

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2021-03106

**IN THE MATTER OF THE INTERPRETATION OF THE CONSTITUTION OF THE
REPUBLIC OF TRINIDAD AND TOBAGO INCLUDING SECTION 123 THEREOF**

AND

**IN THE MATTER OF AN APPLICATION BY RAVI BALGOBIN MAHARAJ IN
THE PUBLIC INTEREST FOR THE INTERPRETATION/CONSTRUCTION OF
THE
COMMISSIONER OF POLICE AND DEPUTY COMMISSIONER OF POLICE
(SELECTION PROCESS) ORDER 2021 AND SECTION 123 OF THE
CONSTITUTION**

BETWEEN

RAVI BALGOBIN MAHARAJ

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

POLICE SERVICE COMMISSION

First Interested Party

GARY GRIFFITH

Second Interested Party

Dated 14th October, 2021

Before the Honourable Madame Justice Nadia Kangaloo

Appearances:

Mr. Anand Ramlogan S.C. leading Ms. Renuka Rambhagan, Ms. Jayantie Lutchmedial and
Mr. Jared Jagroo instructed by Ms. Natasha Bisram and Vishaal Siewasaran for the Claimant

Mr. Douglas Mendes S.C. leading Mr. Rishi Dass and Ms. Tenille Ramkissoon instructed by
Ms. Adana Hosang and Ms. Kendra Mark-Gordon for the Defendant

Mr. Russell Martineau S.C. leading Ms. Coreen Findley instructed Ms. Nissa Simmons for the Police Service Commission

Mr Larry Lalla instructed by Mr. Vashist Seepersad for Mr. Gary Griffith

Claimant present/Ms. Kavita Jodhan for The Police Service Commission/Ms. Allana Rivas representing The Office of the Commissioner of Police/Gary Griffith Present

JUDGEMENT

*What a shocking factor to read in the news
About one commander who could light the fuse
Or push the red button on that computer
That could cause a chain reaction and damage the future
Using our Treasuries we have made them strong
Creating authorities as we move along
But knowing power develops and absolute power corrupts
Question for the lads - Who going to guard these guards?
The royalties and the governments, look, the many houses of parliaments
The cassar of the guards - Who going to guard these guards? Yes.
Question for the fanatics advocating politics
In the face of failing standards - Who going to guard these guards?
[Who Will Guard The Guards? King Austin, Trinidadian Calypsonian]*

Introduction

1. The claim before the Court is one of great constitutional and general public importance.
2. The Claimant, Ravi Balgobin Maharaj, has commenced this High Court action, in his capacity as a blogger, social media journalist and political activist.
3. Mr. Maharaj states that he has brought this action over his concern of what he considers a lack of information from the State about the appointment of former Commissioner of Police (“CoP”), Mr. Gary Griffith, to act in the post of CoP, subsequent to the expiry of Mr. Griffith’s substantive contract of employment with the State.

4. Mr. Maharaj contends that this appointment is contrary to law, as it was made without the requisite affirmative resolution of the House of Representatives.
5. In essence, Mr. Maharaj alleges that the Police Service Commission (“the PolSC”) has acted in excess of its powers.
6. Mr. Maharaj accordingly seeks to challenge the interpretation of certain provisions of the Constitution of Trinidad and Tobago (amended by Act No. 6 of 2006) (“the 2006 Constitution”) and of Orders made by the President, Her Excellency Paula Mae Weekes, pursuant to the same which led to the appointment in 2021 of Mr. Griffith to act in the office of CoP.
7. It is Mr. Maharaj’s overarching submission that the procedure outlined in section 123 of the 2006 Constitution must apply to Mr. Gary Griffith, in respect of his acting appointment. It is also submitted that at the time of the said appointment, Mr. Griffith was “a mere civilian”, his contract of employment having expired, and thus the PolSC was purporting to appoint a civilian to the office of CoP, without any Parliamentary approval. Senior Counsel for Mr. Maharaj contends that the procedure set out in section 123 applies irrespective of whether the appointment was to hold or to act in the office of CoP.
8. Remarkably, the Attorney General is aligned with Mr. Maharaj in his interpretation of Section 123 of the Constitution.
9. The Police Service Commission and Mr. Griffith however beg to differ. Both are contending that the PolSC was correct in its analysis and interpretation of the law, and the Orders made pursuant thereto, that it was well within its right to appoint Mr. Griffith without parliamentary approval, and that this is a right which was given to them by Parliament.

Chronology of this High Court Action

10. The proceedings were initiated on 16th September 2021, by Fixed Date Claim Form, Certificate Urgency and Affidavit of the Claimant, Mr. Ravi Balgobin Maharaj.
11. On 20th September 2021, the Claimant filed a Supplemental Affidavit.

12. At the First Case Management Conference on 21st September 2021, the Court gave directions for the filing of an Agreed Statement of Facts by 30th September 2021, and further granted leave to the Police Service Commission and Mr. Gary Griffith to be joined as Interested Parties.
13. The matter came up for hearing again on 27th September 2021, and the Parties indicated that they were still taking instructions in relation to the Affidavits filed in the matter.
14. An Affidavit of Corey Harrison, Director of Personnel Administration (Ag.) of the Service Commissions Department, was also filed on 27th September 2021, on behalf of the Police Service Commission.
15. On 28th September 2021, an Affidavit of Mr. Dwight Andrews was filed on behalf of Mr. Griffith.
16. The Defendant filed a Notice on 29th September 2021, alerting the Court of its intention to seek full guidance from the Court as to the effect of any interpretation it makes of Section 123 of the Constitution, specifically on two Orders made pursuant to Section 123 (2) which addresses acting appointments namely, the *Commission of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) (No. 2) Order 2009* and the *Commission of Police and Deputy Commissioner of Police (Selection Process) Order 2021*.
17. On 1st October 2021, the matter was heard again by the Court, and directions were given for the filing and service of Written Submissions by all parties to the matter.
18. All parties filed Written Submissions on 6th October 2021 and Submissions in Reply on 8th October 2021.
19. The Claimant filed a Notice on 11th October 2021, whereby he sought to summarize the submissions filed by all parties, to assist in his oral submissions. The Court has not taken this Notice into account in coming to today's decision.
20. The Court received further Oral Submissions from the parties on 11th October 2021.

The Application before the Court

21. By Fixed Date Claim Form filed herein on 21st September 2021 accompanied by his Affidavit and a Certificate of Urgency, Mr. Maharaj seeks:

1. A determination of the following issues:
 - a. Whether section 123(3) of the Constitution (as amended by Act 6 of 2006) required, in respect of the acting appointment of Mr. Gary Griffith to the office of Commissioner of Police, that the Police Service Commission submit to the President a list of the names of the persons nominated for such acting appointment;
 - b. Whether section 123(4) of the Constitution (as amended by Act 6 of 2006) required, in respect of the acting appointment of Mr. Gary Griffith to the office of Commissioner of Police, that the President do issue a Notification to the House of Representatives of his nomination received from the Police Service Commission for its approval; and
 - c. Whether section 123(5) of the Constitution (as amended by Act 6 of 2006) required, in respect of the acting appointment of Mr. Gary Griffith to the office of Commissioner of Police, that the Police Service Commission make the acting appointment after the House of Representatives approved its nomination.
2. Declaratory Reliefs as follows:
 - d. That the procedure contained in section 123(3)-(5) of the Constitution applies to, and must be followed in the case of, nominations of persons who were previously on contract with the Police Service for acting appointments to the office of Commissioner of Police;
 - e. That upon the true construction of section 123 of the Constitution of the Republic of Trinidad and Tobago, in respect of approval of the nomination for acting appointment to the office of Commissioner of Police of an individual previously on contract with the Police Service, Her Excellency the President must issue a Notification to the House of Representatives to approve the said nomination received from the Police Service Commission;

- f. That upon the true construction of section 123 of the Constitution of the Republic of Trinidad and Tobago, in respect of granting an acting appointment to the office of Commissioner of Police of an individual previously on contract with the Police Service, the Police Service Commission can make such appointment only after the House of Representatives approves the said notification of nomination; and
- g. That the appointment of Gary Griffith to act as Commissioner of Police from 18th August 2021 is illegal and unconstitutional.

The Evidence

22. The facts relevant to Mr. Griffith's acting appointment as are follows:

- a. Mr. Griffith was granted a contract of employment by the Government of Trinidad and Tobago to the office of CoP on 17th August 2018 for a period of three years. This contractual tenure necessarily then expired on 16th August 2021. This contract contained no provision for renewal or acting appointment after expiry.
- b. By letter dated 12th August 2021 to Her Excellency, the President of the Republic of Trinidad and Tobago, Paula Mae Weekes, O.R.T.T., from the Chairman of the PolSC, Ms. Bliss Seepersad, the PolSC invoked Clause 4 of the **Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order 2021 published by Legal Notice 183 of 2021** ("the 2021 Order") and included a list of two nominees to act in the office of CoP. The passing of the 2021 Order aroused public criticism and debate by learned professionals as well as by former members of the PolSC. To this end, several newspaper articles were attached to Mr. Maharaj's evidence.
- c. On 13th August 2021, Her Excellency responded to Ms. Seepersad's letter, thanking her for submitting the list of nominees. By the said correspondence the President expressed that:

"A reading of paragraph 4 raised for me an immediate concern, as nowhere within its four walls does it set out any role or function, power or authority in the President. The President, being a creature of statute, has no inherent

jurisdiction and must find all power and authority within some law. I have found none beyond receiving the relevant list ...

I am of the opinion that the unequivocal and unrevoked provisions paragraph (sic) 3(b) of [the Acting Appointment Order No. 2] cannot be revoked by implication by paragraph 4 of [the 2021 Order].

I can only conclude that in his wisdom the draftsman of [the 2021 Order] considered it desirable that the President be informed of the list from which the acting Commissioner of Police is selected.

- d. By a letter from the PolSC dated 15th August 2021, Mr. Griffith was appointed to act as CoP.
- e. By Media Release dated 20th August 2021, the PolSC informed the public of Mr. Griffith's appointment in accordance with Clause 4 of the 2021 Order.

23. In light of the matters set out above, and having read all the matters published in the newspapers, Mr. Maharaj deposes that he is of the view that Mr. Griffith's acting appointment has run afoul of the Constitution and has been done in a manner that breaches established legal procedure.

24. Mr. Maharaj therefore instructed his Attorneys to write to Her Excellency whereby enquiries were made as to whether the correct legal procedure was in fact followed in respect of the acting appointment.

25. Mr. Maharaj received a response from the Director of Legal Services in the office of the President, Ms. Nancy Arneaud, by letter dated 7th September 2021, who indicated that the President had been in receipt of the list of nominees, but that there was no nomination made by the President to the House of Representatives, as there was no legal requirement for same in the circumstances. The contents of the response received from the Office of Her Excellency bear repetition:

"I can confirm that Her Excellency the President on August 12, 2021, received a letter of even date from the Chairman of the Police Service Commission, Ms. Bliss Seepersad. Ms. Seepersad thereby submitted in compliance with Legal Notice 183 of 2021, a list of suitably qualified persons as nominees to act in the office of Commissioner of Police.

By letter of August 13, 2021, Her Excellency replied to the Chairman. No notification was sent to Parliament by Her Excellency for the granting of an acting appointment in the Office of Commissioner of Police as no such procedure is mandated or provided for in law.”

26. Mr. Maharaj alleges the correct procedure was therefore not followed by Her Excellency, nor the Commission who subsequently made the acting appointment without compliance with Sections 123(4) and (5) of the Constitution.

27. Mr. Dwight Andrews, Strategic Advisor within the Trinidad and Tobago Police Service, gave evidence on Affidavit on behalf of Mr. Griffith. In this capacity, he has custody of all correspondence to Mr. Griffith from the PolSC, as well as the Permanent Secretary of the Ministry of National Security, in relation to Mr. Griffith’s acting appointment. The following was put before the Court by Mr. Andrews:

- a. Letter dated 15th August 2021 to Mr. Griffith from Ms. Bliss Seepersad; and
- b. Letter dated 26th August 2021, to Mr. Griffith from the Permanent Secretary, Ministry of National Security, together with memorandum from the Director of Personnel Administration.

28. The Director of Personnel Administration (Ag.), Mr. Corey Harrison furnished the Court with an affidavit on behalf of the PolSC, as he has access to the records and files of the Service Commissions Department. Mr. Harrison outlined the process followed in processing the substantive appointment of CoP, pursuant to 2021 Order, such as publishing of an advertisement in the newspaper, receiving applications and shortlisting candidates etc. Thereafter, Mr. Harrison desposes that a list of nominees was submitted to Her Excellency on 12th August, 2021, meaning that the process was undertaken in approximately two months. He rebutted the allegation made by Mr. Maharaj concerning lack of information from the Commission, referred to a Media Release dated 20th August 2021, whereby the Commission stated that the acting appointment given to Mr. Griffith remained in effect until the completion of the process for substantive appointment.

29. Mr. Harrison sought to clarify that Mr. Griffith was at all times an employee of the Executive, which is responsible for the granting of any vacation leave and the terms thereof, as justification for any alleged silence by the PolSC on this issue.

30. Further, Mr. Harrison stated that the PolSC complied with its duty under paragraph 4 of 2021 Order by submitting its list of nominees for the acting appointment to Her Excellency.

31. Mr. Harrison also further deposed that upon receipt of the response from The Office of Her Excellency which concluded that the submission of the list of nominees was merely to inform Her Excellency of the list from which an Acting Commissioner (“Acting CoP”) would be appointed, the PolSC proceeded to grant the acting appointment to Mr. Griffith.

The Competing Contentions of the Parties in their Submissions to the Court

Claimant

32. Senior Counsel for Mr. Maharaj took the opportunity to paint a complete contextual picture for the Court’s consideration. His submissions expressly addressed the following:

- a. The Historical Context of the Constitution and its Establishment of the Protected Jurisdiction of the PolSC; The Principle of Political Insulation;
- b. Legislative Provisions governing acting appointments to the post of Commissioner of Police;
- c. Mr. Maharaj’s Interpretation of same and the canons of construction that ought to inform the Court in construing the same;
- d. The Procedure followed in respect of Mr. Griffith’s appointment as Ag. CoP; Its unconstitutionality & illegality;
- e. Ancillary Matters raised by the Defendant by a Notice filed on 29th September, 2021;
- f. The current status of the PolSC and its lack of *locus standi*.

33. The Claimant’s initial submission is that the jurisdiction of the PolSC is established by the Constitution and is duly protected by the same. This he argued is necessary to ensure that the PolSC is insulated from political interference and influence and can be traced back to Trinidad and Tobago’s Pre-Independence days. Since then, the Claimant submits, the PolSC was entrusted with autonomous jurisdiction in certain fundamental matters, such as

the appointment to, promotion within and dismissal from the Police Service. This jurisdiction extended to include appointment to the post of Commissioner of Police.

34. Senior Counsel hearkened back to **Section 99 of the Trinidad and Tobago (Constitution) Order in Council 1962**, wherein the appointment procedure for the post of CoP was as follows:

99. (1) Power to appoint persons to hold or act in public offices in the Police Service (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit delegate any of its powers under this section to any of its members or to the Commissioner of Police or any other officer of the Police Service.

(2) Before the Police Service Commission appoints to any office in the Police Service any person holding or acting in any office power to make appointments to which is vested by this Constitution in the Judicial and Legal Service Commission, it shall consult with that Commission.

(3) Before the Police Service Commission appoints to any office in the Police Service any person holding or acting in any office power to make appointments to which is vested by this Constitution in the Public Service Commission, it shall consult with that Commission.

(4) The Police Service Commission shall not remove, or inflict any punishment on, the holder of an office in the Police Service on the grounds of any act done or omitted to be done by him in the exercise of a judicial function conferred upon him unless the Judicial and Legal Service Commission concurs therein.

(5) Before the Police Service Commission makes an appointment to the office of Commissioner or Deputy Commissioner of Police it shall consult the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister signifies

to the Police Service Commission his objection to the appointment of that person to such an office.

35. Senior Counsel for Mr. Maharaj contends that the rationale for vesting such matters in an independent body such as the PolSC, was to give effect to the principle of political insulation. The well-known case of **Endell Thomas v the Attorney General of Trinidad and Tobago**¹ was cited in support of this position, where Lord Diplock posited:

“In the case of an armed police force with the potentiality for harassment that such a force possesses, the power of summary dismissal opens up the prospect of converting it into what in effect might function as a private army of the political party that had obtained a majority of the seats in Parliament at the last election. Their Lordships do not suggest that there is any likelihood of any of these extreme consequences of the existence of a legal right of summary dismissal without cause occurring in Trinidad and Tobago; but what has actually happened in some other countries suggests that the possibility of their occurrence was not too far-fetched to justify the constitution-makers in the 1960’s making provision to eliminate any such risk in constitutions which follow the Westminster model ...

The whole purpose of Chapter VIII of the Constitution [now Chapter 9] ... is to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence exercised directly upon them by the government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service ...”

In respect of each of these autonomous commissions the Constitution contains provisions to secure its independence from both the executive and the legislature ...”

36. Senior Counsel further argued that the position argued by Lord Diplock in **Thomas** remains good law and was re-affirmed upon Trinidad and Tobago becoming a Republic under the 1976 Constitution. He cited the cases of **Cooper & Balbosa v Director of Personnel**

¹ [1982] AC 113, 123B

*Administration*²; *Sankar v Public Service Commission*³; *Webster v Attorney General of Trinidad and Tobago*⁴, in support of this contention.

37. In *Cooper & Balbosa* the Board examined the relationship between the PolSC and the Executive, in resolving the issue as to whether a Public Service Examination Board appointed by Cabinet, and to be used by the PolSC, contravened the principle laid out in *Thomas*. The dicta of Lord Hope of Craighead at paragraphs 26-29 in particular, remains instructive:

26. ... *Where then is the line to be drawn between the proper exercise by the Cabinet of its powers under appointments by the commissions in general and the Police Service Commission in particular?*

27. *On the one hand there is the function of appointing officers to the police service, including their promotion and transfer. This is a matter exclusively for the Police Service Commission. On the other hand there are the terms of service which are to be included in the contract of the individual police officer. **The Police Service Commission does not employ the police officer. His contract is with the executive.** Terms of service, of which Lord Diplock gave various examples, may be laid down by the legislature. Where they are laid down in that way they must form part of the contract. Where there are gaps because the matters at issue have not been dealt with by the legislature, they may be dealt with by the employer. **In the case of police officers, their contract of service is with the executive.** So it is open to the executive to fill the gaps. But this has nothing whatever to do with the matters that lie within the exclusive preserve of the Police Service Commission. It is for the Commission, and the Commission alone, to appoint and promote police officers. Terms of service are what each police officer enters into with his employer following the confirmation by the Commission of his appointment to, or his appointment on promotion within, the police service.*

28. *The Constitution requires that the powers which it has given to the Public Service Commissions, and to the Police Service Commission in particular, to appoint persons*

² [2006] UKPC 37, [2007] 1 WLR 101

³ [2011] UKPC 27

⁴ [2015] UKPC 10, [2015] ICR 1048.

*to hold or act in public offices and to make appointments on promotion must be exercised free from inference or influence of any kind by the executive. There is room in this system for the taking of some initiatives by the Cabinet. **A distinction can be drawn between acts that dictate to the Commissions what they can or cannot do, and the provision of a facility that the Commissions are free to use or not to use as they think fit.** The appointment of a Public Service Examination Board by the Cabinet for the commissions to use if they choose to do so is not in itself objectionable. The advantages of using such a centralised body are obvious, and in practice the commissions may well be content to continue to make use of them. The objection which has given rise to these proceedings lies in the misapprehension as to where the responsibility for choosing that system lies. **In their Lordships' opinion the proposition in the media release of 8 July 2002 that the sole responsibility for the conduct of examinations falls under the Public Service Examination Board's purview was based on a profound misunderstanding of where the line must be drawn between the functions of the commissions and those of the executive.**”*

[Emphasis this Court's]

38. Senior Counsel also drew to the Court's attention the legislative provisions which he contends gave effect to the principle of political insulation subsequent to Trinidad and Tobago becoming a Republic, as it related to the PolSC:

123. (1) Power to appoint persons to hold or act in an office in the Police Service established under the Police Service Act, including appointments on promotion and transfer and the confirmation of appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission ...

(3) Before the Police Service Commission makes an appointment to the office of Commissioner or Deputy Commissioner of Police, it shall consult the Prime Minister, and a person shall not be appointed to such an office if the Prime Minister signifies to the Police Service Commission his objection to the appointment of that person to such an office.

39. Continuing the journey of historical context, Senior Counsel for Mr. Maharaj arrived at the year 2006 when the Constitution was amended by Act No. 6 of 2006.

40. A key feature brought about by the 2006 amendment was the conferring on the PolSC of exclusive jurisdiction in all appointments and promotions of police officers, apart from just the CoP and the Deputy CoP by section 123(1).
41. Senior Counsel for Mr. Maharaj submits that the 2006 Constitution facilitated a substantial transfer of power from the PolSC, but retained the PolSC's jurisdiction for the "apex offices" of CoP and Deputy CoP, with the creation of a new power to the President to give Orders as to the criteria and process for nomination for appointment to said offices, all the while enhancing the process by subjecting the nominations to debate and positive resolution of the House of Representatives.
42. The relevant provisions of **the 2006 Constitution** were outlined by Senior Counsel as follows:

"123. (1) The Police Service Commission shall have the power to -

(a) appoint persons to hold or act in the office of Commissioner and Deputy Commissioner of Police;

(b) make appointments on promotion and to confirm appointments;

(c) remove from office and exercise disciplinary control over persons holding or acting in the offices specified in paragraph (a);

(2) The Police Service Commission shall nominate persons for appointment to the offices specified in subsection (1)(a) and section 22(1) of the Police Service Act in accordance with the criteria and procedure prescribed by Order of the President, subject to negative resolution of Parliament.

(3) The Police Service Commission shall submit to the President a list of the names of the persons nominated for appointment to the offices of Commissioner or Deputy Commissioner of Police.

(4) The President shall issue a Notification in respect of each person nominated under subsection (3) and the Notification shall be subject to affirmative resolution of the House of Representatives.

(5) The Police Service Commission shall appoint the Commissioner or Deputy Commissioner of Police only after the House of Representatives approves the Notification in respect of the relevant office ...

123A. (1) Subject to section 123(1), the Commissioner of Police shall have the complete power to manage the Police Service and is required to ensure that the human, financial and material resources available to the Service are used in an efficient and effective manner.

43. It was submitted on behalf of Mr. Maharaj that the spirit of the **2006 Constitution** is intended to⁵:

- a. Improve the overall efficiency of the police service, including increase the operational freedom of the Commissioner of Police;
- b. Allow for secondary legislation governing “criteria and procedure” for appointments to the highest offices of CoP and Deputy CoP, but preserve in respect of those offices the well-established constitutional principle established by **Thomas** in respect of the protected jurisdiction of the PolSC; and
- c. Provide for wider participation and more transparency in the process of approving a CoP and Deputy CoP.

44. Focussing on the current legislative framework, Senior Counsel for Mr. Maharaj now submits that the PolSC’s power to make an appointment to the office of CoP is derived from section 123(1)(a) of the 2006 Constitution. Senior Counsel also submits that the process then begins at section 123(2), the nomination provision, which requires compliance with subsisting Orders of the President in respect of the criteria and procedure for the PolSC’s nominations. In this regard, Senior Counsel further submits that the 2021 Order, made under section 123(2), applies to the PSC’s selection and nomination procedure. Compliance with the nomination provision then provides the catalyst for section 123(3), which requires the PolSC to compile a list of nominations for onward submission to the President, who then must issue the notification required by section 123(4), the notification provision. Senior Counsel for Mr. Maharaj contends that the final step lies at the foot of the

⁵ Paragraph 23 of the Claimant’s Written Submissions

PolSC, which is then directed by section 123(5) to make the appointment to either office, subsequent to the affirmative resolution of the House of Representatives.

45. It is Mr. Maharaj’s overarching submission that the procedure outlined above must apply to Mr. Gary Griffith, in respect of his acting appointment. It is also submitted that at the time of the said appointment, Mr. Griffith was “a mere civilian”, his contract of employment having expired, and thus the PolSC was purporting to appoint a civilian to the office of CoP, without any Parliamentary approval. Senior Counsel contended that the procedure set out in section 123 applies irrespective of whether the appointment was to hold or to act in the office of CoP.
46. In seeking to assist this Court in its role as interpreter of the legislative provisions relevant to the Claimant’s relief, Senior Counsel for Mr. Maharaj commended learning from the learned authors of **Bennion on Statutory Interpretation, 8th Edition**.
47. **Bennion’s** guidance is that one must ascertain the true meaning of words used in legislative enactments by a determination of “legislative intention”. As per **Bennion** commenting at Section 11.1 on the interpreter’s objective:

“The legislative intention is the meaning attributed to the legislature in respect of the words used. So the interpreter’s objective, when interpreting an enactment, is to determine the true meaning of the words used by the legislature. This is a simple thought, with profound consequences. The interpreter must focus on the legislative text - that is to say, on the words used by the legislature ...”

48. Senior Counsel also commended the authority of **Williams v Central Bank of Nigeria**⁶, where Lord Neuberger stated pithily at paragraph 72:

“When interpreting a statute, the court’s function is to determine the meaning of the words used in the statute. The fact that context and mischief are factors which must be taken into account does not mean that, when performing its interpretive role, the court can take a free-wheeling view of the intention of Parliament looking at all admissible material, and treating the wording of the statute as merely one item. Context and

⁶ [2014] UKSC 10

mischief do not represent a licence to judges to ignore the plain meaning of the words that Parliament has used."

49. It was further argued that the natural and ordinary meaning of legislative provisions lends to the presumption of grammatical interpretation, as to which interpretation Senior Counsel quoted **Bennion** at section 11.4:

"The grammatical meaning is arrived at without taking into account legal considerations ...

The initial presumption is in favour of the grammatical meaning, since the legislature is taken to mean what it says ... where nothing in the words is ambiguous, no exposition of them shall be made which is opposed to the words."

50. The learned authors continued that the weight to be attached to grammatical meaning is far greater than that to be attached to any other interpretative criterion, accepting that acts are usually produced by very precise.

51. In furtherance of the above, Senior Counsel for Mr. Maharaj asks this Court to note that section 123(5) simply uses the phrase "appoint the Commissioner of Police". Section 123(2) uses the phrase "nominate persons for appointment to the offices". Senior Counsel submits that there is no distinction within these provisions that they apply to any particular class of appointment to the relevant offices.

52. Senior Counsel also drew the Court's attention to the fact that one may temporarily hold the office of acting CoP and be substantively confirmed to the office of CoP, carrying on materially identical functions in both roles.

53. Senior Counsel also implores the Court to give effect to legislative context and submits that the case of **Attorney General v Maharaj**⁷ is instructive. At paragraph 130 of the judgement, the Court opined that is inappropriate to isolate and apply any individual canon of construction without performing a balancing exercise. While overturned by the Privy Council, the finding of Lady Black remains intact: that consideration of an entire section and its context is necessary, despite the literal meaning being of paramount consideration.

⁷ [2019] UKPC 6

54. Senior Counsel accordingly submits that in the instant case, where Parliament has taken the time to carefully craft a system that is clear, logical and simple to understand, there is no need to complicate matters by the introduction of external ambiguities.
55. Against the backdrop of our constitutional history, Senior Counsel for Mr. Maharaj submits that the office of CoP is not an elected position but exhibits the democratic voice of the people by providing for a veto to be given to the Prime Minister at one time, and now by the House of Representatives. Thus, he argued, there is a democratic nexus in the appointment process.
56. Senior Counsel submits that this nexus mandates the Court to address its mind to the preamble of the Constitution, which provides a helpful interpretative lens (See: **BK Holdings Limited & Ors v The Mayor, Aldermen, Councillors and Citizens of the City of Port of Spain & Ors**⁸ and **Belize International Services Limited v the Attorney General of Belize**⁹).
57. Accordingly, Senior Counsel invites the Court to consider the Preamble to the Constitution, in particular sub-paragraphs (c) and (d):

“Whereas the People of Trinidad and Tobago –

(c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;

(d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

Now, therefore the following provisions shall have effect as the Constitution of the Republic of Trinidad and Tobago.”

58. Senior Counsel for Mr. Maharaj contends that the requirement for positive resolution of the House, as per section 123(4) of the 2006 Constitution is the means by which Parliament

⁸ Civil Appeal No. P348 of 2019

⁹ [2020] CCJ 9 (AJ) BZ

has sought to include an element of democracy in the appointment process to the offices of CoP and Deputy CoP, acting or substantive.

59. Senior Counsel also asks the Court to consider the socio-political context when making its pronouncement as to section 123 and refers the Court to two decisions in this regard, **The Law Association of Trinidad and Tobago v Archie**¹⁰ and **The Attorney General of Trinidad and Tobago v Vijay Maharaj (Substituted on behalf of the Estate of Satnarayan Maharaj for Satnarayan Maharaj) and Central Broadcasting Services Limited**¹¹.
60. Senior Counsel further submits that the Court must also have regard to Parliament's approach to drafting in construing section 123 and must pay heed to how the whole section is structured. Senior Counsel submits that section 123(1), which outlines the functions and powers of the PolSC, must be likened to a prelude to the subsequent provisions, which are must refer back to such prelude. Thus, the power granted at sub-section 123(1) is then followed up by a detailed procedure, at sub-sections 123(2) to 123(5), as to how the power ought to be exercised.
61. Senior Counsel for Mr. Maharaj also refers the Court to several sections of the Constitution where the drafters sought to make a distinction between an acting and a substantive position¹². Senior Counsel concludes that if the constitutional draftsman intended that there to be a different procedure for an appointment to act in the office of CoP, express provision would have made in the Constitution for this different procedure, as has been done with the aforementioned sections relating to Senators, the Chief Justice, Judges and the Auditor General.
62. Another interpretative aid Senior Counsel implores the Court to adopt is that of Constitutional definitions. ***Bennion*** at Section 18.1 is referred to:

“(1) A term used in legislation must be construed in accordance with any statutory definition that applies to it.

¹⁰ Civil Appeal P075 of 2018.

¹¹ Civ. App. No. P023 of 2020.

¹² S. 40 (1), 44 (I) and 44 (4) in the case of Senators, S. 102 and 103 in the case of the Chief Justice, S.104 (1) – (4) I the case of Judges other than the Chief Justice and S. 117 (1) – (2) in the case of the Auditor General

(2) An Act may contain ad hoc definitions of terms used elsewhere in the Act. There are also a number of definitions that apply to Acts generally. Many of these appear in the Interpretation Acts ...”

63. Senior Counsel argued that in the face of a definition provided by law itself, it is unimaginable to adopt an alternative. On the facts of the instant case, this definition he says must apply and is provided by section 3(2) of the Constitution:

“(2) In this Constitution—

(a) a reference to an appointment to any office shall be construed as including a reference to the appointment of a person to act in or perform the functions of that office at any time when the office is vacant or the holder thereof is unable (whether by reason of absence or infirmity of mind or body or any other cause) to perform the functions of that office; and

(b) a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.”

64. Senior Counsel contended that by the express words above, the Parliamentary drafters intended that all references to an appointment to any office would be construed consistently with the section 3(2), unless a provision explicitly departs from this position. Senior Counsel cites the cases of **Campbell v Gordon**¹³ and **R v Lang**¹⁴ as authorities for the longstanding principle that Parliament is presumed to be cognizant of the law when it drafts legislation. Thus, an “appointment” must be given a broad and generous interpretation to include appointments, other than substantive.

65. Should Mr. Maharaj failed to effectively persuade the Court as to the operation of section 3(2) in relation to section 123, Senior Counsel directs the Court to be guided by section 39(1) of the Interpretation Act:

¹³ [2016] UKSC 38 at para 44

¹⁴ [2005] EWCA Crim 2864 at para 8

“39. (1) Subject to the Constitutional Laws of Trinidad and Tobago, words in a written law authorising the appointment of a person to any office shall be deemed also to confer on the authority in whom the power of appointment is vested—

(a) power, at the discretion of the authority, to remove or suspend him; and

(b) power, exercisable in the like manner and subject to the like consent and conditions, if any, applicable on his appointment—

(i) to reinstate him on his suspension, or reappoint him on his removal, his resignation, the expiration of his office, or otherwise;

(ii) to appoint another person in his stead or to act in his stead and to provide for the remuneration of the person so appointed; and

(iii) to fix or vary his remuneration, to withhold his remuneration in whole or in part during any period of suspension from office, and to terminate his remuneration on his removal from office,

but where the power of appointment is only exercisable upon the recommendation or subject to the approval, consent or concurrence of some other person or authority the power of removal shall, unless the contrary intention is expressed in the written law, be exercised only upon the recommendation, or subject to the approval, consent or concurrence of that other person or authority.”

66. Senior Counsel for Mr. Maharaj argues that section 39 in fact goes a step further than section 3(2) by explicitly providing that the conditions which attach to the power of appointment must be applied unless a contrary position is expressed.

67. Senior Counsel also pressed the Court to consider the purpose of section 123 and why the 2006 amendment was implemented in the particular manner¹⁵. He submits that the rationale behind the legal procedure for appointment is to balance the need for political insulation with a recognition for the democratic voice of the people of Trinidad and Tobago, as it is crucial for there to be public confidence in matters of national security, consistent with the abovementioned preambular declarations.

¹⁵ Bennion at Section 12.2

68. Senior Counsel further submits that the change to section 123 sought by the 2006 amendment, was made pellucid by both former and current Parliamentarians. To advance this submission, Senior Counsel makes reference to extracts from Hansard¹⁶, including that from a debate in the Senate on 5th July 2021, where the Defendant exhibits his understanding of the process, which Senior Counsel asserts as being compatible with Mr. Maharaj’s understanding.

69. Senior Counsel concludes on this point that the Amendment allowed for the appointment process to become more open by now engaging the democratic voice in the House of Representatives.

70. Senior Counsel also contended that the doctrine of the separation of powers must also be applied to limit the powers of the PolSC to make Mr. Griffith’s appointment. The PolSC, he says, is a part of the Executive and must not trespass on the jurisdiction of the Legislature. The judgement of Rajkumar J. (as he then was) in **Harridath Maharaj v The Attorney General**, in particular paragraphs 59 to 64 thereof, is instructive. Paragraph 59 of the Learned Judge’s judgement bears repetition:

“59. [The Commission] retains the power to appoint persons to hold or act in the offices of Commissioner and Deputy Commissioner of Police. However that power to appoint is circumscribed by sections 123 (2) (3) (4) (5).”

71. Senior Counsel concludes that the 2006 amendment has created the means for parliamentary scrutiny of the PolSC’s nominations to the office of CoP, so as to safeguard the limits of the PolSC’s power to appoint and to maintain the doctrine of the separation of powers. Senior Counsel submits that the PolSC, as part of the Executive, has breached the separation of powers by appointing Mr. Griffith to act without reference to the Legislature.

72. Senior Counsel further submits that this Court ought to take judicial notice of Trinidad and Tobago’s history of extended acting appointments for the post of CoP, which appointments, in many cases, have outlived the time for substantive appointments.

73. In this regard, the Court was also asked to note that it has already granted an injunction halting the selection and appointment process, in favour of Mr. Anand Ramesar, pending

¹⁶ Paragraphs 84-87

the further hearing and determination of his own claim in which he challenges the decision of the PolSC not to short-list him for the substantive post of CoP.

74. As regards the procedure which was actually followed in granting the acting appointment to Mr. Griffith, Senior Counsel for Mr. Maharaj submits that the same complied with Clause 4 of 2021 Order, as confirmed by the President in letter dated 7th September 2021, and by Media Release from the PolSC dated 20th August 2021. By extension, Senior Counsel asserts that there was also compliance with section 123(3) of the Constitution.
75. Mr. Maharaj's contention is that thereafter, the appointment process went awry, by the failure to comply with sections 123(4) and 123(5). Senior Counsel submits that the legal consequence of this non-compliance is that there was an effective transfer of the power/functions of the House of Representatives to the PolSC. Senior Counsel also submits that Her Excellency's failure to submit the list of nominees for Parliamentary scrutiny resulted in the PolSC proceeding to make the acting appointment without the necessary approval and thereby caused the PolSC to act in excess of its statutory jurisdiction. Senior Counsel beseeches the Court to guard and uphold the Constitution and to enforce the limits of same, which is essential to upholding the rule of law. (See **Attorney General v Dumas**¹⁷)
76. Senior Counsel contended that upon a true construction of the 2021 Order and section 123(2) to (5) of the Constitution, both constitute the whole procedure for appointments to the office of CoP.
77. Senior Counsel also made submissions on the Court's discretion to entertain the additional issues raised by the Defendant's Notice dated 29th September, 2021, on behalf of the President, and referred to the decision of Justice Jones (as she then was) in **the Integrity Commission v the AG of Trinidad and Tobago**¹⁸ to assist the Court in its exercise of discretion.
78. Notwithstanding Mr. Maharaj's the view that the correct procedure has not been followed by the Defendant, in seeking to raise these matters in the manner in which it has, Senior Counsel nonetheless provided assistance to the Court in respect of the same.

¹⁷ [2017] UKPC 12

¹⁸ H.C.A. 1735 of 2005

Is the Commissioner of Police and Deputy Commissioner of Police (Acting Appointments (Selection Process) (No. 2) Order, 2009 (“the 2009 Order”) void?

79. In resolving the above question, Senior Counsel for Mr. Maharaj invites the Court to adopt an approach in line with that of Rajkumar J. (as he then was) in **Harridath** (*supra*). At paragraphs 62-63 His Lordship states:

“62. Under the 2006 amendment the commission is also vested with the power to select persons for appointment, (subject to a right of veto), but is now constrained within guidelines in selecting persons for appointment to the offices of Commissioner and Deputy Commissioners of Police. Those guidelines were to be those set out in an order of the President. In fact such Orders were proclaimed in 2007 and 2009. But any such Order must still be subject to the 2006 Constitution as amended.

63. To the extent that any Order of the President, whether 2009 or 2015, seeks to provide a role for any body, apart from the Commission itself, which affects directly or indirectly, the selection of persons as candidates for the positions of Commissioner or Deputy Commissioner, it must be authorised. If it is not authorised or justified under the 2006 Constitutional amendment it is difficult to understand on what other basis it can be.”

80. Senior Counsel submits to this Court that the above approach of the Learned Judge is predicated upon an acceptance by that Court that Orders made by the President are subsidiary legislation and must find their authority within the parent Act, which in this instance is section 123(2). The recent Court of Appeal decision in **Dominic Suraj and Ors. v the Attorney General**¹⁹ is cited in furtherance of this submission.

81. Senior Counsel argued that on a plain and literal interpretation of the 2009 Order, one must construe same as conferring a discretion on the PolSC to grant an acting appointment, pursuant to Clause 3 of same:

3. The Commission may, as it thinks fit, appoint to act in the office of the Commissioner of Police, a person holding or acting in the office of the Deputy Commissioner of Police where—

¹⁹ CA S246 of 2020

(a) the Commissioner is absent from Trinidad and Tobago or is on vacation leave or is unable by reason of illness or any other reason, to perform the functions of the Commissioner of Police; or

(b) the office of the Commissioner of Police is vacant for whatever reason and the appointment of his successor is pending.

82. Senior Counsel submitted that the Court ought not to impugn the legality of the 2009 Order, as same is valid, as same was subject to negative resolution by Parliament, who refused to annul the same giving rise to the presumption that there is no error in law. Notwithstanding, Senior Counsel submitted that the Court should merely treat the Order as prescribing the category of persons who may be appointed, i.e. persons acting or substantively holding the office of Deputy CoP, and deeming a form of criteria for appointment to the post of CoP.

83. Senior Counsel therefore resolved that requiring Parliamentary approval for all appointments, while it may appear inconvenient, is not insensible or absurd. He further submitted that it was not for the Court to step into the role of the draftsman and fix drafting deficiencies in the legislation, as this would trespass on the role and function of the legislature and run the risk of contravening the separation of powers. Senior Counsel asks the Court to be guided by the dicta of Kokaram J. (as he then was) in **Dianne Hadeed v the Attorney General of Trinidad and Tobago and the Law Association of Trinidad and Tobago** in particular at paragraphs 210-222, a useful extract from which is hereinbelow set out:

“212. However, I stop short of legislating and reforming ... which clearly is a matter for Parliament. Indeed, having regard to the heated debates on Parliament on this issue, it is hardly a place for this Court to now intervene to legislate the outcome. The Court can give suitable guidance and possible solutions but the final say lies in the bosom of the population by their duly elected representatives ...

216. The Court must act cautiously, however, in any act of “legislating” either by severance or modification ...

219. *The Court must not intrude into the legislative sphere of activity. This is equally important in reading into a section and modification. In **Schachter**, Lamer CJ observed at page 700:*

“Reading in is as important a tool as severance in avoiding undue intrusion into the legislative sphere. As with severance, the purpose of reading in is to be as faithful as possible within the requirements of the Constitution to the scheme enacted by the Legislature. Rogerson makes this observation at p. 288:

Courts should certainly go as far as required to protect rights, but no further. Interference with legitimate legislative purposes should be minimized and laws serving such purposes should be allowed to remain operative to the extent that rights are not violated. Legislation which serves desirable social purposes may give rise to entitlements which themselves deserve some protection.”

84. Further, Senior Counsel also added that any perceived inconvenience to Parliament that might obtain is insufficient to warrant any attempt to amend the contravening law. Senior Counsel reiterated the concession made by the Defendant in this regard, which he deemed to be significant in the circumstances, as he is a member of the Legislature. Accordingly, Senior Counsel submitted that the first question posed by the Defendant must be answered in the affirmative.

Is Clause 4 of the 2021 Order mandatory?

85. As regards the above, Senior Counsel also answered same in the affirmative, asserting that if the Court is minded to adopt Mr. Maharaj’s interpretation that section 123(2)-(5) applies to all appointments, then it is a necessary precondition to any appointment that the PolSC submits its list of nominees to the President. He continued that section 123(3) provides the means by which the nominees for appointment are presented to Parliament, with the President acting as the necessary conduit between the said and the PolSC.

86. It was further contended that despite the use of the term “may” in Clause 4 while odd in the face of the word “shall” in Clause 3, the word “may” in Clause 4 ought to be treated as a “shall” in order for the Order to be compatible with the legislative context and intention.

PolSC's Locus Standi

87. Senior Counsel for Mr. Maharaj also frontally challenges the PolSC's *locus standi* in the instant proceedings, as Mr. Maharaj is of the view that the PolSC has ceased to exist in law, resulting in a lapse of this Court's earlier order for it to be joined as an Interested Party to these proceedings. He further submitted that while the Court has a discretion in these circumstances to nonetheless accept submissions from the PolSC, there must be legal and rationale reasoning for electing to do so.

88. Senior Counsel argued that the current status of the PolSC can be likened to that of an unincorporated entity as its existence is governed by section 122(1) of the Constitution. This section provides that,

122. (1) There shall be a Police Service Commission for Trinidad and Tobago which shall consist of a Chairman and four other members.

89. Senior Counsel cites the cases of **Chandresh Sharma v Integrity Commission**²⁰ and **Williams (A representative Claimant for 20 others comprising "The Sustainable Totnes Action Group) v Devon CC**²¹ to assist the Court in its deliberations on this issue.

90. Following from the aforesaid authorities, Senior Counsel for Mr. Maharaj submits that, as in the case of an unincorporated entity, there is no identifiable group of members which the PolSC can ask to instruct or agree a retainer with an Attorney. This is further supported by the fact that this Attorney-Client relationship is governed by the law of agency. In the instant circumstances, it is difficult to answer the question, "Who is the client?"

91. Senior Counsel also highlighted the fact that this state of affairs is entirely different to a PolSC which exists, but is merely inoperative, as was the case in **Devant Maharaj v the Attorney General**²². The PolSC is part of the State²³, he argued, and in similar fashion to the President and the Ministry of National Security (the latter of whom is the employer of Mr. Griffith and contractual signee) while ultimately affected by the decisions of the Court in this matter, they are not parties to the proceedings. Senior Counsel also draws to the Court's attention the contents of section 76(2) of the Constitution wherein it is specifically

²⁰ H.C.A. No. S2005 of 2004

²¹ [2015] EWHC 568

²² [2019] UKPC 6

²³ As recognised in Civil Appeal No. 29 of 2008 *Carmel Smith v the AG*

provided that the State is to be so represented (See also **Dumas v the Attorney General, Attorney General v James Alva Bain**²⁴ and **Ramesh Lawrence Maharaj v Attorney General**²⁵). Senior Counsel finally submitted that his submissions are also supported by the provisions of *Section 19 of the State Liability and Proceedings Act Chap 8:02*.

Defendant

92. Senior Counsel for the Attorney General of Trinidad and Tobago, the Defendant to these proceedings, has accepted by his submissions that the Honourable Court is constrained to give effect to the constitutional direction given by section 3(2) of the Constitution, and its effective applicability to sections 123(2)-(5).

93. Senior Counsel for the AG thereby frontally concedes that the acting appointment of Mr. Gary Griffith must have been subject to approval from the House of Representatives, rendering his appointment invalid. Senior Counsel for the AG contends that as a natural consequence of this submission, any Orders made pursuant to section 123(2), which seek to permit the PolSC to make any appointments without such approval, will also be invalid.

94. Senior Counsel highlighted the 2009 Orders in relation to acting appointments:

- a. the *Commissioner of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) Order, 2009* (dated 19th March 2009); and
- b. the *Commissioner of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) (No. 2) Order, 2009* (14th May 2009) (“the Acting Appointment Order No. 2”)

95. Senior Counsel for the AG also highlighted Clause 4 of the 2021 Order, published on 17th June 2021, which he said revoked the earlier *Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2015*. Senior Counsel confirmed that while Clause 4 did not provide for the PolSC to appoint an acting CoP, it provided for the PolSC to submit a list of nominees to the President.

96. Senior Counsel opined that section 3(2) applies and outlines all the circumstances in which it may be suitable to make an acting appointment. He further added that there is nothing

²⁴ No 3260 of 1987 (HC).

²⁵ Privy Council Appeal No. 21 of 1977

within the context of section 123 to suggest that section 3(2) ought not to be applied, asserting that section 123 instead tended to reaffirm section 3(2) and thereby illustrates all the circumstances under which an acting appointment could be made.

97. He submitted that the language of section 123(1)(a) expressly uses the verb “appoint” which would make it illogical to construe section 123(2) as limiting the category of “appointment” to substantive office. Senior Counsel for the Defendant also advanced before this Court similar submissions to those of the Claimant, Mr. Maharaj, contending that Parliamentary drafting must be given effect²⁶, as it would be subversive to ignore the plain and ordinary meaning of the legislative provision²⁷, which would give rise to a contravention of the separation of powers.

98. Senior Counsel for the AG also made submissions on legislative intent, contending that the drafters of the 2006 amendment to the Constitution sought to introduce transparency and accountability to the appointment process by assigning an important function to the House of Representatives. He concurred with Senior Counsel for the Claimant that acting appointments in Trinidad and Tobago have historically been made for extended periods and stated that it would subvert the legislative promotion of openness to permit the PoISC to confer on itself a power to make acting appointments on its own. Senior Counsel also referred to **Harridath Maharaj v AG** (*supra*) and discerned that the comments of Rajkumar J²⁸ confirmed the view that section 123 makes no distinction between acting and substantive appointments.

99. Senior Counsel cautioned that although Courts had the power to depart from legislative text by substituting, adding or omitting words, this approach should only be taken in exceptional circumstances where it is necessary to rectify drafting errors. He referred the Court to **Inco Europe Ltd -v- First Choice Distribution**²⁹ which expounded the test in this regard:

“It has long been established that the role of the courts in construing legislation is not confined to resolving ambiguities in statutory language. The court must be able to correct obvious drafting errors. In suitable cases, in discharging its interpretative

²⁶ IRC v Parke [1966] AC 141, 161 as per Viscount Dilhorne- 'It is a familiar device of a draftsman to state expressly that certain matters are to be treated as coming within a definition to avoid argument on whether they did or not'

²⁷ Thomas v Marshall [1953] AC 543, at 556

²⁸ Paras. 42, 59, 60, 61, 62, 64, 74

²⁹ [2000] 1 WLR 586

function the court will add words, or omit words or substitute words. Some notable instances are given in Professor Sir Rupert Cross's admirable opusculum, Statutory Interpretation, 3rd ed. (1995), pp. 93–105. He comments, at p. 103:

“In omitting or inserting words the judge is not really engaged in a hypothetical reconstruction of the intentions of the drafter or the legislature, but is simply making as much sense as he can of the text of the statutory provision read in its appropriate context and within the limits of the judicial role.”

This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpretative. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation.”

[Emphasis Senior Counsel's]

100. In respect of the issues raised by Mr. Maharaj on the Fixed Date Claim for the Court's determination, Senior Counsel accepted that all must be answered in the affirmative.
101. As to the declaratory relief sought, Senior Counsel suggested the following approach:
 - a. It is declared that upon the true construction of section 123 of the Constitution of the Republic of Trinidad and Tobago, the procedure for the appointment of a person to the office of Commissioner of Police and Deputy Commissioner of Police set out in section 123(2) to (5) applies to the appointment of persons to act in the Office of Commissioner of Police or Deputy Commissioner of Police at any time when the office of Commissioner of Police or Deputy Commissioner of Police is vacant or the holder

thereof is unable (whether by reason of absence or infirmity of mind or body or any other cause) to perform the functions of that office;

- b. It is declared that the appointment of Mr Gary Griffith to act as Commissioner of Police from 18th August 2021 is void and unconstitutional as being contrary to section 123 of the Constitution.

102. In respect of Mr. Maharaj’s declaratory reliefs which speak to the acting appointment of “*a person previously on contract*”³⁰, Senior Counsel opined that the framing of the said relief appears to limit same to the particular facts of this case. However, he notes that contrary to what Mr. Maharaj has said, Mr. Griffith was appointed to act before this contract came to an end. Irrespective of this, Senior Counsel opined that the Court should not limit its declaratory relief to the particular facts of this case, as Mr. Griffith’s purporting acting appointment has raised more general questions, and limiting these reliefs could therefore give rise to further interpretation summons in future.

103. Senior Counsel argued that it is important for the Court to determine and make declarations as to the effect of its interpretation of section 123 of the Constitution on the subsisting Orders. He noted that indeed Mr. Maharaj has framed his reliefs in a manner that requires same, as he sought “*All necessary and consequential orders and directions and such further and/or other relief as the Court might consider necessary or expedient or as the Court deems fit.*”

104. In this regard, Senior Counsel submitted that on a proper construction of S.123, the 2009 Order becomes void and unconstitutional, as it purports to give the PolSC the power to make acting appointments, and it would be improper if the Court were to leave the same undisturbed as it would lead to confusion in future.

105. In respect of the 2021 Order, Senior Counsel contended that Clause 4 of the same is the only provision which deals with acting appointments, and it does not seek to confer power but provides for the submission of a list of nominees only. As such, he contends that same is valid as it is consistent with the spirit and intention of S.123(2) to (5), as the language also seems to mirror that in S.123(3).

³⁰ Paragraphs 2, 3 and 4 of the Fixed Date Claim

106. Senior Counsel also advanced the argument that the Court ought to clarify the role of the President pursuant to the said Clause 4, as Her Excellency expressed uncertainty as to same. It was submitted that the Court should hold that when the PolSC proposes to make an acting appointment, it must comply with Clause 4 and section 123(2)–(5).

107. Senior Counsel therefore argued for the grant of the additional relief sought by the Defendant’s Notice. He contended that it is trite law that the Court has a broad discretion and is required to consider the wider public interest involved in making an interpretation of a constitutional provision, and must address its mind to the overriding objective in doing so to ensure resources are used “*as effectively as possible*”³¹. Thus it must give proper guidance as to any areas of confusion that may result from its Order, which he argued is in line with the approach set out by the Judicial Committee in **AG v Dumas**³². He therefore asked the Court to grant the following additional orders:

- c. It is declared that the Commissioner of Police and Deputy Commissioner of Police (Acting Appointments) (Selection Process) (No. 2) Order, 2009 is unconstitutional and void being contrary to or ultra vires the provisions of section 123 of the Constitution;
- d. It is declared that paragraph 4 of the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021 should be construed as requiring the Police Service Commission to submit a list of nominees for an acting appointment to Her Excellency the President where it proposes that an acting appointment should be made.

First Interested Party

108. In construing the relationship between sections 3(2)(a) and (b) and sections 123(1)–(5) of the Constitution, Senior Counsel submitted that the Court must have regard to sections 123(6), 123(8)(a), 123A(1) and (2) and 129(1) of the Constitution as well as section 75(6) of the Interpretation Act.

109. He argued that if section 3(2)(a) and (b) were intended to extend to the PolSC’s power to appoint persons to hold or act in the offices specified, this would render otiose the

³¹ Stamford Chamber of Trade & Commerce and Anor, R (on the application of) v The First Secretary of State for Communities & Local Government & Anor [2010] EWCA Civ 992 per Laws LJ at [13]

³² [2017] 1 WLR 1978

language used in section 123(1)(a). He added that a contextual and purposive approach to the language used in section 123 aligns with the express wording of same.

110. Senior Counsel for the PolSC interprets section 123(1)(a) as providing the power to the PolSC to make appointments of two different classes, i.e. acting and substantive, which must include appointment on contract as per section 22 of the Police Service Act. He contended that notwithstanding section 3(2)(a) and (b), section 123(2)-(5) refers to substantive appointments only.

111. Senior Counsel for the PolSC urged the Court to observe the difference in the language and structure utilised in section 123(1)(a) and that of the aforesaid subsections (2), (3), (4) and (5). Subsection 123(2) he argued deals with the criteria and procedure which ought to be followed by the PolSC in exercising its power to appoint to the offices specified in subsection 123(1)(a) and section 22 of the Police Service Act, but does nothing more. Subsections (3), (4) and (5) then apply to the substantive post of CoP and Deputy CoP.

112. Senior Counsel advanced the argument that the Court, in adopting a wide construction of section 123 as required³³, must bear in mind the reason and purpose behind an acting appointment. This argument was supported by the decision in **Law Association of Trinidad and Tobago v the Honourable Chief Justice of Trinidad and Tobago Mr. Justice Ivor Archie O.R.TT Civil Appeal No. P075 of 2018**, wherein Jamadar JA (as he then was) opined that the Court must take a generous and non-formalistic approach, looking contextually at the substance and reality of what is at stake and to do so through the lens of constitutional values, while grounding its interpretation at all times in the actual language and content of the provisions in question.

113. Senior Counsel therefore asked the Court to envision the ramifications of an interpretation which requires the process in section 123(2) to (5) to be adhered to for acting appointments. He reiterated the transient nature of acting appointments seeks to ensure continuity in performance while the substantive office holder is absent. In support of this submission, Senior Counsel commended the authority of **Chief Fire Officer and another**

³³ Minister of Home Affairs v Fisher [1979] 3 All ER 21 at page 26; AG of Fiji v DPP [1983] 2 AC 672 at page 682.

v Felix-Phillip and others³⁴ for the Court’s guidance. At paragraph 16, Lady Arden of the Judicial Committee of the Privy Council commented:

*“It is of course a significant matter that appointments and promotions of persons working in the public services are governed by the Constitution for the reasons which the House gave in **Endell Thomas**. However, as Bereaux JA pointed out in his judgment, the Constitution refers to acting appointments. That means that the legislature recognized the utility of acting appointments and intended that they should be a class of appointments which were temporary and not permanent.”*

114. Senior Counsel was resolute in his position that section 123(2)-(5) does not apply to acting appointments, as such appointments may arise very suddenly and the process entailed in subsections (2) to (5) can take time to complete, leaving the Police Service a “rudderless ship”. This he said would undermine section 123(A), as the Constitution does not contemplate having the State be without someone to perform the crucial and unique functions of CoP, some of which were outlined as follows:

- a. The grant of licences, certificates or permits under the Firearms Act (section 17(1))
- b. Appointment and termination of trainees – (sections 12 &13 Police Service Act)
- c. Appointment of an independent management consultant for the Promotion (Advisory Board (section8(1)(e) of the Police Service Act)
- d. Administering Award Fund – (section 65 and 69 Police Service Act)
- e. Issuing Departmental Orders – (Regulation 20 of the Police Service Regulations)
- f. Establishing administration and operational units of TTPS – (Regulation 35 of the Police Service Regulations)
- g. Assignment of officers – (Regulation 36 of the Police Service Regulations) 2021
- h. Transfer of officers – (Regulation 68 of the Police Service Regulations)

³⁴ [2020] UKPC 12

i. Issuance of Standing Orders and Service Orders- (Regulation 193 of the Police Service Regulations)

115. He added that leaving the office of CoP open for indefinite periods would amount to a dangerous undermining of the fundamental constitutional powers of the CoP.

116. Senior Counsel for the PolSC further contended that the 2009 Order was invalidly issued by the President as she was not authorised so to do under section 123(2), as the said provision is confined to substantive appointments. He submitted therefore that Mr. Griffith's acting appointment was carried out accordance with the express provisions of section 123(1)(a) of the Constitution and section 22 of the Police Service Act and is valid.

117. Senior Counsel reasoned that any Orders thus made under section 123(2) purporting to deal with acting appointments are invalid, which includes the 2009 Order, and Clause 4 of the 2021 Order.

118. Senior Counsel asserted that in the absence of any regulations, orders or otherwise prescribing the process for appointing someone to act as CoP, the PolSC must act fairly and reasonably.

119. He submitted that the PolSC did so, as Mr. Griffith had already gone through the process at section 123(2)-(5) in 2018 when he was appointed CoP. He also submitted that the PolSC has had the benefit of seeing Mr. Griffith perform his functions for a period of 3 years and had the further benefit of monitoring his efficiency and effectiveness while he did so. Mr. Griffith also met the relevant criteria for qualifications and experience in 2018 as well as at the material time in 2021. The PolSC thus was of the view that it was acting reasonably and fairly in appointing him to act as CoP, pending the completion of the process for substantive CoP.

120. It was further submitted by Senior Counsel that if the Court disagrees with the Defendant's stance on the application of section 123(2)-(5), the Orders of the President would remain valid but will be treated as having omitted to deal with the entire process.

121. Senior Counsel argued that in light of the foregoing, the questions posed by Mr. Maharaj on his Fixed Date Claim Form should be answered in the negative and all declaratory reliefs refused by the Court.

Second Interested Party

122. Counsel for Mr. Griffith’s overarching submission was that section 123(2) - (5) applies only to substantive appointments to the office of CoP. He submitted that in construing the aforesaid provisions, the Court must give effect to its plain and ordinary meaning and in the absence of ambiguity, it should not imply words into this meaning. In doing so, Counsel highlighted that there is no overriding obligation for parliamentary approval for acting appointments within the Constitution.
123. Counsel argues that section 123(1)(a) confers on the PolSC two separate and distinct powers in respect of one office i.e. the office of CoP. He submitted that the purpose for the provision of a power to appoint persons to act was to facilitate administrative efficiency and expediency and that the power to act is a narrower power than that of the substantive role of CoP.
124. Section 3(2)(a) he contends is a “power conferring section” which permits a body which is empowered to appoint a substantive office holder, to *also* appoint a person to act in the stead of the substantive office holder, on short notice for any reason where the substantive holder is incapable of performing his functions. He continued that this was vital, as there are many reasons why a CoP may suddenly become unavailable to carry out his functions, and in those circumstances, it would be necessary for the PolSC to appointment someone to act with haste. This, Counsel argued, is because the office of CoP is crucial to the national legislative landscape as there are several functions which the CoP alone can perform. In this regard, Counsel referred the Court to the following legislative provisions:
- a. Section 123A(1) of the Constitution;
 - b. Section 123A(2)(b) and (c) of the Constitution;
 - c. Section 123(6)(b) and (7) of the Constitution;
 - d. Sections 4(6) and 6 of the Emergency Powers Regulations 2021;
 - e. Sections 50 and 65 of the Police Service Act, Chap. 15:01.

125. Counsel submitted that requiring the procedural steps listed at section 123(2)-(5) to take place in respect of all acting appointments would lead to manifest absurdity, which would be at odds with the administrative efficiency that was intended by section 123(1)(a).
126. Counsel relied on the Affidavit of Corey Harrison³⁵ filed on 27th September, 2021, to demonstrate that the PolSC conducted its affairs relative to section 123(2) in a timely and efficient manner, and its list of nominees was submitted to the President on 12th August, 2021, prior to the expiration of Mr. Griffith's substantive appointment as CoP.
127. Counsel reasoned that if Mr. Maharaj's interpretation of section 123(2)-(5) is correct then the PolSC would have at the same time as it was complying with section 123(2)-(5) in respect of the substantive post, would have concurrently had to comply with the same before it could proceed to appoint Mr. Griffith to act, which in practice would be absurd.
128. Counsel submitted that in the absence of provision prohibiting the PolSC from exercising its power under section 123(1)(a), it acted rationally and reasonably, based on the circumstances in existence at the time of granting the acting appointment to Mr. Griffith. He submitted that on 15th August 2021, after the PolSC had submitted its list of nominees, it acted in the best interest of the Country and to ensure continuity and efficiency within the police service, while transitioning between the end of Mr. Griffith's contract and the approval of a new CoP. In appointing Mr. Griffith to act pending completion of the procedure for the post of CoP, Counsel asserted that the PolSC gave consideration to the following:
- a. Mr. Griffith was within the police service as he was still on contract;
 - b. He was qualified for the post;
 - c. He was the immediate person last approved by the House of Representatives;
 - d. The PolSC had the chance to observe Mr. Griffith during his tenure and its confidence in Mr. Griffith remained intact.

³⁵ Paras. 4, 5, 6 and 8

129. Counsel further submitted that there was no rule of law to prevent the PolSC from making the acting appointment they made, and referred the Court to the dicta of Dickson J in **Hunter v Southam Inc.**³⁶
130. As regards the further interpretation of section 123, Counsel submitted that section 123(2) does not apply to the power given to the PolSC under section 123(1)(a) of the Constitution, to appoint a person to act. He argued that this can be gleaned by looking at the precise wording of section 123(2) and section 123 as a whole.
131. Section 123(2) he contended, speaks to “appointment to the offices” specified in subsection (1)(a) and section 22 of the Police Service Act. He noted that there are only two offices specified that is, the office of CoP and the office of Deputy CoP, and remarked that there was no office called Acting CoP or Acting Deputy CoP.
132. Should the Court not find favour with the above arguments, and instead hold section 123(2) applies to nominations for persons to act in the office of CoP, then the PolSC would have acted correctly, pursuant to Clause 4 of the 2021 Order, as he would meet the criteria for a “*person previously on contract*” and was therefore an appropriate nominee. Counsel asserted that the requirement for the President to receive the list of nominees, is to provide checks and balances on the power of the PolSC.
133. Counsel submitted that Parliamentarians could not have intended that the multi-step procedure outlined in section 123 (2) – (5) to apply to temporary and short-lived appointments of an Acting CoP and relied on ***Bennion on Statutory Interpretation (4th Edn.)***³⁷ in support wherein the learned authors caution the Courts against adopting an interpretation that would give birth to absurdity, which should be given a wide meaning to include a result which is “*unworkable, illogical, impractical, inconvenient etc.*”
134. Counsel further asked the Court to note the transition in the language of section 123(2) to (5).

³⁶ [1984]2 SCR 145 at para 155

³⁷ Page 831

SUBMISSIONS IN REPLY

Claimant

135. Senior Counsel maintained his position that the 2009 Order addresses the criteria for nomination to the post, which he says is consistent against the backdrop of section 123. He disagreed with the Defendant's stance that the same purported to expressly bestow a power on the PolSC to make acting appointments without recourse to Parliament.
136. Senior Counsel contended also that the Interested Parties have overlooked the clear distinction in section 123 between power conferring provision and procedural provisions, leading to a misapprehension of the manner in which the PolSC's power is to be conducted. He reiterated that section 123(1)(a) is the power conferring provision, and submitted that the absence of an explicit reference to "an appointment to act" in subsections (2)-(5) is immaterial as the office of CoP is but one office, with appointment that can be made either on a permanent or temporary basis. To construe the subsections as not applying to both natures of appointment, he submitted, would be misconceived in circumstances where both an Ag. CoP and substantive CoP holder have the same powers. This distinction would also frustrate the Constitutional mandate of continuity in office, which he asserts could not have been intended by the draftsman.
137. Senior Counsel argued that section 123(1)(a) was in any event unhelpful to the construction of the subsections. As he reasoned, it cannot be that absence of a reference was a clear intention to exclude the same. To this end, he noted that the literal interpretation of the expression "appointment" does not itself distinguish between one which is temporary or permanent. He further submitted the said subsections also do not plainly seek to exclude an acting appointment. However, section 3(2) he argued, makes it pellucid that section 123(2) was intended to govern both natures of appointment.
138. Senior Counsel reiterated the need for legislative context and purposive interpretation in the Court's construction of the relevant sections. The purpose of the 2006 Amendment, as he put it, was to ensure there was some form of democratic scrutiny over the powers of the PolSC, which in effect replace Executive scrutiny with Legislative scrutiny. He argued that for the President to be charged with providing this oversight flies in the face of the legislative purpose which was intended to move away from that.

139. Senior Counsel submitted that the case of **BIR v Young**, cited by the PolSC, is inapplicable to the present facts. This, as the same concerned a statutory provision as opposed to a constitutional provision and involved a determination of whether a definition which was contained at the beginning of the subject Act and one within the Act. This is distinguishable from the instant action, he says, as the term “appointment” is not defined anywhere else in the Constitution. He further added that **Young** was a tax case and so principles applicable to tax legislation are different.
140. He further submitted that definitions within legislation must be applied when construing the same (section 12(1) and (2) of the Interpretation Act). He denied that section 3(2)(a) is a power conferring provision but instead posits that same is meant as an interpreter’s aid, to expand the construction given to an expression “*an appointment to any office*”.
141. As regards the purported absurdities which the Interested Parties assert would arise on Mr. Maharaj’s interpretation of subsections (2) to (5), Senior Counsel argued that Parliament must be presumed to have intended what the plain and ordinary words mean which is not to be overrun by hypothetical scenarios which are exaggerated. Any practical issues which might arise, he says, cannot satisfactorily justify a departure from such clear intentions.
142. The presumption above, he continued, must be weighed against the degree of unreasonable result. He cited the case of **R (on the application of Edison First Power Ltd.) v Central Valuation Officer**³⁸ in support. There is also a presumption that the Court generally avoids a construction that would produce irrational or illogical results.
143. Senior Counsel rationalised that any anxiety surrounding an indefinite vacancy in the post of CoP is exaggerated, as it is unlikely to arise in practice. Furthermore he states that temporary absence of the CoP due to illness or otherwise, does not translate in to the police service falling into dysfunction as there clearly defined ranks and responsibilities within the service that will no doubt continue in the CoP’s absence. Notwithstanding this, he stated that the procedure in section 123(2)-(5) can be expedited if necessary, but to obviate the need for parliamentary approval to the highest office in the police service would be unsettling given the track record for extended acting appointments and the fact that there is no express provision limiting the time for the same. The importance of parliamentary

³⁸ [2003] UKHL 2

approval is also bolstered by the fact that the functions and responsibilities of the Acting CoP and CoP are virtually the same.

144. Senior Counsel then reminded the Court of its limited role as interpreter of the Constitution³⁹, and again cautioned against the breach of separation of powers advocated above.

145. In respect of the 2009 Order, Senior Counsel reminded the Court that the same was not negated by Parliament, who should be presumed to be rational and informed by the Court. The Order should thus remain intact, with the likely effect that the criteria prescribed by the same for acting appointments, may assist in expediting Parliamentary approval.

Defendant

146. Senior Counsel for the Defendant disputed the applicability of **Integrity Commission v the AG**, asserting that the Defendant does not seek to make an amendment but instead seeks to have determined, matters consequential upon the reliefs sought by Mr. Maharaj.

147. Senior Counsel reiterated that the plain words of the 2009 Order empower the PolSC to make appointments without reference to the House of Representatives, and therefore cannot be allowed.

148. Senior Counsel also sought to highlight for the Court's attention that the decision in **Diane Hadeed v the AG**, was unanimously set aside by the Court of Appeal in **Civ. Appeal No. P310 of 2019 AG v Hadeed & Ors.**

149. Senior Counsel also denied the applicability of section 39 of the Interpretation Act, which expressly provides that provisions therein are subject to the Constitution, therefore he implored the Court to only seek guidance from section 3(2) of the Constitution and not the external provisions. This he submitted despite accepting that same does not affect the outcome, as an application of both provisions should ultimately lead the Court to the same findings.

³⁹ Magar and St. Mellons Rural District Council v Newport Corporation [1951] 2 ALL ER 839

150. Moving next to the applicability of the said section 3(2), Senior Counsel contended that there was no canon of construction available to the PolSC, to render otiose section 123(1)(a). Further, he stated that in any event redundancy of a section cannot be equated to a contrary intention, resulting in a departure from the logical applicability of section 3(2) to subsections 123(2)-(5). The purpose of section 3(2), he says, is to avoid the need for spelling out certain definitions throughout the Constitution, and the draftsman should be presumed to have understood this when drafting the relevant subsections. Therefore, an absence to a reference of “*acting appointment*” in the said subsections is perfectly reasonable.

151. Senior Counsel also disputed the applicability of **BIR v Young** to the instant facts, intimating that the same is distinguishable from the instant facts as the Court therein was tasked with determining ambiguous definitions, whereas section 3(2) is unambiguous. Senior Counsel contended that the cases cited by the PolSC in this regard take them no further and fails to provide any assistance.

152. It was submitted that the Constitution ought not to be read to indirectly permit what has been directly prohibited.

153. Senior Counsel attempted to alleviate the fears against delay, by asserting that Clause 4 of the 2021 Order could in fact be carried out in an expeditious manner and should be so done, where required, as parliament is democratically elected and is therefore answerable to the people mandating it to act responsibly. Even if the process did result in delay, he argued that the same is not sufficient to ignore clear constitutional direction.

154. Thus, it is Senior’s overarching submission that the constitutionally sound approach would be to give effect to the plain meaning of section 3(2) and to allow for a prescription of procedures to be used to circumvent inordinate delay.

First Interested Party

155. As to the applicability of section 3(2), Senior Counsel for the PolSC submitted that the use of the term “*including*” therein is crucial to the understanding of the provision. He lamented that the term is intended to mean that the PolSC is conferred with a power to appoint persons to act in the stead of the office holder where he/she is otherwise unable so to do. This he continued, did not mean that on every occasion on which the Constitution

used the term “*appointment*” was the same to be treated as meaning “*an appointment to act*”. In this regard, he referred the Court to the PolSC’s earlier discussion of the case of **IRC v Levy**⁴⁰.

156. Reference was made to the other provisions of section 3 of the Constitution (sections 3(1), 3(6) and 3(9)) to illustrate why an inclusive interpretation of subsection (2) of the same could not logically be construed to mean that all references to “*appointment*” meant “*appointment to act*”.

157. He described an appointment to act as a mere species or class of appointment.

158. He further submitted that nothing in the language of section 123(2)-(5) suggests that the procedure explained must be applied in relation to acting appointments. Indeed, he says that if the Constitution intended acting to be included under the umbrella of the provision, it expressly said so: section 123(8)(a), 123A(2), 125, 126(2) and 128 of the same.

159. Senior Counsel opined that the case of **Felix Phillip** cited above, addressed the Defendant’s submission with respect to indefinite periods of acting posts subverting the legislative intent. He referred to paragraphs 14-22 of this case, where the Privy Council deliberated on the issue of a temporary appointment being used as a device for what was in substance a permanent appointment. He argued that an application of section 3(2) to section 123 fails to further the constitutional intention of continuity in the role of CoP.

160. Senior Counsel also asserted that any reliance on the case of **Harridath Maharaj** is misconceived. He submitted that, applying the procedure in subsections (2)-(5) to the office holder as opposed to anyone appointed to act would require the Court reading words and re-writing the provisions, in circumstances where there is no express provision to this effect.

161. He, however, agreed with the Defendant’s submission that if the Court makes a finding that the aforesaid provisions apply to acting appointments, then it should proceed to decide on what is the proper procedure for the PolSC in a situation like the present.

162. Further to the above he contended that it is imperative that the substantive and acting offices be distinguished from one another, and referred the Court again to **Felix Phillip (at**

⁴⁰ [1982] STC 442 at para 6

paras 16-22), The reason proffered for this was that due to the nature of the acting appointment and the relative duration of same as compared with the CoP, the use of a different process is required. In other words, that while the roles and powers of Acting CoP and CoP are the same, one is intended to be temporary while the other is intended to be permanent.

163. Senior also denied that the case of **AG v Maharaj** assists Mr. Maharaj in advancing his arguments as to the use of context as an interpretative aid. He pointed out that the dicta of Lady Black cited at paragraph 30 is in fact persuasive of an argument that the Court should look at the contrast in language used in sections of legislation. He argued that where no procedure is specified for acting appointment by the Constitution, then we are to accept that there exists no procedure, but that one can be implemented by way of Regulations pursuant to section 129 of the same. He further argued that it cannot and ought not be presumed that the same procedure should apply to the acting and substantive posts of CoP, as a consequence of an absence of provisions. He noted that during the period 2006-2021, the procedure in (2)-(5) had not been complied with by the submission of a list of nominees to Parliament for affirmative resolution, nor did the House of Representative play any role in the appointment of any acting appointments that were made.

164. Senior Counsel also asserted that the PolSC did submit a list of nominees to the President but that this was not as a result of any obligation in law to do so, and it is for the Court to say what it is obligated to do.

165. He also rebutted the applicability of section 39(1) of the Interpretation Act and highlighted that it expressly professes to be “*subject to the Constitution*”.

166. He contended that Mr. Maharaj omitted the purpose of administrative efficiency and continuity of office of CoP in weighing the purposive interpretation, which he implored the Court to adopt. He stated that “utility of acting appointments” to fill the vacancy of CoP who has complete power to manage the police service is the purpose.

167. As regards the separation of powers argument advanced by Mr. Maharaj, Senior Counsel submitted that the PolSC has not usurped the function of the Legislature, as it has not exercised a legislative power, but rather one already given to it by statute.

168. Finally, as to the *locus standi* of the PolSC in the proceedings, Senior Counsel dismissed Mr. Maharaj's arguments by stating that the PolSC received its instructions before it lost its members and due to the nature of the proceedings there is no need for any further instructions. In any event, he submitted that the Court could allow the legal team representing the interests of the PolSC to appear *amicus curiae*.

Second Interested Party

169. In determining the meaning of section 3(2) of the Constitution, Counsel for Mr. Griffith advised the Court to take a purpose approach. He relied on the learning in **Bennion**⁴¹ at page 809 which states:

“Parliament is presumed to intend that in construing an Act, the Court by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with and the implications arising from those words, should aim to further every aspect of the legislative purpose ...”

170. Counsel joined with Senior Counsel for the PolSC in submitting that the legislative purpose of section 3(2) to give effect to administrative efficiency and expediency so that the crucial functions of the CoP are uninterrupted. He argued that insight into this purpose is captured in the very section, by the words “... *to perform the functions of that office at any time when the office is vacant or the holder thereof is unable ... to perform the functions of that office.*” To this end, Counsel submitted that a long-winded and time-consuming process to perfect an acting appointment would be the antithesis to administrative efficiency and continuity.

171. He also added that there was nothing in the wording of subsections (2)–(5) to suggest that Parliament contemplated they be applied to short term and temporary appointments.

172. He finally asked the Court to note that the PolSC obtained tacit approval from the Executive, in respect of Mr. Griffith's acting appointment, through the Ministry of National Security.

⁴¹ Also page 810

Issue for Determination by this Court

173. The issue to be determined by this Court is straightforward:

- (i) **Does the process set out in section 123(2)-(5) of the Constitution for the appointment of a Commissioner of Police apply to both acting and substantive appointments?**

174. This Court has been superlatively assisted by the written and oral submissions of all parties, in particular in relation to the applicable guidelines for statutory interpretation.

175. This Court's focus is accordingly on the legislation that is relied upon to appoint a person to act in the office of the CoP. As the Attorneys for the PolSC have pointed out to this Court, the offices of CoP and Deputy CoP are the only offices to which appointment is subject to approval of the House of Representatives. The drafters of the Constitution have singled out these offices for prior approval through a democratic and transparent process.

176. This Court has also received confirmation, without objection, from the Claimant's Attorneys that the person who acts in the office of the CoP has the same powers as the substantive office holder. The powers of the CoP were listed in submissions received on behalf of the PolSC.

Locus Standi of the PolSC

177. On that note, this Court heard debate on the right of the PolSC to be heard in these proceedings, subsequent to the much publicized resignation of its members, ending with the resignation of its Chairman, Ms. Bliss Seepersad.

178. Senior Counsel for the PolSc, in submissions in reply, painted a picture of a Commission that could nonetheless, albeit without Commissioners, assist this Court in the role of *amicus curiae* on the relevant law. Indeed, Senior Counsel for the Claimant had confirmed in earlier oral submissions that the issues which arose upon the Claimant's application were purely issues of law.

179. According to **Thomson Reuters Practical Law**, the phrase *amicus curiae* is Latin for "friend of the court." A non-party with an interest in the outcome of a pending lawsuit who argues or presents information in support of or against one of the parties to the lawsuit. In

many instances, the *amicus curiae* attempts to draw the court's attention to arguments or information that the parties may not have presented, such as the effects of a particular court ruling on the interests of certain third parties.

180. *Amici curiae* are not parties to the lawsuit, unless they formally intervene. As a result, an *amicus curiae* does not need to have standing to bring suit. Further, as a non-party, an *amicus curiae* normally does not have the rights that parties in a lawsuit have, such as the right to obtain discovery from other parties.

181. In this Court's opinion, since the resignation of all Commissioners of the PolSC, the role of Attorneys for the PolSC has been and continues to be limited to assisting this Court with what they consider to be submissions or information on the law relating to statutory interpretation. The Attorneys for the PolSc have suggested to this Court how it might apply that law to the facts of the instant case and have stated what in their submissions are the consequences of such application. No more and no less. Accordingly, this Court finds that in such exposition of the law, the Attorneys for the PolSc fall squarely within the definition of *amicus curiae* and have maintained the highest traditions of the Bar in seeking to assist the Court. This Court accordingly has taken in account the submissions received from the legal team for the PolSC in arriving at today's decision.

The Role of the Court in a Construction Claim

182. In **Civ. App. No. P 169 of 2014 The Attorney General of Trinidad v Tobago and Tobago House of Assembly**, in a judgment delivered on 21st October, 2019, Mendonça JA described the primary task of the Court in the interpretation of legislation as being to give effect to the intention of the legislature. The Learned Judge went further:

“As Lord Bingham said in R (Quintavalle) v. Secretary of State for Health [1999] 2 All ER 791, 805:

“The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also

*(under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because **undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute.** Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. **The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.***

*In **Smith v. Selby** [2017] CCJ 28 (AJ) 40 the Caribbean Court of Justice noted:*

*“[9] The principles which the judges must apply include respect for the language of Parliament, the context of the legislation, the primacy of the obligation to give effect to the intention of Parliament, **coupled with the restraint to avoid imposing changes to conform with the judge's view of what is just and expedient.** The courts must give effect to the intention of Parliament ...*

*[12] In **Rambarran v The Queen**, we noted that when a court is called on to interpret legislation it is not engaged in an academic exercise. Interpretation involves applying the legislation in an effective manner for the well-being of the community. Giving words their natural and ordinary meaning does not necessarily produce a different result than would be produced if a purposive approach was taken in the process of interpretation. Both principles assist the court in performing its primary task of giving effect to the intention of the legislature.*

*Parliament's intention is discerned by understanding the objective of the legislation; what is the change that it is aimed to produce; what is its purpose. This often requires consideration of the social and historical context and a review of the legislation as a whole. But its intentions are also discerned from the words it uses. The underlying principle is that the court has a different function from Parliament. The court is ensuring that the legislative intent is properly and effectively applied. **It is not correcting the legislative intent nor substituting its own views on what is a just and expedient application of the legislation**”.*

[Emphasis this Court's]

183. The Court as interpreter of sections 123(2)-(5) of the Constitution embarks upon its journey of statutory construction and asks itself, what is the appropriate starting point for this voyage of discovery?
184. There has been little, if any deviance, on the law presented by all parties concerning statutory interpretation and the Court has been treated to a plethora of principles gleaned from learned judges and from erudite authors. It is on the application of these principles that the contentions of the parties take different paths.
185. This Court finds a useful port of embarkation in the dicta of Mendonça JA in **The Attorney General v Devant Maharaj** (“the JLSC case”). There, the Learned Judge was considering the question of whether a retired judge may be appointed to the JLSC under section 110(3)(b) of the Constitution. At paragraph 21 of his judgment, Mendonça JA stated thusly:

*“21. The question therefore that arises on the submissions is whether a retired judge may be appointed to the JLSC under S 110(3)(b). This of course, raises a question on the proper interpretation of the Constitution. In **Bennion on Statutory Interpretation** (6th ed.) it is noted that the sole object of statutory interpretation is to arrive at the legislative intention. The legislative intention corresponds to the legal meaning of an enactment. In searching for the legal meaning, it was said (at p.504) that the Court:*

“Identifies the general guidelines to legislative intention (otherwise known as interpretative criteria) that are relevant in the instant case, of which there may be many. It determines by reference to these relevant criteria the specific interpretative factors that, on the wording of the enactment and the facts of the instant case, are decisive. It weighs the factors that tell for or against each of the opposing constructions put forward by the parties and then gives its decision.”

I believe this is of assistance with the interpretation of provisions of the Constitution. The object is to determine the intention of the framers of the Constitution and the approach of the Court in determining the legislative intention of an enactment is of relevance to the interpretation of provisions of the Constitution.”

186. Guided by this and the authorities to which the parties have referred, this Court must therefore ask itself, what was the legislative intent of the framers of sections 123(2)-(5) of the 2006 Constitution?

187. This Court accepts that its initial efforts at discerning the *prima facie* intention of these subsections must be to examine their literal meaning.

188. In **The Attorney General v. Devant Maharaj** (*supra*), Mendonça JA opined:

“22. In view of the submissions in this matter, it is necessary to consider the interpretive criteria informing the literal construction of an enactment, and the purposive construction. It is also necessary to consider whether the maxim generalibus specialia derogant (special provisions override general ones) is of relevance to the construction of S 110(3)(b).

23. As I mentioned, both parties relied on what they saw as the literal construction of S 110(3)(b). As well as they might because the prima face intention of a statute is that which corresponds to its literal meaning (see S 85 of Bennion on Statutory Interpretation (6th ed.)(at p 275). Considerable weight is therefore to be attached to the literal meaning. It is put this way at p 781 of Bennion:

“The literal meaning, at least of a modern Act, is to be treated as pre-eminent when considering the enactments contained in the Act. In general, the weight to be attached to the literal meaning is far greater than applies to any other interpretative criterion. The literal meaning may occasionally be overborne by other factors but they must be powerful indeed to achieve this.”

24. The literal meaning is that which corresponds to the grammatical meaning of the text of the enactment in its setting. That meaning may be straightforward or may be ambiguous or obscure. In relation to that the authors of Bennion (6th Ed.) noted (at pp 780-81):

“The term “literal meaning” corresponds to the grammatical meaning where this is straightforward. If, however, the grammatical meaning, when applied to the facts of the instant case, is ambiguous, then any of the possible grammatical meanings may be described as the literal meaning. If the grammatical meaning

*is semantically obscure, then the grammatical meaning likely to have been intended (or anyone of them in the case of ambiguity) is taken as the literal meaning. **The point here is that the literal meaning is one arrived at from the wording of the enactment alone, without consideration of other interpretative criterion.***”

[*Emphasis this Court’s*]

189. Applying these interpretative principles *seriatim* to sections 123(2)-(5) of the Constitution, this Court accepts that it ought not to ignore the umbrella provision of section 123(1)(a) in particular which states:

“123. (1) *The Police Service Commission shall have the **power to**—*

*(a) **appoint** persons to hold or act in the office of Commissioner and Deputy Commissioner of Police ...”*

190. Section 123(1) of the Constitution lists the powers of the PolSC. In so doing, this Court finds no grammatical obscurity. Section 123(1)(a) gives the PolSC the power to appoint persons to hold or act in the office of CoP and Deputy CoP.

191. Moving then to Section 123(2):

“(2) *The Police Service Commission shall nominate persons for appointment to the offices specified in subsection (1)(a) and section 22(1) of the Police Service Act in accordance with the criteria and procedure prescribed by Order of the President, subject to negative resolution of Parliament.*”

192. Here, the PolSC, exercising its power to appoint persons to hold or act in the office of CoP (and Deputy CoP), shall nominate persons for appointment to these two offices. The PolSC in carrying out this nomination process is constrained to do so:

- (i) In accordance with the criteria and procedure prescribed by Order of the President, subject to negative resolution of the Parliament.

193. For clarity, this Court here set outs section 22(1) of the Police Service Act.

“22. (1) The Commission may, having regard to the qualifications, experience, skills and merit of a person who is not in the Service, appoint on contract such a person as a police officer to the rank of Commissioner or Deputy Commissioner for any specified period in accordance with the procedure prescribed under section 123(2) to (5) of the Constitution.”

194. A conjoint reading of section 22(1) of the Police Service Act and section 123(2) in this Court’s interpretation, permits the PolSC, in the exercise of its power to appoint persons to hold or act in the office of CoP (and Deputy CoP), to appoint a person who is not in the Service on contract to the rank of Commissioner for any specified period, in accordance with the procedure under section 123(2) to (5) of the Constitution.

195. This is a straightforward and literal interpretation of subsection 123(2), in this Court’s opinion.

196. Again, in its role of interpreter and in a consequent effort to glean the legislative intent, this Court finds in section 123(2) no ambiguity.

197. Section 123(3) continues:

“(3) The Police Service Commission shall submit to the President a list of the names of the persons nominated for appointment to the offices of Commissioner or Deputy Commissioner of Police.”

198. This subsection mandates the PolSC, in its continuing exercise of the power to appoint persons to hold or act in the office of CoP (and Deputy CoP), to submit to the President a list of the names of persons nominated for such appointment.

199. Again, this Court finds in section 123(3) a pellucid elucidation of the continuing process of executing the PolSC’s power to appoint persons to hold or act in the office of CoP (and Deputy CoP).

200. Section 123(4) of the Constitution then provides that:

“(4) The President shall issue a Notification in respect of each person nominated under subsection (3) and the Notification shall be subject to affirmative resolution of the House of Representatives.”

201. This subsection mandates the President to issue a Notification in respect of each person nominated to hold or act in the office of CoP (and Deputy CoP). The Notification shall be subject to affirmative resolution of the House of Representatives. Here again, in this Court's opinion, the language of this subsection is absent any grammatical obfuscation.

202. Finally, the Court looks at the language of section 123(5):

“(5) The Police Service Commission shall appoint the Commissioner or Deputy Commissioner of Police only after the House of Representatives approves the Notification in respect of the relevant office.”

203. The PolSC is here mandated to appoint a person to hold or act in the office of CoP or Deputy CoP only after the House of Representatives approves the Notification in respect of the office of CoP or Deputy CoP.

204. This is this Court's literal interpretation of the meaning of sections 123(2) to (5) of the 2006 Constitution.

205. These are the natural and ordinary meaning of the words of section 123(1)(a) and sections 123(2)-(5) as they apply to the appointment of a person to hold or act in the office of CoP.

206. If the Court is wrong on its plain reading of these sections of the Constitution, it can then continue its interpretative quest by ferreting out the intent these of subsections, applying a purposive construction.

207. For this Court to glean the purpose of sections 123(2)-(5) of the 2006 Constitution, the Court needs to identify the mischief with which these subsections were intended to deal. In so doing, however, this Court cannot and does not ignore the plain meaning of the words used by the constitutional draftsman.

208. The mischief managed by section 123(2)-(5) is to ensure that the appointment of a person to hold the office of or act as CoP (and Deputy CoP) is by a process that is insulated from political interference, to hold at bay that far-fetched notion of the police service morphing into a private army of the government of the day funded by taxpayers, alluded to by Lord Diplock in **Thomas** (*supra*).

209. Senior Counsel for the Claimant and the Defendant have also both submitted to this Court that it may pray in aid section 3(2) of the Constitution, to determine the full purpose of section 123(2)-(5) of the Constitution.
210. When read together, there is no contradiction between section 3(2) of the Constitution and section 123(2)-(5) of the Constitution. When read together, this Court finds that they contain what Mendonça JA referred to in the **JLSC** case as “overlapping aims and applications”. This Court would go so far as to say that a conjoint reading of section 3(2) and section 123(2)-(5) makes for a seamless process for the appointment of a person to hold or to act in the office of CoP. Whether or not the framers’ intention was thereafter carried out is not of immediate concern to this court.
211. The PolSC and Mr. Griffith have submitted that section 3(2) ought not to be factored into this Court’s interpretation of sections 123(2)-(5) and do so in reliance on the **BIR v Young** case. To apply the learning of **Young** to the interpretation of sections 123(2) to (5) would be, in this Court’s opinion, to adopt an overly and unnecessarily strained interpretation of the plain and ordinary language of those subsections. Such a tortuous interpretation is unwarranted.
212. The normal construction of the phrase “*a reference to an appointment shall be construed as including a reference to the appointment of a person to act in or perform the functions of that office*” is that the word “*including*” in relation to the word “*appointment*” as it appears in section 3(2) of the Constitution is used for no other purpose than to provide an illustration of the things - “acting” or “performing” - in relation to “an appointment”.
213. In this Court’s opinion, such a finding does not result in an abnormal interpretation nor can the word “including” give a “deeming effect” to this section. It must be remembered that section 3(2) falls within the definition section of the 2006 Constitution. And that is its function - to define and to provide the constitutional framer with a mechanism that makes for fluid drafting and straightforward construction.
214. The fact that there is no express reference in section 123(2) to (5) to the power of the PolSC to appoint someone to act in the office of CoP does not limit this Court in its ability to interpret section 123(2)-(5) through the lens of section 3(2). The fact that there are some offices created by the Constitution where specific and detailed provision is made for the process of appointing a person to hold that office and also detailed provision made for the

process for appointing a person to act in that office, similarly does not limit this Court. There are indeed a number of offices created by the Constitution where no such express or distinguishing provision is made, yet section 3(2) may be prayed in aid to their interpretation to include reference to an appointment to act.

215. The fact that in the past, persons have been appointed to act in the office of Commissioner of Police without prior approval of the House of Representatives does not limit this Court in its interpretation that section 123 applies to both holding and acting in that office. The “de facto officer principle” espoused in **Balbosa** guides the Court in this regard, as does the doctrine of necessity. An officer de facto is “*one who has the reputation of being the officer he assumes to be and yet is not a good officer in point of law.*” (See **R v Bedford Level Corporation** referred to at paragraph 87 of **Balbosa**). **Balbosa** went on to state that “*Because the public relies upon the decisions and actions of such a person, the de facto officer doctrine operates to preserve such actions and decisions.*” See also paragraphs 87 to 95 of **Balbosa**.

216. The Court has also asked itself this question - if it were to construe sections 123(2)-(5) of the Constitution without reference to section 3(2) of the Constitution, would that not be tantamount to omitting words of which the framers of the 2006 Constitution must have been aware? Would that not be to descend into the legislative arena and supplant this Court’s opinion for the clear intention of the draftsmen?

217. Had the draftsman wished section 3(2) to be ignored when looking at section 123(2)-(5), would they not have expressly so stated in the 2006 Constitution? The Court reminds itself, as it is entitled so to do when it embarks upon a construction exercise, that at the time of the piloting of the 2006 Constitution Bill, multitudinous as well as lengthy acting appointments were prevalent in the police service, indeed throughout the public service. Is it not more likely then to have been at the forefront of the minds of the framers of the 2006 Constitution, that the appointment to the most senior offices in the police service, the CoP and Deputy CoP, should be subject to the democratic process of healthy yet measured debate by the House of Representatives?

218. Finally, to treat with an oral submission of Counsel for Mr. Griffith on section 3(2), regarding the express reference in section 123(5) to “**the** Commissioner of Police”, this Court asks itself does the use of this phrase exclude the acting CoP? Section 3(2)(b) of the

2006 Constitution clearly states that “*a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.*” The Court answers its question in the negative.

219. This Court has not seen it necessary in its role as interpreter to pray in aid the language of section 39(1) of the Interpretation Act. In so doing, the Court is satisfied that it has read the uncontroversial subsections in the context of the Constitution as a whole, and the Constitution in the historical context of the situation which led to its enactment as per the guidance in **The Attorney General v Tobago House of Assembly** (*supra*).

220. This Court also declines to accept the learning in **Chief Fire Officer and another v Felix-Phillip and others** as applicable to its role of interpreter of sections 123(2)-(5). On a reading of the plain and ordinary language of those subsections (2) – (5), there are no words that suggest that Parliament contemplated that they not be applied to short term and temporary appointments. While lengthy acting appointments in the police service (and indeed in the public service) may be cause for concern in some quarters, this issue does not fall for this Court’s consideration on this construction application.

221. It is this Court’s opinion in particular that the PolSC and Mr. Griffith are arguing for an unnatural construction of section 123(2) of the 2006 Constitution to be adopted to give effect to the purpose of section 123 of the 2006 Constitution.

222. This Court is bolstered in its interpretation of sections 123(3)-(5) through both the literal and purposive lenses by reference to the dicta of Rajkumar J. (as he then was) in **Harridath** from paragraphs 42 through to 74:

“42. The Commission’s power to appoint persons to hold or act in the office of Commissioner or Deputy Commissioner is therefore subject to:

a. nomination of persons for appointment in accordance with criteria and procedure prescribed by Order of the President;

b. such order is subject to negative resolution of Parliament; and

c. persons so nominated in accordance with the criteria and procedure prescribed by such order may be appointed by the Commission only after affirmative resolution by the House of Representatives of their notifications ...

59. ... [The Commission] retains the power to appoint persons to hold or act in the offices of Commissioner and Deputy Commissioner of Police. However that power to appoint is circumscribed by sections 123 (2) (3) (4) (5) ...

64. Even in the 2006 Constitution, the power of appointment under the Constitution is vested in the Commission by the route of nomination subject to affirmative resolution by the House of Representatives (effectively a veto).

65. There is no role under that Constitution for the Executive to select persons for appointment to the offices of Commissioner or Deputy Commissioner ...

74. The power to appoint to those offices, though now modified to a power to nominate, subject to confirmation by the House of Representatives, remains solely vested in the Police Service Commission, as enshrined in the Constitution.”

[Emphasis this Court’s]

223. The Court wishes also to treat with the references to Hansard which flavoured the submissions of the Claimant. The Court in so doing needs only to repeat the learned guidance of Lord Steyn in **R(Jackson) v. AG** (*supra*) who stated at paragraphs 97 to 98 B-F:

“XIV. The resort to Hansard

97. The Court of Appeal made extensive use of materials from Hansard. If it were necessary to do so, I would be inclined to hold that the has come to rule as Lord Hope of Craighead apparently did in R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd. [2001] 2 AC 349, that Pepper v Hart [1993] C 593 should be confined to the situation which was before the House in Pepper v Hart. That would leave unaffected the use of Hansard material to identify the mischief at which legislation was directed and its objective setting. But trying to discover the intentions of the Government from ministerial statements in Parliament is

constitutionally unacceptable. That was the submission made by Sir Sydney. If it were necessary to rule on the matter I would be inclined to accept the submission.

*98. I am content, however, in this case to judge the use made by the Court of Appeal of Hansard materials by the strict criteria of *Pepper v Hart: R (Jackson) v Attorney General* [2005] QB 579, paras 73-87. Sir Sydney subjected the reliance on references in Hansard to detailed criticism. Having taken into account the contrary submissions of the Attorney General my view is that the present case does not satisfy the requirements of *Pepper v Hart*. In the first place the legislation is not obscure or ambiguous. No member of the House has come to a different conclusion at this point. It follows that the principle in *Pepper v Hart* is inapplicable. In any event, the reference to Hansard contain no important indications on the very point in issue. Alternatively, if it is right to admit such material, I would hold that its weight is minimal and cannot possibly prevail over the words used by the parliamentary text.*

*“... my view is that the present case does not satisfy the requirements of *Pepper v Hart*. In the first place the legislation is not obscure or ambiguous ... Alternatively, if it is right to admit such material, I would hold that its weight is minimal and cannot possibly prevail over the words used by the parliamentary text.”*

224. The Court accordingly has paid heed to the references to Hansard in the same vein as it enjoys its favourite meal, with slight *Pepper*.

225. This Court accepts that it can, after completing its interpretive adventure, consider and grant such other relief as it deems necessary or expedient. Indeed, the Court has been expressly invited so to do by the relief sought by the Claimant, to wit “*All necessary and consequential orders and directions and such further and/or other relief as the Court might consider necessary or expedient or as the Court deems fit.*”

226. In this detour, the Court has been guided by **CV2016-01567 Shevanand Gopeesingh v. The Attorney General of Trinidad and Tobago and the Law Association of Trinidad and Tobago**, a decision of Aboud J (as he then was), dated 14th June 2018.

227. At paragraph 22 of his Judgment, the Learned Judge noted a concession of the Law Association as to the Claimant’s challenge to the interpretation of sections of the Legal Profession Act, “*in the absence of an alternative provision in the Act*”. The case involved

the special admission of an English Queen’s Counsel to practise in Trinidad and Tobago. Terms and conditions could be imposed on such special admission by the Minister. The Learned Judge opined “*However, this ministerial order could not alter the meanings of sections 12 and 56 [of the Legal Profession Act].*”

228. As to the validity of the 2009 and 2021 Order, the August 2021 Order must be read against the backdrop of the Constitution as per the “supreme law clause”.

229. It is trite law that delegated legislation may not exceed the parameters of the primary legislation under which it is made (see the recent decision of the Court of Appeal in *PS, Ministry of Social Development and Family Services -v Ruth Peters* by Mendonça JA.

230. In so doing, the Court finds both the 2009 Order and paragraph 4 of the 2021 Order primarily to be outwith the strictures of its interpretation of Section 123(2)-(5) of the Constitution and practically not otherwise able to be interpreted without this court taking a free-wheeling view of its role as interpreter.

231. This Court therefore finds both the 2009 Order to be void and unconstitutional and paragraph 4 of the 2021 Order to unnecessary in light of this Court’s interpretation of sections 123(2)-(5) of the Constitution.

Disposition and Order

232. This Court accordingly grants to the Claimant the following relief, taking into account the concessions and cooperation of Senior Counsel for Mr. Maharaj and Senior Counsel for the Attorney General:

- (i) It is declared that upon the true construction of section 123 of the Constitution of the Republic of Trinidad and Tobago, the procedure for the appointment of a person to the office of Commissioner of Police and Deputy Commissioner of Police set out in section 123(2) to (5) applies to the appointment of persons to act in the Office of Commissioner of Police or Deputy Commissioner of Police at any time when the office of Commissioner of Police or Deputy Commissioner of Police is vacant or the holder thereof is unable (whether by reason of absence or infirmity of mind or body or any other cause) to perform the functions of that office;

- (ii) It is declared that the appointment of Mr. Gary Griffith to act as Commissioner of Police from 18th August, 2021 is void and unconstitutional as being contrary to section 123 of the Constitution;
- (iii) It is declared that the Commissioner of Police and Deputy Commissioner of Police(Acting Appointments) (Selection Process) (No. 2) Order, 2009 is unconstitutional and void being contrary to or ultra vires the provisions of section 123 of the Constitution;
- (iv) It is declared that paragraph 4 of the Commissioner of Police and Deputy Commissioner of Police (Selection Process) Order, 2021 is superfluous and hereby struck out in light of the provisions of section 123(2)-(5) of the Constitution;
- (v) Costs of the Fixed Date Claim reserved.

233. As to the issue of costs on a construction summons, the Court has received no submissions in this regard from any of the parties. This Court invites the parties to attempt to agree costs, failing which it may submit Submissions on Costs via email to be sent to this Court on or before Friday October 29th 2021. The Court, nonetheless, in inviting these further submissions asks all Attorneys to pay heed to the approach taken by Boodoosingh J. (as he then was) in **CV2018-02605 The Law Association of Trinidad and Tobago v The Board of Inland Revenue**, where at paragraph 64 of his judgement, the Learned Judge noted:

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

234. **This Court concludes with the answer to its initial question posed through the lyrical genius that was Lord Austin. Who will guard the guards? We the People, through our elected representatives.**

235. And the Court so finds.

Nadia Kangaloo
Judge
14th October 2021