THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2020-00510

BETWEEN

AKILI CHARLES

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO **Defendant**

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant:	Mr. Anand Ramlogan S.C.;Mr. Ganesh Saroop and Ms.Jayanti Lutchmedial
Defendant:	Mr. Fyard Hosein S.C. leads Ms. Amirah Rahaman, instructed by Ms. Diane Katwaroo and Ms. Tenille Ramkissoon
Interested Party:	Mr. Douglas Mendez S.C.; Mr. Mahabir; Mr. Kiel Tacklalsingh instructed by Ms. Kavita Roop-Boodoo
Date of Delivery:	9th March 2021

JUDGMENT

[1] By Fixed Date Claim filed on 6th February 2020, the Claimant claimed the following Reliefs:

I. A declaration that Section 5(1) of the **Bail Act**[1], Part 1 of the First Schedule of the same and Section 51 of the **Children Act 2012**[2] are incompatible with Section 1 of the Constitution;

II. A declaration that the denial of bail of the Claimant was unconstitutional and illegal and that the following rights under the Constitution have been infringed:

i. The right to liberty and the right to not be deprived thereof except by due process of law under Section 4(a);

ii. The right to protection of the law under Section 4(b);

iii. The right to not be subject to arbitrary detention and imprisonment under Section 5(2) (a);

iv. The right not to be deprived of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under Section 5(2)(e);

v. The right not to be deprived of the right to reasonable bail without just cause under Section 5 (2) (f) (iii);

III. A declaration that Section 5(1) of the **Bail Act**Part 1 of the First Schedule of the same and section 51 of the **Children Act**are disproportionate and incompatible with Sections 4(a), (b), 5(2)(a), (e), (f) (iii) of the Constitution and are not reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual;

IV. An order that monetary compensation including vindicatory damages be paid to the Claimant by the Defendant for the breach of his constitutional rights;

V. Costs certified fit for Senior and Junior Counsel to be assessed by a Registrar in default of agreement; and

[1] Act 18 of 1994 Chapter 4:60
[2] Act 12 of 2012, Chapter 46:01

VI. Such further and/or other relief as the Honourable Court may deem fit in the circumstances of the case.

[2] The Grounds upon which the Relief is sought are that the denial of bail in cases of murder amounts to:

i. a violation of the separation of powers doctrine which is an entrenched constitutional norm protected by Section 1 of the Constitution which provides a separate and substantial guarantee to all citizens;

ii. the denial of the right to bail as outlined in the **Bail Act 1994** and Section 51 of the **Children Act** have operated to oust the Judiciary's role to protect the individual against arbitrary detention by the Executive; further the removal of Judicial oversight in the granting of bail amounts to a breach of Section 1 of the Constitution;

iii. a breach of Section 1 of the Constitution cannot be saved by existing law nor is it exempt from Constitutional challenge;

iv. alternatively the **Bail Act** and Section 51 of the **Children Act** are not reasonably justifiable in a society which has a proper respect for the rights and freedoms of the individual;

v. Parliament's excision of the offences in Part 1 of the First Schedule from the jurisdiction of bail has created a regime of mandatory remand. Such a regime has removed the discretion, enjoyed by the Judiciary prior to 1950, to determine a defendant's liberty in accordance with the facts and circumstances of his role in an alleged crime. The regime prevents differential treatment on the basis of the strength of the evidence against an accused or indeed any of the detailed considerations provided for in Section 6(1) of the **Bail Act 1994** which regulates the restrictions on an accused's liberty rendering such detention as arbitrary;

vi. the automatic denial of bail in cases falling within Part 1 of the First Schedule takes place without the State having to demonstrate any cause before the court, a substantial departure from the protection afforded by Section 5(2)(e) and (f)(iii) of the Constitution which require not only that "cause" be shown

before bail is denied, but that "just cause" be shown and that the issue be determined by a court;

vii. the automatic removal of bail violates the presumption of innocence contrary to Section 5(2)(f)(i).

HISTORICAL BACKGROUND TO THE CLAIM

[3] The Claimant deposed[3] that he and 5 others were charged for the murder of Russell Antoine. The Claimant was 30 years old at the time. He alleges from December 5, 2010 to May 21, 2019 he was in the custody of the State at the Royal Jail in Port of Spain. He alleged he maintained his innocence but since murder is a non-bailable offence, he along with the others were denied bail[4].

[4] His first Preliminary Inquiry (PI) started on January16, 2012 before the former Chief Magistrate Marcia Ayres-Ceasar, and was halted on April 3, 2017 when the former Chief Magistrate was elevated to the position of Judge of the High Court. The PI effectively spanned a duration of more than 5 years before being aborted[5].

[5] He was in the custody of the State since 2010, remanded at the Royal Jail in Port of Spain where the conditions were sub-human, revolting and horrible.[6]

[6] On October 17, 2017 his attorneys filed a claim for Judicial Review and Constitutional Relief challenging the decision to re-start his PI de novo and on December 4, 2017 Rampersad J granted leave and imposed a stay of the PI pending the determination of the claim for Judicial Review[7].

[7] On January 4, 2019 his judicial review claim was dismissed by Justice Gobin and the effect of that judgment was that it was lawful for his PI to be restarted de novo[8].

[3] Claimant's affidavit dated 5th December 2020
[4] See paragraph [4] of his affidavit
[5] See paragraphs [5] and [7] of his affidavit
[6] See paragraph [8] of his affidavit
[7] See paragraphs [9] and [10] of his affidavit
[8] See paragraphs [12] and [14] of his affidavit

[8] On May 21, 2019 his second PI was discharged on a no case submission[9].

[9] He claims that he was remanded for approximately nine years in conditions that made him feel frustrated, angry and depressed and as a result, he often contemplated suicide. As a result of his compulsory incarceration due to the non-bailable nature of the offence of murder, he was subjected to horrible, terrifying, sub-human and revolting conditions in the prison system which caused him great distress and trauma[10].

[10] The Defendant's evidence comprised the affidavit of Warrant Officer McMillan, who deposed to the period of the Claimant's detention at the Port of Spain Prison; the affidavit of Superintendent Johnson refuting the Claimant's allegations of the horrible and sub-human conditions at Remand Yard, Port of Spain Prison and setting out the circumstances and locations of the Claimant's detention. She testified that there have been improvements to the conditions at the prison which is cleaned regularly on a daily basis. She also testified that the Claimant participated in many of the prison programmes and his medical records do not bear out any complaints of depression or threats of suicide as alleged. Inspector Mohammed[11] did trace some of the proceedings from the Transcripts of the Magistrate's Court in Case Nos. 22514-19/2010, 24360-74/2010 and 2244-07/2010. There were a series of adjournments which delayed the commencement of the Claimant's second PI:

- On 2nd August, 2017 the Prosecution indicated that it would be re-starting the proceedings but Attorney for the Claimant, Mr. Sookoo, requested an adjournment of the proceedings on the basis that the Claimant intended to make a certain application to the High Court to the proceedings discontinued. The Claimant's attorney requested an adjournment until August 16, 2017. The Court adjourned the matter to August 29, 2017;

- On 29th August, 2017 the State indicated it was ready to proceed but no Attorney appeared for the Claimant and the matter was adjourned to 14th September, 2017 to set dates for trial;

[9] See paragraph [3] of his affidavit
[10] See paragraphs [15] and [16]
[11] The Affidavit of Inspector Mohammed filed on 31st July 2020

- On 14th September, 2017 the proceedings were adjourned to 28th September for the filing of a High Court Action by the Claimant and others;
- On 28th September, 2017 the Court was informed that the Attorney General had filed an Interpretation Summons in the High Court; some of the accused agreed to a further adjournment to 2nd November, 2017 while others agreed to the date of 26th October, 2017 to await the outcome of that Summons;
- On 26th October, 2017 the Claimant was represented by Mr. Ramlogan SC who informed the Court that the Claimant filed an application for Judicial Review and a constitutional motion and that he intended to make an application for a stay of proceedings pending the determination of the Interpretation Claim and the Judicial Review Application. The Claimant's Attorney requested an adjournment to the end of November 2017;
- On 9th January, 2017 the Claimant's Attorney, Mr. Sookoo informed the Court that Mr. Justice Rampersad had granted an interim injunction preventing the continuation of the PI until that claim had been completed;
- On 4th January, 2019 the Claimant's Judicial Review claim was dismissed;
- On 21st May, 2019 the Claimant was discharged.

THE CONSTITUTIONAL PROVISIONS

[11] It is important to set out the relevant constitutional provisions that are under review and which form the basis of this Claim in order to provide context for the submissions and discussion which follow.

[12] Section 6 of the Constitution provides as follows:

> *6. (1) Nothing in sections 4 and 5 shall invalidate—*
>
> *(a) an existing law;*
>
> *(b) an enactment that repeals and re-enacts an existing law without alteration; or*

(c) an enactment that alters an existing law but does not derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.

(2) Where an enactment repeals and re-enacts with modifications an existing law and is held to derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right then, subject to sections 13 and 54, the provisions of the existing law shall be substituted for such of the provisions of the enactment as are held to derogate from the fundamental right in a manner in which or to an extent to which the existing law did not previously derogate from that right.

(3) In this section—

"alters" in relation to an existing law, includes repealing that law and reenacting it with modifications or making different provisions in place of it or modifying it;

"existing law" means a law that had effect as part of the law of Trinidad and Tobago immediately before the commencement of this Constitution, and includes any enactment referred to in subsection (1);

"right" includes freedom.

[13] Section 1(1) of the Constitution provides:

"The Republic of Trinidad and Tobago shall be a sovereign democratic state."

[14] Section 2 of the Constitution stipulates that:

"This Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency."

[15] Section 4 of the Constitution protects the right to liberty and the right not to be deprived thereof save by due process of law:

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

[16] Sections 5(2)(a) and (f)(iii) of the Constitution, respectively, provide that Parliament may not authorise arbitrary detention or deprive a person charged with a criminal offence of the right to reasonable bail without just cause.

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognized and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

(a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

(c) deprive a person who has been arrested or detained—

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial

authority

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

(d) authorise a Court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

(f) deprive a person charged with a criminal offence of the right—

(i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;

(ii) to a fair and public hearing by an independent and impartial tribunal; or

(iii) to reasonable bail without just cause;

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a Court, commission, board or other tribunal, if he does not understand or speak English; or

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

[17] Section 13 of the Constitution provides an exception for certain Acts that are inconsistent with sections 4 and 5 of the Constitution as follows:

"13. (1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless

the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual. (2) An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House. (3) For the purposes of subsection (2) the number of members of the Senate shall, notwithstanding the appointment of temporary members in accordance with section 44, be deemed to be the number of members specified in section 40(1)."

[18] The right to bail is an enshrined right within the Constitution at Section 5(2)(f)(iii) as follows:

> *5. (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—*
> *(f) deprive a person charged with a criminal offence of the right—*
> *(iii) to reasonable bail without just cause;*

SUBMISSIONS OF THE CLAIMANT

[19] The Claimant submitted that the saving law provision contained in Section 6 of the Constitution[12] must be interpreted in accordance with the judgments of the Caribbean Court of Justice[13] which held that murder is a bailable offence because the applicant's constitutional rights must prevail over legislation that pre-dates the Constitution. In light of these judgments the Claimant contended that the detention of the applicant without bail was unconstitutional and illegal.

[20] The Claimant argued that in determining the constitutionality of Section 5(1) of the **Bail Act** and Section 51 the **Children Act**, the Court is entitled to take into consideration the status of bail in International law which Trinidad and Tobago had ratified in the form of **Article 10 ICCPR** which prohibits states from enacting mandatory detention in criminal proceedings. The Claimant having been deprived

[12] Section 6 (1) – (III)

[13] Jabari Sensimania Nervais v The Queen [2018] CCJ 19 and Quincy Mc Ewan & Others v The Attorney General of Guyana [2018] CCJ 30

of his liberty by the operation of the **Bail Act** has suffered breaches of its constitutional rights as contained in Sections 4 (a) (b) and 5 (2)(a), (e)(f) (i) and (iii).

[21] It was contended on behalf of the Claimant that the doctrine of separation of powers is relevant when determining the Constitutionality of ordinary legislation. The Claimant contended further, thatthe automatic denial of bail by statute is unconstitutional because it violates the doctrine of separation of powers in that it purports to remove the independent judicial discretion hitherto enjoyed by the Court to consider an application for bail. The Claimant asserted that the impugned legislation serves to deprivethecourtofitsjurisdictiontoconsideranapplicationforbailandtogrant or deny bail after consideration of the particular facts and circumstances of the case. The Claimant also asserted that it is an unlawful interference with the independence of the judicial arm of the State.

[22] The Claimant argued that theapplicationforbailispartoftherighttoafairhearinginaccordancewiththe principles of fundamental justice for the declaration of a person's rights and obligations under Section 5(2) (e) of the Constitution and the denial of this important right by the legislature is therefore unconstitutional.

[23] The Claimant asserted that the arbitrary deprivation of liberty is a violation of due process of law and cannot be justified in a society which has proper respect for the dignity of the human person and the inalienable rights with which all human beings have been empowered. It therefore amounts to a breach of section 4(a) of the Constitution because it amounts to the deprivation of a person's liberty without due process.

[24] The Claimant also asserted that therighttoprotectionofthelawisviolatedbecausetheClaimantcouldnotapply tothecourtforbailasitwasautomaticallydenied.Inthecircumstances, the detention of the Claimant was arbitrary contrary to Section 5(2)(a) of the Constitution.

SUBMISSIONS OF THE LAW ASSOCIATION

[25] I invited the Law Association to participate in these proceedings given the importance Constitutional issues involved. Pursuant to that invitation the Law Association filed submissions which were limited to the constitutionality of the impugned provisions of the **Bail Act**.

[26] At the outset, the Association made clear that it did not agree with the Claimant's argument regarding the unconstitutionality of Section 51 of the **Children Act**. It however agreed with the Claimant's submissions regarding the unconstitutionality of Section 5(1) of the **Bail Act**.

[27] It was submitted that section 6 will not save an existing law which is inconsistent with the non-human rights provisions of the Constitution even though the existing law is also incompatible with sections 4 and 5 of the Constitution. The Law Association argued that the Doctrine of Separation of Powers is part of the structure of the Constitution and any legislation which violated the Separation of Powers doctrine ought to be struck down by the Court; further,any interference by the legislature with the judicial functions of the Judiciary is unlawful and inconsistent with the Doctrine of the Separation of Powers and must be struck down.

[28] It was contended on behalf of the Law Association that the Court of Appeal of Trinidad and Tobago accepted that "the legislative removal of the input of a judicial officer from the intrinsically judicial act of granting bail … would have been an invalid intrusion by the legislature upon a judicial function."[14]In the circumstances the Law Association urged that this Court was obliged by binding authority to find that section 5(1) of the **Bail Act**:

i. removes from the Judiciary any responsibility for or power in respect of the liberty of a person charged with the offences of murder, treason, piracy, hijacking and any offence for which the penalty is death;

ii. violates the separation of powers doctrine and is therefore inconsistent with the Constitution of Trinidad and Tobago;

iii. alsoviolatesSection1of the Constitution which declares Trinidad and Tobago to be a sovereign democratic state.

[14]Attorney General of Trinidad and Tobago v Danielle St. Omer et al[14], Civil Appeal No. P 351 of 2016, 8th March 2019

[29] The Association contended on the other hand, that Section 51 of the Children Act does not impinge upon the separation of powers but deals with the granting of bail by a police officer where a suspect under the age of eighteen cannot bebrought forthwith before a Magistrate. It does not curtail the judicial power to grant bail in any way.

[30] The Law Association further argued that Section 13(1) of the Constitution provides that a law which is passed with a three-fifths majority and expressly declares that it shall have effect *even* though inconsistent with Sections 4 and 5, shall have effect accordingly. The Association emphasized that Section 13(1) does not purport to protect laws which are inconsistent with other provisions ofthe Constitution in that it does not say that if a law is passed with a three-fifths majority and expressly declares that it shall have effect even though inconsistent with provisions of the Constitution other than sections 4 and 5 or with implied principles of the Constitution, the law shall have effect accordingly. It was submitted that Section 13(1) does not protect Section 5(1) of the Bail Actfrom invalidity because of inconsistency with the separation of powers doctrine or Section(1) oftheConstitution.

[31] The Law Association also argued thatSection 5(1) accordingly violates the right to liberty and the right not to be deprived thereof except by the due process of law as well as the right to the protection of the law.

[32] The Law Association contended that the effect of Section 5(1) is to vest in the police the power to determine that a person will be deprived of his or her liberty for an indefinite period of time by the choice of offence with which to charge a suspect and by his or her determination that there is sufficient evidence to justify the charge. A society which has proper respect for the rights and freedoms of the individual cannot countenance the curtailment of liberty without judicial input.

[33] It was also argued that Section 5(1) of the **Bail Act** is not existing Law and therefore cannot be saved by Section 6 of the Constitution. Counsel for the Law Association asserted that even if it were existing law it could not be saved from invalidation because Section 6 of the Constitution only applies to

existing law which is inconsistent with Sections 4 and 5 of the Constitution. The Law Association asserted that Section 5(1) of the Bail Act was not part of the law of Trinidad and Tobago immediately before the commencement of the 1962 Constitution and therefore cannot be saved since the law governing bail before independence was comprised of a complex interplay of sections 29(1) and 34 of the **Indictable Offences (Preliminary Enquiry) Ordinance**[15]. Counsel for the Law Association urged the Court to note that Section 1 of the Constitution refers to an enactment that repeals and reenacts an existing law without alteration; however Section 5(1) of the **Bail Act** repealed the previous legislation governing bail but did not reenact them. Section 5(1) of the **Bail Act** altered the law which existed prior to Independence to the extent that judges of the High Court were now deprived of all discretion to grant bail and the offences for which bail could not be granted now includes hijacking.Counsel for the Association contended that in this case, pre-independence law recognized a jurisdiction in the High Court to grant bail, but there was no practice to grant such bail. He went on to assert that Section 5(1) of the **Bail Act** now renounces that jurisdiction altogether and therefore derogates to a greater extent than did the existing law. He invited this Court to find in the circumstances, that Section 5(1) is accordingly not caught by Section 6(1) (c) either.

SUBMISSIONS OF THE DEFENDANT

[34] The Attorney General submitted firstly, that the Claimant had no *locus standi* to challenge the constitutionality of Section 51 of the **Children Act** since he was thirty years old when he had been charged for murder. Further, he had not alleged nor established that any constitutional right has been, is being or is likely to be contravened by the provision of Section 14 of the Constitution.

[35] The Defendant argued that Section 5(1) of the **Bail Act 1994** restated existing law and was therefore saved under Section 6 of the Constitution. The Attorney General

[15] Ch 4, No 1

asserted that the **Bail Act** captured the Common Law principles relating to bail. Persons accused of offences of murder or attempt to murder were refused of bail in accordance with a well established practice[16][17][18]. The Defendant noted that a savings clause is a common feature of Caribbean constitutions however they vary from state to state. In Trinidad and Tobago Section 6 of the Constitution operates to preserve any law which was saved before the coming into force of the Constitution.

[36] The Defendant argued that from time immemorial Judges have not granted bail when a person was charged with murder when the presumption of innocence was applicable, as well as after committal. Although at common law the judges in England had in theory the power to grant bail, in cases of murder, treason and piracy, they seldom in fact exercised it, and perhaps only did so on one or two occasions, which were cases of deaths arising from duels. With respect to whether Trinidad and Tobago should take into consideration the bail legislation of other Commonwealth jurisdictions the Attorney General asserted that bail legislation in other countries were formulated to treat with the social mores of those countries whose laws relating to the offence of murder and the grant of bail for this offence were amended by statute.

[37] The Defendant submitted that both sections under challenge reproduced existing law without alteration. Section 6(3) of the Constitution requires that the law which "alters" an existing law must repeal it and then either re-enact it with modifications or make different provisions in place of it or modify it. There was no alteration to either of the challenged sections in this case.

[38] It was submitted that Section 51 of the **Children Act 2012** simply reenacted Section 72 of the **Children's Ordinance 1925**[19] without alteration or modification; since the **1925 Ordinance** was existing law when the Constitution came into force, Section 51 is saved by Section 6 of the Constitution.

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[16] **Halsbury's Laws of England,** third edn., vol. 10, para. 677**,** under the rubric "Bail Pending Trial", the authors opine as follows; "It is not usual to grant bail in cases of murder, or in cases of attempted murder, unless the prosecution consents."

[17] 38th edn., 1973 in **Archbold's Criminal Evidence and Practice**, the authors state: "It is not usual to grant bail on charges of murder."

[18] Para. 292 at p. 87

[19] No 4 of 1925 section 72

[39] The Defendant also submitted that in this case the Constitution has, by virtue of the reach of section 6, given a constitutional sanction to the non-applicability of the exercise of a judicial discretion to the grant of bail for the offence of murder.

[40] The Defendant asserted that Section 1 of the Constitution is not entrenched but deals with macro constitutional principles such as:

i. that the people must decide who should govern them,

ii. that fundamental rights should be protected by an impartial and independent judiciary,

iii. that in order to reconcile the inevitable tensions between these ideas a separation of powers between the legislature, the executive and the judiciary was necessary. Separation of powers is a subset of the rule of law.

[41] It was further asserted by the Defendant that the doctrine of separation of powers is not inviolable and that it is not every case where the legislation impinges on judicial power that there is a violation of the doctrine. Mr. Hosein argued that legislation impinges directly on judicial proceedings if the statute itself amounts to the exercise of an inherently judicial power. Direct interference with judicial proceedings is usually inherently contrary to the separation of powers and the rule of law. However, direct interference with judicial proceedings was rare.Legislation which altered the law applicable in current legal proceedings was capable of violating the principle of separation of powers and the rule of law by interfering with the administration of justice, but 'something more' was required before it can be said to do so. That 'something more' was that the legislation should not simply affect the resolution of the current litigation but should be *ad hominem*.

[42] The Defendant contended that the Claimant must first establish that the challenged legislation directly impinges upon the exercise of an inherently judicial power, that is, the power to grant bail for the offence of murder, which he has failed to do.The Defendant contended that from the Statute of Westminster in 1275 certain offences were made non-bailable, and at common law, from time immemorial judges did not grant bail for murder. By the **Indictable Offences (Preliminary Enquiry)**

Ordinance and the **Criminal Procedure Ordinance** [20]the legislature of Trinidad and Tobago legitimately amended the law to make murder a non-bailable offence. In the circumstances, this case is not one of direct interference with inherently judicial power, as argued for by the Claimant. In this case, bail for murder was not the subject of much judicial discretion as it was hardly ever granted and the change in the law making murder a non-bailable offence does not involve any infringement of the principle of separation of powers.

[43] The Attorney General submitted that the denial of bail for the offence of murder has developed as an exception to the general principle of separation of powers. In response to the Claimant's submission that the mandatory regime created by the **Bail Act** prevents differential treatment of accused persons[21], the Defendant submitted that in Trinidad and Tobago there is no categorization of murder[22]. The law criminalized murder simpliciter. The Attorney General also submitted that the impact of a denial of judicial discretion for the grant of bail for the offence of murder is therefore limited. When the common law principles are considered there is hardly any judicial discretion at all to be intruded upon. Counsel for the Attorney General argued that this case is similar to that of **Matthew v The State of Trinidad and Tobago**[23] where the Judicial Committee accepted that the death penalty was prescribed by Parliament and was a saved law. There was no breach of separation of powers by the removal of a judicial exercise of discretion with respect to the mandatory imposition of the sentence of death upon a conviction for murder.

[44] The Defendant argued that Sections 1, 4, 5 and 6 of the Constitution must be read together. This Court was urged to find that law saved by Section 6 cannot be invalidated for inconsistency with Sections 4, 5and 1 of the Constitution.

[20]Ch. 4 No. 3
[21] Fixed Date Claim Form p.10
[22]The Offences Against the Person Act, section 4
[23][2005] 1 AC 433

THE LEGISLATIVE FRAMEWORK

[45] As all the parties to this Claim agree, this case turns on whether Section 5(1) of the Bail Act is existing law in accordance with Section 6 of the Constitution[24].The pre as well as post independence legislation governing the issue of bail for murder is outlined below.

[46] The history of the legislation governing the grant of bail in cases of murder is as follows:

(a) Sections 27(1) of the then **Indictable Offences (Preliminary Enquiry) Ordinance[25]**provided:

'27. (1) With respect to bail, the following provisions shall have effect –

'(a) where the offence with which an accused person is charged is a misdemeanour, he shall be admitted to bail as is hereinafter mentioned;

'(b) where the offence with which an accused person is charged is a felony, not being treason, murder or piracy, the magistrate may, in his discretion, admit him to bail as is hereinafter mentioned; and

'(c) a magistrate shall not admit to bail any person charged with treason, murder or piracy.'

(b) Sections **5 and 82** of the **Criminal Procedure Ordinance** provided as follows:

'5. (1) Subject to the provisions of this Ordinance, if any person committed for trial is not brought to trial before the close of the second ordinary criminal sessions held next after his commitment at the place to which such person has been committed for trial, he shall be discharged from his imprisonment for the offence for which he was committed for trial if the said offence be in its nature bailable, or if such offence be not bailable

[24]See paragraph 19 above
[25] Ch 4, No 1

he shall nevertheless be admitted to bail, or discharged on his own recognisance, at the discretion of the court:

Provided that nothing in this Ordinance shall abrogate or derogate from the power of the court to order the postponement of any trial.

'(2) No person who shall have been once discharged from prison under the provisions of this section shall be liable to be recommitted to prison, either for examination or for trial, for the same offence; and no person who shall have been admitted to bail under the provisions of this section shall be obliged to find further bail, or shall be liable to be committed to prison, either for examination or for trial, for the same offence in respect of which he was formerly admitted to bail; but no such discharge, nor the expiration of the time mentioned in the recognisance shall be any bar to prevent any person from being brought to trial for any offence for which he was formerly committed to prison, or admitted to bail, or discharged.'

'82. A judge shall have such and the same power to bail in all cases whatsoever as the Court of King's Bench, or any judge thereof in vacation, has by the law of England.' [emphasis supplied]

(c) Sections 29(1) and 34 of the **Indictable Offences (Preliminary Enquiry) Act** ('the Act') provided as follows:

*'**29.** (1) With respect to bail, the following provisions shall have effect:*

'(a) the magistrate shall not admit to bail any person charged with treason, murder or piracy or with any offence for which death is the penalty fixed by law;

'(b) a magistrate may, in his discretion, admit to bail any person charged with an offence that is not specified or referred to in paragraph (a);

'(c) the discretion of the magistrate under paragraph (b), or of the court or a judge under section 34, shall be exercised in accordance with the principles in force in England on 30th August 1962 with respect to the discretion of the High Court of Justice when dealing with applications for bail except that where a person who has been committed for trial is in

custody awaiting such trial in respect of an offence not specified or referred to in paragraph (a) and is not brought to trial within six months after his commitment the court or judge may, on the application of such person, admit such person to bail with a surety or sureties or upon his own recognisance to secure his appearance at his trial;

'(d) where a magistrate when committing a person for trial of an offence other than treason or murder or piracy or any other offence for which death is the penalty fixed by law, does not admit such person to bail, he shall inform such person of his right to apply for bail to a judge of the High Court.'

*'**34.** The court or a judge may at any time, on the petition of an accused person, order such person, whether he has been committed for trial or not, to be admitted to bail, and the recognisance of bail may, if the order so directs, be taken before any magistrate.' [emphasis supplied]*

(d) **THE BAIL ACT 1994**

13. Section 5(1) of the Bail Act 1994 provides as follows:

"Subject to sub section (2), a Court may grant bail to any person charged with any offence other than an offence listed in Part 1 of the First Schedule.

14. PART 1 of the First Schedule of the **Bail Act 1994** provides as follows:

" FIRST SCHEDULE

EXCEPTIONS TO PERSONS ENTITLED TO BAIL

PART 1

CIRCUMSTANCES IN WHICH PERSONS ARE NOT ENTITLED TO BAIL

Where a person is charged with any of the following offences:

(a) Murder;

(b) Treason;

(c) Piracy or hijacking;

(d) Any offence for which death is the penalty fixed by law.

(e) The ***Children Act 2012, section 51*** provided as follows:

"Where a person who appears to be under the age of eighteen years is apprehended with or without warrant, and cannot be brought forthwith before a Court, the officer in charge of the Police Station to which such person is brought shall enquire into the case and may –

(a) Unless the charge is for murder or for any other offence which carries a term of imprisonment in excess of five years;

(b) Unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute;

(c) If there is reason to believe that the release of such person would defeat the ends of justice,

Release such person on bail in accordance with the Bail Act, subject to a duty to appear before a Magistrate at such time and place as the officer appoints and shall bring the child to the attention of the Authority."

(f) **The Children Act**, section 51, reproduces and restates existing law as the **Children Ordinance No 4 of 1925 section 72** provided as follows:

"Where a person apparently under the age of sixteen years is apprehended with or without warrant, and cannot be brought forthwith before a magistrate, the officer in charge of the Constabulary Station to which such person is brought, shall enquire into the case and may in any case, and shall –

(a) Unless the charge is one of homicide or other grave crime; or

(b) Unless it is necessary or in the interest of such person to remove him from association with any reputed criminal or prostitute; or

(c) Unless the officer has reason to believe that the release of such person would defeat the ends of justice,

Release such person on a recognisance, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge, being entered into by him or his parent or guardian."

ANALYSIS AND CONCLUSION

[47] While Section 5(1) of the **Criminal Procedure Ordinance** appears to grant a discretion to the High Court to grant bail for non-bailable offences such as murder, the discretion was not exercised by the Judges of the High Court in England. This was the practice that was followed for centuries in that jurisdiction whose statutes and common law were applied in Trinidad and Tobago.

[48] The historical framework of the statutes and its effect on the law regarding bail for the offence of murder was summarized by then Chief Justice Bernard in the case of **Krishendath Sinanan v The State**[26]thus:

"Bail before conviction of an indictable offence

A person charged with a criminal offence is presumed to be innocent. It follows that, as far as possible, his liberty should not be unduly curtailed and, all things being equal, he is entitled to bail. It is not a vehicle for punishment. It is simply the means to secure the attendance of the accused at his trial; see R v Rose (1898) 67 LJQB 289.

Now with regard to the question of bail in an indictable offence, ***sections 29(1) and 34*** *of the* ***Indictable Offences (Preliminary Enquiry) Act*** *('the Act') provide:*

*'**29.** (1) With respect to bail, the following provisions shall have effect:*

[26] No. 1 1992 44 WIR 359

'(a) the magistrate shall not admit to bail any person charged with treason, murder or piracy or with any offence for which death is the penalty fixed by law;

'(b) a magistrate may, in his discretion, admit to bail any person charged with an offence that is not specified or referred to in paragraph (a);

'(c) the discretion of the magistrate under paragraph (b), or of the court or a judge under section 34, shall be exercised in accordance with the principles in force in England on 30th August 1962 with respect to the discretion of the High Court of Justice when dealing with applications for bail except that where a person who has been committed for trial is in custody awaiting such trial in respect of an offence not specified or referred to in paragraph (a) and is not brought to trial within six months after his commitment the court or judge may, on the application of such person, admit such person to bail with a surety or sureties or upon his own recognisance to secure his appearance at his trial;

'(d) where a magistrate when committing a person for trial of an offence other than treason or murder or piracy or any other offence for which death is the penalty fixed by law, does not admit such person to bail, he shall inform such person of his right to apply for bail to a judge of the High Court.'

***'34.** The court or a judge may at any time, on the petition of an accused person, order such person, whether he has been committed for trial or not, to be admitted to bail, and the recognisance of bail may, if the order so directs, be taken before any magistrate.' [emphasis supplied]*

*It should be observed that **section 29(1)** of the Act was enacted in 1961. Prior to this time the position was regulated by sections 27(1) and 32 of the then **Indictable Offences (Preliminary Enquiry) Ordinance (Ch 4, No 1)** and sections 5 and 82 of the then **Criminal ProcedureOrdinance (Ch 4:03)***

It is interesting to observe that the repealed provisions of section 5 of the previous ***Criminal Procedure Ordinance (Ch 4, No 3)*** *referred to offences which were in their nature bailable or not bailable, and that it clothed the High Court or a judge with the following powers in the case of a person who had been committed for trial and was not brought to his trial 'before the close of the second ordinary criminal sessions held next after his commitment': (a) to discharge such person from imprisonment if the offence for which he was committed was in its nature bailable; and (b) to admit such person to bail or discharge him on his own recognisance if the offence for which he had been committed was not bailable.*

What, therefore, was the mischief aimed at by the existing provisions of section 29(1)? It seems to me that, when read together, sections 29(1) and 34 operate to fetter the jurisdiction of a High Court judge to grant bail to a person who has been committed for trial on an offence for which the penalty is death*, but to permit him to grant bail to a person who has been committed to stand his trial for an offence for which the penalty is not death if that person has not been brought to trial and has been in custody for six months or more. In the exercise of his discretion to admit to bail in this latter case, the judge is required to be guided by the principles in force in England on 30 August 1962 with respect to application for bail.*

With respect to bail before committal I would only add that at common law, having regard to the severity of the punishment, as it was at one time in England, it was unusual to grant bail in the case of murder; see in this connection R v Mohun (Lord) (1697) 91 ER 96, R v Barronet and Allain (1852) 169 ER 633, R v Barthelemey and Morney (1852) 169 ER 636, R v Andrews (1844) 8 JP 791, 9 Halsbury's Laws of England (1 Edn) page 326, footnote (g), 9 ibid (2 Edn) page 121, footnote (r), and Stephen's Commentaries on the Laws of England (21 Edn) vol 4, pages 240, 241.

In this country, unlike the case in England, death is still the mandatory penalty for all murders and, of course, treason the penalty for which in England was, at some time or other, one of transportation. ***I would add that in this jurisdiction from time immemorial, consistent with the approach in***

early times in England with particular reference to the approach to the penalty which obtained at one time to the case of murder, it has never been the custom to admit to bail any person charged with an offence for which the penalty is death. This view, with respect, seems to be in consonance with the repealed provisions of section 5 of the Criminal Procedure Ordinance (Ch 4, No 3) whose language appears to contemplate that an offence such as murder was not bailable."

[49] In **Matthew v The State [2004]**[27]the Privy Council laid down foundational principles regarding the effect of Section 6 of the Constitution on existing law. Lord Hoffman opined[28]:

> *"The law decreeing the mandatory death penalty was an existing law at the time when the Constitution came into force and therefore, whether or not it is an infringement of the right to life or a cruel and unusual punishment, it cannot be invalidated for inconsistency with sections 4 and 5. It follows that despite section 2, it remains valid.*
>
> *The language and purpose of section 6(1) are so clear that whatever may be their Lordships' views about the morality or efficacy of the death penalty, they are bound as a court of law to give effect to it. As Lord Bingham said in* ***Reyes v The Queen [2002] 2 AC*** *235****, 246,*** *"the court has no licence to read its own predilections and moral values into the Constitution". And their Lordships do not understand the appellant to dispute that if one simply reads the Constitution, there is no basis for holding the mandatory death penalty invalid for lack of consistency with sections 4 and 5.*
>
> . *This is a very important point. It is not suggested that there is any ambiguity about the Constitution itself. It is accepted that it is simply not susceptible to a construction, however enlightened or forward-looking, which would enable one to say that section 6(1) was merely a transitional provision which somehow and at some point in time had become spent. It stands there*

[27] UKPC 33

[28] at paragraphs [12]-[14]:

protecting the validity of existing laws until such time as Parliament decides to change them.

The result is that although the existence of the mandatory death penalty will not be consistent with a current interpretation of sections 4 and 5, it is prevented by section 6(1) from being unconstitutional...It follows that the decision as to whether to abolish the mandatory death penalty must be, as the Constitution intended it to be, a matter for the Parliament of Trinidad and Tobago."

Lord Hoffmann also stated as follows at paragraphs [12]-[14]:

12. *Their Lordships consider that for reasons similar to those given in Reyes v R(2002) 60 WIR 42 and Boyce and Joseph v R, the mandatory death penalty is a cruel and unusual punishment and therefore inconsistent with ss 4(a) and 5(2)(b) of the Constitution. Their Lordships note that Trinidad and Tobago is, like Barbados, a party to the International Covenant on Civil and Political Rights and a member of the Organization of American States and that the Human Rights Committee and Inter-American Commission have both decided that the mandatory death penalty is inconsistent with the international law obligations created by adherence to the International Covenant on Civil and Political Rights and membership of the Organization of American States, respectively: see Kennedy v Trinidad and Tobago (2002) CCPR/C/67/D/845/1998 and Edwards v The Bahamas (2001) Report 48/01. The principle the domestic law should so far as possible be interpreted consistently with international obligations and the weight of opinion expressed in domestic cases decided in other jurisdictions supports the conclusion that ss 4 and 5 of the Constitution should be similarly interpreted. For further discussion on this point, their Lordships refer to the advice in Boyce and Joseph v R.*

13. *The question in this case, however, is whether inconsistency with ss 4 and 5 has any effect on the validity of the mandatory death penalty. Section 6(1) contains an exception to the operation of the previous two sections*

"Nothing in sections 4 and 5 shall invalidate-

(a) An existing law;

(b) An enactment that repeals and re-enacts an existing law without alteration; or

(c) An enactment that alters an existing law but does not derogate from any fundamental rights guaranteed by this chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.'

14. The Offences Against the Person was passed in 1925, replacing earlier similar legislation. It therefore cannot be invalidated by anything in s 4 or s 5. As the Constitution contains no other provisions which can affect its operation or validity, it follows that if one is concerned only to construe the Constitution as the supreme law of Trinidad and Tobago, there is no basis for challenge.

[50] The authorities below all emphasize the effect of Section 6(1) on existing law notwithstanding the fact that such law may infringe upon Sections 4 and 5 of the Constitution, or may not accord with current societal mores.

[51] In **Johnson and Balwant v The AG**[29]Lord Rodger opined:

"The effect of s. 6(1) is that an "existing law" is not to be invalidated by section 4 of the Constitution and is not to be regarded as inconsistent with the Constitution by reason of anything in s. 4. To put the point another way, s.6(1) makes an existing law constitutional, i.e., consistent with the Constitution even though it would conflict with s. 4 if that section applied to it.

According to s. 6(3) 'existing laws' means 'a law that had effect as part of the laws of Trinidad and Tobago immediately before the commencement of this Constitution and includes any enactment referred to in subsection (1).

It follows that, since regulations 52 and 58 had not been declared invalid they had effect immediately before the Constitution came into effect in 1976 and so are 'existing laws' in terms of section 6 (1). Looking simply at ss 2, 4, and 6(1)

[29][2009] UKPC 53 at paragraphs [13]-[16]

of the Constitution, the position is clear: since Regs 52 and 58 were existing laws s. 4 does not apply to them. So even though they discriminate against women by reason of their sex they are constitutional."

[52] In **Attorney General v Aleem Mohammed (1985)** [30]Chief Justice Kelsick stated in relation to S.23 (5) and (6) of the **Indictable Offences (Preliminary Enquiry) Act** whichreplaced the **Indictable Offences (Preliminary Enquiry) Ordinance**, the same predecessor act to the **Bail Act** under challenge here:

"The common law as existing before the commencement of the Independence Constitution on 31st August 1962 was that there was by necessary implication of law no right… for an accused person to be heard on an application for a warrant of his arrest and commitment under s23(5) and (6) of the Act. There would be no violation of any constitutional right of the respondent by the denial of this motion. As an existing law, section 23(5) and (6) would be exempted from the constraints of sections 4 and 5 of the Constitution by virtue of section 6."

[53] Justice Persaud[31] also stated:

"To sum up I take the view that:

a) The Act was an existing law within the meaning of S. 6 of the Constitution when the later came into operation;

b) S.5(1) of the Constitution contemplates future legislation this conclusion is supported by the provisions of S. 6(2) and

c) Consequently s. 23 (6) of the Act is not affected by S. 5 of the Constitution."

[54] Having reviewed the above cases and helpful submissions advanced by the parties herein, I hold as follows:

(i) The **Children Act** restated the existing law contained in the **Children Ordinance** without alteration or modification. It is therefore captured by Section 6 of the Constitution and is valid as existing law. In any event, when

[30] 36 WIR 359 364g at p. 364 f-g

[31] p 375 d-e

charged for the offence of murder, the Claimant was an adult. The **Children Act** and its provisions do not in any event apply to him.

(ii) Section 5(1) of the **Bail Act** is existing law saved by Section 6 of the Constitution; in the circumstances the Act is not and cannot be invalidated by the provisions of Sections 4 and 5 of the Constitution. Before the coming into force of the impugned legislation, by common law and statute, any judicial discretion which existed to grant bail in cases of murder had not been exercised. It was common practice of the High Court in England and later Trinidad and Tobago not to consider the issue of bail in cases of murder, a practice developed, no doubt, having regard to the mandatory sentence of death upon conviction, and the likelihood of flight by such an accused person facing the possibility of the imposition of this sentence upon him. Additionally, as noted above, Sections 29(1) and 34 of the **Indictable Offences (Preliminary Enquiry) Act** which provided that a magistrate may not admit to bail charged with murder was enacted in 1961, prior to the coming into force of the 1962 and 1976 Constitutions. Further, as noted above, Sections 29(1) and 34 of the said Act are to be exercised "in accordance with the principles in force in England on 30th August 1962 with respect to the discretion of the High Court of Justice when dealing with applications for bail[32].

[55] The learning in the above cases of **Matthew** and **Sinanan** lends support to the view that Section 5(1) of the **Bail Act 1994** and **Section 51** of the **Children Act**are existing law and therefore saved by **Section 6** of the Constitution. Both pieces of legislation merely reenact the law as it stood before the coming into force of the Constitution.

[56] Although Sections 29 and 34 of the **Indictable Offences (Preliminary Enquiry) Act**gave a discretion to a Judge to admit to bail a murder accused who has not been tried six months after committal, that discretion has not been exercised either under common law or statute. In the circumstances, the practice under the common law by the Judges of the High Court of not granting bail to persons accused of murder notwithstanding the provisions of the **Indictable Offences**

[32]Para 29(1)(c) of Indictable Offences (Preliminary Enquiry) Act

(Preliminary Enquiry) Act and the legislation which went before prior to the promulgation of the 1962 Constitution constitute existing law which is saved by Section 6 of the Constitution.

[57] Counsel for the Claimant urged this Court to disregard or distinguish the Privy Council decisions in **Matthew** and**Boyce**[33] and hold that the Savings Law Clause cannot validate legislation which conflicts with Sections 4 and 5 of the Constitution. This I respectfully decline to do. This Court is bound by decisions of higher courts on this point; I am only permitted to depart from following such precedent if there is a lawful basis for so doing. Unfortunately, on the facts of this case, I do not find such basis to exist.

[58] In my view, it is a function of the legislative arm of government, taking into account current societal norms and any other social factors it deems relevant, to decide whether the law relating to bail for murder ought to be repealed, amended or replaced as has happened in other Caribbean jurisdictions. Having determined that the impugned legislation is existing law, I consider that it would amount to judicial overreach to strike down, alter or replace the said legislation.

THE SEPARATION OF POWERS ISSUE

The Law Association

[59] The Association submitted that Section 6 of the Constitution will not save an existing law which is inconsistent with the non-human rights provisions of the Constitution even though the existing law is also incompatible with Sections 4 and 5 of the Constitution. The main thrust of their argument was that the impugned legislation infringed Section 1 of the Constitution and the Doctrine of the Separation of Powers because an inherently judicial power to grant bail was removed from the Judiciary by the legislative arm of government.

[60] It should be noted at the outset that Section 1 of the Constitution is not an entrenched provision and can be repealed by a simple majority.

[33] 2004 64 WIR 37

[61] In any event, I do not agree that the effect of the impugned legislation was an impermissible removal of all judicial input with respect to the grant or refusal of bail in cases of murder.

[62] I take into account the guiding principles enunciated in the Privy Council decision of **Boyce v The State**[34]and **Matthew v The State** on the scope of the doctrine of the Separation of Powers.

[63] Lord Hoffman in **Matthew**[35] supra opined:

> *"As their Lordships observed in Boyce v The Queen [2005] 1 AC 400, the principle of separation of powers is not an overriding supra-constitutional principle but a description of how the powers under a real Constitution are divided. Most constitutions have some overlap between legislative, executive and judicial functions."*

[64] In **Boyce v The State** Lord Hoffman explained the scope of the Doctrine thus:

> *''There is no supra-constitutional principle by which it is presumed that the provisions of a constitution even those concerned with fundamental rights, must be capable of being given an updated effect taking precedence over all other laws. To make such an assumption is to beg the very question at issue in this case, which is whether the Constitution left it to Parliament to decide whether existing laws should be amended…''.*

[65] In **Ferguson et al v The Attorney General of Trinidad and Tobago**[36], Lord Sumpton further outlined the scope of the doctrine by explaining that legislation impinges directly on judicial proceedings if the statute itself amounts to the exercise of an inherently judicial power. Direct interference with judicial proceedings is usually inherently contrary to the separation of powers and the rule of law. However, direct interference with judicial proceedings was rare. He determined that legislation which altered the law applicable in current legal proceedings was capable of violating the principle of separation of powers and the rule of law by interfering with the administration of justice, but 'something more'

[34] 2004 64 WIR 37
[35] at paragraph [28]
[36] 2016 UKPC 2paragraphs 23 - 24

was required before it can be said to do so. That 'something more' was that the legislation should not simply affect the resolution of the current litigation but should be *ad hominem*, i.e., targeted at identifiable persons or cases.

[66] As I determined above, judges of the High Court did not grant bail for murder either at common law or by statute. The earlier legislation[37] fettered the exercise of judicial discretion to grant bail. I also take into account the fact that there is no authority which demonstrates that judges exercised a discretion to grant bail either under the common law or earlier statutes. The **Bail Act 1994** which made murder a non-bailable offence was therefore consistent with judicial norms and practices. In the circumstances I hold that the **Bail Act** did not interfere with an inherent judicial power.

[67] The Claimant has failed to establish that the **Bail Act 1994** was *ad hominem*, or directly interfered with judicial proceedings. The Bail Act did neither. The Act affects all cases. Accordingly it does not breach the Doctrine of the Separation of Powers.

[68] This Court is bound by the Judgments of **Matthew**, **Boyce** and **Ferguson** and I cannot overrule these cases, as I was very enthusiastically encouraged to do by Counsel for the Claimant and to a lesser extent, Counsel for the Law Association. While I agree that it may be a valuable exercise to consider a review of the legislation governing murder, to take account of the widely varying circumstances by which a person may take the life of another, this is a task which falls within the domain of the legislative arm of government. It is also for Parliament to alone determine whether the law should be amended so as to make murder a bailable offence.

[69] In the circumstances, I make the following Order:

1. The Claimant's Claim is dismissed;

2. The Claimant to pay the Defendant's costs certified fit for senior and two junior counsels to be assessed by the Registrar in default of agreement;

3. There be no Order as to costs against the Law Association.

Joan Charles
Judge

[37] Indictable Offences Ordinance, Criminal Procedure Ordinance