excess of \$360,000.00. Therefore, this activity is economic in nature.

ANALYSIS

50. Further assistance is gained from *Tolley's Value Added Tax 2019-20* paragraph 15.2, in the understanding of the word supply. It states:

The same person may be supplied, at the same time, with a number of different goods or services or both. If the individual

components are all liable to VAT at the same rate, VAT can be calculated in the normal way but if they are not, it is necessary to decide whether a single or multiple supply is being made.

1. In a single supply where one component of the supply is the principal component to which all the other components are ancillary, integral or incidental, the whole transaction is treated as having the VAT liability of the principal component.

2. In a multiple supply, each component is distinct and independent and takes its own VAT liability.

51. Tolley's Value Added Tax 2019-20 discusses in detail the treatment of subscription for VAT and it is helpful to detail the learning here:

Where members pay a subscription to obtain or gain entitlement to any 'substantive' benefits of membership, VAT due is calculated on the total amount of the subscription. The VAT liability of subscriptions depends on the liability of the membership benefits supplied in return. In most cases clubs supply a package of benefits so the supply will have more than one component. However, just because membership may offer a package of benefits does not

necessarily mean that multiple supplies are being made. In fact in most cases there is one principal benefit or reason for joining. For example, being a member of a professional body or trade union allows the member to enjoy the rights that membership may bring. In addition, other benefits, such as the provision of a hand book or newsletters are an integral or incidental part of the main supply. In these circumstances, the subscription is consideration for a single supply and its liability is determined by the liability of the main benefit. No apportionment may be made.

However, there is an exception for non-profit making bodies making a single supply which comprises a mixture of benefits with different VAT liabilities. These bodies may apportion their subscriptions to reflect the value and VAT liability of each individual benefit. It is up to the organisation whether to take advantage of the concession, but it cannot apply the concession retrospectively. If it wishes to apportion, e.g. subscriptions to cover separate benefits such as zero-rated printed matter, it must apportion all types and elements of subscriptions, it cannot 'pick and choose'. The concession does not work in reverse, i.e. non-profit making bodies may not treat their multiple supplies as single supplies.

52. The learning also speaks about multiple supplies:

In some cases certain elements of the package of membership benefits received are clearly not related at all to the main purpose of joining the membership body or club, meaning that multiple supplies are being made. If the subscription is consideration for multiple supplies and the separate elements have different VAT liabilities, the subscription must be apportioned between those different elements. Examples of benefits which may need to be apportioned include

- *priority booking rights;*
- *guaranteed seats;*
- *discounts on admission charges; and*
- *items with a resale value.*

These benefits are considered to be substantive regardless of whether there is any cost to the organisation in supplying them and what that cost might be.

53. Based on the above learning and the affidavits of the Association, it may be argued that a multiple package of supplies is delivered to members, the

acquisition of membership by paying the subscription being one while the other areas such as seminars and printed material for a fee can be treated as economic activity if members are charged for them. The Board views the subscription fee as providing a single supply of services to the members and is therefore taxable. Given that the provisions of the LPA mandate a member to pay a fee and the Association is mandated with certain responsibilities, the benefits acquired may be distinct from the other services provided by the Association. The Association indicates that the subscription is used for administrative purposes.

54. It seems to me that any services provided to the members by the Law Association while important and useful, are provided incidental or indirectly to its statutory role and purposes as defined in the LPA. I respectfully do not agree that they are gatekeepers of the profession. A person has to be admitted on the Roll of Attorneys-at-law before the Court. The Act requires payment to the Association to ensure the Association is funded so it can perform its statutory obligations. Subject to the statutory exceptions for attorneys in the government service, in order to get to practice before the courts the subscription payments are necessary. But the payments are necessary to practice law, not to gain any particular benefit or service from the Association. This is an important distinction. There are statutory functions which enable the largely self-regulating

profession to govern itself. For example, the Association supports the Disciplinary Committee; it issues a Certificate of Fitness to new entrants to the profession and does other acts in keeping with its statutory mandate. The members are required by the **LPA** to pay subscriptions to practise law but this is but a way to fund the Association so it can perform its statutory duty. It is a funding mechanism for the performance of its roles and functions. It is not a payment to confer any direct benefit provided by the Association. The fact that the Registrar collects the subscription fee and issues the Practising Certificate serves to underscore the point that the fees are payable solely in furtherance of the statutory objectives of the Law Association.

55. While it is also true that payment of the annual practicing fee allows the members to attend meetings and vote to elect officers or on issues arising at meetings, this is not a benefit within the meaning of the legislation. It simply allows the member to have a say in the running of the Association and on issues and matters which the Association may take up in the performance of its statutory mandate to represent the interests of the legal profession and its other functions. It is interesting to note that the statutory functions of the Association all relate to the **legal profession** as a whole. Nowhere in section 5 under purposes is the word “member”

mentioned. All of the purposes relate to the **legal profession** or the **profession** in relation to the public or the administration of justice.

56. The payments do not fall under the rubric “facilities and advantages” in return for a subscription as such. The payment would have been necessary in any event even if there were no facilities and advantages since the annual payments secure the ability to practice law before the courts in Trinidad and Tobago for that year. In theory the Association can decide to provide no service to its members once it is fulfilling its statutory purposes, being a creature of the LPA.

57. In this sense its functions are also not commercial activity within the meaning of the **VAT Act**. It is quite permissible that one activity of the Association can be subject to VAT payments such as the collection of rental income or if it charges a fee for a seminar or service, but to find that another transaction such as the payment of subscription fees to not be VAT payable. Dr Denbow’s argument that you are either VAT registered and must pay VAT on money collected is attractive but this is an exceptional case. The Association can be seen to be providing multiple supplies. Having decided to charge a rental fee for premises it owns can be considered to be involved in economic activity and the Association rightly accept VAT is payable on this income. However, collection of subscription

fees as provided for under the LPA does not fall within the ambit of economic activity.

58. This also does not mean there is partial registration. There is registration by the Law Association necessitated by it earning rental income in excess of the \$360,000.00 threshold. There is just no VAT liability for the payment of the subscription fees.

59. Section 4(1) of the VAT Act refers to business includes a trade, profession or vocation. That requires attorneys meeting the income threshold to pay VAT. It does not require the Association to pay VAT. Under section 4(2) (a) the activity of collecting rent involves the provision of a good or service for consideration. Thus VAT is payable for the rental income. The subscription fee is not the supply of goods or services for consideration. Under 4(2) (b) the Association does not provide in return for the fee facilities or advantages within the Act.

60. I also conclude that the Law Association is not a business within the meaning of the VAT Act. This is linked to the finding that there is no consideration in law arising from the payment of the subscription fee. The statutory framework of the Act is unlike the instances where VAT was

found payable in the cases cited by the Board. In those cases there was a direct relationship to the payment of the subscription and a benefit conferred. Consideration arose in those cases unlike in the present case. The determination in the **Apples and Pears** case is similar to the present circumstances.

61. Therefore, based on the above, I conclude the subscriptions are not subject to VAT. As indicated above I do not think that it would be appropriate in this interpretation summons claim to make an order for the return of the VAT paid to the Board to the Association. However, if there is no appeal of this decision (and stay), it would be expected that repayment of the sums paid would follow naturally and promptly so.

62. The order is as follows:

It is declared that the annual subscription fees paid by members of the Law Association of Trinidad and Tobago to the Law Association are not subject to the payment of Value Added Tax (VAT) under the **Value Added Tax Act, Chap. 75:06**. Accordingly no VAT is chargeable on these fees.

63. I wish to thank the attorneys on both sides for their very helpful and engaging submissions, both written and oral. I must record a special note of thanks to Dr Denbow SC who performed his duty of assisting the court in the highest traditions of the Bar in advancing all arguable points on behalf of his client especially, as it were, where he found himself having to argue against his own interest and Association.

64. This being an “interpretation summons” where there was a clear divergence of legal viewpoints which called for a definitive determination one way or the other, no issue of a costs order arises. Each party will bear their own costs.

Ronnie Boodoosingh

Judge