THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2019- 02135

IN THE MATTER OF THE JUDICIAL REVIEW ACT, NO. 60 OF 2000.

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO THE PROVISIONS OF THE JUDICIAL REVIEW ACT 2000.

Between

CENTRAL BROADCASTING SERVICES LIMITED

Claimant

And

THE COMMISSIONER OF POLICE

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Jagdeo Singh, Mr Dinesh Rambally and Mr Kiel Tacklalsingh instructed by Mr Stefan Ramkissoon for the Claimant

The Defendant, not present and unrepresented

Date: 24 July 2019

JUDGMENT

1. The claimant carries on a television and radio station under a broadcast licence. After certain statements made by Mr Satnarayan Maharaj, one of its presenters, the police came to the premises of the station to search for "audio-visual" footage. They were said to possess a search warrant. The police officers seized certain audio-visual footage. Since then the claimant, through its attorneys, has asked for a copy of the search warrant authorising the search to be provided. This request has been refused by the police.

2. A pre-action letter was sent. A reply was given denying the request. A leave application was then filed. It was supported by the affidavit of Mr Lokesh Maharaj, a director of the claimant. The court granted leave to file judicial review. The claim was filed. A case management conference was set. The claimant, through the affidavit of Mr Michael Jones, Law Clerk, has indicated that the proceedings were served on the defendant and on the Solicitor

General. The proceedings were served on Inspector King at the Commissioner's Office on 7 June 2019 with the date of the case management conference stated in the notice. The proceedings were served on K. Prosper on 10 June 2019 at the Solicitor General's Office with the date of hearing indicated. No one attended the CMC on behalf of the defendant. The court gave instructions for written submissions and asked that the claimant give notice of the directions to the defendant. The said affidavit sets out that these directions were served by the claimant on the defendant and the Solicitor General's Office. The claimant alone filed evidence and written submissions.

3. The court did however have before it a letter dated 28 April 2019 by Mr Christian Chandler, the Director of Legal Services of the Police Service in which a response was given to a pre-action letter sent by the claimant. This reflected the position of the defendant on the issues raised in this claim.

4. The issuance and execution of a search warrant in a democratic society is an incursion on the rights which citizens have to generally go about their lawful business unhindered by the State authorities. A historical examination of how search warrants came about makes for interesting reading and provides an important backdrop to considering whether providing a copy of a search warrant in these circumstances may be considered to be a reasonable course.

5. In a **2015 Report of the Law Commission** of Ireland the following history was noted:

The development of search warrants in England and the United States

1.01 It is thought that the concept of procedural searches travelled with Romans to Britain during the Roman invasion of 43 AD. Early medieval English common law accepted that, while there was no general authority to issue warrants to search homes because of the general common law protection of the dwelling, it was permissible to do so to search for stolen goods. This common law exception reflected the position under the Roman code of law, the Twelve Tables, concerning searches under the Roman law of theft (*furtum*) that, in the prosecution of "private" offences, a person who suspected that his or her stolen goods were on the premises of another was permitted to enter that place to carry out a search. In addition to the position at common law, legislation providing for search warrants in England was first enacted in the early part of the 14th century. The search powers in these early statutes were quite broad in nature and at that time were referred to as "writs" rather than warrants. Writs were general in form, containing little specification or restriction as to what, where or who could be searched and required little supporting evidence to be submitted by the applicant.

1.02 The general search warrant that existed in Britain at this time was exported to the United States, then under British rule. Writs were initially provided for by legislation governing customs in the United States and afforded customs officials a "blanket authority" to search any location where they suspected that they would find smuggled goods and to examine any package or container which they saw fit.

1.03 In addition to being unspecific as to the persons or places that could be searched under their authority, or the items that could be seized, writs were also general as to the length of time for which they were in operation.

(Footnotes excluded)

6. During the 17th Century in England there was the power to issue general search warrants. In the case of **Entick v Carrington (1765) 2 Wils 275** there was strong criticism of the issuance of general search warrants.

7. In that case Entick had published a leaflet, "Monitor or British Freeholder", which the authorities said was seditious when he criticised the government. He brought an action for trespass following the execution of a search warrant in his home under certain licensing statutes. Due to the general nature of the warrant the executing officials searched and examined all the rooms in his home, as well as private papers and materials.

8. In a significant judgment Lord Camdem CJ made some pertinent observations. In the **2015 Irish Report on Search Warrants** there was this observation about the judgment:

> "As Lord Camden CJ explained, the common law "holds the property of every man so sacred that no man can set foot upon his neighbour's close without his leave. If he does, he is a trespasser... If he will tread upon his neighbour's ground, he must justify it by law." The Court added that where a warrant was to be granted for the search for stolen goods, the informer (applicant) and the justice involved should abide by certain safeguards and "proceed with great caution." The procedure recommended by Lord Camden CJ, which reflected the views of Sir Matthew Hale, discussed above, was that there should be an oath sworn that a person has had his goods stolen and there

should be a strong reason to believe that the goods are concealed in a particular place. Thus, the Court in *Entick v Carrington* rejected the concept of general warrants, but accepted the principle of search warrants subject to procedural safeguards."

9. A person's home has long been regarded as his castle. The **Irish Constitution, Article 40.5**, for example, provided:

> "The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with the law."

10. More recently the English Court in **DPP v Barnes [2006] IECCA 165**, Court of Criminal Appeal, noted that Article 40.5:

> "is a modern formulation of a principle deeply felt throughout historical time and in every area to which the common law has penetrated. This is that a person's dwelling house is far more than bricks and mortar; it is the home of a person and his or her family, dependents or guests (if any) and is entitled to a very high degree of protection at law for this reason."

11. These cases, of course, were concerned with dwellings, the homes of persons. Less stringent considerations may apply to commercial premises. But where persons work there their privacy would be subject to protection. However, the idea that a search warrant is needed to search commercial premises and

that there must be procedural safeguards in how it is issued and executed must necessarily also apply with strong force.

12. The law has always been that care must be taken to follow all appropriate procedures governing search warrants. There is supposed to be proper judicial oversight of the process. There are some basic processes that will always be applicable. However, depending on the circumstances presented slightly different considerations may apply where information is sought.

13. In **Blackstone's Criminal Practice, 2019** it was noted:

> **D1.163 Procedural Requirements and Safeguards**
>
> Courts have consistently held that the issue of a search warrant is a very severe interference with individual liberty, is a step which should be taken only after mature consideration of the facts, and that the officer making the application is under a duty of full disclosure of relevant matters (*R (Chatwani) v NCA* [2015] EWHC 1283 (Admin), in which the Divisional Court criticised the NCA for failing 'to have any regard to the fundamentals of the statutory scheme'). The necessary foundation for the issue of a warrant should be on the face of the information unless there are good reasons for not including it, and both the applicant and the court must be able to identify the basis for the grant of the warrant. However, information may be withheld from the applicant if it is not in the public interest to disclose it, even if what falls to be disclosed cannot, without more, support the various

conclusions necessary for a warrant to be issued (*Haralambous v St Albans Crown Court* [2018] 1 Cr App R 26 (372)).

14. It was further stated in **Blackstone's**:

D1.167

The application must disclose anything known or reported to the applicant that might reasonably be considered capable of undermining any of the grounds of the application (Crim PR 47.26(3)), and bare compliance with the statutory requirements regarding the information to be disclosed on an application for a warrant may not be sufficient. The test adopted in *R (Rawlinson) v Central Criminal Court* [2013] 1 WLR 1634 was whether the errors or non-disclosure in the application would in fact have made a difference to the decision to issue a warrant (and not whether they *might* have made a difference). This was followed in *R (Golfrate Property Management Ltd) v Southwark Crown Court* [2014] 2 Cr App R 12 (145), in which the lack of 'full and frank' disclosure resulted in the warrants being set aside, and in *Zinga* [2012] EWCA Crim 2357, in which failure to disclose the intended prosecutor did not vitiate the warrant. However, this approach was doubted in *R (Mills) v Sussex Police* [2015] 1 WLR 2199, where it was held that the preferred test 'is whether the information that it is alleged should have been given to the magistrate might reasonably have led him to refuse to issue the warrant'. See also *Vuciterni v Brent Magistrates' Court* (2012) 176 JP 705, in which warrants were quashed where there was a failure to disclose doubts about whether the activities being

investigated were unlawful. While a material mistake of fact leading to unfairness can be available as a ground of judicial review in some circumstances (*R (DPP) v Sunderland Magistrates' Court* [2018] EWHC 229 (Admin)), it cannot invalidate a warrant otherwise properly obtained (*R (Daly) v Metropolitan Police Commissioner* [2018] EWHC 438 (Admin)).

15. Lord Hoffmann explained in ***A-G v Williams*** **[1997] 3 LRC 22 at 28, [1998] AC 351** at 358 that:

> 'The purpose of the requirement that a warrant be issued by a justice is to interpose the protection of a judicial decision between the citizen and the power of the state. If the legislature has decided in the public interest that in particular circumstances it is right to authorise a policeman or other executive officer of the state to enter upon a person's premises, search his belongings and seize his goods, the function of the justice is to satisfy himself that the prescribed circumstances exist. This is a duty of high constitutional importance. The law relies upon the *independent scrutiny of the judiciary* to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter upon private property have been met.'

16. Lord Widgery CJ in ***Williams v Summerfield*** **[1972] 2 All ER 1334 at 1338, [1972] 2 QB 512** at 519 observed:

> 'Generations of justices have, or I would hope have, been brought up to recognise that the issue of a search warrant is a very serious interference with the liberty of the subject, and a step which would only be taken after the most mature, careful consideration of all the facts of the case.'

17. In **Stone's Justice Manual 2018** guidance is provided for the process that should be followed when applying for a search warrant:

> "An application for a warrant to enter and search premises must be made ex parte and be supported by an information in writing. All the material necessary to justify the grant of the warrant should be contained in the information provided on the form. The obligation on an applicant for a warrant is the same as that imposed on any person making a "without notice" application to a court, namely one of "full and frank disclosure". The obligation is not necessarily fulfilled merely by an information demonstrating that the bare statutory minima for the grant of the warrant are met. The disclosure must be as "full and frank" as the circumstances of each case requires. The police should disclose that a private prosecution is expected to follow the issue of the warrant. A warrant may be quashed on the grounds of material non-disclosure."
>
> (Footnotes excluded)

18. Before making the application, the constable must:

- take reasonable steps to check the information he has received is accurate, recent and not provided maliciously or irresponsibly. Corroboration should be sought for anonymous information;
- ascertain as specifically as possible the nature of the articles concerned and their location;
- make reasonable inquiries to establish if anything is known about the likely occupier of and the nature of the premises;
- obtain any other relevant information;
- support the application by a signed written authority from an officer of inspector rank or above (or next most senior officer in urgent cases); and
- consult the local police/community liaison officer (urgent cases as soon as practicable thereafter) where there is reason to believe a search might have an adverse effect on relations between the police and the community.

The application must specify:

— the enactment under which it is made, ground on which it is made;

— the premises to be searched ("specific premises warrant") or any premises occupied or controlled by a person specified ("all premises warrant");

— that there are no reasonable grounds to believe the material sought consists or includes items subject to legal privilege or special procedure material;

— whether the application is for search on more than one occasion (multiple entry warrant) and if so, whether the number of entries sought is unlimited or the maximum number; and

— if applicable, a request to authorise a person or persons to accompany the officer who executes the warrant."

19. In **R (on the application of Energy Financing Team Ltd) v Bow Street Magistrates' Court and others [2005] EWHC 1626**: the Court provided guidelines with respect to the issuance and execution of search warrants. At paragraph 24 it was stated:

"From the authorities I am able to derive some general conclusions which are relevant to the facts of this case:

The **grant and execution of a warrant to search and seize is a serious infringement of the liberty of the subject, which needs to be clearly justified, and**

.....

The remedy which is available to a person or persons affected by a warrant is to seek judicial review. It is an adequate remedy because the statutory provisions have to be read in the light of those articles of the convention which are now part of English law. In fact, as was said by Lord Woolf CJ in Kent Pharmaceuticals Ltd v Director of Serious Fraud Office if the statutory provisions are satisfied the requirements of Art 8 of the convention will also be satisfied, and at least since the

implementation of the 1998 Act an application for judicial review is not bound to fail if, for example, the applicant cannot show that the Director's decision to seek a warrant in a particular form was irrational, but in deciding whether to grant permission to apply for judicial review the High Court will always bear in mind that the seizure of documents pursuant to a warrant is an investigative step, perhaps best reconsidered either at or even after the trial.

Often it may not be appropriate even after the warrant has been executed, to disclose to the person affected or his legal representatives all of the material laid before the district judge because to do so might alert others or frustrate the purposes of the overall inquiry**, but the person affected has a right to be satisfied as to the legality of the procedure which led to the execution of the warrant, and if he or his representatives do ask to see what was laid before the district judge and to be told about what happened at the hearing, there should, so far as possible, be an accommodating response to that request. It is not sufficient to say that the applicant has been adequately protected because discretion has been exercised first by the Director and then by the district judge**. In order to respond to the request of an applicant it may be that permission for disclosure has to be sought from an investigating authority abroad, and/or that what was produced or said to the district judge can only be disclosed in an edited form, **but judicial control by way of judicial review cannot operate effectively unless the person or persons affected are put in a position to take meaningful advice, and if so advised to seek relief from the**

court. Furthermore it is no answer to say that there is no general duty of disclosure in proceedings for judicial review."

20. The law quoted above all go to show how important the application process for a warrant is and the need for careful consideration and scrutiny of the process used. This therefore takes me to consideration of the reasonableness of the claimant's request for a copy of the warrant in this case. One legitimate objective of the claimant is to be entitled to have information so that it can, if it wishes, challenge the process by which the warrant was procured and executed.

21. In **Regina (Cronin) v Sheffield Justices [2003] 1 WLR 752** at paragraph 29 the Court stated:

> "A further point made by Mr Cragg is the fact that in this case a copy of the information was provided by the justices on request. Subsequently it was questioned whether it would be desirable to provide informations unless there was some legal justification for doing so. Information may contain details of an informer which it would be contrary to the public interest to reveal. The information may also contain other statements to which public interest immunity might apply. **But, subject to that, if a person who is in the position of this claimant asks perfectly sensibly for a copy of the information, then speaking for myself I can see no objection to a copy of that information being provided. The citizen, in my judgment, should be entitled to be able to assess**

whether an information contains the material which justifies the issue of a warrant. This information contained the necessary evidence to justify issuing the warrant. Once this information had been disclosed, there was no issue here which justified this court being troubled by this case.

22. In **Realty Renovations Ltd. V Attorney General for Alberta (1978) 44 C.C.C (2d) 249** at paragraph 19 it was stated:

> **"Since the issue of a search warrant is a judicial act and not an administrative act, it appears to me to be fundamental that in order to exercise the right to question the validity of a search warrant the interested party or his counsel must be able to inspect the search warrant and the information on which it is based.** Although there is no appeal from the issue of a search warrant, **a superior court has the right by prerogative writ to review the act of the justice of the peace in issuing the warrant**. In order to launch a proper application, the applicant should know the reasons or grounds for his application which reasons or grounds are most likely be to be found in the form of the information or warrant. **I am unable to conceive anything but a denial of justice of the contents of the information and warrant, after the warrant is executed, are hidden until the police have completed the investigation or until the Crown prosecutor decides that access to the file containing the warrant is to be allowed**. Such a restriction could effectively delay, if not prevent,

review of the judicial act of the justice in the issue of the warrant. **If a warrant is void then it should be set aside as soon as possible and the earlier the application to set it aside can be heard the more the right of the individual is protected".**

23. In **Gittins (R on the application of) v Central Criminal Court [2011] EWHC 131** the court noted**:**

"**A search warrant is intrusive and capable of causing grave reputational and other damage**. As has been said, it must never be regarded as routine: see Redknapp [2008] EWHC 1177, especially at [13]; Faisaltex [2008] EWHC 2832 (Admin) [2009] 1 WLR 1687, especially at [24]. In this regard it may be said that there are some similarities between a search warrant and Mareva, Anton Piller and Restraint Orders.

When an application for judicial review is launched seeking to quash the grant of a search warrant, it is, again, in some respects, akin to the "return date" for Mareva's, Anton Piller's and Restraint Order's. Ordinarily, the expectation will be that the party challenging the grant of the warrant must be entitled to know the basis upon which the warrant was obtained. **Where full disclosure cannot be given (and there will be cases where it cannot be), HMRC should, if at all possible, and again unless there is good reason for not doing so, make available, and in a timely fashion, a redacted copy or at least a note or summary**

> **of the information and the hearing before the judge, where appropriate, backed by an affidavit**. It is most unfortunate that it took until yesterday for this to happen in the present case. It has not helped the preparation or presentation of this case. In some circumstances it might have resulted in the court declining to accept further material from HMRC and in other cases it might very well result in an adjournment at the cost of HMRC."

24. **Standing Orders** of the Police Service provide at Number 10 Section 64 (3 (d) that:

> "The warrant must be **read to the owner**/occupier or in his absence any adult present before **beginning the search.**"

25. The Director of Legal Services' letter articulates the apparent policy position that search warrants are only disclosable in "legal proceedings." Presumably his means after a person has been charged. This, however, cannot be correct. A person or entity may be entitled to bring a challenge in respect of the process by which the warrant was issued either by way of tortious claim or judicial review in appropriate cases. Certainly being able to see the information contained in the warrant may be an important consideration in deciding whether to bring a claim in the first place.

26. What all of these cases clearly demonstrate is that a proper judicial process must be followed in the obtaining of a search warrant. Certain stringent criteria must be satisfied. Any incursion on the rights of the citizen must be

carefully measured and be proportionate to the circumstances. There is no "one fit all" stipulation. There are, however, certain basic criteria that must be established. The process of issuing a search warrant is not a formality and it can be subject to careful judicial scrutiny.

27. Further, information on the process can in appropriate cases facilitate the right to access to justice, which is in turn a fundamental pillar of the observance of the rule of law. This right of access is a fundamental one in a democratic society. Where there has been a breach of the law the information which can show that allows for a proper determination to be made on whether a claim should be brought or if brought whether it may be successful.

28. I note in this case that Mr Maharaj in his unchallenged affidavit stated that the warrant the police said they had was not read before or at the time of the search and it was not shown to anyone.

29. In the **2015 Report** referred to earlier it was stated:

> ***General requirement to provide copy of search warrant to owner or occupier***
>
> 5.47 In the Consultation Paper, the Commission expressed the view that giving a copy of the search warrant to the person(s) concerned would lead to greater transparency and accountability with regard to the execution process. Furthermore, this would enable person(s) to identify the authority afforded to executing officers by the warrant in respect of their property. Thus, the Commission provisionally recommended that the practice of giving a copy of the warrant to the owner or occupier should be provided for in legislation.

5.48 The Commission remains of the view that a copy of the search warrant should be given to the owner or occupier of the property concerned. It is important in this respect to distinguish between a copy of the search warrant and the information which grounds the application. An application for a search warrant may identify information sources or include other such information which, in the interests of the investigation, or perhaps the safety of persons concerned, should remain confidential to the investigating authority and the issuing authority. The Commission does not recommend that such information should be afforded to the owner or occupier. Rather, the requirement would be limited to a copy of the search warrant itself, as this is the legal authority for the entry and search of the location.

5.49 In the Consultation Paper, the Commission suggested that a copy of the warrant should generally be given at the commencement of the search warrant execution. However, following further consideration and consultation, the Commission now recommends that the warrant copy should be given upon completion of the search. Furnishing a person with a copy of the warrant at the commencement of the execution may afford that person, or any other person at the location concerned or another location, the opportunity to remove or destroy evidence. Giving a copy of the search warrant upon completion of the search would retain the benefits of accountability and transparency, while the risk of removal or destruction of evidence or frustration of the search would be reduced.

5.50 On a practical level, the copy of a search warrant should be clearly certified as a copy and not the original search warrant so that it may not be used in a manner that implies that it is the original.

5.51 In some instances the owner or occupier may not be present at the search location. In some jurisdictions a copy of the warrant is left at the location to be found on their return. For example, in England and Wales the *Police and Criminal Evidence Act 1984* provides that if there is no person who appears to be in charge of

the premises at the time of the execution of the search warrant, the officer must leave a copy of the warrant in a prominent place on the premises. Code of Practice B, which supplements the 1984 Act, requires a copy of the search warrant to be left in a prominent place on the premises or appropriate part of the premises, and endorsed with the name of the officer in charge of the search if the occupier is not present. In Queensland, the *Police Powers and Responsibilities Act 2000* and the *Crime and Misconduct Act 2001* provide that if the occupier is not present a copy of the search warrant should be left in a "conspicuous place". Similarly, in Western Australia section 31 of the *Criminal Investigation Act 2006* states that in the event of an occupier not being present, the executing officer must leave the following in a prominent position on the premises: (i) a notice stating that the place has been entered and stating the officer's official details, and (ii) a copy of the search warrant.

(Footnotes excluded)

30. In a **2018 Report of the Law Commission of the United Kingdom** (June 2018), the following statements were set out:

"INFORMATION TO BE PROVIDED TO THE OCCUPIER

Current law

During the search

6.59 PACE requires the occupier, or some other person who appears to be in charge of the premises, to be provided with documentary evidence of the identity of the person conducting the search; have the search warrant itself produced; and be supplied with a copy of it. If no one is present who appears in

charge of the premises, a copy of the warrant must be left in a prominent place.

6.60 The warrant which must be produced is the original warrant, as signed by the judge or magistrate. This includes a duty to supply a copy of the full warrant, including any schedule appended to it.

The warrant must be produced and not simply shown and held onto until the search and seizure is complete.

A warrant is "produced" within the meaning of section 16(5)(a) and (b) when the occupier is given a chance of inspecting it.

6.61 The Court of Appeal held in Longman, however, that non-compliance with section 16(5)(a) and (b) may be justified, in certain circumstances, where the search would otherwise be frustrated. To this end, the Court of Appeal held that force or subterfuge could legitimately be used for the purpose of gaining entry with a search warrant.

Moreover, the constable need not produce the warrant where the occupier immediately attempts to frustrate the search or attack the officer.

6.62 As discussed in Chapter 3, the Divisional Court has held that, on the facts of the case, where the warrant was produced after the search was completed, the consequence of a breach should not inevitably lead to the grant of what is discretionary relief in judicial review.

In reaching this conclusion, the Court referred to Code B of PACE, paragraph 6.8, which provides that, if the occupier is present,

copies of the warrant shall 'if practicable' be given to them before the search has begun.

6.63 It is particularly important that the warrant specifies the address of the premises being searched, as occupiers are entitled to know that the warrant relates to their premises.

The ECtHR has repeatedly stressed the importance of the search warrant providing at least a minimum amount of information to enable checks to be carried out on those who have executed the warrant and to detect, prevent and report abuses.

However, to prevent an investigation from being compromised, it is permissible in the case of all premises warrants for the identity of other premises to be redacted when the warrant is given to the occupier.

After the search

6.64 Other information which an occupier may be interested in obtaining, during or after the search, includes the Information accompanying the search warrant; the time taken to consider the application; additional notes taken during the hearing; and the statement of reasons by the court for why the search warrant has been issued."

(Footnotes excluded)

31. In **Sam Maharaj v Prime Minister of Trinidad and Tobago [2016] UKPC 37**, the Privy Council cited favourably the decision of the Caribbean Court of Justice in the case of **The Maya Leaders Alliance v Attorney General of Belize [2015] CCJ 15** where it was stated:

> "The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. **It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However, the concept goes beyond such questions of access and includes the right of the citizen to be afforded, 'adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.' The right to protection of the law may, in appropriate cases, require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.** In appropriate cases, the action or failure of the state may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been

frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy."

32. In **Thornhill v The Attorney General 1981 AC 61** it was recognised that when the police act they are acting on behalf of the State and their actions are entitled to be scrutinised (see page 74).

33. What all of this points to is that scrutiny of the process by which a warrant has been obtained and the manner in which it is executed is an important safeguard for the citizen in a democratic State. Here the entity is a broadcasting company which is accorded legal rights under the Constitution and laws of the country.

34. In order to give effect to this right to scrutinise and interrogate the process in an appropriate case the provision of a copy of the warrant on request is an important safeguard. It may not be appropriate in all circumstances where for example there is some strong public interest element that justifies confidentiality or where it may be necessary to protect the safety of witnesses. The court has to look at the circumstances of the case presented when a request is made.

35. First, therefore, in this case the supposed offence concerned is in relation to words spoken. There is a general right to freedom of speech and expression subject to defamation laws. There is a right to operate a free media subject to necessary regulations. These are essential and cherished rights. This is not

a case of a gangland murder or some circumstance where sensitive information may be involved. It concerns utterances made in the public sphere. A criminal case in relation to the contents of an audio-visual recording would have a high threshold to pass especially with the rights to freedom of speech and expression.

36. Second, the claimant's assertion is that the warrant was not read in breach of procedure. Thus, this fortifies the interest to learn what exactly the warrant contained, and perhaps even if one existed.

37. Third, the request was made some time after and reasonable time was given for compliance. It cannot be said that it is onerous or impracticable to provide a copy of the warrant. The law as set out above provides for a copy to be provided during the search. Even the notes made during the search may be disclosable.

38. Fourth, the claimant, through Mr Lokesh Maharaj, has specifically stated it is interested in challenging the basis for the issuance of the warrant and the process by which it was obtained. Providing the claimant with a copy may facilitate consideration of whether a claim should be brought at all. There is a public interest element here in terms of the administration of justice under the Civil Proceedings Rules. Consideration of whether to bring a claim necessarily includes forming a judgment of whether it makes sense to bring a claim at all. If the claimant is satisfied with the information, it may legitimately decide not to advance a claim and therefore this prevents a claim being

brought only to be withdrawn at a later stage if the warrant is later disclosed in those proceedings.

39. Fifth, in circumstances like these where the nature of any offence may relate to the words spoken the necessity of a detailed search of the premises may not have been necessary at all. If the purpose of visiting the premises was to obtain a copy of the master tape so that the contents of the broadcast could be identified, there may have been no necessity at all to search through the papers or documents of the company and employees. The claimant may have been willing to provide a copy of the tape without the need for a warrant given it was a public broadcast. Thus, to ascertain the terms of the scope of the search warrant would likely be a legitimate exercise that the claimant is entitled to pursue.

40. The law as stated in the Reports as existing in Ireland and in England and Wales is that the provision of a copy of a search warrant is in most cases a usual and uncontroversial request. That it has become so contentious having regard to the request made here bespeaks resistance to complying with what ought to be a simple and uneventful request.

41. Further, in a democratic State the search of a media house can have a chilling effect on the society. The power of search can be used for an illegitimate purpose of intimidating or silencing critics including invading the privacy of individuals who are present or employed at the media house. A free media operating in an environment which is free from harassment and intimidation is as fundamental to a democratic society as a free and independent judiciary.

The entire process of how the warrant was obtained and executed is a proper subject of intense scrutiny. The first step in that process is obviously to see a copy of the warrant so that information can be obtained on who issued it, when it was issued, on what terms or conditions, by whom was it sought and what was it issued in relation to. For example, if it was limited to obtaining a copy of a master audio-visual tape of the programme in question, then the necessity of searching through a personal phone or documents may be shown to be outside the scope of the warrant and may lead to a conclusion of some ulterior purpose in obtaining the warrant. It is like going into a home to search for drugs or arms and ammunition and then while there looking through and reading private documents and papers. Testing the whole process relating to the warrant is the claimant's right.

42. The claimant is a legitimate broadcaster operating under the terms of a broadcast licence. The claimant and its employees are entitled to the protection of the law and entitled to the least incursion on their liberty while a legitimate criminal investigation is being carried out. As indicated here the conduct appears to be words used on a television/radio programme as contained in an audio-visual recording. The claimant, acting through its officers, is well entitled to see a copy of any warrant under which its premises were searched.

43. It is therefore declared that the failure of the defendant to provide the claimant with a copy of the search warrant requested is unlawful.

44. The Commissioner of Police must provide a copy of the search warrant and have the original available for inspection within 7 days of this judgment.

45. Finally I would urge the relevant authorities to update the relevant laws and polices and Standing Orders to give effect to changes to facilitate the provision of a copy of a search warrant in the usual course of searches subject to necessary exceptions. The Reports referred to above are worthy of serious study and attention. Those Reports have gone further in advocating for additional reforms to the law relating to search warrants more consistent with the observance of human rights while providing an effective balance with the need for proper investigation of crime. Several recommendations are worthy of serious consideration.

46. The defendant must pay the costs of the claim to the claimant to be assessed by a Registrar in default of agreement.

47. I thank the attorneys and my JRC, Mr Shane Pantin, for their helpful research in this matter.

Ronnie Boodoosingh

Judge