REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2009-04166

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

AND

IN THE MATTER OF AN APPLICATION BY CHRISTOPHER PRIME FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW

Between

CHRISTOPHER PRIME

Intended Claimant

And

THE TRINIDAD AND TOBAGO RACING AUTHORITY

Intended Defendant

Before the Honourable Mr. Justice des Vignes

Appearances:

Ms. D. Seetahal, S.C., Mr. K. Ramkissoon and Mr. W. James for the Intended Claimant

Mrs. D. Peake, S.C., Mr. R. Nanga and Ms. A. Bissessar for the Intended Defendant

J U D G M E N T

Introduction

1. On the 10th November 2009, Christopher Prime ("the Intended Claimant") applied for leave to bring judicial review proceedings against the Trinidad and Tobago Racing Authority ("the TTRA") in respect of the TTRA's decision of the 9th September 2009, to fine and suspend him.

2. The application is supported by the following four (4) affidavits:
   (i) The affidavit of the Intended Claimant filed on 10th November 2009.
   (ii) The affidavit of Derek Chin filed on 10th November 2009.
   (iii) The affidavit of Laraine Lutchmedial, S.C., Chairman of the Law Revision Commission, filed on 10th November 2009.
   (iv) Affidavit of Dr. Clive Rahamut-Ali Jr., Veterinary Surgeon, filed on 19th November 2009.

Disposition

3. I am not satisfied that the Intended Claimant has advanced any arguable ground for judicial review that has a realistic prospect of success. Accordingly, for the reasons hereinafter set out, I have decided to refuse the Intended Claimant's application for leave to apply for judicial review and order that the costs of the TTRA be paid by the Intended Claimant, certified fit for Senior and Junior Counsel.

Facts

4. The Intended Claimant has been a licensed Race Horse Trainer since 1998. One of the horses which he had under his care in 2009 was a horse named "Storm Street", owned by Mr. Derek Chin.

5. On 4th July 2009, Storm Street was the official winning horse of Race 6 of Day 24 of the Arima Race Club's 2009 racing season. In accordance with Rule 64 of the Trinidad and Tobago Racing Authority Rules 2000 ("the 2000 Rules"), a sample of urine was taken from Storm Street under the direction of the Official Veterinarian. A portion of the sample was sent for primary testing at the TTRA's laboratory facilities in Iowa in the United States of America and the other portion of the sample was retained in the TTRA's possession for independent testing at another laboratory approved by the Authority, if requested by the owner/trainer.

6. The urine sample tested in Iowa was found to contain methocarbamol, which is a muscle relaxant falling into the category of therapeutic medications described in Class 4, Uniform Classification Guidelines of Foreign Substances under Rule 100(A)(4) of the 2000 Rules.

7. By letter dated 23rd July 2009, the Secretary of the TTRA, Mr. Loregnard, notified Mr. Chin of these results and provided him with a copy of the Final Report dated 22nd July 2009, from Iowa State University of Science and Technology. He advised Mr. Chin that, with immediate effect, Storm Street was not allowed to race again until the Authority directed otherwise. He also advised Mr. Chin that a split sample of urine was being held by the Authority and should he wish to have the sample analysed, he should so indicate to the TTRA in writing, within forty-eight (48) hours of receipt of the letter. The TTRA also provided the names of two approved referee laboratories, both located in the United States of America, namely:

   (i) University of Florida, College of Veterinary Medicine Racing Laboratory in Florida; and

(ii) Centre for Tox Services in Arizona.

8. This letter was brought to the attention of the Intended Claimant by Mr. Chin and he selected the University of Florida, *"a well recognized testing facility".* However, by email dated 27th July 2009, that laboratory declined testing of the sample. Concerned about the laboratory's refusal to test the split sample, the Intended Claimant demanded from Mr. Loregnard to know why the University of Florida had declined to conduct the test. Mr. Loregnard responded by disclosing the email dated 27th July 2009, which was sent to him by Dr. Margaret Wilding from the University of Florida. The email read as follows:

> *"Dr. Sams and I have discussed your sample and have spoken with Dr. Hyde. We are going to decline the sample at this time. I have attached an updated import permit for your records."*

9. This email was in response to a previous email dated 23rd July 2009, from Mr. Loregnard to Dr. Wilding, (which was disclosed to the Intended Claimant at the hearing on the 9th September 2009) which stated:

> *"… We are in receipt of a positive report from our primary laboratory…for a finding of – METHOCARBAMOL (Class 4).*
>
> *This was A QUALITITATIVE TEST ONLY and detected and confirmed using HIGH PRESSURE LIQUID CHROMATOGRAPHY/MASS SPECTOMETRY. Please note that our rules of racing do not require quantitative testing with the exception being LASIX/SALIX.*
>
> *If you have any questions you may contact Dr. Walter Hyde at Iowa State University or myself.*

Please indicate soonest if you are willing and able to conduct the split sample test."

10. Notwithstanding this concern on the part of the Intended Claimant, by letter dated 28th July 2009, Mr. Chin's Attorney, Mr. Stuart Young, wrote to the TTRA advising that Mr. Chin did not wish for the split sample to be sent to the Center for Tox Services and requested that the TTRA propose another laboratory.

11. By letter dated 29th July 2009, the TTRA advised the Intended Claimant that the University of Pennsylvania Equine Toxicology and Research Centre of Westchester in Pennsylvania had agreed to accept and test the split sample, and that arrangements had been made to retrieve the sample and dispatch same via courier on 30th July 2009.

12. On 30th July 2009, the Intended Claimant did not show up for the handing over of the split sample for the reason that he was concerned that there had been communication between the Iowa State University Laboratory and the University of Florida laboratory and his insistence that the split sample be tested by the University of Florida and not by a laboratory chosen by the TTRA.

13. Rule 64 (C) of the 2000 Rules provides, inter alia, as follows:

"*A trainer or owner of a horse having been notified that a written report from a primary laboratory states that a prohibited substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory <u>approved by the Authority.</u>* (Emphasis mine) *The request must be made in*

writing and delivered to the Authority not later than 48 hours after the trainer of the horse receives written notice of the findings of the primary laboratory. Any split sample so requested must be shipped within an additional 48 hours. ….Failure of the owner, trainer or their designee to appear at the time and place designated by the Official Veterinarian for dispatch of the sample shall constitute a waiver of all rights to split sample testing. Prior to shipment, the Authority shall ensure the laboratory's willingness to provide the testing required, (emphasis mine) *its willingness to send results to both the person requesting the testing and the Authority, and that satisfactory arrangements are made for payment of the laboratory's costs."*

14. By letter dated 4th August 2009, the TTRA wrote to the Intended Claimant indicating that as a result of his failure to present himself for the sample to be dispatched on 30th July 2009, the Authority had concluded that he had waived his right to have the split sample tested.

15. By letter of 5th August 2009, the Intended Claimant's Attorneys, Messrs. Kelvin Ramkisson & Associates wrote to the TTRA demanding that the split sample in the Authority's possession be sent "*forthwith"* to the University of Florida Lab, since the Intended Claimant could see no valid reason why that Institution had declined the sample.

16. On 10th August 2009, the TTRA's Attorneys, Messrs. Pollonais, Blanc, de la Bastide & Jacelon responded to the Intended Claimant's Attorneys indicating, inter alia, that the Intended Claimant had waived his right to request a split sample test and

thus could not at that stage make a new request for the test to be completed.

17. By letter dated 27th August 2009, the TTRA requested the Intended Claimant to attend a meeting on 9th September 2009, at which time an enquiry would be conducted into the report of the findings of methocarbamol in the sample of urine taken from Street Storm on 4th July 2009 to determine whether there had been a breach of the Rules of Racing. The TTRA also drew to the Intended Claimant's attention that he may be subject to penalties as prescribed by the Rules and requested that the attending Veterinarian for Storm Street and the Intended Claimant's head lad or Assistant Trainer attend the said meeting. The TTRA also informed the Intended Claimant that his legal representative(s) may attend the enquiry but only in an advisory capacity.

18. By letter dated 28th August 2009, the Intended Claimant's Attorneys responded to the TTRA's Attorneys maintaining that their client did not waive his right to have the split sample tested. By that letter the Intended Claimant indicated that the University of Florida's decision to decline to conduct the split sample test was not his fault and stated that if the University of Florida could provide reasons as to why it declined to test the sample he would be willing to have the split sample test conducted at an approved lab of his choice (*emphasis mine).* Further, the Intended Claimant also called upon the TTRA to *"prove the sterility of the testing barn, the personnel, the handling of the samples – blood/urine and the bedding".*

19. By letter dated 7th September 2009, the Intended Claimant's Attorneys wrote to the TTRA making the following requests:

    (i) That the TTRA disclose, prior to the hearing, any evidence it had in its possession that would incriminate Mr. Prime. That the TTRA disclose the full contents of an email written by Mr. Loregnard to Ms. Margaret Wilding on 27th July 2009.

    (ii) That the Authority have Mr. Loregnard available for cross-examination

    The letter also advised the Authority of the Intended Claimant's intention to tender into evidence the sworn statement of one Mr. Glenn Mohammed.

20. By letter dated 8th September 2009, the TTRA's Attorneys drew the Intended Claimant's attention to Rule 64[1] of the Rules of Racing 2000, and denied the Intended Claimant's request for disclosure on the basis that the formal rules of evidence did not have to be followed in disciplinary hearings.

The Enquiry of 9th September 2009

21. The Intended Claimant attended the enquiry on 9th September 2009. He was accompanied by his Attorneys, Messrs. Kelvin Ramkisoon and Kiel Takalalsingh. The members of the Board present were:

    1. Joe Hadeed - Chairman
    2. Dr. David Kangaloo - Vice Chairman
    3. Richard Freeman - Member
    4. Robert Bernard - Member
    5. Selwyn Raymond – Member

[1] Rule 64 sets out the guidelines for the collecting and storing of samples.

6. Mrs. Valerie Romano

22. Mr. David Loregnard, Secretary of the Authority and Ms. Sorzano, the Assistant Secretary were also present at the meeting.

23. Prior to the start of the enquiry, Mr. Ramkisoon requested that Mr. Loregnard "recuse" himself on the basis of apparent bias arising from Mr. Loregnard's involvement in the "Jetsam Horse of the Year 2008 fiasco". (The Jetsam fiasco will be addressed in detail later in this judgment). The Minutes of the meeting[2] reflect that the Chairman pointed out to Mr. Ramkisson that Mr. Loregnard was the Secretary of the Authority and that he was there in an administrative capacity only and therefore did not participate in the decisions of the Board. Nonetheless, the Board considered Mr. Ramkisson's request and Mr. Loregnard was excused from further attendance at the enquiry.

24. Mr. Ramkisson also sought permission to question Mr. Loregnard, which request was denied. The Chairman explained to Mr. Ramkisoon that cross examination was not generally permitted and that the Authority was not a court of law. Mr. Ramkisson also made a request for disclosure of an email written by Mr. Loregnard to Mrs. Margaret Wilding on 27th July 2009 which the Authority provided. A request was also made by Mr. Ramkisoon to introduce as evidence a sworn statement of Mr. Glen Mohammed. Copies of this Statement were provided to members of the Board but, according to the Intended Claimant, this was not taken into account by the members of the Board.

[2] See "CP28" exhibited to Christopher Prime's affidavit filed 10th November 2009.

25. The Intended Claimant was questioned by the Chairman and Dr. Kangaloo. Storm Street's groom, Eustace Roberts, was also present at the enquiry and was asked questions by the Chairman, Dr. Kangaloo and Mr. Raymond. It should be noted that the attending Veterinarian for Storm Street did not attend the enquiry as requested.

26. At the conclusion of the enquiry, the Board deliberated and concluded that the medication was a Class 4 drug according to the Rules of Racing and was a prohibited substance if present in the horse's system at the time of racing. Since the Intended Claimant was responsible for the welfare of the horse, he was negligent in the performance of his duties as he was unable to account for how the substance came to be present in the horse's system. Pursuant to Rules 62(8), 100 and 100(B)(4) of the TTRA Rules 2000, the Intended Claimant was suspended for two (2) years with effect from September 14, 2009 and fined $500 and in accordance with Rule 7(4)(q) he was declared a disqualified person for the stated period. The Board also lifted the suspension imposed on Storm Street.

27. According to the Intended Claimant's affidavit, this was not the first time that he was found to be in breach of the TTRA Rules. In fact, there were five previous occasions on which he was penalized for findings of prohibited substances in horses. On three of those occasions he was penalized for findings of methocarbomol. The first occasion was in 2007 when he was suspended for one month and fined $500 for a finding of methocarbamol in the horse, "Storm Street", the second was in 2008, when he was suspended for two months and fined $500 for a finding of methocarbamol in the horse, "Captain America" and the third was also in 2008, when he

was suspended for three months and fined $500 for a finding of methocarbomol in the horse, "Storm Street"[3].

28. It is against this background that the Intended Claimant is seeking the Court's leave to bring judicial review proceedings against the TTRA's decision to fine and suspend him.

Reliefs sought by the Intended Claimant

29. At the hearing, Senior Counsel for the Intended Claimant indicated that the following reliefs are being sought by the Intended Claimant:

    (i) A declaration that the Rules of Racing 2000 are null and void in that the said Rules are not compliant with the Laws of Trinidad and Tobago as respects the procedural requirements necessary for the making of delegated legislation under the law;

    (ii) A declaration that all actions taken by the TTRA consequent upon its enquiry of 9th September 2009 are null and void;

    (iii) An interim order staying all decisions and directions made by the TTRA;

    (iv) A declaration that the suspension of the Intended Claimant as trainer by the TTRA is illegal, irrational, procedurally improper, null and void and of no effect;

    (v) A declaration that the enquiry conducted by the Intended Defendant on the 9th September 2009 was done in contravention of the principles of natural justice;

    (vi) An order that all penal sanctions imposed upon the Intended Claimant at the said enquiry are illegal, null and void;

[3] See "CP5" exhibited to Christopher Prime's affidavit filed on 10th November 2009

(vii) An order of certiorari to bring into the High Court of Justice and quash the decision of the Intended Defendant to impose upon the Intended Claimant a fine of $500.00 together with a 2 year suspension of the performance of his duties as a Trainer;

(viii) An interim declaration that the decision of the Intended Defendant is illegal, irrational, null and void and of no effect;

(ix) A declaration that any disciplinary action taken against the Intended Claimant for the use of Methacarbamol without the publication of threshold levels is irrational;

(x) A declaration that the failure and/or neglect and/or refusal of the Intended Defendant to make and establish guidelines in respect of the accepted threshold levels for the use of classified substances is illegal and irrational and constitutes a dereliction of duty by the intended Defendant;

(xi) An Order that the Intended Defendant do within 60 days hereof take such procedural steps as are necessary to establish the necessary and accepted threshold levels for the use of classified substances in the regulation of the sport of horse racing;

(xii) Damages;

(xiii) Costs.

At the hearing, Counsel also expressly abandoned the following reliefs:

(i) An order of mandamus compelling the Intended Defendant to establish threshold levels for muscle relaxants and other therapeutic medicines in keeping with internationally acceptable standards.

(ii) An order of mandamus compelling the intended Defendant to restore the position of "Storm Street" as the winner of race 6 of Day 24 and pay the purse of $75,000.00

Grounds

30. The grounds as pleaded by the Intended Claimant may be summarized as follows:

(i) The Rules of Racing 2000 are illegal.

(ii) The penalty imposed upon the Intended Claimant is excessive and ultra vires.

(iii) The TTRA's failure to establish requisite threshold levels for therapeutic medications is illegal and irrational.

(iv) The purported enquiry was unfair and in breach of the principles of natural justice.

(v) The TTRA was actuated by bias.

Legal Principles: Application for leave for judicial review

31. The test to be applied by the Court on an application for leave for judicial review is whether there is an arguable ground for judicial review that has a realistic prospect of success. In ***Sharma v Brown-Antoine and others***[4], the Privy Council stated the test in the following terms:

"The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: see ***R v Legal Aid Board, Ex p Hughes (1992)*** *5 Admin LR 623, 628 and Fordham, Judicial Review Handbook 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is*

[4] [2007] 1 WLR 780 at 787E-H

a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R (N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468, para 62, in a passage applicable, mutatis mutandis, to arguability:

> *"the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on a balance of probabilities. Thus the flexibility of the standard lies not in the adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*

32. The Privy Council then went on to say:

> *"It is not enough that a case is potentially arguable: an Intended Claimant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen": Matalulu v Director of Public Prosecutions [2003] 4 LRC 712 at 733.*

33. Bearing these principles in mind, I will now consider each of the grounds raised by the Intended Claimant.

I Rules of Racing 2000 are illegal

34. In 1989, pursuant to S.17[5] of the ***TTRA Act Chap 21:50***, the Authority made Rules of Racing ("the 1989 Rules"), which were

[5] ***17.*** *The Racing Authority shall make rules relating to the conduct of racing…"*

published by Legal Notice 4 of 1990. These Rules were subsequently amended by Legal Notice 151 of 1991 and Legal Notice 186 of 1992 and are published in the Laws of Trinidad and Tobago 2006, as the TTRA Rules. Other amendments were made to the 1989 Rules in 2000; these were published in the Trinidad and Tobago Gazette of 22nd February 2000, 23rd March 2000 and 27th June 2000. In the Gazette dated 14th August 2000 there was published what purports to be the ***TTRA Rules 2000***. Amendments were made thereafter which were published in the Gazette of 24th October 2000 and 2nd February 2007. Neither the 2000 Rules nor any of the amendments made in 2000 are included in the 2006 Revised Laws of Trinidad and Tobago.

35. Senior Counsel for the Intended Claimant submitted that the 2000 Rules are illegal because the amendments that were made to the 1989 Rules in 2000, and thereafter, were published in the Gazette and not by Legal Notice and that neither the 2000 Rules nor the amendments thereto have been included in the 2006 Revised Laws. Accordingly, she argued that the applicable Rules are the 1989 Rules.

36. In support of this submission, Senior Counsel relied on the evidence of Mrs. Laraine Lutchmedial, S.C., Chairman of the Law Revision Commission.

37. According to Mrs. Lutchmedial, S.12(1)(a) of the ***Statutes Act Chap 3:02*** provides that *"every statutory instrument shall be published by the Gazette".* However, at para. 6 she deposed that in relation to "published" specified in the ***Statutes Act*** *"it has always been the understanding of the drafter and the Law Revision Commission since prior independence that this means that the*

publication of the Statutory Instrument must be done by Legal Notice". Therefore, she says *"the practice has been that statutory instruments are published by Legal Notice"*.

38. Further, she deposed that the only material that the Commission considers in revising the Laws of Trinidad and Tobago are Acts and Legal Notices for a given year[6]. Therefore, when the TTRA enquired at the offices of the Commission as to why the 2000 Rules were not included in the Revised Laws the Commission indicated that it was because the Rules were not published as a Legal Notice[7].

39. Mrs. Lutchmedial then expressed her opinion, at para. 15, that the 2000 Rules were not "published" as a Statutory Instrument as they were not published by Legal Notice and were not numbered. Publication other than by Legal Notice, she deposes, would make law revision a "nightmare" as the Commission would be required to review on a weekly basis the Gazettes to determine what could possibly be considered legislation since the Gazette contains other matters[8].

40. In response, Senior Counsel for the TTRA, Mrs. Peake, urged the Court to disregard the evidence of Mrs. Lutchmedial. She submitted that the Court should not hear expert evidence on what the law is and cited the case of ***Gleeson v J Wippell & Co Ltd***[9]. In ***Gleeson***, the Court rejected the opinion expressed by a Queen's Counsel in an Affidavit and held that it does not hear expert

[6] See para 10
[7] See para 14
[8] See Para 16
[9] [1977] 3 All ER 54

evidence on what the Law is or what the rights of parties are under that law.

41. Senior Counsel for the TTRA also submitted that the 2000 Rules are compliant with the law and that custom and practice cannot override Section 12 of the ***Statutes Act***. In support of her submission, she cited ***Cooper & Balbosa v Director of Personnel Administration***[10]. In that case, the Privy Council found that since the Constitution did not provide for the setting up of a Public Service Examinations Board, which was the sole responsibility of the Police Service Commission, the 40 year old practice by Cabinet to appoint a Public Service Examination Board was illegal.

42. Further, Senior Counsel for the TTRA submitted that the omission of the 2000 Rules from the Revised Laws 2006, did not mean that they were invalid since Sections 12 (1)[11] and 14[12] of the ***Law Revision Act*** expressly provided to the contrary and S. 3 of the ***Evidence Act***[13] expressly authorized the Court to take judicial notice of a statutory instrument published in the Gazette.

43. In my opinion, I cannot permit the evidence or opinion of Mrs. Lutchmedial as to the legality of the 2000 Rules to influence my

[10] Privy Council Appeal No. 47 of 2005

[11] *"**12.** (1) Subject to subsections (2) and (3) and to section 13, the Laws shall contain –*
……
(c)such subsidiary legislation in operation in Trinidad and Tobago on the last revision date as the Commission thinks fit to include therein…"

[12] *"**14**. No written law omitted from the Laws, under the authority of this Act or otherwise, shall be deemed to be without force and validity by reason only of the fact that it is so omitted."*

[13] *"**3.** A court shall take judicial notice of any statutory instrument made under a written law in Trinidad and Tobago if the statutory instrument has been published in the Gazette or in the Revised Edition of the Laws of Trinidad and Tobago."*

decision in this matter as to whether or not those Rules are part of the Laws of Trinidad and Tobago. It is my duty and responsibility to examine the relevant statutory provisions and determine what the law is. In this regard, I adopt the views expressed by Megarry V-C in the ***Gleeson***[14] case:

> "*As I told Counsel for the Plaintiff, I would listen with pleasure to any submission on the subject that he chose to put before me, whatever his source of inspiration, but I would not listen to the words of a Queen's Counsel, however eminent, or the author of an article, when proffered as evidence of the legal rights and prospects of a litigant. A court does not hear expert evidence on what the law of England is, or what the rights of parties are under that law.....*"

44. Further, I am of the view that the existence of a practice does not mean that it represents what the law is. Section 12 of the ***Statutes Act*** makes it clear that a statutory instrument comes into operation on the date that it is published in the Gazette. As inconvenient as it may be to the Commission, unless Parliament provides otherwise, the court is bound to follow the letter of the law. Accordingly, the practice established by the Law Revision Commission of only including in the Revised Laws statutory instruments published by Legal Notice cannot displace the requirements of S. 12 of the ***Statutes Act***.

45. In the circumstances, I am not satisfied that this ground raised by the Intended Claimant that the 2000 Rules are illegal because they were not published in the Revised Laws 2006 is an arguable

[14] *Supra*

ground with a realistic prospect of success and I would refuse to grant leave to apply for judicial review on this ground.

II Penalty imposed by the TTRA is excessive and ultra vires

46. Senior Counsel for the Intended Claimant submitted that the penalty imposed by the TTRA is illegal in that it exceeded the maximum penalty which the Authority is permitted to impose under Rule 100B. She argued that by virtue of Rule 100 the Authority is compelled to impose penalties and disciplinary measures consistent with the recommendations contained in the Rules.

47. She also submitted that if the Authority wished to exceed the maximum penalty in Rule 100B, then they ought to have given the Intended Claimant Notice of this as well as an opportunity to be heard, especially in circumstances where there is no appeal process against the decision of the TTRA. However, since this argument was not included in the grounds pleaded by the Intended Claimant in his Application filed on 10th November 2009, I am of the opinion that the Intended Claimant is not entitled to raise this issue in support of his application for leave to apply for judicial review.

48. In response, Senior Counsel for the TTRA submitted that Rule 100 gives the TTRA the power to impose penalties *consistent with* and not *in compliance with* the recommendations contained therein and that the penalty recommendations specified in the Rules do not limit the powers of the TTRA with respect to the imposition of penalties. She argued further that in the absence of any statutory

provision which limits the power of the Authority, that the Authority, in accordance with S.45 of the ***Interpretation Act***[15] was empowered not only to grant a licence but also to suspend or withdraw the grant of that licence.

49. Accordingly, she submitted that the penalty imposed by the Authority was not unreasonable since the Intended Claimant's situation was exceptional and the TTRA was entitled to take into account the fact that the Intended Claimant had five previous findings against him for using prohibited substances in breach of the Rules.

50. Mrs. Peake also submitted that, in the case of specialized bodies, the Court ought to exercise judicial restraint and relied on the dicta of Jones J. in ***Digicel v TSTT***[16] where the learned Judge observed:

> *"It is trite law that where Parliament entrusts persons with a particular expertise with decision making responsibility a court will be loath to interfere with the decision of that specialist body: see* ***Cooke v Secretary of State for Social Security [2002] 3 All ER 279****…*
>
> *Further, the "Court must be astute to avoid the danger of substituting its views for the decision-maker and of contradicting … a conscientious decision-maker acting in good faith with knowledge of all the facts" per* ***Lightman*** *J.* ***R v Director General of Telecommunications, ex parte***

[15] *"**45.** (3) Without prejudice to the generality of subsection (2), where a written law confers power -*
(a) ….
(b) to grant a licence… such power shall include power to refuse to make such grant, …and power to suspend or cancel such grant…"

[16] CV 2006-03320 @ p.25

<u>Cellcom Ltd. and others [1999] E.C.C. 314 at page 331 paragraph 26.</u>"

51. It is trite law, but nonetheless worth re-stating, that in judicial review proceedings the court does not exercise an appellate jurisdiction. It is not for this Court to second-guess the judgment of the TTRA or to substitute its discretion for the TTRA's discretion but to determine whether the Authority acted outside of its statutory powers in respect of the penalties imposed upon the Intended Claimant.

52. The Rules under which the TTRA acted in penalizing the Intended Claimant are Rules 62(8), 100, 100B(4) and 7(4)(q).

53. Rule 62(8) provides as follows:

> *"When any horse has been declared to run under these Rules and has been the subject of an examination, and the result of an analysis of any sample of its tissue, body fluid or excreta is positive, the Authority may impose a fine upon the trainer of the horse in question and may, at their discretion, suspend or withdraw his licence. In this regard the Authority will be guided by the Uniform Classification Guidelines of Foreign Substances and penalties listed in these Rules."*

54. Rule 100 provides that the Authority shall impose penalties and disciplinary measures consistent with the recommendations set out in the Rules. It states as follows:

> ***"100. <u>MEDICATION AND PROHIBITED SUBSTANCES</u>***
>
> *Upon a finding of a violation of these medication and prohibited substances rules, the Authority shall consider the classification level of the violation as listed*

at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as published from time to time, and impose penalties and disciplinary measures consistent with the recommendations contained therein…"

55. Rule 100(A) sets out the Uniform Classification Guidelines of Foreign Substances and lists the types of substances as placed in each category. Methocarbamol is considered to be a skeletal muscle relaxant, which is listed as a Class 4 substance under Rule 100A (4)(e). The drugs in this category are primarily therapeutic medications routinely used in race horses that may influence performance, but generally have a more limited ability to do so. Under Rule 100B(4) the penalty recommendations in respect of Class 4 substances, are as follows:

> *"**B. Penalty recommendations (in the absence of mitigating circumstances)***
>
> *……*
>
> *(4) Class 4 – One month to one year suspension and a fine not exceeding $500.00 and loss of purse."*

56. Rule 7(4)(q) states that the Authority has the power to *"warn any person off the premises of any Promoter, and to declare any such person disqualified."*

57. Further, under Rule 7(4) the Authority also has the following powers:

> *"(n) to grant or refuse to grant and to renew or refuse to renew licences to persons".*
>
> *(o) to withdraw or suspend the licence of any person for breach of the terms of his licence and/or for breach of any of these*

Rules and to make reinstatement of such licence at the expiry of any period of suspension…"

58. By Rule 42(3), the TTRA is given a wide discretion to grant a licence to a race horse trainer in its absolute discretion. Of course, this does not mean that, in the exercise of that discretion, the TTRA can act unreasonably since, if the Court finds that it has taken into account any irrelevant or extraneous matters then the Court will intervene. However, the Intended Claimant has not adduced any evidence to support an argument that the decision was irrational or unreasonable.

59. Therefore, in my view, the TTRA is not limited to the penalty recommendations stated in the Rules and they should be interpreted as just that – recommendations, by which the Authority is guided.

60. In my view, the exercise by the Authority of its discretion does not conflict with the underlying philosophy of the Statute. Indeed, it would amount to a fettering of its discretion if the Authority were to feel compelled, even in exceptional circumstances, to limit itself to imposing the penalty stipulated under Rule 100B. The intent of the Rules is, among other things, to protect the integrity of horse racing. The intent is expressed in Rule 102(1) as follows:

"It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications and drug substances foreign to the horse: In this context:

(a) No horse participating in a race shall carry in its body any drug, substance or its metabolites or analogues excepts as hereinafter expressly provided.

(b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this country except for approved and authorized drug substances as provided for in these rules… …"

61. I agree, therefore, with the submissions of Senior Counsel for the TTRA that the Authority was entitled to take into account the previous findings against the Intended Claimant over the past five years in deciding what penalty to impose upon him. As Lord Browne-Wilkinson observed in ***R v Secretary of State for the Home Department Ex parte Venables***[17]:

> *"When Parliament confers a discretionary power exercisable from time to time over a period, such power must be exercised on each occasion in the light of the circumstances at that time. In consequence, the person on whom the power is conferred cannot fetter the future exercise of his discretion by committing himself now as to the way in which he will exercise his power in the future..."*

62. Accordingly, I am not satisfied that this ground – that the penalty imposed by the TTRA was excessive and ultra vires – has raised an arguable ground with a realistic prospect of success.

III Failure to establish threshold levels unreasonable

63. Prohibited substances are defined in the 2000 Rules at Rule 100C (1) to include:

[17] [1998] AC 407 @ 496H

(a) Drugs or medications for which no acceptance levels have been established;

(b) therapeutic medications in excess of established levels;

(c) substances present in the horse in excess of levels at which such substances could occur naturally; and

(d) substances foreign to a horse at levels that cause interference with testing procedures."

64. Rule 100C (2) sets out those situations in which drugs and medications are permissible. The Rule states that:

"(2) Drugs or medications in horses are permissible, provided:-

(a) The drug or medication is listed by the International's Drug Testing and Quality assurance Program; and

(b) The maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

(c) Except as otherwise provided by this section, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this section during the forty eight (48) hour period before post time for the race in which the horse entered."

65. The only drug for which there are established levels under the Rules is Furosemide (Lasix): See Rule 100E

66. Junior Counsel for the Intended Claimant submitted that the tenor and logical conclusion to be drawn from Rules 100C (1)(a) and (b) of the 2000 Rules is that there ought to be established threshold levels for Class 4 drugs, which are therapeutic in nature. In the

absence of such established acceptable levels, he argued, the decision of the Authority is "Wednesbury unreasonable".

67. In support of this submission, Counsel referred to paras. 21-23 of the Intended Claimant's Affidavit where he deposes that since he has been involved in the horse-racing industry the Authority has never published any threshold guidelines and/or specific withdrawal times for the administering of medications (except Lasix). He also deposes that in jurisdictions such as Canada, the United States of America and Jamaica, threshold guidelines have been published which include the withdrawal times for the medicating of horses.

68. Junior Counsel also relied on the affidavit evidence of Dr. Ali, Veterinary Surgeon. According to Dr. Ali, methocarbamol is a therapeutic medication which is routinely used to treat horses that suffer from "cramped up muscles" and that he does not consider the drug to be performance enhancing. In his opinion, although there are no local guidelines set by the TTRA as to the threshold levels for administering methocarbamol and other therapeutic drugs, it is important that a recommended withdrawal time be established for this class of drugs as it is unreasonable to expect that these medications would never be used legitimately in the treatment of horses.

69. In her response, Senior Counsel for the TTRA made the following points:

    (i) Dr. Ali's opinion should not be regarded as independent and objective evidence since he was the veterinarian who treated the horse "Storm Street" prior to the race.

(ii) His evidence is irrelevant to the issue before the Court since it is the decision of the TTRA made on 9th September 2009 that is under review and by S. 11 of the Judicial Review Act, an application for judicial review must be made within three months from the date when the ground first arose. Therefore, since the complaint is that the TTRA failed to set threshold levels since 1991, it is not now open to the intended Claimant to challenge the TTRA decision of the 9th September 2009 on that ground.

(iii) The allegation of irrationality must be in relation to the decision of the TTRA made on 9th September 2009, and in accordance with the principles set forth in ***R v The Director General of Telecommunications Ex. p Cellcom Ltd.***[18] the Court should only interfere if the TTRA is found to have taken into account irrelevant considerations or it failed to take into account relevant considerations.

(iv) Since the Intended Claimant did not bring Dr. Ali to the enquiry on the 9th September 2009, despite the specific request of the TTRA, the Intended Claimant should not be permitted to introduce fresh evidence before the Court unless he can show exceptional circumstances. The court in ***Ex. p Cellcom Ltd***[19] at Para 28 observed that:

> *"[28] A party can in judicial review proceedings adduce evidence to show what material was before the decision-maker, but not fresh material not available to the decision-maker designed to persuade the court that the decision-maker's decision was wrong."*

[18] [1999] E.C.C. 314
[19] *Ibid* @ Paras 27-28

70. CPR 33.1(1) states that it is the duty of the expert witness to help the Court impartially on the matters relevant to his expertise. Further, under CPR 33.2(2) an expert witness must provide independent assistance to the court by way of objective, unbiased opinion, in relation to matters within his expertise. In my view, Dr. Ali cannot properly be placed before the Court as an independent and objective expert witness since as appears from paragraph 15 of his affidavit, he was the Vet who treated Storm Street. Moreover, it is not permissible for the Court to admit Dr. Ali's evidence at this stage, given that his evidence was not before the TTRA at the time when it made its decision. In judicial review, the Court is primarily concerned with matters that were before the decision-maker. Thus, fresh evidence, either by way of expert evidence or at all is not to be admitted save in exceptional circumstances[20].

71. I also agree that the Intended Claimant is barred by Section 11 of the Judicial Review Act from challenging the TTRA's failure to establish threshold levels in these proceedings.

72. In my view, it is apparent from the Rules that, with the exception of Lasix, the TTRA is employing a "zero-tolerance" policy in respect of methocarbomal and those drugs where no accepted levels have been established. This position was explained to the Intended Claimant's Attorney by the Chairman of the TTRA when the issue was raised at the enquiry on 9th September 2009. Further, under S. 10 of the ***TTRA Act*** the TTRA is responsible for the regulation and control of the racing industry and, under Rule 8 of the 2000 Rules, the decision of the TTRA as to the meaning and effect of the Rules shall be final.

[20] See: *Lynch v The General Dental Council* [2003] EWHC 2987 @ Para 22 also *Ex. p Cellcom Ltd.* (*Supra*)

73. As Lord Warrington LJ observed in ***Short v Poole Cpn***[21]:

> *"With the question whether a particular policy is wise or foolish the court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority."*

74. Accordingly, I am not satisfied that this argument that the failure of the TTRA to establish threshold levels for therapeutic medications is unreasonable is an arguable ground with a realistic prospect of success.

IV The purported enquiry was unfair and in breach of natural justice

75. The Intended Claimant's complaint is that, since there is no appeal against the decision of the TTRA and its decision is one that would affect the livelihood of the Intended Claimant, he was entitled to a full opportunity to be heard; more specifically, he should have been given the opportunity to cross examine Mr. Loregnard, the Secretary of the TTRA.

76. Senior Counsel for the Intended Claimant argued that it was evident from an email exchange between Mr. Loregnard and Dr. Wilding of the University of Florida[22] that there was communication between The University of Florida and the primary lab in Iowa and that, in order for the integrity of the testing process to be maintained, it was imperative that both labs remained neutral and independent. Further, she submitted that the Intended Claimant ought to have been given the opportunity to cross-examine Mr. Loregnard in respect of the apparent communication between the two labs. In support of these submissions, she cited

[21] [1926] Ch. 66 @ 91
[22] Exhibited to the Affidavit of Christopher Prime as "CP 6"

Juan Mosca v TTRA[23] and ***University of Ceylon v Fernando*** [24]. She also referred to ***Maniram Maharaj v The TTRA***[25]**,** which applied ***Mosca.***

77. In response, Senior Counsel for the TTRA submitted that there was no breach of natural justice. She argued that since Mr. Loregnard never gave evidence at the enquiry, the TRRA was entitled to refuse the Intended Claimant's request to cross-examine him. Further, she argued that the TTRA was not obliged to follow the rules of evidence that are applicable in a court of law. She submitted that the cases relied on by the Intended Claimant were distinguishable.

78. In ***University of Ceylon v Fernando***[26] a witness gave evidence against the Plaintiff in his absence. The Plaintiff was unaware of the evidence led against him or of the case he had to meet. He did not request to cross examine the witness. Although the Privy Council found that in the circumstances it was not sufficient to invalidate the proceedings, their Lordships expressed the view that the objection raised by the Plaintiff would have been more formidable if the Plaintiff had sought permission to cross examine the witness and the request was refused. In the instant case, however, Mr. Loregnard did not give any evidence at the enquiry and the Intended Claimant was well aware of the case he had to meet.

[23] HCA 2295 of 1993
[24] [1960] 1 WLR 223
[25] HCA 1428 of 1999
[26] *Supra*

79. Senior Counsel Mrs. Peake also submitted that, in any event, it was not relevant to summon Mr. Loregnard to give evidence for the following reasons:

(i) Firstly, in respect of any communication between Mr. Loregnard and the University of Florida, the Authority was required by Rule 64 of the 2000 Rules to ascertain whether the lab was willing to carry out the testing.

(ii) Secondly, according to the Minutes of the meeting of the 9th September 2009[27], Dr Kangaloo, a recognized and experienced Veterinarian, explained that it was important for both labs to use similar procedures in testing the sample; therefore, communication between the labs was necessary.

80. Senior Counsel also submitted that whether or not there was communication between the University of Florida and the primary lab at the University of Iowa is immaterial as the split sample was never sent for testing at all by reason of the Intended Claimant's decision not to turn up at the appointed time.

81. In my view, the TTRA's decision to disallow the Intended Claimant's request to cross examine Mr. Loregnard was not a breach of the principles of natural justice. The Authority is not a court of law and is not obliged to adhere to the strict rules of evidence applicable to civil or criminal litigation. Moreover, the concept of natural justice and fairness are not rigid and do not mean that there is an automatic right to cross examine anyone. The requirement of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules

[27] Exhibited to the Affidavit of Christopher Prime as "CP 28".

under which the tribunal is acting and the subject-matter that is being dealt with. [28] According to Macpherson J. in ***R v Monopolies and Mergers Commission, Ex. p Matthew Brown Plc***[29]:

> *"The question in each case is whether the commission has adopted a procedure so unfair that no reasonable commission or group would have adopted it, so that it can be said to have acted with manifest unfairness."*

82. The finding of methocarbomol in Storm Street's urine was communicated to the horse's owner by letter of 23rd July 2009. He was informed of his right to have the split sample tested by an independent lab and when he declined to have the sample tested at the approved labs suggested by the TTRA, the TTRA, at the request of Mr. Chin's Attorney, suggested the University of Pennsylvania. Having failed to present himself for the sample to be dispatched for testing, the Intended Claimant waived his rights to have the split sample tested. Accordingly, by the time the Intended Claimant was requested to attend the enquiry on the 9th September 2009, the issue of the communication between the Iowa lab and the University of Florida lab had been overtaken by the request made on behalf of the owner of Storm Street for the name of another testing lab and by the deliberate decision made by the Intended Claimant not to submit the split sample for testing. Under the Rules, the Intended Claimant did not have the right to choose the lab where testing of the split sample would take place. The lab had to be approved by the TTRA.

83. In my view, the TTRA's failure to allow the Intended Claimant to cross-examine Mr. Loregnard does not amount to a breach of the

[28] *Russell v Duke of Norfolk* [1949] 1 All ER 109 @ 118, per Tucker LJ
[29] [1987] 1 WLR 1235 @ 1242

principles of natural justice. I, therefore, find that there is no realistic prospect of the claim succeeding on this ground.

V The TTRA was actuated by bias

84. An allegation of bias is a serious charge. Therefore, the person who asserts that there is a situation giving rise to apparent bias, bears the onus of establishing that this is the case. In order to do so, he must establish that the fair minded and informed observer having considered the facts would conclude that there was a real possibility that the tribunal was biased: ***Basdeo Panday v Wellington Virgil*** [30]. According to Archie JA (as he then was) *"mere suspicion of bias is not enough; a real possibility must be demonstrated on the available evidence".*[31]

85. The Intended Claimant has alleged apparent bias on the part of the TTRA based on the involvement of the Secretary of the TTRA, Mr. Loregnard, in the Jetsam Horse of the Year 2008 Fiasco ("The Jetsam Fiasco")

The Jetsam Fiasco:

86. In 2008, Mr. Loregnard was appointed by the Arima Race Club as the Chairman of the selection committee of the Jetsam Horse of the Year 2008 Award. As Chairman of the Committee Mr. Loregnard was responsible for the tallying of the secret ballot votes of the Committee which comprised himself and four other persons.

87. Storm Street was one of the top contenders for the award; however, on the night of the award ceremony another horse was presented

[30] Mag. App. No. 75 of 2006 per Warner J.A. at para. 12
[31] *Ibid* per Archie JA @ Para 9

with the prize. This came as a complete shock to Mr. Chin and to others in the horse racing fraternity.

88. Storm Street's owner, Mr. Derek Chin, challenged the decision, following information he received from three members of the five-man Committee who informed him that they had voted for Storm Street. Following investigations conducted by the Arima Race Club (ARC), the ARC concluded that the selection process was *"deficient due mainly to miscommunication among members of the committee."* The ARC then advised that the Horse of the Year title 2008 should be awarded to Storm Street. This was communicated to Mr. Chin by letter dated 17th March 2009[32].

Apparent bias of the TTRA

89. Senior Counsel for the Intended Claimant put forward the following arguments in support of this ground:

(i) Since Mr. Chin was the one who revealed Mr. Loregnard's "error" to the racing industry, Mr. Chin considers that Mr. Loregnard has a personal bias against him as well as the Intended Claimant, as the trainer of Storm Street.

(ii) Since the Jetsam fiasco, Mr. Chin has been uneasy and distrustful of Mr. Loregnard's role in relation to the split sampling.

(iii) Mr. Loregnard's involvement in the arranging and handling of the split sample has tainted that process.

(iv) Mr. Loregnard's presence at the beginning of the meeting on 9th September 2009 tainted the enquiry.

(v) Although, upon the objection being taken by the Intended Claimant's Attorney, Mr. Loregnard was excused from the

[32] See "DC5" exhibited to affidavit of Derek Chin filed 10th November 2009

meeting and was not present during the enquiry, his relationship with the Chairman infected the Chairman and tainted the entire process. As Secretary of the Authority Mr. Loregnard would have a close relationship with the Chairman, Mr. Hadeed and this relationship is also evidenced by the Media Release issued by the Authority following the Jetsam fiasco.

(vi) The fact that Mr. Loregnard did not take part in the decision-making process is irrelevant and his involvement in the Jetsam fiasco is sufficient evidence that he had a bias against the Intended Claimant.

90. In response, Senior Counsel for the TTRA made the following arguments:

(i) Although there is evidence before the Court that Mr. Loregnard, as Secretary of the TTRA was involved in arranging for the testing of the split sample, there is no evidence that establishes that Mr. Loregnard at any time had custody of the split samples.

(ii) There is no evidence before the Court to support an allegation that the guidelines and procedure stipulated in the Rules in respect of the collection and storage of split samples were not followed.

(iii) The Court should not take into account the several newspaper articles annexed to the affidavits of the Intended Claimant and Mr. Chin.

(iv) The News Release issued by the TTRA should not be regarded by the Court as evidence of a "relationship" between the Intended Claimant and Mr. Hadeed, which infected the decision of the Board.

(v) There is nothing in the evidence which would lead the fair-minded and informed observer to conclude that the Chairman and the other board members were infected by bias.

91. Further, Senior Counsel for the TTRA submitted that the Intended Claimant, having failed to raise an objection to the panel proceeding with the enquiry, on the ground of apparent bias, cannot now seek to raise that objection before this Court. Citing the case of ***R v Nailsworth Licensing Justices Ex p. Bird***[33] she argued that the Intended Claimant is deemed to have waived that point.

92. I will now deal with the submissions made on behalf of the Intended Claimant seriatim:

(i) The evidence before me concerning the selection of the Horse of the Year 2008 reveals that Mr. Loregnard was appointed as Chairman of the Awards Committee by the Arima Race Club. It is not in doubt that this Committee initially selected another horse as "Horse of the Year" and that this decision was eventually overturned by the ARC and Mr. Chin's horse, "Storm Street", was given the award. It is also not in dispute that this situation attracted a lot of media and public attention. However, insofar as the Intended Claimant sought to rely on newspaper articles to support his argument of bias against Mr. Loregnard, I decline to take such articles into account. As Archie J.A. (as he then was) stated in ***Panday v. Virgil*** at para. 15:

> *"It is the very antithesis of fair-mindedness to attach any weight to accounts given by persons with no actual*

[33] [1953] 1 W.L.R. 1046 @ 1048

knowledge of the events. The source of the hearsay is irrelevant. It may in some circumstances be sufficient to trigger an investigation but we are engaged in a juridical exercise where there is an evidential burden;

To do so would undermine the very confidence in the administration of justice that we are trying to uphold. It is not unknown for letters, articles or reports in the media to be biased, inaccurate or written with an undisclosed agenda. Such reliance is even more dangerous in circumstances where there is no cross-examination as it risks placing undue or equal weight to hearsay material (even where the source is disclosed"

(ii) Having considered carefully the evidence of Mr. Prime and Mr. Chin concerning what they describe as the "Jetsam Horse of the Year fiasco", I am not satisfied that a fair minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased against the Intended Claimant. The fact that Mr. Chin was dismayed and disappointed by the failure of the Awards Committee to select his horse as "Horse of the Year 2008" does not logically translate into a personal bias against Mr. Chin or the Intended Claimant by Mr. Loregnard leading to the finding of a prohibited substance in Mr. Chin's horse and the decision of the TTRA to suspend and fine the Intended Claimant after due enquiry. In fact, Mr. Chin acknowledged at paragraph 26 of his affidavit that "*there was either a mistake in the tabulation of the votes or that there was a mistake in the announcement of the award".* The Arima Race Club, by its letter dated 17th March 2009 communicated to Mr. Chin its conclusion that the selection

process was deficient mainly due to miscommunication among members. Accordingly, I am not satisfied that either Mr. Chin or Mr. Prime has adduced any credible evidence to support Mr. Chin's conclusion that "*Mr. Loregnard had deliberately and intentionally manipulated the process of the conferring of the award so as to deny Storm Street the rightful position in favour of a horse owned by Poon Tip, as a friend and business associate of Mr. Joe Hadeed, the Chairman of the TTRA",* or his conclusion that "*the administration of the industry had a personal vendetta against me.…"*

(iii) There was no evidence led by the Intended Claimant, of Mr. Loregnard's involvement in the taking of or custody of the split sample. His only involvement was in making the administrative arrangements with the Laboratories for the testing of the primary and split samples. The Rules expressly contemplate that the TTRA must ensure that the laboratory selected for testing of the split sample is willing to conduct the tests. Therefore, the correspondence between Mr. Loregnard and the University of Florida lab does not support the argument that his involvement tainted the process. In any event, the request by Mr. Chin's Attorney for the name of another lab and the supply of that alternative and the failure of the Intended Claimant to attend at the appointed time demonstrate the illogical nature of this argument. Mr. Loregnard played no role at the enquiry and it is the decision of that enquiry which is being challenged in this application;

(iv) The mere presence of Mr. Loregnard at the commencement of the enquiry cannot support an allegation of apparent bias of the TTRA. In the first instance, under the Trinidad and Tobago Racing Authority Act, the Secretary is not a member of the Board and therefore, Mr. Loregnard was not a member

of the decision-making panel. In any event, an objection was taken to his presence and he was excused from any further involvement. In those circumstances, I am of the view that this evidence cannot support the allegation of apparent bias of the tribunal which conducted the enquiry thereafter.

(v) The "close relationship" between the Chairman of the TTRA and Mr. Loregnard is said to have infected the Chairman at the enquiry. This is yet another example of stretching logic. Mr. Loregnard is the Secretary of the TTRA and as such he is required to work with the Chairman and other members of the Board. In my opinion, the fact that the TTRA issued a press release in support of the integrity of Mr. Loregnard, would not lead a fair-minded and informed observer, having considered the facts to conclude that there was a real likelihood of bias on the part of the TTRA when conducting the enquiry on the 9th September 2009.

93. In the circumstances, I find that there is no reasonable prospect of the claim succeeding on this ground of apparent bias.

CONCLUSION AND ORDERS

94. For these reasons, I hereby refuse the Intended Claimant's application for leave to apply for judicial review and order the Intended Claimant to pay the costs of the TTRA, certified fit for Senior and Junior Counsel. A Statement of costs must be filed on or before 15th May 2010, and the hearing of the assessment of costs will take place on ..... 2010 at .....

Dated this 26th day of April 2010.

André des Vignes
Judge

Renee Mclean
Judicial Research Assistant