REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2012-00876

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

IN THE MATTER OF AN APPLICATION BY GLADYS GAFOOR MEMBER AND DEPUTY CHAIRMAN OF THE INTEGRITY COMMISSION OF TRINIDAD AND TOBAGO, A PERSON ALLEGING THAT THE PROVISIONS OF SECTION 4 OF THE SAID CONSTITUTION PROTECTING HER FUNDAMENTAL RIGHTS AND FREEDOMS ENSHRINED IN THE SAID CONSTITUTION AND IN PARTICUALR SECTION (b) HAVE AND ARE BEING AND ARE LIKELY TO BE CONTRAVENED IN RELATION TO HER FOR REDRESS IN ACCORDANCE WITH SECTION 14 OF THE CONSTITUTION

IN THE MATTER OF SECTION 136 OF THE CONSTITUTION AND IN PARTICUALR SECTION 136 (9) THEREOF WHEREBY THE PRESIDENT APPOINTED A TRIBUNAL IN THE PERSONS OF MR. MICHAEL DE LA BASTIDE Q.C., TC., (CHAIRMAN) HUMPRHEY STOLLMEYER J.A AND MAUREEN RAJNAUTH LEE J.

AND

IN THE MATTER OF THE INTEGRITY IN PUBLIC LIFE ACT, 2000 AS AMENDED BY THE INTEGRITY IN PUBLIC LIFE (AMENDMENT) ACT 2000

BETWEEN

GLADYS GAFOOR

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

AND

THE INTEGRITY COMMISSSION, ITS CHAIRMAN MR. KENNETH GORDON, MEMBERS MR. NEIL ROLINGSON, PROFESSOR ANNE MARIE BISSESSAR AND MR. SEUNARINE JOKHOO

AND

THE TRIBUNAL, MICHAEL DE LA BASTIDE Q.C., T.C. STOLLMEYER J.A AND RAJNAUTH-LEE J.

Defendants

Before the Honourable Mr. Justice Vasheist Kokaram

Appearances:

Mr. Mr. Clive Phelps and Mark Seepersad instructed by Ms. Nicole De Verteuil-Milne for the Claimant

Mr. Avory Sinanan S.C. and Mr. Shastri Prasad instructed by Ms. Carol Cuffy-Dowlat, Mr. Alvin Ramroop for the first Defendant

Mr. Neal Bisnath for the Tribunal, the second Defendant

Ms. Deborah Peake S.C. and Mr. R Nanga instructed Mrs. Marcelle Ferdinand of J.D. Sellier & Co. for the Integrity Commission, the Interested Party

JUDGMENT

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Introduction

1. The duty to act fairly in administrative decision making whether made by the President of the Republic of Trinidad and Tobago or a public officer is not a mathematical formula to be applied mechanistically nor at the other end of the continuum is it a duty to be neutralized to a meaningless phrase. The notion of "fair play" in action suggests that what amounts to a fair procedure will vary with each case. It depends upon the nature of the inquiry and the statutory backdrop. Substantial fairness is a fundamental principle of common law infused in the fundamental rights of "the protection of the law" and "due process" enshrined in the Constitution. What is fair is contextual and there is no magic in the concept so long as there is achieved a standard of behaviour that is fair and at minimum the participation of the person to be adversely affected by a decision in the decision making process. The level of participation will vary with the demands of the particular administrative procedure, however the requirement to participate is the common denominator in the requirement to act fairly. In the establishment of Tribunals to enquire into acts of misconduct by public officials, the decision to trigger this disciplinary mechanism in most cases must be carefully exercised and anxiously scrutinized by the Court to ensure there is "substantial fairness". The decision must bear the hallmarks of fairness and legality. In this constitutional motion both parties have advanced their respective views on the content of the right to be heard. This is the touchstone to determine the constitutionality of the establishment of a Tribunal to enquire into alleged acts of misconduct said to be committed by Mrs. Gladys Gafoor, Member and Deputy Chairman of the Integrity Commission ("the Commission").

2. His Excellency the President of the Republic of Trinidad and Tobago on 9th February 2012, acting pursuant to section 136 (9) of the Constitution, appointed a Tribunal to investigate complaints against Mrs. Gafoor, made by Kenneth Gordon, the Chairman and two other members of the Commission, that she engaged in conduct and behaviour which amounted to misconduct and/or misbehaviour in office.

3. The Tribunal consisted of a Chairman Mr. Michael de la Bastide former President of the Caribbean Court of Justice and two other members: Justice M. Rajnauth-Lee and Justice of Appeal Humphrey Stollmeyer, sitting judges of the High Court and Court of Appeal respectively. The said Tribunal was further mandated by His Excellency to report to him and advise on two matters. Firstly whether such facts as found by it amount to conduct and/or behaviour within the meaning of the Integrity in Public Life Act Chapter 22:01 ("the Act") and section 136 (7) of the Constitution. Secondly whether Mrs. Gafoor ought to be removed from the office of member and Deputy Chairman of the Integrity Commission pursuant to section 136 (10) of the Constitution and section 8(2) of the Act.

4. His Excellency also at the same time, acting pursuant to section 136 (11) of the Constitution, by letter dated 9th February 2012 suspended Mrs. Gafoor as member and Deputy Chairman of the Integrity Commission with full emoluments and salary until further notice. Although the suspension was not imposed by way of a penalty and not disciplinary in nature, the publicity associated with the said suspension and the display of dissatisfaction and acrimony played out in the full view of the public between herself and members of the Commission, culminating in this intervention by his Excellency, would naturally have affected Mrs. Gafoor's reputation as a member and Deputy Chairman of the Commission. The very nature of the inquiry is an investigation into her capacity to continue to hold office in a Commission which has been charged with the powerful constitutional role in preserving and promoting the integrity of public officials and institutions in our democracy. It is an investigative process whereby her integrity in the affairs of the Commission will be under close scrutiny by the Tribunal.

5. Mrs. Gafoor is now seeking to challenge in these constitutional proceedings the appointment of this Tribunal. She raises the question as to whether His Excellency acted in contravention of her fundamental rights enshrined in section 4 (b) of the Constitution of the right to the protection of the law and the right to natural justice. Although it is accepted as common ground in the proceedings that she will have the full right to be heard before the Tribunal, she contends that

at the stage at which the President is considering whether to appoint the Tribunal or not she should have been given a fair opportunity to be heard. In the classic **Rees v Crane**[1] scenario this case similarly calls into question the duty of the decision maker in affording the individual, who may be the subject of a disciplinary hearing, a right to be heard at the preliminary stage before triggering a full investigation into that official's conduct.

6. As a matter of principle there is no dispute between the parties of the applicability of the salutary constitutional principle confirmed by the Law Lords in **Rees v Crane** that at the preliminary stage in this investigation the common law and constitutional principle of fairness applies to Mrs. Gafoor. This principle applies as much to the former Justice Crane as it does to any individual[2]. The content of that right to a fair hearing is contextual. Fairness would require that the person who is adversely affected by the decision will have an opportunity to make representations before the decision is taken. This is so even for a preliminary decision depending on the factual matrix, the legal context and the nature of the investigation. However there is no immutable standard of the requirement of fairness. It is not iron cased nor is it inscribed in tablets of stone. The constitutional principle of fairness is flexible. Although the notion of fairness is a flexible concept, it cannot be stretched beyond its limits of elasticity and applied without regard to the appropriate context.

7. Although the central issue in this case was whether Mrs. Gafoor received a fair hearing at the preliminary stage of this investigation this is not to overshadow two other important issues: First whether the Court has jurisdiction to entertain this question at all in light of the constitutional ouster in the form of section 38 of the Constitution whereby the President is not answerable to any Court for the performance of the functions of his office or for any act done by him in the performance of those functions. Such constitutional ousters typically receive the

[1] [1994] 43 WIR 444

[2] "The consideration of these factors and their Lordships conclusion on them are not based specifically on the nature of the judicial function or the fact that the respondent is a judge. A similar approach would apply mutatis mutandis to the persons who could rely on the same considerations" per Lord Slynn

Endell Thomas v AG[3] treatment beginning with the premise that the Court will jealously guard its supervisory jurisdiction and will be slow to uphold constitutional ousters in the face of clear breaches of constitutional rights. Secondly the Defendant contended that the motion is an abuse of the process as she was not denied her access to the courts and therefore there can be no arguable claim for breach of her "protection of the law" right. This calls for a revisiting of the Law Lord's definition of the right to the protection for the law as espoused in **AG v Mc Cleod**[4]**,** a constitutional right often viewed through restrictive rather than a liberal constitutional interpretative lens.

8. In this case however Mrs. Gafoor was afforded a hearing by His Excellency before he made his decision to appoint the Tribunal. There can be no dispute as to this fact. He brought to her attention weeks before making his decision, the allegations which were being made against her by the Chairman and two other members of her Commission. His Excellency made the invitation to meet with the Claimant without any statutory mandate to do so and in light of a clear constitutional discretion set out in section 136 (8), to make a decision "on his own initiative" that the question of the removal of an officer from office ought to be investigated by the appointment of a Tribunal.

9. There has been no case cited to this Court that deals with the question of the requirement of fairness by the President himself when he exercises that disciplinary function set out in section 136 of the Constitution. His Excllency's constitutional discretion is however not absolute and limited to the extent, by the infusion by law, of the constitutional principle of natural justice and the requirement to act fairly which at the minimum requires a level of participation by the subject of the proposed inquiry before triggering the investigative machinery.

10. From a broad overview of the facts it cannot be successfully argued that His Excellency acted with stealth, or stole a march on Mrs. Gafoor, or did not involve

[3] [1981] 35WIR 375
[4] [1984] 1 All ER 694

her in his deliberations before appointing a Tribunal. Complaints about the behaviour of Mrs. Gafoor were made by the Chairman and the two other members in their letters written to His Excellency dated 23rd, 20th and 22nd January 2012 respectively. His Excellency did not provide Mrs. Gafoor with copies of the letters, neither did she make a request to view them before she responded. She accepts that His Excellency set out what he considered to be the "gist" of the complaints. She was in my view on the evidence satisfied that his Excellency's oral summary of the allegations against her was sufficient for her to pen her own response in her defence on 26th January 2012. An objective review and comparison of the letters of complaint and her letter in response supports the view that she was provided with enough information by His Excellency to be aware of the allegations of misconduct being made against her by her fellow members and Chairman of the Commission. This can be characterized as having had the "gist" of the allegations.

11. His Excellency waited for her response to these allegations before acting. In her written response she characterized the allegations as trite, meaningless and was dismissive of the complaints made by her colleagues of her alleged improper conduct. His Excellency took legal advice on the letters of complaint and Mrs. Gafoor's response. In what I consider to be a measured response, His Excellency then made the decision to engage the investigative process of the Tribunal.

12. Shorn of the constitutional niceties in this case, Mrs. Gafoor's real complaint is simply that although she received a hearing she deserved a better one… she deserved better than an oral summation, she deserved full disclosure of the letters. She deserved better than a gist, she deserved full particulars and specific evidence of the instances of her alleged acts of misconduct. In the absence of those ingredients the hearing she received she contends was unfair. Such a conclusion however ignores several realities: that there was a decision to be made by His Excellency to appoint a Tribunal to conduct an investigation as he himself had no investigative powers of his own; that she was given enough

information for herself to ponder, consider and make her response before His Excellency made the decision; that she utilized the occassion to indeed go further to suggest impliedly that the other members should resign; that there is no statutory requirement for a hearing at this stage; that she cannot be said to be caught by surprise by the remit of the Tribunal in the manner of a Justice Crane[5] or a Carmel Smith[6] or a Justice Barnwell[7] and that the letter response simply highlighted and underscored the severity of the impasse in the operations of the Commission. His Excellency prudently engaged in a filtering exercise before making his decision to investigate her alleged acts of misconduct. One perhaps can speculate that had her response been "all has been patched up" between herself and the other members or the tone was more conciliatory in nature, it may have led to a different response by the President.

13. However at this preliminary stage in so much as His Excellency was engaged in a filtering exercise to determine whether the complaints were "frivolous and vexatious", how is his Excellency to justify a decision to prefer one person's version over the other's as to the existence of acts of misconduct, or to request particulars and disclosure of evidence unless he himself assumes the role of investigator and adjudicator. Indeed a dangerous path to tread and the principle of fairness would no doubt demand equally that His Excellency invokes his power to appoint a neutral Tribunal clothed with the constitutional authority to independently investigate these facts and report and advise him on whether there are in fact any reasons to act in a manner adverse to Mrs. Gafoor's interest. It is there that Mrs. Gafoor would be entitled to full particulars and disclosure and certainly she can there make out a case that there is no case for her to answer on the nature of the complaints and quality of evidence. If accepted the investigative Tribunal will so advise His Excellency pursuant to the provisions of the Constitution and his mandate expressed in the Gazetted notice.

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[5] **Rees v Crane** [1994] 2 AC 173, PC
[6] **Carmel Smith v AG** [2009] UK PC 50
[7] **Barnwell v AG** [1993] 49 WIR 88

14. In my opinion therefore, there has been no breach of the Claimant's constitutional rights. I will dismiss this constitutional motion for the following reasons:

(a) The fair hearing issue: Although His Excellency must act fairly in the exercise of the power to appoint a Tribunal, fundamental fairness was observed in seeking Mrs. Gafoor's response to the allegations made by the Chairman and members of the Commission before making the decision to appoint the Tribunal.

(b) The abuse of process issue (i): The motion was not an abuse of process on the basis that her right to the protection of the law was fully engaged at the preliminary stage of His Excellency's deliberation and she was entitled to move the Court to articulate this right. The protection of the law encompasses more than simply the right to access the court but also the right to natural justice.

(c) The abuse of process issue (ii) section 38 is a limited and not absolute ouster: The Court having been satisfied that His Excellency did properly act within the constitutional ambit of section 136 in the appointment of the Tribunal, and did observe substantial fairness in giving the Claimant a hearing before exercising his constitutional power, the full extent of the section 38 ouster applies and the Court cannot investigate the manner in which His Excellency chose to afford Mrs. Gafoor a hearing given the wide discretion of reasonable choices available to the President. He could have given her the letters, but this does not dilute the quality of the hearing offered to her before the decision was made. In my opinion for this Court to investigate the quality of that preliminary hearing would lead dangerously close to substituting the views of this Court for that of His Excellency a matter which is certainly not contemplated by the framers of section 38 and which will be in breach of the separation of powers. The effect of section 38 means at the very least that deference should be

afforded to the President in the exercise of his discretion in the manner in which he afforded the right to be heard and at the very highest the Court's supervisory jurisdiction has been ousted having been satisfied that the President acted within the ambits of the law and not above it.

15. Mrs. Gafoor's has outlined in these proceedings her accomplishments in her career in the public service culminating with the receipt of a National award for service in the Public Service. In her affidavit she expresses her disappointment in His Excellency's actions. However, there is a bigger picture at the heart of this investigation which is the ethical conduct of officials of the Integrity Commission and proper management thereof. No pain must be spared to ensure that the public has the fullest confidence in the Commission and its members in the conduct of the affairs of the Commission. The work of the Commission impacts upon the lives of public officials and maintains the accountability of public officials to high standards of ethical conduct. The same demands the Commission makes of other officers in public life are the same they also make of themselves. The members of the Commission are persons appointed by His Excellency. While there is a duty to act fairly in relation to them there is a correlative duty to ensure that the integrity of the work of the Commission is not compromised and that disputes and complaints made intra-members, although the first of its kind in the history of the Commission, is resolved in a just, expeditious and transparent process.

The claim

16. By her re-amended claim form filed on 21st May 2012, Mrs. Gafoor, the Claimant, sought the following relief inter alia:

    i. A declaration that the President was under a duty to fully disclose to the Claimant the precise allegations and/or complaints made against her as contained in three letters all dated the 24th or 25th January, 2012 written to the President by the Chairman of the Integrity Commission, Mr. Kenneth Gordon, members of the Commission, Mr. Neil Rolingson

and Professor Anne Marie Bissessar, and his failure so to do deprived the Claimant of the opportunity to answer the said allegations and/or complaints in consequence whereof the President acted unreasonably and/or abused his power and/or breached the principles of fundamental justice and fairness and/or the rules of natural justice thereby rendering the appointment of the Tribunal under Section 136 (9) ultra vires the Constitution, illegal, null and void, and destitute of all legal effect.

ii. A declaration that the appointment of the Tribunal in the persons of Mr. Michael de la Bastide Q.C., T.C., Humphrey Stollmeyer J.A. and Maureen Rajnauth-Lee J. by the President's letter dated 9th February, 2012 mandating the Tribunal to report to and to advise the President on the facts found after due inquiry into the matters set out in the said letter in accordance with Section 136(9) and (10) of the Constitution and, having regard to the Integrity in Public Life Act Chapter 22:01 Section 8 (2) is unreasonable, and/or an abuse of power and/or ultra vires the Constitution and/or in breach of the protective provisions of the Constitution and in particular Section 4(b) thereof.

iii. A declaration that the suspension forthwith of the Claimant from performing the functions of her office as Member and Deputy Chairman of the Integrity Commission by the powers vested in the President under Section 136 (11) is unreasonable and/or an abuse of power and/or ultra vires the Constitution and/or in breach of the protective provisions of the Constitution and in particular Section 4(b) thereof.

iv. (a) A declaration that the President was not seised of any or any sufficient evidential material to base the exercise of the power vested in him by the Constitution and in particular Section 136 (9) thereof to appoint the Tribunal in consequence whereof he acted illegally, unreasonably and/or abused his power;

v. An order of *certiorari* do forthwith issue to quash the appointment of the said Tribunal made pursuant to Section 136 (9) of the Constitution by letter dated 9th February, 2012 under the hand of the President.

She also seeks an order prohibiting the Tribunal from embarking on its inquiry until after the full hearing of the Claimant's challenge to the decision of the Integrity Commission to force the recusal of the Claimant from participating in the investigation of Mr. John Jeremie S.C. pursuant to Section 33 of the Integrity in Public Life Act Chapter 22:01 or until further order.

17. The onus is on the Claimant to articulate and prove the alleged breach of her constitutional rights. Her grounds of the motion define the parameters of the dispute. They are relatively short and as it forms the backcloth for the Claimant's challenge the grounds are set out verbatim:

(a) The President without any or any proper evidential material (save as to the said three letters which he kept secret and the "say so" of the Chairman and two other Commissioners) appointed the said Tribunal under Section 136 (9) of the Constitution on the 6th February, 2012 which appointment was gazette on the 9th February, 2012, appointed the said Tribunal whimsically in consequence whereof the said appointment of the said Tribunal in the events which have happened was and is unreasonable, procedurally improper, irrational, illegal, null and void and of no legal effect.

(b) The President failed to sufficiently disclose the allegations made against the Claimant and/or to show to the Claimant the full contents of the said three letters dated 23rd, 22nd and 20th 24th or 25th January, 2012 written to him by the Chairman, Mr. Kenneth Gordon, Mr. Neil Rolingson and Professor Anne Marie Bissessar respectively and failure deprived the Claimant of the opportunity to answer the said allegations and failure so to do was and is in breach of the principles of fundamental justice and

fairness, and/or the rules of natural justice and/or is null and void and of no legal effect.

(c) The Claimant was suspended forthwith on 9th February, 2012 by the President under and by virtue of Section 136 (11) of the Constitution until further notice from performing the functions of her office as member and Deputy Chairman of the Integrity Commission without prejudice to her entitlement to salary and emoluments of office.

(d) An important issue in this case is the impeccable professional reputation and integrity of the Claimant spanning fifty one (51) years not only as a Barrister-at-Law and an Attorney-at-Law but as a person who has held high judicial office as magistrate, Judge of the Industrial Court, Chairman of several Commissions of Enquiry and Deputy Chairman of the Integrity Commission.

(e) In the circumstances of this case where deprivation of the Claimant's office as Deputy Chairman and member of the commission and the fact that her suspension would cast a slur on her professional reputation and integrity and do serious damage to both, the President was duty bound not only to inform the Claimant of sufficient particulars of the allegations made against her but also the precise contents of the said three letters and any complaints howsoever made; but also to give the said letters to the Claimant to read, listen and consider carefully her responses thereto and thereafter to take legal advice on the matter before acting under Section 136 (11) of the Constitution.

The procedural history

18. The motion was first case managed on 29th March 2012 when directions were given for the filing of affidavits and procedural applications. I had asked Counsel for the Tribunal that the hearings should be stayed while these proceedings are

ongoing and he obliged. The Tribunal took no part in these proceedings and stated that it will abide by the decision of this Court. At the first case management conference Counsel for the Tribunal did make a statement in the following terms: "The Tribunal has been mandated by His Excellency the President to "undertake this commission as a matter of utmost urgency and with all appropriate dispatch" in the circumstances even in light of the challenge before the court, it is the view of the Tribunal that provisions could be made for the Tribunal to proceed since the outcome of the Tribunal's exercise and its determination as part of its mandate may leave to the judicial proceedings being unnecessary a stay of the Tribunal's proceedings is not automatic and it could be in the applicant's interest for an expeditious determination of the issues that the Tribunal be allowed to proceed with its task and that is what the tribunal wish me to indicate to the Court."

19. The Integrity Commission and its members Kenneth Gordon, Anne Marie Bissessar and Neil Rolingson were initially named as Defendants. Relief was initially sought against that party[8]. Although the focus of the Claimant was on the decision and act of His Excellency she also described her version of a sequence of events at the Commission beginning with a request by Mr. John Jeremie a former Attorney General who was a subject of inquiry under the Act, that the Claimant and Mr. Seunarine Jokhoo be recused from hearing his matter. Thereafter followed a disagreement between the Claimant and the Chairman and other members of the Commission over this request which descended into hostilities leading to the intervention of the President.

20. The Defendant in this matter eventually disclosed the three letters of complaint which were penned by the Chairman, Professor Bissessar and Mr. Rolingson in its affidavit filed on 13th May 2012. The Integrity Commission also on that date disclosed the said letters. As a consequence an application to re-amend the claim was made. I disallowed some of the proposed amendments on the grounds that the Claimant had not satisfied me that these amendments could not have

[8] See relief (iv)(b) of the fixed date claim for m filed on 2nd March 2012

been made at a much earlier stage. It would have led to a new case and which would have further delayed the hearing of the motion. I have noted that despite my ruling there were aspects of the Claimant's written submission which traversed over the grounds which formed part of the rejected re amendment. I do not propose to entertain those submissions which go beyond the narrow confines of this dispute as articulated in the re-amended claim and the grounds of the re-amendment[9].

21. Another significant event was that at the day of the pre trial hearing the Claimant had filed a notice withdrawing its claims against the Integrity Commission. Having done that however she stopped short of acceding to the request to strike out those portions of her affidavit which dealt specifically with allegations against the Commission. Counsel for the Claimant contended that these matters were merely part of the history leading up to her suspension and not relevant to the issue for determination. Equally therefore it was important to weigh in the balance the Commission's version of the history which was set out in their affidavit filed in parallel judicial review proceedings[10] and reference was made to same the Martin Farrell affidavit. Insofar therefore that the context of the dispute arose out of matters in relation with the members of the Commission I gave the Commission permission to remain as an interested party in the proceedings. They were also permitted to make submissions at the hearing of the motion.

22. Most of the procedural applications were held in camera for reasons set out in an earlier judgment and eventually I ruled on 11th June 2012 that the confidentiality restriction which I had imposed be lifted.

23. Finally it is noted that the parties attended on 18th May 2012 a judicial settlement conference which was chaired by another Judge. The proceedings in that

[9] So for example the written submissions of the Claimant filed on 15th June 2012 at paragraph iv, v of page 9, the contention that the President should have informed the Claimant that the complaints may form the basis of complaints of inability to perform in her office (paragraph 26) or that His Excellency was considering making a decision to exercise his powers under section 136 (paragraph28, 31, 33)
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conference was private and confidential and I am not aware of the nature of the without prejudice discussions that ensued. Suffice it to say that even though this is a constitutional motion I commend the parties for having made that step towards finding an amicable resolution to this dispute.

24. Several orders for costs of the procedural applications were reserved and are dealt with at the end of this judgment. The evidence before this Court now consists of the affidavits of the Claimant[11], the affidavit of Mr. Reginald Armour for the Defendant and Mr. Martin Farrell for the Integrity Commission. The parties relied upon written and oral submissions.

The constitutional/statutory backdrop

25. The determination of this claim depends in a large degree on a full appreciation of the statutory and factual backdrop. The Integrity Commission is a creature of the Constitution and of the Act. In making recommendations for the Republican Constitution, the Wooding Commission recommended that an Integrity Commission be established to which members of Parliament will declare their assets shortly after taking their oaths of office and annually thereafter. The Integrity Commission established by the Constitution and the Act is much wider in scope.

26. By section 138 (2) of the Constitution the Commission is charged with the duty of–

> *(a)* receiving, from time to time, declarations in writing of the assets, liabilities and income of Senators, Permanent Secretaries, Chief Technical Officers, members of the Tobago House of Assembly, Members of Municipalities, Members of Local Government Authorities and members of the Boards of all Statutory Bodies, State Enterprises and the holders of such other offices as may be prescribed;

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(b) the supervision of all matters connected therewith as may be prescribed;

(c) the supervision and monitoring of standards of ethical conduct prescribed by Parliament to be observed by the holders of offices referred to in paragraph *(a),* as well as members of the Diplomatic Service, Advisers to the Government and any person appointed by a Service Commission or the Statutory Authorities' Service Commission;

(d) the monitoring and investigating of conduct, practices and procedures which are dishonest or corrupt.

27. To give effect to this constitutional mandate, by section 139 of the Constitution Parliament was empowered to enact legislation relating to the Commission. The importance of enacting legislation and indeed regulations to deal with procedures to deal with these matters was noted by Justice Narine (as he then was) in **Sharma v The Integrity Commission**[12].

> "Persons in public life have a right to know the manner in which enquires are to be carried out and the standard and criteria for the initiation of such inquiries, and the manner in which information received from the public would be assessed and verified. The Act prescribes very serious penalties for non-compliance. It is therefore of vital importance that the practice and procedure of the Commission in relation to these matters should be standard, uniform and predictable and should be known to persons in public life and to the public. Those who may be subject to criminal liability should have the assurance that their affairs will be handled in accordance with established and predictable practices and procedure. "

28. The Act[13] was promulgated in 2000 as its long title suggests to:

[12] C.A. CIV 60/2005

[13] The Integrity in Public Life Act Chap 22:01

“make new provisions for the prevention of corruption of persons in public life by providing for public disclosure; to regulate the conduct of persons exercising public functions; to preserve and promote the integrity of public officials and institutions.” The Act established a Commission which consists of a Chairman, Deputy Chairman and three other members “who shall be persons of integrity and high standing”. It is composed of an attorney-at-law of at least ten years experience, a chartered or certified accountant and the Chairman and other members of the Commission appointed by the President after consultation with the Prime Minister and the Leader of the Opposition (see Section 4(1)). Its board is a small one and three members of the Commission of whom one shall be the Chairman or Deputy Chairman, shall constitute a quorum (see Section 4(6)).

29. The Commission is an independent body. In the exercise of its powers and performance of its functions under this Act, the Commission—

“(a) shall not be subject to the direction or control of any other person or authority” (see Section 5(2)(a)).

Additionally the Commission is charged with the authority to—

(a) carry out those functions and exercise the powers specified in this Act;

(b) receive, examine and retain all declarations filed with it under this Act;

(c) make such enquiries as it considers necessary in order to verify or determine the accuracy of a declaration filed under this Act;

(d) compile and maintain a Register of Interests;

(e) receive and investigate complaints regarding any alleged breaches of this Act or the commission or any suspected offence under the Prevention of Corruption Act;

(f) investigate the conduct of any person falling under the purview of the Commission which, in the opinion of the Commission, may be considered dishonest or conducive to corruption;

(g) examine the practices and procedures of public bodies, in order to facilitate the discovery of corrupt practices;

(h) instruct, advise and assist the heads of public bodies of changes in practices or procedures which may be necessary to reduce the occurrence of corrupt practices;

(i) carry out programs of public education intended to foster an understanding of standard of integrity; and

(j) perform such other functions and exercise such powers as are required by this Act. (see Section 5(1)(a) of the Act).

30. It is important in analysing the actions of the President in this case to appreciate that the members of the Commission are themselves persons in public life and are indeed subject to the codes of conduct set out by the very Act itself. Section 28 of the Act provides for instance that **"**matters of a confidential nature in the possession of persons to whom this Part applies, shall be kept confidential unless the performance of duty or the needs of justice strictly require otherwise, and shall remain confidential even after separation from service".

31. A member of the Commission can be removed from office by the President. Section 8(2) of the Act specifically provides as follows:

> "(2) A member of the Commission may be removed from office by the President acting in his discretion for inability to discharge the functions of his office whether arising from infirmity of mind or body or any other cause, or for misbehaviour."

32. The process which is engaged by President pursuant to section 8 (2) must be read together with the Constitution. The powers to remove the Claimant from office is set out in the Constitution and envisages a two stage approach. First a decision is made by the President that the question of the member's removal ought to be investigated and second a Tribunal is established to investigate and report to the President on the question of the officer's removal. Section 136 (8),

(9) and (10) of the Constitution set out the disciplinary scheme and are set out hereunder:

> "136 (8) A decision that the question of removing the officer from office ought to be investigated may be made at any time- *(b)* in any other case, by the President either on his own initiative or upon the representation of the Prime Minister.
>
> (9) Where a decision is made under subsection (8) that the question of removing the officer from office ought to be investigated, then– *(a)* the President shall appoint a Tribunal which shall consist of a Chairman and not less than two other members all of whom shall be selected by the President acting in accordance with the advice of the Judicial and Legal Service Commission from among persons who hold or have held office as a Judge of a court having unlimited jurisdiction in civil and criminal matters in some part-of the Commonwealth or a court having jurisdiction in appeals from any such court, and *(b)* the Tribunal shall inquire into the matter and report on the facts to the President and advise the President whether the officer ought to be removed from office on any of the grounds specified in subsection (7).
>
> (10) Where the question of removing the officer from office is referred to a Tribunal appointed under subsection (9) and the Tribunal advises the President that the officer ought to be removed from office, the President shall, by writing signed by him, remove the officer from office."

33. Section 136 (11) of the Constitution clearly contemplates that any suspension of the officer is a non disciplinary suspension. It provides:

> "Where the question of removing the officer from office has been referred to a Tribunal under subsection (9) the President, after consultation with the Judicial and Legal Service Commission, may suspend the officer from

performing the functions of his office and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the Tribunal advises the President that the officer ought not to be removed from office."

No decision has been made with regard to the removal of the officer from office. This suspension is a holding suspension.

34. It is important to make the point here that these statutory constitutional provisions invest the power of the removal of the member of the Commission in the President. There is no intermediary nor functionary that is charged with a duty to refer the question of removal to the President. In this case there is no challenge to any decision to refer a complaint to the President. The challenge is to the act of the President himself. Such a challenge has never been the subject of any decided case or none has been cited to this Court. The difference is made clear when one examines the provisions for the removal of a judge as set out in section 137:

> **"137.** (1) A Judge may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.
>
> (2) A Judge shall be removed from office by the President where the question of removal of that Judge has been referred by the President to the Judicial Committee and the Judicial Committee has advised the President that the Judge ought to be removed from office for such inability or for misbehaviour.
>
> (3) Where the Prime Minister, in the case of the Chief Justice, or the Judicial and Legal Service Commission, in the case of a Judge other than the Chief Justice, represents to the President that the question of removing a Judge under this section ought to be investigated, then-
>
> *(a)* the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the

President acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Prime Minister after consultation with the Judicial and Legal Service Commission in the case of a Judge, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether he should refer the question of removal of that Judge from office to the Judicial Committee; and

(c) where the tribunal so recommends, the President shall refer-the question accordingly."

35. The authorities of **Rees**[14], **Charles**[15]**, Mc Nicholls**[16], **Barnwell**[17] all deal with that preliminary stage of an intermediary body the JLSC referring a question for the removal of a Judge to the President. Implicitly it seems that the cases acknowledge that when the matter reaches to the Head of State he is constrained to act by appointing the Tribunal. No question arose in those cases that there is another right to be heard by the President before he refers the question to the Tribunal. It may be because of the nature of the challenge against the decisions of other bodies to refer the question to the President it was not necessary to examine the duty and obligations of the President himself in making his decisions. A proper reading of the constitutional text however demonstrates that once a decision is made by the President that the question of the removal of the officer ought to be investigated then the President must act. He must appoint a Tribunal. The question here really is not a hearing before

[14] **Rees v Crane** [1994] 2 AC 173, PC
[15] **Herbert Charles v AG** CA76/99; PC26/2001
[16] **Sherman Mc Nicholls v Judicial and Legal Service** Commission [2010] UKPC6
[17] **Barnwell v AG** [1993] 49 WIR 88

appointing the Tribunal but in reality a hearing before making a decision that the question of removing the officer from office ought to be investigated.

The factual backdrop

36. The Claimant has set out in her evidence a distinguished career in the public service. A barrister of 51 years standing, she held several key positions in the public service over the years. Those positions include Senior Magistrate, Deputy Solicitor General, Director of Public Prosecutions, Vice President of the Industrial Court, Chairman of Commissions of Enquiry. For her record of service she was awarded a national award in the public service a Medal of Merit Gold in 2011. She was recently appointed in 2009 a member of the Integrity Commission and from 2010 has been its Deputy Chairman.

37. However from November 2011 a series of internal disputes over the issue of whether the Deputy Chairman and another member Mr. Jokhoo should be recused from hearing a complaint of a breach of the Act allegedly committed by Mr. John Jeremie quickly descended into a public standoff between the Claimant, the Chairman and other members of the Commission:

    a. The Commission proposed to discuss the request of Mr Jeremie at a meeting scheduled for 19th December 2011. The Claimant was asked formally by the Commission not to attend that meeting. The Commission expressed the view that it was concerned about the perception and expectation from the wider society in the handling of that request. A vote was taken as to whether the Claimant should withdraw from deliberating on this issue so that the Commission can freely discuss the request. In its letter dated 13th December 2011 the Chairman stated that the Claimant remained adamantly opposed to withdrawing “but the work of the Integrity Commission must go on”.

b. The Claimant in her letter dated 15th December 2011 set out her reasons why the request by Mr. Jeremie for her recusal was in her view not good enough reason for her not to sit on his matter.

c. In a surprising turn of events in an article appearing in the Newsday newspaper dated 20th December 2011 entitled “Bitter row” it was reported that there was a bitter row between the Chairman and the Claimant and several matters which were the subject of the Commission’s private deliberations were made public. Subsequently the Commission reported this to the police and officers from the Anti Corruption Investigations Bureau wrote the Claimant to seek the Claimant’s assistance in the investigation into this leak of confidential information in the public domain.

d. The imbroglio became the subject of public commentary. In a letter to the editor appearing in the Daily Express on 20th January 2012 the author commented that the refusal of the Claimant to recuse herself raised questions about her suitability as a Commission member. At the same time the author also commented that the Gordon-Gafoor clash makes “very interesting and exciting reading such will not assist the IC in fulfilling its mandate and will further damage the Commission’s image. After several IC debacles Gordon is walking on thin ice.”

e. In a subsequent meeting of the Commission the decision was taken by a majority vote that the Claimant be recused from the Jeremie complaint. A letter to that effect was dispatched to Mr. Jeremie dated 19th December 2011.

f. By letter dated 31st December 2011 the Claimant called upon the Chairman to vacate the resolution that she be recused from hearing the Jeremie complaint. She threatened to take legal action if her request was not complied with.

g. In what she described as an impasse between the Chairman of the Commission and herself in December 2011 she sought His Excellency's intervention by letter dated 31st Deember 2011. Curiously she supplied to the President a private hand written note written by Mr. Rolingson which was left behind after the Commisison's meeting which she claims supports her view that external legal advice should be obtained on the issue of the recusal. She called upon the President "to encourage the Chairman to withdraw the resolution" in advance of their subsequent meeting. Indeed it was quite improper to make such a request having regard to the independent functions discharged by the Commission. There is no evidence to suggest that the Claimant disclosed to any of the other members of the Commission that she sought the President's intervention in this manner. It was however patently clear from this letter that the impasse created by the recusal decision between the Chairman and the Claimant had the potential to affect the further co-operation of the Claimant with the Chairman of the Commission. The Claimant stated in her letter to the President: "It is my desire to co-operate fully with the Chairman but I cannot agree to go along with something I know to be wrong and which external legal advice has confirmed to be the case".

h. The Chairman responded to the Claimant's threat of legal action by letter dated 5th January 2012 in which he pointed out that the decision taken by the Commission was after the matter was fully discussed and after taking into account all the views of the members including the Claimant. He therefore could not accede to the request. Importantly he pointed out "the Commission's business must be conducted in such a manner that a decision once reached by the Commission after taking into account the views of all the members of the Commission is respected by all members even though a member may hold a different view."

i. The Claimant issued a pre action protocol letter on 13th January 2012 calling upon the Commission to vacate its decision on the said recusal failing which she will take legal action.

38. The die was cast. There was no backing down. The resolution was passed by the Commission and the Claimant's request to have the said resolution vacated was denied. The impasse led to the Chairman and two members of the Commission sending letters of complaint to the President about the misbehaviour and misconduct of the Claimant as member and Deputy Chairman. As much revolves around the President's discussion of these letters with the Claimant the contents of these letters are set out verbatim:

39. The Chairman's letter of complaint dated 23rd January 2012 states:

> *Mr. President:*
>
> *It is necessary that I advise you of an unfortunate situation which has arisen within the Commission and to make my resignation available at your convenience in view of the pending Court Action.*
>
> *This is as a result of an unwillingness of the Deputy Chairman to accept standards of behavior which the Commission is convinced are necessary if it is to build confidence and achieve credibility in the public eye.*
> *In one instance the Deputy Chairman requested that a vote be taken on a particular matter. When this was done with her full participation in debate and the subsequent voting which went against her she refused to abide by the decision.*
>
> *On another occasion when Commissioners were requested by the Chair to return copies of a letter circulated for information she responded with the unmistakable challenge "you want it come and take it nah". There was also a muttering about violence.*

She has made statements to the Commission and later denied having made them. This is substantiated by approved minutes of the Commission.

There has been a pattern of leaks to the media which could only have emanated from one or other of the Commissioners. The Deputy Chairman has been involved on each occasion. In one instance she was the only person other than the Registrar and the Chairman to have had knowledge that a certain attorney had been invited to a very sensitive meeting of the Commission. On reflection the Chairman cancelled the invitation to the attorney. The following day another "leaked" story appeared in the media announcing that the attorney would be present at the meeting of the Commission with relevant details.

There are other matters with which I will not burden this letter, but the Commission is being daily brought into public odium by ongoing leakages of its affairs to the media. In fact it is no longer possible for the Commission to function on the basis of confidentiality without attracting public ridicule.

I seek your urgent intervention Mr. President so that the Commission can be seen to act with Integrity.

Yours faithfully
Kenneth Gordon
Chairman
Integrity Commission

(b) The letter of complaint of member Neil Rollingson dated 22nd January 2012:

Sir,
I am constrained to pen this personal letter to you in your capacity as President of the Republic of Trinidad and Tobago in order to place on

record my discomfort with the current state of affairs at the Integrity Commission of which I am honoured to be a member.

As you are aware, the business of the Commission is being continuously being compromised by the release of documentation, and Board meeting information to members of the Media.
Although there is no conclusive evidence as to the source of the 'leaks', it is indicative that their sudden appearance in the national media is tied to a breakdown in the relationship between our Deputy Chairman, Mrs. Gladys Gafoor and our Chairman.

The nature of the leaks appear to be an attempt to bring into the public domain a matter that in my view should be handled and settled within the confines of the Boardroom of the Commission.

When linked to the very boorish behavior of Mrs. Gafoor at meetings of the Commission of late, I am of the personal view that the required teamwork of Members of the Commission required by the Integrity in Public Life Act 2000, no longer exists.

My letter to you, therefore Mr. President, is to seek you direct intervention in a matter which if allowed to persist will certainly depreciate the good work and trust that the Commission has been able to garner since its inception.
I am available to discuss this matter with you, if you so require and at your convenience.

Yours faithfully,
Neil Rolingson

(c) The letter of complaint of member Professor Ann Marie Bissessar dated 20th January 2012:

Dear Sir

Subject: Challenges Facing the Integrity Commission

It is with much distress that after my University trip to Jamaica. I have returned to find that the Deputy Chairperson of the Integrity Commission has now issued a pre-action protocol letter to the Commission. I, Sir, find this disturbing in the least that a Member of the Commission could file an action against that very Commission on which they sit.

For some time, Sir, I have had a number of concerns with respect to the management of the Commission and its affairs even during the tenure of Professor St. Cyr as the Chair of the Commission. For instance, immediately after we had been sworn in the Commission, as a Commissioner I found myself in a most uncomfortable position with Mrs. Gaffoor constantly issuing insults to me as Commissioner and insinuating in a most vicious manner that I was in some way connected to the People's National Movement, at that time the ruling party. I was, however, not the only person singled out for these insulting remarks. Mrs. Gaffoor, at all times, also dominated the discussions, even engaging in disruptions of the remarks of the chair. She also constantly over-rode members of the Commission and indeed dominated many of the matters of the Commission. In many instances, when decisions were taken by the Commission she later changed many of the Commission's decisions by redrafting the letters, suggesting the the letters were not clear enough. This I understand this was the case with the Tesheria matter. She constantly alluded to the fact that you had appointed her as a member of the Commission because she was a luminary in law matters and we were described to as 'non-lawyers.'

There were also incidents in which Mrs. Gaffoor literally accused the former director of investigations of being unable to do his work and her lack of confidence in him. Mr. Virgil retired from this position, because he

too seemed to be very uncomfortable with the direction in which the Commission was heading. (It should be noted that he was involved in investigations involving Mrs. Gaffoor). In another case in interviewing the candidates of the position of Director of Investigations, when the positions were prioritized, Mrs. Gaffoor came to us and insisted that the second candidate should be given the position since she 'knew' him to be very good. I stoutly resisted this recommendation and then she asked the Commission to re-interview candidates which again I stoutly resisted since to me this amounted to a contamination of the process. In another case, with respect to the Jack Warner matter, Mrs. Gaffoor told the chairman to go the newspaper to air our position. Again, I was appalled and resisted this recommendation. I however had to go out of the country and upon my return found that the matter had been aired.

When the new party assumed power, Mrs. Gaffoor commenced by making unkind remarks relating to the Attorney General and Devant Maharaj. She made comments that she could not talk openly since I was related to Mrs. Persad Bissessar and these innuendoes have continued to this day.

In the matter involving John Jeremy, I stated at the Commission meeting that we had to understand the position of the Commission as a whole. Even if the perception of bias is not warranted on the part of Mr. Jeremy the mere fact that he has expressed a lack of faith in these two members of the Commission making a judgement without having a bias, this perception will in fact taint the future decisions made by the Commission in this matter. It would also have served to erode public confidence in the Commission. The current Chairman of the Commission, Mr. Ken Gordon, has at all times involved all members in consultation and has at all times conducted himself with integrity in observing protocols. In this meeting he asked Mrs. Gaffoor and Mr. Jokhoo to recuse themselves given the perception of bias on the part of the person being investigated. Mr. Jokoo acceded and Justice Gafoor suggested that 'no one could ask her to

recuse herself.' The Chair then asked that we hold a special meeting to consider the merits of Mr .Jeremy's request. Mrs. Gaffoor insisted that she be given this in writing and my expectation was that upon given such a letter she would recuse herself from that meeting.

On the day the 'special meeting' was convened to discuss Mr. Jeremy's matter, Mrs. Gaffoor showed up, Mr. Jokoor did not. She had a conversation with the Chairman in his office and then came to the conference room and insisted that she sit in on the meeting although she would not comment. At that point the quorum consisting of myself, Mr. Rolingston and Mr. Gordon and took the decision that there was some merit in Mr. Jeremy's request and that a meeting should be held in which a resolution would be taken by the Commission as to whether the members should be asked to recuse themselves.

This meeting was held and a resolution to that effect was subsequently taken. Matters have continued to deteriorate so badly that in our last meeting Mrs. Gaffoor refused to return confidential letters to the Registrar and asked the Chair "if he wanted it to come for and if he wanted to engage in violence." Added to this have been the current attacks and commentaries by the Media about the Commission on meetings held by the Commission which was only known to members of the Commission. In one case confidential information which was known to only the Chair, The Deputy Chair and the Registrar was leaked ad verbatim to the media. The very confidentiality of the Commission has thus been severely eroded.

Sir, in my opinion, there is no way in which the Commission can proceed with the business of the Commission if Mrs. Gaffoor continues to serve as a sitting member of the Commission. The Commission has now been reduced to a body which has been ridiculed throughout the country and the region and indeed this has severely impacted on my professional as well as my personal life. In the circumstances, unless some action is taken

to address the problems I have outlined I have no choice but to resign from the Commission in the near future since it cannot function effectively as it should.

Respectfully, Sir,
Ann Marie Bissessar (Professor, Public Management
Head, Department of Behavioural Sciences
UWI, St. Augustine Campus.

40. Subsequent to receiving these complaints, the Claimant was summoned to a meeting with the President on 26th January 2012. There is no evidence in these proceedings from His Excellency as to what took place at that meeting. However from the Claimant's evidence I find as a fact that at that meeting His Excellency the President drew to the Claimant's attention his concern over the way in which the business of the Commission was being conducted. In that meeting the President orally communicated to the Claimant specific concerns brought to his attention by other members of the Commission over the operation and management of the work of the Commission. The Claimant did not request copies of the letters but took notes of His Excellency's concerns with a promise to respond to same in writing.

41. On 30th January 2012 the Claimant attended President House with her response in writing dated 30th January 2012 which she read out to the President having given him a copy and he followed what she had read out. His Excellency advised that he would be communicating further with her. The Claimant's letter sets out a comprehensive response providing her version of events and in some cases asking to be provided additional support for the allegations. The Claimant's response also makes it clear what was communicated to her by His Excellency and I have highlighted those portions. Her response is set out verbatim as follows:

30th January 2012

Your Excellency,

I refer to our meeting of 26th January 2012 at which ***you kindly brought to my attention some concerns expressed by my fellow Commissioners at the Integrity Commission. You also kindly agreed to allow me a brief opportunity for reflection****. Having done so, I now have the following comments to make:*

Your Excellency drew to my attention your concern about the way in which the business of the Commission is being conducted *and I can only share in those concerns. The last two months have left me both perplexed and troubled about the apparent lack of transparency and scrutiny being brought before the Commission. As one might anticipate, it is expected that Commissioners would be circumspect in the way that they discharge their duties give that oftentimes various distinguished senior counsel are involved in making representations to the commission on behalf of their respective clients. It is questionable whether the events of the last few weeks as they have unfolded in relation to my present concerns about the conduct of the commission's business have done much to inspire confidence in this body as I have been constrained after much soul searching and at no small cost to my health, general well-being and pocket to do what is necessary to preserve my reputation which, I am given to understand, is what led Your Excellency to appoint me to the present and past Commissions.*

I now deal with the various matters which were the subject of our specific discussion:

<u>Public perception</u>

Your Excellency referred specifically to the "disquiet" and "ridicule" which have been generated in the media about the commission. *It seems to me that much of what has been said has been the product of*

previous commissions foundering due to various issues raised which have not been due to any fault of mine in so far as I am in any way associated as a member of those previous commissions and which have been well documented in the press. As far as the current situation is concerned regarding the preservation of my legal rights, I can assure Your Excellency that such steps where not taken lightly and indeed were the subject of earlier formal notification by me to both the Chairman and Your Excellency through separate correspondence.

Impasse

I acknowledge that there is an "impasse" between the Chairman and myself which the Chairman has publicly conceded is the case. However the instant matter of my recusal from deliberating upon an investigation into former Attorney General Jeremie, is a legal issue and, given that the Chairman and others members of the commission are not legally trained nor qualified, so far as I am aware, I am not sure that this is a matter upon which the Chair and other commissioners can legitimately form a view unless appropriately guided by proper legal advice. Indeed, I would go so far as to suggest that it would be unwise of them to so do. This is perhaps best demonstrated by the fact that, even up to the present time, no or no proper discussions have taken place upon the mere request and purported reasons so advanced from the former Attorney General that I should not deliberate on his matter nor whether it was appropriate for the Commission to vote on the issue. My contention that proper procedures are not being followed by the Chairman and the other two commissioners rests on the legal proposition of the fair minded and informed observer which is the standard established in law and which I have previously brought to the attention of the Chairman by way of private correspondence which he saw fit, against my express wishes, and which correspondence was also marked "private and confidential" to lay before the commission as a whole. Having done so, it can neither be said that the other

commissioners are unaware of the legal test nor have they been denied an opportunity to solicit and obtain independent legal advice on this issue.

Letters from the Chairman and the other two commissioners

I cannot legitimately comment on allegations against me which I have not seen. However, ***as far as leakage to the media is concerned****, this is a matter which is being separately pursued through my attorneys but I wish to reiterate that I am not responsible for any alleged leakage despite being hounded relentlessly on this issue by the Chairman in the absence of any proof to this effect as well as the absence of the results of any police investigation being laid before the commission. As an attorney of some 50 years standing with an impeccable reputation, as I am sanguine that Your Excellency will appreciate, this has had a deleterious effect on my health and general well-being as someone who has guarded her professional reputation jealously.*

Pre-action protocol letter

It is a matter of record that valiant and persistent efforts were made by me to settle and discuss the subject matter of this letter with the other commissioners and your good self prior to such action but to no avail and thus little or no other option was open to me in this regard. May I respectfully remind Your Excellency that other commissions have had to resign for breaching the law and failing to observe the fundamental tenets of natural justice and, as the legal member of the team duly appointed under the provisions of the Integrity in Public Life Act, I have a duty to point out where the commission appears to be yet again lapsing into error in treating with the former Attorney General as this is a case of the utmost sensitivity and therefore it was incumbent upon the present commission to ensure that any correspondence dispatched to the former Attorney General should be carefully worded as well as enjoying the full approval of the commission as a whole. Unfortunately this was not done as the

Chairman apparently took it upon himself to cause the registrar to write to the former Attorney General not only assuring him that my fellow Commissioner Jokhoo and myself will not be deliberating upon his matter but also that his matter will be resolved by 17th February 2012, even in the absence of an ongoing investigation being completed. Concerns expressed by me both privately and at the meetings that this was not a prudent course of action were merely swept aside by the Chairman that the letter had already been despatched.

***Regarding the alleged complaints by the other two commissioners, which as indicated above I have not seen but which were summarized by Your Excellency at our meeting on 26th January**, I comment briefly as follows:*

(i) ***That my behaviour has caused the Commission to fall below a certain standard***

I would have thought that for my behaviour to fall below a certain standard, that standard ought clearly to be identified and this has not been done. Moreover, I do not know how I can stand accused of this when my entire career has been dedicated towards the pursuit of excellence.

(ii) ***Breakdown of relationships with the other Commissioners***

I pose the question rhetorically, how has my behaviour contributed to this? The Chairman and the other two Commissioners have withheld their speech from me and refuse to talk to me at meetings since the matter involving the former Attorney General was raised in November 2011 and I expressed the view that recusal is a matter for my consideration and the Chairman has been extremely aggressive towards me by shouting at me during meetings in the presence of the other commissioners although I am the Deputy Chairman which is unbecoming of his position as well as being

demeaning to me especially as a lady. Moreover, at the meeting in mid-December, after the meeting of the commission, the Chairman formally announced that he wished to see all the other commissioners in his office except me. This was not only, it seems to me calculated to embarrass and humiliate me but also was designed to cause disunity and division within the commission.

(iii) ***Work of commission cannot be accomplished***

If this is true then it is because the Chairman has suspended meetings pending a police report. Commissioner Jokhoo specifically questioned the basis for this decision and advised the Chairman against this course of action but he nevertheless has proceeded to so do. I have no difficulty working with the other commissioners and indeed chaired some four meetings myself during the interregnum between the resignation of Dr. St. Cyr and the appointment of Mr. Kenneth Gordon as the new Chairman.

(iv) ***Action by Your Excellency***

I am myself in the dark as to what action the Chairman and other two commissioners are calling upon Your Excellency to take urgently. *Your Excellency has previously advised that this is not a matter in which you can intervene and therefore the suggestion that you are now called upon to so do would appear to be misconceived.*

Further, Your Excellency drew to my attention various examples cited by the Chairman and other two commissioners *and I now comment on these examples as follows:*

(a) ***Refusing to return confidential documents and being confrontational***

What are these documents? I have no documents and any such documents lent to me were returned to the registrar. I am unaware of any confidential documents in my possession which I have refused to return.

(b) ***Refusing to abide by majority decision/participation in decision***

What are these matters? I am within my rights to object to any vote on my recusal. I have not participated in any decision of the commission and refused to abide by it.

(c) ***Intimidating attitude***

I am the only lawyer on the commission but have never adopted such an attitude. Rather, I have tried to assist my fellow commissioners by seeking to explain legal matters to them.

(d) ***Being insulting to commissioners and staff***

This is not correct. The person who has continuously done so is the Chairman. I have insulted no-one and indeed I remain mystified by this complaint as well.

(e) ***Public domain***

I am not aware that these matters as alluded to above are in the public domain via the printed media.

(f) ***Restoration of public confidence in the Commission***

The issue of restoring public confidence transcends the current commission given that the past three commissions have not fared well with various commissioners resigning for different reasons ***but any allegation that I am responsible for undermining public confidence surely cannot be laid*** *at*

my door, bearing in mind that this allegation would appear to be based on the subjective views of three members referred to above.

Remedy

***If the Chairman and two of the other three members wish to voluntarily resign as so indicated**, that is their personal decision and if this will assist in the work of the commission, then so be it.*

In closing, it is passing strange that the complaints which have regrettably taken up Your Excellency's valuable time have nothing to do with the issue of my recusal but rather dwell on personal issues which have little or nothing to do with the work of the commission as a whole and which amount to petty allegations which are patently untrue, lack merit or substance and perhaps are clearly designed to further embarrass me as well as revealing more about the authors than anything else.

Notwithstanding this, I remain firmly committed to upholding the high standards of integrity by which I have lived my personal and professional life and conducted my affairs and moreover to justifying the confidence which Your Excellency has reposed in me as the Deputy Chairman of the commission as well as a member of previous commissions.

Yours most respectfully,
Gladys Gafoor

42. A comparison of the letters of complaint and the Claimant's letters in response demonstrates that the Claimant addressed all of the concerns raised in the letters about her behaviour in office, her standard of behaviour, public confidence, her refusal to abide by decisions of the Commission, the refusal to return documents, her statements made to commissioners, leaks of confidential material, the issuing of a pre action protocol letter against the Commission of which she is a member,

the impasse in the dealing with the Jeremie investigation, the inability of members of the Commission to work with the Claimant and the virtual shutting down of the work of the Commission as a result of the impasse. These were all matters squarely raised in the three letters of complaint and which were all responded to in the letter of the Claimant under the distinct headings. Furthermore they are matters which were placed within the terms of reference of the Tribunal's enquiry. A comparison of the letters themselves, her response and the terms of reference of the Tribunal is set out as appendix A for convenience.

43. The general tenor of the Claimant's written response to the concerns articulated by the President was dismissive. She described the allegations made by the other members of the Commission as petty allegations which were patently untrue, lacking in merit and substance and clearly designed to further embarrass her and which "reveal more about the authors than anything else". She saw no value in these complaints or relevance to the work of the Commission as a whole. She was aware that the Chairman and two commissioners had expressed a desire to voluntarily resign. Her response was cryptic "if this will assist in the work of the commission then so be it".

44. His Excellency considered the response and took legal advice from Mr. Reginald Armour SC. Over the past five years His Excellency has called on him for legal advice from time to time. With respect to this matter Mr. Armour provided to His Excellency legal advice in relation to the correspondence of the Claimant, the complaints made by the Chairman and members of the Commission and the Claimant's response. The President then subsequently appointed a Tribunal selected by the JLSC under section 136 of the Constitution to inquire into complaints made by members of the Integrity Commission against the Claimant in continuing to engage in the conduct which his Excellency had brought to her attention and that by her conduct taken together including her dismissal of the complaints amount to misconduct in relation to her duties and or misbehaviour in public office. The Tribunal was also mandated to report to the President on

whether the conduct constitutes misconduct and whether the Claimant should be removed from office as member and Deputy Chairman.

The Gazetted notice establishing the Tribunal is set out verbatim:

APPOINTMENT OF A TRIBUNAL

BY THE POWERS VESTED in His Excellency Professor George Maxwell Richards, President of the Republic of Trinidad and Tobago, under and by virtue of the Constitution and in particular, section 136 there is constituted and appointed a Tribunal comprising The Right Honourable Mr. Justice Michael de la Bastide, T.C., Chairman and Members, The Honourable Mr. Justice Humphrey Stollmeyer, J.A. and The Honourable Mme. Justice Maureen Rajnauth Lee for the following purposes:

1. *To inquire into complaints made by Members of the Integrity Commission that Mrs. Gladys Gafoor, appointed Member and Deputy Chairman of the integrity Commission on the 15th March 2010 has, from or after that date through January, 2012 and continuing, engaged in conduct, that is to say –*

    a) *having participated in the decision making processes of the Commission, thereafter, unreasonably resiling from and/or refusing to abide by the decisions of the Commission;*

    b) *retaining confidential documents of the Commission provided to her in the course of the Commission's business and, unreasonably refusing to return same when required to do so;*

c) *conducting herself in her relations with her fellow Members and with staff of the Commission in an intimidatory manner not conducive to accomplishing the work of the Commission;*

d) *in relation to matters coming before the Commission, preferring her personal status and perceived reputation and standing as an Attorney over the work and reputation of the Commission and without any or any sufficient regard for the fact that her appointment as a member and Deputy Chairman is for the benefit of the Commission;*

e) *in relation to the work of the Commission, preferring her personal status and perceived reputation and standing as an Attorney over the work and reputation of the Commission and without any or any sufficient regard for the fact that her appointment as a member and Deputy Chairman is for the benefit of the Commission;*

f) *conducting herself in relation to the business of the Commission and in her relations with her fellow Members and staff of the Commission in such a manner as to have brought or contributed significantly to bringing the work of the Commission to a state of impasse and/or such a stage that a majority of her fellow Commissioners are unable to work with her;*

g) *conducting herself in relation to the business of the Commission including its confidential processes and documentation in a manner which is likely to bring the Commission into disrepute;*

h) *conducting herself in relation to the business of the Commission and in her relations with her fellow Members and staff of the commission in such a manner as to have undermined the authority of the Commission;*

i) *notwithstanding having had the gist of the complaints above drawn to her attention, dismissing the said complaints as being petty allegations which are patently untrue;*

and that by her manner, conduct and behavior in relation to her duties and/or her office as Member and/or Deputy Chairman of the Integrity Commission, such conduct and behaviour when taken together, amount to misconduct in relation to her duties and/or misbehaviour in office.

2. *To report to and to advise His Excellency on such facts found by the Tribunal, whether such conduct and/or behaviour by Mrs. Gladys Gafoor as Member and Deputy Chairman, constitutes conduct and/or misbehaviour within the meaning of the Integrity in Public Life Act, Chap. 22:01, as amended (hereinafter 'the Act') and in particular section 8(2)(d) and (e) thereof and of section 136(7) of the Constitution, with particular reference to whether such conduct-*

a) *affects her ability to perform her duties and to discharge the functions of her office as Member and Deputy Chairman of the Integrity Commission;*

b) *affects the perception of others, including members of the public and other Members of the Integrity Commission, of her ability to perform her duties and to discharge the*

functions of her office as Member and Deputy Chairman of the Integrity Commission;

c) *if Mrs. Gladys Gafoor was allowed to continue in the said office, whether her continuation in office would be inimical to the good governance by the Integrity Commission in and about the discharge of its business and mandate under the Constitution and the Act;*

d) *is such as to have brought or contributed to bringing the important constitutional office of the Integrity Commission as established under the Constitution and the Act into disrepute.*

3. *By the said report, that the Tribunal do advise His Excellency whether Mrs. Gladys Gafoor ought to be removed from the Office of Member and Deputy Chairman of the Integrity Commission, pursuant to the provisions of section 136(10) of the Constitution and section 8(2) of the Act and that, the Tribunal do undertake this commission as a matter of utmost urgency and with all appropriate despatch.*

4. *Counsel appointed by His Excellency to the Tribunal is Mr. Reginal Armour, S.C.*

Dated the 6th day of February, 2012

45. Subsequently the President issued his letter of suspension to the Claimant dated 9th February 2012:

In re: The Integrity Commission and section 136 of the Constitution

By the powers vested in me by the Constitution and in particular section 136 (9) thereof, I have appointed a Tribunal to inquire into complaints made by Members of the Integrity Commission that you, Mrs. Gladys Gafoor, appointed Member and Deputy Chairman of the Integrity Commission on the 15th March 2010 have, from or after that date and through January 2012 and continuing, engaged in conduct, that is to say:

a) *Having participated in the decision making processes of the Commission, thereafter, unreasonably resiling from and/or refusing to abide by the decisions of the Commission;*

b) *Retaining confidential documents of the Commission provided to you in the course of the Commission's business and, unreasonably refusing to return same when required to do so;*

c) *Conducting yourself in your relations with your fellow Members and with staff of the Commission in an intimidatory manner not conducive to accomplishing the work of the Commission;*

d) *In relation to matters coming before the Commission, preferring your personal status and perceived reputation and standing as an Attorney over the work and reputation of the Commission and without any or any sufficient regard for the fact that your appointment as a member and Deputy Chairman is for the benefit of the Commission;*

e) *In relation to the work of the Commission, preferring your personal status and perceived reputation and standing as an Attorney over the work and reputation of the Commission and without any or any sufficient regard for the fact that your*

appointment as a member and Deputy Chairman is for the benefit of the Commission;

f) *Conducting yourself in relation to the business of the Commission and in your relations with your fellow Members and staff of the Commission in such a manner as to have brought or contributed significantly to bringing the work of the Commission to a state of impasse and/or such a stage that a majority of your fellow Commissioners are unable to work with you;*

g) *Conducting yourself in relation to the business of the Commission including its confidential processes and documentation in a manner which is likely to bring the Commission into disrepute;*

h) *Conducting yourself in relation to the business of the Commission and in your relations with your fellow Members and staff of the Commission in such a manner as to have undermined the authority of the Commission;*

i) *Notwithstanding having had the gist of the complaints above drawn to your attention, dismissing the said complaints as being petty allegations which are patently untrue;*

and that by your manner, conduct and behavior in relation to your duties and/or your office as Member and/or Deputy Chairman of the Integrity Commission, when taken together, amount to misconduct in relation to your duties and/or misbehaviour in office.

The Tribunal is mandated to report to and to advise me, as President, on the facts found after due inquiry into the matter, accordance with

provisions of section 136 (9) and (10) of the Constitution and, having regard to the Integrity in Public Life Act, Ch.22:01, section 8 (2) (d) and (e).

By the powers vested in me under section 136 (11) and, after consultation, I hereby suspend you forthwith, until further notice, from performing the functions of your office as Member and Deputy Chairman of the Integrity Commission, without prejudice to your entitlement to salary and emoluments of office.

Yours sincerely
George Maxwell Richards

46. The Claimant subsequently sought to obtain copies of the letters of complaint from His Excellency. She had not made this request previously and the horse had already bolted. By letter dated 1st March 2012 the President indicated to the Claimant that the request for the said documentation should be made to the Tribunal and that the Tribunal is to be "permitted to exercise the amplitude of its procedural and substantive jurisdiction." The Claimant turned her dissatisfaction to His Excellency. In her final salvo before the commencement of these proceedings, by letter dated 2nd March 2012 she stated "I am unable to fathom how the reference to the Tribunal exercising its powers can have any or any real bearing on the simple yet specific request for the letters of complaint against me." She complained that the denial of the request amounted to a breach of natural justice. Presumably the breach to which she refers is her hearing before the Tribunal and not at the preliminary stage when the President met with the Claimant.

The issues

47. It is against this backdrop that the constitutional challenge made by the Claimant has been made within a narrow compass as set out in the re-amended claim.

She contends that the President breached her constitutional right to the protection of the law and to her right to natural justice by the appointment of the Tribunal. In its written submissions in reply the Claimant has abandoned the failure to take legal advice as a ground for constitutional relief. Also at paragraph 36 she suggests that the issue of the suspension does not form the basis for a separate claim but is simply part of the appointment of the Tribunal and relevant to the fact that the Claimant was not informed of any course which the President was proposing to take.

48. The following issues therefore arise for determination:

i. Whether the President was under a duty to act fairly in relation to the Claimant before he made the decision to appoint the Tribunal pursuant to section 136 of the Constitution and whether such a duty engages the Claimant's constitutional right to the protection of the law under section 4(b) of the Constitution.

ii. If so whether the President was obliged to provide full disclosure of the actual letters of complaints and sufficient particulars of the allegations received by the President to fulfill his duty to act fairly.

iii. Whether the issue of sufficiency of evidence or lack thereof at the stage prior to the establishment of the Tribunal is a question for the President at all and raises any issue of a violation of the constitutional right under Section 4 (b) of the Constitution.

iv. Whether the motion constitutes an abuse of process as (a) the court's jurisdiction to enquire in the acts of the President is ousted by section 38 of the Constitution and (b) the Claimant's right to the protection of the law is unarguable as her access to the Courts have not been denied to her.

The investigative role of the Tribunal

49. In the authorities cited to this Court there have been no cases examining the duty of the President in relation to the establishment of a Tribunal under section 136.

The string of authorities of **Rees v Crane**[18], **Charles**[19], **Mc Nicholls**[20] dealt with a different enquiry. Under section 136 the removal of an officer holding the office of member and Deputy Chairman of the Commission involves a two staged approach. First a decision is made by the President that the question of removing the officer ought to be investigated (Section 136(8)). Once making that decision the President then appoints a Tribunal to conduct an investigation and compile a report for the President (Section 136(9)). That report will provide the facts as found and advise the President whether the officer ought to be removed (Section 136(10)). The President then acts on this advice of the Tribunal by removing the officer if the Tribunal so advises (Section 136(11)).

50. The Tribunal features as part of the administrative disciplinary arrangements in a constitutional framework to discipline certain holders of offices created by the Constitution. The Tribunal established under section 136 (9) is purely investigatory and advisory in nature.

> "Those responsible for the conduct of any Inquiry must, at an early stage, take decisions as to the procedure to be adopted for the taking of evidence. The objects to be served by the procedures will be threefold: first, the need to be fair and to be seen to be fair to witnesses and others whose interests may be affected by the work of the Inquiry: second, the need for the Inquiry's work to be conducted with efficiency and as much expedition as is practicable; third, the need for the cost of the proceedings to be kept within reasonable bounds."

The Tribunal will control its own procedure but that procedure adopted will comply with the principles of natural justice. One must note that if the President acts pursuant to the advice of the Tribunal there is no remedy for the individual as against the President it would be unpalatable to scrutinize the decision of the President to act on the advice of the Tribunal. If indeed however he refuses to act

[18] **Rees v Crane** [1994] 2 AC 173, PC
[19] **Herbert Charles v AG** CA76/99; PC26/2001
[20] **Sherman Mc Nicholls v Judicial and Legal Service** Commission [2010] UKPC6

on the advice or does comply with the advice that is reviewable as a clear breach of the Constitution. See section 136 (10). This is discussed later in this judgment. In my opinion the right to natural justice underlies the exercise of the powers of the President under section 136 (8) of the Constitution.

The duty to act fairly

51. **"**Natural justice is a creation of the common law, not a product of statute. It is a judge-made principle by which minimum standards of procedural fairness are prescribed. Sometimes it has been called "fair play in action". Natural justice relates to questions of process rather than substance. In other words, it answers questions which centre on "how" a decision was made, rather than "what" a decision actually was. Thus the principle of natural justice has nothing to say as to the equity, in any moral or philosophical sense, of the actual substantive result."[21]

52. The duty to act fairly is primarily a focus on process. Therefore the general and open ended principle underpinning the rules of natural justice is that it requires that the procedure before any tribunal which is acting judicially shall be "fair in all the circumstances". This gives considerable discretion to any decision-maker charged with considering whether the rules of natural justice have been adhered to. It allows for variations in detail from one kind of tribunal or tribunal system to another. The application of the principle and the manifestation of the principle of fairness varies with the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting and the subject matter of the case. Hard and fast rules applicable to all kinds of tribunal systems cannot be laid down. To that extent it is said that the content of the duty of fairness varies from case to case.

[21] "*Natural Justice and Independent Tribunal Services Tribunals*" JSSL 1998 S92) 62-71

53. At common law the principles of natural justice has been described contextually. The seminal and elementary judgment of Tucker LJ in **Russell v Duke of Norfolk**[22] described it as follows:

> "There are…no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting the subject which is being dealt with and so forth".

54. Lord Hodson in **Ridge v Baldwin**[23] identified three key components of natural justice as the right to be heard by an unbiased tribunal, the right to have notice of charges of misconduct and the right to be heard in answer to the charges. These rights are not exhaustive and indeed whether these rules are applicable at all is contextual.

55. Lord Bridge in **Lloyd v Mc Mahon**[24] usefully opined:

> "The so called rules of natural justice are not engraved in tablets of stone. To use the phrase which better expressed the underlying concept, what the requirement of fairness demand when anybody, domestic, administrative or judicial has to make a decision which will affect the rights of individuals depends on the character of the decision making body the kind of decision it has to make and the stature or other framework in which it operates. In particular it is well established that where a statute has conferred on anybody the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

[22] [1949] 1 AER 109
[23] [1964] AC 40
[24] [1987] 1 AER 1118

56. The English courts have characterized natural justice with varying synonyms. “Fair play in action”: **Ridge v Baldwin**[25] **Wiseman v Borne man**[26] “common fairness” Ex parte **Hosenball**[27] “fairness of procedure” **Re Pergamon Press**[28] “the fundamental principles of fair trial” **Tameshwar v R**[29] or “a fair crack of the whip” **Fairmount Investments v Secretary of State for the Environment**[30].

57. In judicial review applications the notion of natural justice is now treated as a requirement to achieve “substantial fairness”. Chief Justice Bishop in **Barnwell v AG** a decision which examined circumstances very similar to **Rees v Crane** which was decided before the ruling of the Privy Council in **Rees v Crane** usefully traced the development of the convenient labels ascribed to natural justice. Chief Justice Bishop concluded that the term natural justice and the phrase the duty to act fairly have no difference but are flexible depending on the circumstances of context. In the Chief Justice’s extensive judgment he referred to De Smith and Brazier in *Constitutional and Administrative Law* (1989) which addressed the notion of the flexibility of the concept:

> “The rules of natural justice are minimum standards of fair decision making de Smith and Brazier in *Constitutional and Administrative Law* (6 End) (1989) say (at pages 557, 558):
>
> > 'The rules of natural justice are minimum standards of fair decision-making, imposed by the common law on persons or bodies who are under a duty to "act judicially". They were applied originally to courts of justice and now extend to any person or body deciding issues affecting the right or interests of individuals where a reasonable citizen would have a legitimate expectation that the decision-making process would be subject

[25] [1963] 1 QB 530
[26] [1969] 3 AER 275
[27] [1977] 1 WLR 766
[28] [1971] Ch 388
[29] [1957] AC 476
[30] [1976] 1 WLR 1255

to some rules of fair procedure. The content of natural justice is therefore flexible and variable. All that is fundamentally demanded of the decision-maker is that his decision in its own context be made with due regard for the affected parties' interests and accordingly be reached without bias and after giving the party or parties a chance to put his or their case. Nevertheless some judges prefer to speak of a duty to act fairly rather than a duty to observe the rules of natural justice. Often the terms are interchangeable. But it is perhaps now the case that while a duty to act fairly is incumbent on every decision-maker within the administrative process whose decision will affect individual interests, the rules of natural justice apply only when some sort of definite code of procedure must be adopted, however flexible that code may be and however much the decision-maker is said to be master of his own procedure. The rules of natural justice are generally formulated as the rule against bias (*nemo judex in sua causa*) and [in respect of] the right to a fair hearing (*audi alteram partem*)."

58. In **Spackman v Plumstead Board of Works**[31] at page 240 the Earl of Selborne LC stated:

'No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given

[31] (1885) 10 App Cas 229

by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.'

59. The concept of natural justice has morphed over the years in various judicial treatments in the Commonwealth into this notion of fairness. It is not a distinction without a difference but especially in the context of constitutional law highlights a fundamental principle which is another facet of the right to the protection of the law. In Allen Thompson and Walsh *Cases and Materials on Constitutional and Administrative Law.*

> "A related difficulty is whether there is any difference between the content of natural justice and the content of the duty to be fair. One view which happens to be that of both Lord Roskill and Megarry VC is that there is no difference the content of natural justice and the content of the duty to be fair are both flexible and depend on the circumstances of the case. Another view is that the duty to be fair might include requirements which were not part of the traditional concept of natural justice for example the duty to act on evidence" See **R v Deputy Industrial Injuries Commissioner ex parte Moore**[32]."

60. Kavanagh in *Guide to Judicial Review* (2 Edn) (1984) at page 17 discusses the 'Meaning of Fairness':

> "Fairness as related to the discharge of administrative functions means something less than a full-type hearing. The procedures will vary from case to case. Of course, they ought not to impede the legislative scheme ... Fairness does not require that the party affected be informed of every detail. The leading case here is **R v Race Relations Board, ex parte Selvarajan**[33]. Speaking of an investigation, Lord Denning said: "What fairness requires depends on the nature of the investigation and the

[32] [1965] 1 QB 456
[33] [1976] 1 All ER 12, CA

consequences which it may have on persons affected by it". The person affected by the investigation "should be told the case against him and be afforded a fair opportunity of answering it. The investigative body is, however, master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name informants. It can give the substance only ..."

61. In **Mauger v Minister of Employment and Immigration**[34]. The court said "the requirements of fairness must be balanced by the needs of the administrative process being examined". There is no dispute in these proceedings that the Claimant was entitled to a process that was fundamentally fair and that the principles of natural justice are applicable to her at the preliminary stage of determining whether a Tribunal should be established. There is of course no dispute by the parties that at the Tribunal hearing the Claimant would be afforded full rights of hearing of investigation and of presenting her case.

62. The touchstone to the duty to act fairly in my view is adopting a procedure which is participative and which involves the person who will be faced with adverse consequences of a decision in the decision making process before the decision is made. Chief Justice Bishop observed in **Barnwell**[35]:

> "The subject is removal of a judge. The circumstances arose from a complaint of alleged misbehavior represented by the chief magistrate, who must be taken as knowing that the making of her accusation carried the consequences of dandifying the judge in social, psychological and material respects. In terms of natural justice, the JSC, too, ought to have realized that the appellant, from the inception, was put in jeopardy and that the procedure it should have employed was required to evince the JSC's regard for the office held by the appellant and his status as a protected person by virtue of the Constitution: i.e. that he was entitled to

[34] (1980) 119 DLR (3d) 54 (Fed CA)
[35] **Barnwell v AG** [1993] 49 WIR 88

procedural safeguards that recognized the several risks he faced. That procedure, although unwritten, should have been intimated to him beforehand, and possessed of sufficient flexibility to allow his further participation, in the event of developments which neither the JSC nor he could, with reasonable prudence or foresight, have anticipated".

63. The theme of giving the affected person the opportunity to participate in the decision making process was touched on by Chief Justice Bishop when he referred to the **Tellis v Bombay Municipal Corporation.**[36] The Supreme Court of India examined the *audi alteram partem* rule, certain facets of the right to be heard, the psychological properties that the affected person gains from his participation in the hearing. Chandrachud CJ observed:

> 'The proposition that notice need not be given of a proposed action because there can possibly be no answer to it is contrary to the well-recognized understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done. Procedural safeguards have their historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities (see Kadish, "Methodology and Criteria In Due Process Adjudication - A Survey and Criticism" (1957) 66 Yale LJ 319 at page 340). The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the proceedings by which those decisions are made, an opportunity that expresses their dignity as persons. [**Goldberg v Kelly**, 397 US 254, at

[36] [1987] LRC (Const) 351

pages 264, 265 (1970) (right of the poor to participate in public processes).] "Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experiences at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express the elementary idea that to be a *person*, rather than a *thing* is at least to be consulted about what is done with one".'

64. I found the following extract enlightening which underscores the participative element that is the undercurrent to the duty to act fairly and which is the common thread in the treatment of the duty to act fairly in the Commonwealth.

> “Two different aspects can be extrapolated from the natural justice principle. Firstly, it represents an ideal of justice (I call this ‘the justice value’), described as a common law principle by reason of its unquestionable antiquity. In this sense it clearly embodies a universal substantive standard. …., it also contains procedural standards. Secondly, it is a principle of practical application available to those to whom the threshold right to be heard is extended. This can be referred to as ‘the participation principle’. The important point about extending natural justice to an individual is that it enables the person to participate meaningfully in the process of decision-making.” — the fact that the rules of natural justice incorporate fundamental ideas or values, including equality, non-discrimination, impartiality and basic fairness. The natural justice principle also has an inherent instrumental value which highlights the importance of fair procedures for securing accurate outcomes. In this sense, the justice value incorporates both substantive and procedural standards, which are interconnected. The fact that the courts, when conducting judicial review, explain their role as being to determine whether procedural rather than

substantive fairness was accorded does not detract from that proposition. That is, the courts emphasize the limits of the *process* of judicial review, and eschew interference with substantive outcomes. To emphasize that constitutional role, the Australian courts in recent years have preferred the term 'procedural fairness' to natural justice. Natural justice thus incorporates a theory of *substantive* procedural justice, rather than being a mere procedural rule about the distribution of benefits, or of distributive justice as, for example, Rawls' views might suggest the participation principle limits the right to participate in a hearing by reference to distributive principles."[37]

65. In **R v Secretary for the Home Department, ex parte Fayed**[38] the Court held that applicants for British citizenship were wrongly deprived of an opportunity to make representations before their applications were refused. The Court took into account that the refusal of the applications deprived them of the benefits of citizenship. The Court may read into a statute the necessary procedural safeguards to ensure the attainment of justice. This is so even if the act sets out a procedure to be followed.

66. In **Kioa v West**, supra, in the High Court of Australia Mason, J. Explained that in

> *"procedural fairness' more aptly conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case. The statutory power must be exercised fairly, i.e., in accordance with procedures that are fair to the individual considered in the light of the statutory requirements, the interest of the individual and the interests and purposes, whether public or private, which the statute seeks to advance or protect or permits to be taken into account as legitimate considerations…."*

[37] 26 Melb U.L Rev 355, "Natural Justice and Non Citizens: A matter of Integrity?"
[38] [1998] 1WLR 763

67. In our Court of Appeal the issue of the duty to act fairly has been treated largely as the requirement to do substantial justice. Warner JA approved of this extract of De Smith:

> "Surely the time has come to recognise that the duty of fairness cannot and should not be restricted by artificial barriers or confined by inflexible categories. The duty is a general one, governed by the following propositions?
>
> 1. Whenever a public function is being performed there is an inference, in the absence of an express requirement to the contrary, that the function is required to be performed fairly;
> 2. The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has a legitimate expectation of being fairly treated;
> 3. The requirement of a fair hearing will not apply to all situations of perceived or actual detriment. There are clearly some situations where the interest affected will be too insignificant, or too speculative, or too remote to qualify for a fair hearing…..;
> 4. Special circumstances may create an exception which negatives the inference of a duty to act fairly….;
> 5. What fairness requires will vary according to the circumstances….;
> 6. Whether fairness is required and what is involved in order to achieve fairness is for the decision of the courts as a matter of law. The issue is not one for the discretion of the decision-maker. The test is not whether no reasonable body would have thought it proper to dispense with a fair hearing. The Wednesday reserve has no place in relation to procedural propriety."

68. Warner JA further commented:

> "What is essential is substantial fairness - this may sometimes be adequately achieved by telling the officer the substance of the case he has to meet, without disclosing the precise evidence or the sources of the information... It cannot be over emphasized that what is fair in a particular case must be determined against the whole background of the case. What is essential is substantial fairness - this may sometimes be adequately achieved by telling the officer the substance of the case he has to meet, without disclosing the precise evidence or the sources of the information".

69. Justice of Appeal Mendonca in **Rajkumar v Medical Board**[39] also underscored that where a statute does not stipulate the procedure that the Council must follow in an enquiry what is important is that the Council must act fairly. What it means to act fairly depends on the circumstances of each case. Mendonca JA approved of Lord Mustill's judgment in **R v Secretary of State for the Home Department, ex parte Doody**[40]:

> *"(3)The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential factor of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken."*

70. In **Feroza Ramjohn** per Warner JA opined:

> "The terms natural justice and procedural fairness have been used interchangeably, however in administrative law, the concept comprises

[39] CA 139 of 05
[40] [1994] 1AC 531, 560

two well-known and fundamental rules of fair procedure – a man may not be a judge in his own course and his defence must be heard. 9. The principles of natural justice have evolved under the common law, as a means of restraining the arbitrary exercise of state power.10. Administrative decisions cannot be made capriciously. That does not however mean that every decision is subject to the rules of natural justice. The exercise of powers of discipline, or where a penalty is to be imposed are clearly subject to the rules."

71. Even in the dissenting judgment of Kangaloo JA he recognised the importance of implying the principle of fairness where the decision would have adverse consequences:

> "To the extent therefore that transfers and recalls under section 121(6) (b) are run of the mill operational or managerial decisions of the Prime Minister, it is in my view, quite inappropriate for a supervisory court in exercising its jurisdiction to imply the rules of natural justice. If there were some element of disciplinary proceedings as a result of the recall, the position would in all probability be different as in those kinds of situations, the rules of fairness come into play"

This is the strong current of the common law in the Commonwealth in developing the concept of fairness in administrative decision making and making its waves in our jurisdiction. Equally therefore with respect to the Constitution there is a presumption that the principles of fairness apply unless there is a strong manifestation of contrary intention.

The duty to act fairly and the Protection of the law

72. **AG v Mc Cleod**[41] has often been referred to as restricting the protection of law right guaranteed under the Constitution to a right to access to the Court. However the Law Lords were clear in that case that there can be no restrictive interpretation of the right to the protection of the law and deliberately left it open to the Courts to work out the right on a case by case basis. That the rules of natural justice are included within the meaning of an unwritten rule of law and require that the affected person be given an opportunity to be heard which must be afforded him at a meaningful time and in a meaningful manner is a feature of the due process of law and the protection of the law.

73. In *Commonwealth Caribbean Constitutions* (1992), commenting on **Thomas v Attorney-General**[42] says (at page 35):

> '... no provision of the Bill of Rights was expressly invoked but questions of a fair hearing and of natural justice were implicated and the case can well be comprehended as treating in part at least of the right to a fair hearing in the determination of the individual's rights and obligations.'

74. Justice Rajnauth-Lee in **Rowley v Integrity Commission** opined

> "We do not have such a challenge in Trinidad and Tobago where the Written Constitution of Trinidad and Tobago protects and guarantees fundamental human rights and freedoms including the right of the individual to the protection of the law and to the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations [sections 4 (b) and 5 (2) (e)]. These rights have been interpreted to include the right of the individual to be informed of the specific allegations made against him and the right to be given an

[41] [1984] 1 All ER 694
[42] (1981) 32 WIR 375

opportunity to deal with them in the circumstances set out in the case of **Rees and Others v. Crane**[43]. According to Lord Slynn who delivered the judgment of the Judicial Committee of the Privy Council, the protection of the law referred to in section 4 (b) upon which the respondent also relies would include the right to natural justice (page 453). The right to be informed of the specific allegations made against an individual and the right to be heard on those allegations have been codified in several enactments in Trinidad and Tobago, including section 38 of the Act.

54. In the judgment of the Court, where there is a breach of an individual's fundamental right to be informed of the specific allegations made against him and a breach of the right to be afforded an opportunity to be heard on those allegations, and where the Constitution of Trinidad and Tobago guarantees those rights."

75. **Rees v Crane**[44] also makes the point that the protection of the law also includes the right to act fairly. This is consistent with the theory of the natural justice as facet of the rule of law. Reliance on **AG v Mc Cleod**[45] that the protection of the law is somehow restricted to access to the Court is ill conceived and is a misapplication of the principles enunciated in that case. Justice of Appeal N Bereaux was equally dismissive of such a constitutional restriction given the breadth of the protection of the law clause. I endorse the following extract of his judgment in **Oswald Alleyne**:

> "Neither can I accept Mr Sinnamon's main submission that the respondents' access to the High Court is a sufficient remedy. That is far too limited a construction of section 4(b). The decision in **Mc Cleod** is an example of one of the many facets of the terms *"protection of the law",* which is a wide and varied concept. See the decision of the Caribbean

[43] (1994) 43 WIR 444
[44] [1994] 2 AC 173, PC
[45] [1984] 1 All ER 694

Court of Justice in **Attorney General and others v Joseph & Boyce**[46] in which the breadth of the term *"protection of the law"* was considered. There the court had to consider its power under the Barbados Constitution to enforce the right to protection of the law, and to grant a remedy for its breach. In a joint judgment on behalf of the majority **de la Bastide P** and **Saunders J** stated (at paragraph 60) that:

> ***"…the right to the protection of the law is so broad and pervasive that it would be well nigh impossible to encapsulate in a section of a Constitution all the ways in which it may be invoked or can be infringed."***

At paragraph 62 of their judgment they quoted Lord Diplock's dictum in ***Ong Ah Chuan v Public Prosecutor***[47] as follows:

> ***"… a Constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to "law" in such contexts as "in accordance with law", "equality before the law", "protection of the law" and the like, in their lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution."***

At paragraph 63 they also referred to Lord Millett's dictum in ***Thomas v Baptiste***[48] at 421 in reference to the term 'due process of law' set out in section 4(a) of the Trinidad and Tobago Constitution as follows:

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[46] (2006) 69 WIR 104
[47] [1981] AC 648
[48] (1998) 54 WIR 387

"In their lordships' view, "due process of law" is a compendious expression in which the word "law" does not refer to any particular law and is not a synonym for common law or statute. Rather, it invokes the concept of law itself and the universally accepted standards of justice observed by civilised nations which observe the rule of law…'The clause thus gives constitutional protection to the concept of procedural fairness …"

They concluded at paragraph 64:

"***We are of the view that Lord Millett's observations on the meaning of the word 'law' in the context of the phrase 'due process of law' are equally applicable to the phrase 'protection of the law'. Procedural fairness is an elementary principle permeating both concepts and therefore, pursuant to s 11, a condemned man has a constitutional right to procedural fairness as part of his right to protection of the law. Correspondingly, the courts have an inherent jurisdiction, and a duty, to grant an appropriate remedy for any breach of that right.'***

Wit J, at paragraph 20 in his dissenting judgment, spoke of the protection of the law thus:

"The multi-layered concept of the rule of law establishes, first and foremost, that no person, not even the Queen or her Governor-General, is above the law. It further imbues the Constitution with other fundamental requirements such as rationality, reasonableness, fundamental fairness and the duty and ability to refrain from and effectively protect against abuse and the arbitrary exercise of power. It is clear that this concept of the rule of law is closely linked to, and broadly embraces,

concepts like the principles of natural justice, procedural and substantive 'due process of law' and its corollary, the protection of the law. It is obvious that the law cannot rule if it cannot protect. The right to protection of the law requires therefore not only law of sufficient quality, affording adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power; but it also requires the availability of effective remedies."

The term *"protection of the law"* thus cannot be given the construction given to it in **Mc Cleod** which turned on its own facts and circumstances. In the present case, the respondents claim to have been deprived of access to the Industrial Court by the failure to make regulations setting out the conditions to be satisfied and the procedure to be adopted for the recognition by a statutory authority of existing associations and associations formed under section 25(2)."

76. Lord Slynn in **Lewis v AG**[49] also considered that the breach of the rules of fairness of natural justice meant that the applicant did not enjoy the protection of the law either within the meaning of the constitution or the common law.

Natural justice and preliminary hearings

77. Natural justice and the principle of fairness apply where the action or decision taken is merely preparatory to or a first step in, a sequence of measures which may culminate in a decision detrimental to the official's interest: See **Rees v Crane**. It is important to note that the concerns expressed **in Barnwell, Sherman, Charles, Rees** was that a public official was being called upon to make a decision as to whether an adverse representation should be made

[49] PC [2001] 2 AC

against a high ranking public officer a holder of a constitutional office who would be put in risk.

78. The adverse representation was being made to the President. In this case the adverse representation has already been made to the President by members of the Commission. One can go no further with making these representations. Indeed the buck stops here. The framework of decision making contemplates a procedure which is that of the President's. It is his Tribunal from which he is seeking advice. It is not a case of a body making a decision to report that matter to the President who will then establish the Tribunal. It is a decision being made by a public official who is protected by the Constitution in the performance of his actions. This is not a mere busy body nor investigative authority. He must decide what to do with the complaints. The choices left to the President were to dismiss them out of hand and let the Commission spiral out of control or seek advice on the alleged acts of misconduct. If the allegations are dismissed by the Tribunal it neutralizes certainly the perceived barriers to working with the Deputy Chairman.

79. There was no case cited to me where the highest authority, the Head of State, has had to make an adverse decision and before doing so there is a statutory mechanism which neutralizes his role in the investigative process and fact finding process. Certainly if the fact finding process is faulty you can bring an action against that body. To that extent the Defendant argued that your right to the protection of the law may arguably be "postponed". But conscious of the procedural ouster, a President must ensure to act in a way to minimize his direct contravention with the rights and liberties of the subject. To that extent several procedural safeguards are in place for the President to distance himself from an actual investigation and similarly to provide the citizen with procedural safeguards where he or she can invoke the courts supervisory jurisdiction over acts adverse to it without offending the conventions with respect to and prerogative of the Head of State.

80. The range of authorities referred to me by both parties in this matter are simply examples of fair play in action or of fairness "writ large and juridical". No one case holds the key. If the applicant was deemed not to have been afforded a hearing at a preliminary stage it was a recognition that the preliminary decision forms part of a broader decision making process and will not attract the right to be heard if an opportunity for adequate hearing is available in later stages of the process.

81. For instance **Kanda v Government**[50] dealt with a full disciplinary hearing as opposed to a preliminary stage. The applicant in that case was dismissed without being afforded the opportunity to review a report which dealt in detail with the evidence against him. That is far removed from the circumstances of this case. The Claimant in this case is already armed with the letters containing allegations of misconduct before the Tribunal is convened. The President brought a summary or gist of those allegations to her attention prior to making the decision to investigate her conduct.

82. Equally in **Feroza Ramjohn** it was not about the quality of the hearing there was no hearing at all. She was not told of the case against her or given an opportunity to make representations. Similarly in that case there was no constitutional proviso to provide a hearing in the exercise of a veto. However the principles of natural justice was read into section 121 (6) of the Constitution.

83. These are merely instances of the Court's investigation into whether a procedure which was fair was made available to the officer and where he or she was allowed to participate before a decision was made.

The gist of the gist

84. The oral arguments of the Claimant were somewhat circular. At one stage the complaint was that the gist was unsatisfactory that the Claimant should have been given the letters themselves. On the other hand the Claimant contended

[50] **Kanda v Government of the Federation of Malaya** [1962] AC 322; [1962] UKPC2

the letters themselves have no evidential basis to make an allegation of misconduct against her. Certainly the latter is a matter that quite properly lies within the province of the Tribunal to determine. However her submission morphed into a gist given to her by His Excellency of a gist. It is in my view merely semantics. What must be examined is the procedure made available to her to participate in the process before the President made his decision, bearing in mind her further participation at the Tribunal stage in a more involved manner.

85. Unlike **R on the application of Alan Lord v Secretary of State for the Home Department**[51] the gist in this case was in my view an accurate summary of the representations made by the President about the complaints made against the Claimant by the Chairman and members of the Commission.

86. Ultimately I am satisfied that the procedure that was adopted by the President was not so unsatisfactory or unfair or deprived the Claimant of her participative role before he made his decision that the question of removing the Claimant as a member of the Commission ought to be investigated, so as to amount to a breach of her right to the protection of the law. Taking a broad view of the disciplinary process applicable in this case she will be afforded a full opportunity to sift the evidence, attack the allegations as baseless and demand particularity at the hearing before the Tribunal. In these circumstances the "gist" of the complaints was appropriate and sufficient. The evidence however bears out that she was under no misapprehension as to the complaints which formed the basis of the appointment of the Tribunal. She fully understood the allegations that were made against her and she proceeded to give a full and detailed response. It was certainly not beyond the Claimant's competence to proffer her best defence and indeed as seen her implied counter attack that the others should resign. She asked for time to ponder on the allegations and the opportunity was sufficient for her to take legal advice. This was a serious occasion where the Head of State has raised concerns over her own conduct in the affairs of Commission. If the

[51] [2003] EWHC 2073

Claimant had difficulty in responding she certainly would in my view have said so to the President or made specific requests for the letters before responding.

The sufficiency of evidence

87. This is the aspect of natural justice which is particularly stressed in the judgment of Diplock L.J., as he then was, in *Moore.* His Lordship put it like this:

> "the requirement that a person exercising quasi judicial functions must base his decision on evidence means no more than it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined or show the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer; but he may take into account any material which has, as a matter of reason, some profit or value in the sense mentioned above. If it is capable of having any profit or value the way it could be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue."

88. His Excellency could not and did not "spin a coin" in making a decision as to how to treat with the complaints. He consulted the Claimant took legal advice and I am satisfied that there was sufficient evidence for the President to act. What else was the President to do? He himself found himself in a stalemate between his members of the Commission. The only prudent and fair course of action would be to appoint the Tribunal to carry out the investigation of the facts and report back to him.

The Disclosure of the letters:

89. Will it have made a difference if the Claimant was shown the letters? I imagine it is tempting to ask that question but it is of no moment. And under the heading 'Where a fair hearing "would make no difference"' Wade, *Administrative Law* (6 End), pages 533, 534 offer this comment:

> 'Procedural objections are often raised by unmeritorious parties. Judges may then be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. But in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be pre-judged unfairly.'

90. Megarry J criticizing the contention that “the result is obvious from the start” in **John v Rees**[52] at 402 stated:

> 'It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. "When something is obvious", they may say, "Why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start". Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.'

[52] [1970] Ch 345

91. This argument that there could be no prejudice to the Claimant if the letters were shown to her is to be treated with great caution "down that slippery slope lies the way to dictatorship" See **R v Eagling Magistrates Court ex p Fanner**[53]. However the notion of participation is the bedrock of a functional democracy and the undercurrent to a fair hearing. In my view at that stage of the proceedings the gist provided was sufficient as a matter of fair procedure.

Abuse of process (i) The President's immunity and the section 38 constitutional ouster

92. Both the Commission and the Defendant have argued that although the President is not a party to these proceedings, it is his acts which are the subject of scrutiny. In effect the Claimant is seeking to make the President answerable to the Court for the performance of his functions under section 136 (8) of the Constitution in making the decision that the question of removing the Claimant from office ought to be investigated. The parties submitted that this amounted to an abuse of process.

93. The Commission approached this issue of the constitutional ouster on three main limbs. First that the clear words of the ouster must be given its fullest meaning and effect regardless of the fact that the President himself is not a party to the proceedings. The proceedings as it is constituted in essence amounts to an improper collateral attack on the exercise of His Excellency's constitutional powers. Second that the modern approach is that where disciplinary tribunals have been established under the Constitution save for exceptional circumstances the procedures before the Tribunal should be invoked to address matters of evidence and procedure. Public law challenges by judicial review of constitutional motion are to be discouraged in advance of proceedings before such tribunals. See **Sherman Mc Nicholls v Judicial and Legal Service Commission**[54] per Lord Clarke:

[53] an [1996] 8 Admin LR 351

[54] **Sherman Mc Nicholls v Judicial and Legal Service** Commission [2010] UKPC6

> "Experience shows that applications of this kind themselves cause substantial delay, especially when they lead to one or more appeals. Save perhaps in an exceptional case the officer against whom a charge is made should not apply for judicial review but utilize the procedure set out in regulation 98…Regulation 98 contains detailed provisions which ensure that an officer so charged will be afforded a fair hearing."

94. On the face of it I accept that having regard to the composition of the Tribunal established by the President there is no real risk that the Claimant will not be afforded a hearing. I consider the view of Lord Clarke equally applicable here when he concluded that "the Board has every confidence that the disciplinary proceedings before an appropriate tribunal will be fair. The appellant has a case to answer but what decision the Tribunal reaches will be a matter for it and not the Board."

95. Thirdly the Claimant's resort to a hearing before the Tribunal is the protection of the law to which she is entitled. Senior Counsel for the Defendant considered that the protection of the law was in fact postponed until the hearing of the Tribunal. It is there the Claimant can seek her procedural relief from the Tribunal or a court of Judicial review exercising a supervisory jurisdiction over the Tribunal. Taking this perspective then it becomes palatable for the Court to uphold a constitutional ouster couched in the terms of section 38. Both Counsel argued for the Court to give due regard to the constitutional ouster but came short of saying it was an absolute ouster and that the Court is precluded from examining the validity of the appointment of the Tribunal.

96. In my view section 38 of the Constitution is clear in terms. The President shall not be answerable to any Court for the performance of the functions of his office or for any act done by him in the performance of those functions. The President can be called to answer claims of illegal action even if he is not a party to the proceedings. As in this case the validity of the appointment of the Tribunal was closely examined and even though not a party to the proceedings the President was just one step short of actually giving evidence before this Court in person to

account for his decision to invoke section 136 in relation to the Claimant. The evidence in relation to the exercise of Presidential powers ultimately was gleaned from the Claimant's affidavits and that of the President's legal adviser. It certainly will not be palatable or consistent with constitutional conventions if the minutiae of decision making by the President in his official capacity was open to review. The constitutional ouster highlights in my view the importance of the President as the Head of State. Of interest were the comments in the Report of the Constitution Commission 22nd January 1974 which advocated for a largely ceremonial Head of State "who would have some powers in the area of appointment to offices of a national character and be a symbol of national unity. The desire was to find a person above the clash of race and class and ideology which makes up the politics." Having the President elected by an electoral college places the office of Head of State above the cut and thrust of political campaigns where the character of the office holder is vulnerable to the disaffection of bitter political contests.

97. The constitutional ouster in my view preserves the integrity of the office of the Head of State and the Constitution itself by section 35 and 36 provides the constitutional machinery to deal with any abuse of power in office. However I hasten to add, the remedy of dealing with an abuse of power under section 36 is left in the realm of politics, for a proposal to be moved by the House of Representatives. This leaves unanswered the question whether the President can be held accountable if he violates an individual's constitutional rights as it is alleged in this case if ignored by the political body, the House of Representatives.

98. The Claimant contends that section 38 of the Constitution cannot oust the constitutional remedy provided by the Constitution itself to give redress for the breach of fundamental rights. I agree with the submission of the Claimant and I believe all the parties recognize that there are limits to the application of section 38. The Claimant contends that section 38 merely deals with the President in his personal capacity and the protection afforded is a personal immunity. He relied

on the authorities of **Andy Thomas v AG**[55], **Karunathilaka v Commissioner of Elections**[56]. So for example according to this logic the President cannot be made a party to an action although he can be held to account as an arm of the state by suit against the Attorney General. This was the approach taken by Justice Davis in **Andy Thomas** and **Kirkland Paul**[57]. Justice Davis circumvented the section 38 ouster by concluding that the applicants were not seeking to make the President answerable because he was not a party to the proceedings. This was adopted by my sister Justice Dean Armorer in **Lincoln Smith v AG**[58]. In applying the authorities of **Maharaj v AG**[59] (no 2) and **Thomas v AG** the learned judge concluded that a motion which alleges breaches of fundamental rights under section 14 of the Constitution by virtue of a presidential order, presents no attack on His Excellency, but is a claim against the State for what has been done in the exercise of its executive power. A challenge therefore based on an allegation of a breach of a fundamental right will even in a perfectly clear case prevail over the ouster clause and the jurisdiction conferred by section 14 will not be extinguished.

99. The logic of Justice Dean Amorer's judgment is clear. However I derive little comfort in examining the actions of the President in making a decision under section 136 through the lens of articulating fundamental human rights by creating an artificiality that the President is "not answerable" because he is not a party to the proceedings. Justice Boodoosingh in **Devant Maharaj v AG** approached the question of the section 38 ouster from a different perspective. Reading the Constitution as a whole the ouster must be given effect however it cannot trump other provisions of the Constitution if the President acts contrary to them. The learned Judge opined that section 38 is "not an absolute ouster. The President's actions cannot be enquired into once his actions are lawful. In my view his actions will not be protected if they are unlawful."

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[55]

[56] [1999] 4 LRC 380

[57] HC 6347/85

[58] HC 2475/2003

[59] **Devant Maharaj v AG** HC 3591/2009

100. This in my opinion is a perfect platform to rest any discomfort that section 38 makes the President absolutely immune and above the law in the discharge of his functions as President. It preserves the solemnity of Presidential action so long as the act is within the boundaries of lawful conduct as prescribed by the Constitution. In our instant case, is the President bound to act on each and every complaint that he receives, or is he required in the use his discretion to act rationally? The power to make a decision under section 136 (8) is discretionary. The President can on his own initiative make the decision that the question of removing an officer from office ought to be investigated. However the President does not wake up one morning and on a whim make such a decision. So long in my opinion the decision is made without breaching any of the fundamental human rights enshrined in the supreme law, the President will not be answerable for the manner in which he chose to make the decision. This analysis endorses the treatment of constitutional ousters as authoritatively established by the Privy Council in **Thomas v AG**. In **Attorney-General v Whiteman**[60] at page 412, Lord Keith of Kinkel said: 'The language of a Constitution falls to be construed, not in a narrow and legalistic way, but broadly and purposively, so as to give effect to its spirit, and this is particularly true of those provisions which are concerned with the protection of human rights.'

101. As discussed above in the absence of express provisions as to the manner in which the decision under section 136 (8) ought to be made the principle of fairness is infused in the decision making process. There was a range of possibilities open to the President in acting fairly towards the Claimant before he made his decision under section 138. He could have provided the letters to the Claimant, he could have written the Claimant formally laying out the specific allegations of misconduct, he could have told her that she could attend on their next meeting with a lawyer of her choosing. There is in my view a host of options and neither of these options discounts or dilutes in any way the participative role offered to the Claimant by providing to her orally a gist of the allegations of

[60] (1991) 39 WIR 397

misconduct and inviting her response. What the law requires is “fair play in action”. A procedural activity that allows for the participation of the Claimant in the decision making process.

102. I consider therefore the section 38 ouster as the gate keeper to the integrity of the office of the President. The gates will be temporarily opened for the Court to examine whether the conduct engaged by the President in his official capacity is lawful and whether it offends the fundamental right. Such illegality can include: That he did make the decision to remove the officer from office without setting up the Tribunal. That he set up a Tribunal comprising the very three members of the Commission who made complaints against the Claimant. That he failed to give the Claimant a hearing before making his decision. The list is not meant to be exhaustive but illustrative of the inquiry. However once the Court is satisfied that the President has acted in compliance with the Constitution the gates of the ouster are shut again.

103. In **Re Sarran's Application**[61] **at page** 371 Cummings JA said:

> ”Let me at the outset say that section 6 **of article 119 [now ar**ticle 226(6)] does not, in my view, present any difficulty. It means no more than that there can be no inquiry by a court into the validity of an act that the commission is legally authorized to do; this does not mean that if the commission or person does something which it has no jurisdiction to do, or which is beyond its or his power, as defined in the Constitution, that act cannot be inquired into by the courts.”

104. In **Re Langhorne's Application**[62] at page 356, Luckhoo C stated: 'When article 96(1) [now article 201(1)] vested in the commission the power to remove and exercise disciplinary control over public officers, it gave to that body the legal authority to do so, but of necessity it is required to act within the area of a jurisdiction subject to qualifications and conditions of exercise specified under the

[61] (1969) 14 WIR 361
[62] (1969) 14 WIR 353

Constitution. If it does not act within the jurisdiction there delineated, then the protection afforded by article 119(6) [now article 226(6)] to prevent any inquiry into the validity of functions performed, would be unavailing, since the functions will not have been performed with due authority of law. The very language of article 119(6) [now article 226(6)] emphasizes this when it bars an inquiry by the courts on those occasions when any "function" is "vested" in the commission "by or under the Constitution". It is in the nature of a condition precedent that the function must so vest before the courts cease to have the right to inquire under this article. If, then, a question is raised as to whether in a particular case a function is or is not vested, this goes to the root of the commission's jurisdiction and so is properly justiciable by the courts without the aid of any other enabling provision.'

105. See also **Evelyn v Chichester**[63], **Tappin v Lucas**[64], and **Attorney-General of Antigua v Antigua Times Newspaper Ltd**[65]. In **Endell Thomas v AG** Lord Diplock gives life to the interpretation of the section 38 as the gatekeeper for lawful action:

> "In exercising such jurisdiction the commission is clearly performing a function vested in it by the Constitution; and the question whether it has performed it validly by removing the plaintiff from the Police Service falls fairly and squarely within the language of section I02 (4)(a) as a question into which by the Constitution itself the court is prohibited from inquiring…
>
> …However, their Lordships do not find it necessary in the instant case to analyze the speeches in *Anisminic* and later English cases that have followed it or to do more than say that it is plainly for the court and not for the commission to determine what, on the true construction of the Constitution, are the limits to the functions of the commission. This is the task on which their Lordships have been engaged in answering questions

[63] (1970) 15 WIR 410
[64] (1973) 20 WIR 229
[65] [1975] 3 All ER 81

(I) and (3). If the Police Service Commission had done something that lay outside its functions, such as making appointments to the Teaching Service or purporting to create a criminal offence, section I02(4) of the Constitution would not oust the jurisdiction of the High Court to declare that what it had purported to do was null and void.

There is also, in their Lordships' view, another limitation upon the general ouster of the jurisdiction of the High Court by section I02(4) of the Constitution; and that is where the challenge to the validity of an order made by the commission against the individual officer is based upon a contravention of "the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations" that is secured to him by section 2 (e) of the constitution, and for which a special right to apply to the High Court for redress is granted to him by section 6 of the Constitution. "*Generalia specialibus non derogant"* is a maxim applicable to the interpretation of constitutions. The general "*no certiorari"* clause in section I02(4) does not, in their Lordships' view, override the special right of redress under section 6.

In the instant case, however, there is no suggestion that the plaintiff was not given a fair hearing in accordance with section 2 (e). Nor can it be plausibly argued that the commission acted outside its jurisdiction in removing the plaintiff from the Police Service in the exercise of disciplinary control over him. What it did fell fairly and squarely within the functions and jurisdiction conferred upon it by section 99(I). The High Court had no jurisdiction to inquire whether or not it was validly done."

106. I do not therefore agree with the Defendant that the Court cannot investigate into the President's exercise of his discretion under section 38 of the Constitution. If however it has been lawfully exercised or exercised within the constitutional limitations, the President will not be held answerable for the exercise of this function.

107. I wish to add that the importance of the constitutional ouster of section 38 highlights a fundamental principle of constitutional law (See **Kenneth Suratt v AG**[66]). That the fundamental rights and freedoms are not absolute and the Court must always conduct a balancing exercise between competing rights. In this case there is the right to take executive action clothed with a constitutional ouster and the individual right to the protection of the law as articulated as a right to be heard. There is the right of the individual appointed by the President and the general interest of the proper functioning of the Commission also under the purview of the President which discharges an important role in the national life of our country.

108. The presence of the ouster calls for at the very least due deference to the President in the quality of the hearing afforded to the individual. As explained above the complaint of unfairness in this case is one of degree. Lady Hale in **Suratt** reminds us that the fundamental rights enshrined in our Constitution are qualified rights. It is for the Courts to strike the balance between individual rights and the general interest. In my view the hearing afforded by the President before making his decision achieves the right balance between observing the duty to be fair to the Claimant and the duty of the President to act in the general interest of the Commission.

Abuse of Process (ii) Availability of Judicial Review

109. In the final analysis I do not dismiss this claim as an abuse of process. I have dismissed this claim on its merits. In my view the Claimant was entitled to articulate her right to the protection of the law as a right to be heard before the President made his decision under section 136. The section 38 constitutional ouster was not a sufficient bar from making the enquiry that the President acted within the jurisdiction of the Constitution which includes observing the constitutional principle of fairness discussed above enshrined in the fundamental

[66] **Kenneth Suratt v AG** [2007] UKPC55

right to the protection of the law. I accept however that an appropriate remedy would have been judicial review of the decision of the Commission to make the complaints to the President in the first place without having given her an opportunity to be heard. The difficulty with this approach however is that the complaints were apparently made by individual members of the Commission and not the Commission itself. In any event this does not negate her right to constitutional relief if she was able to prove that any of her constitutional rights under the protection of the law was infringed. A task in which in my opinion she has failed outright.

Conclusion

110. The modalities for the removal of the Claimant as member and Deputy Chairman of the Commission is a purely Presidential act. It begins with a decision taken by the President on his own initiative pursuant to section 136 (8) of the Constitution and ends with a report to be made to the President by a Tribunal established under section 136 (9) to inquire into the matter, report on the facts and advise His Excellency as to whether the officer should be removed. It is a decision taken against the constitutional backdrop of the limited ouster of the Court's jurisdiction from enquiring into the acts of the President in his official capacity, the principle of fairness to be observed in relation to the Claimant before the decision is made and the full right of the Claimant to be heard before the Tribunal where questions of the sufficiency of evidence will be tested and adjudicated upon and whose deliberations will fall under the Court's supervisory jurisdiction.

111. It is a decision taken against the factual backdrop of an impasse in the operations of the Commission, letters of complaint made about the conduct of the Claimant and the need to investigate those complaints. The President in my view acted prudently and appropriately in distancing himself from adopting an inquisitional and investigative role and in triggering the establishment of the Tribunal.

112. It is a decision taken after the Claimant was given the gist of the allegations of misconduct, in circumstances where she dismissed the allegations out of hand and where the terms of reference of the Tribunal was consistent with the gist as articulated by His Excellency and responded to by the Claimant.

113. There has been no breach of the Claimant's right to the protection of the law or the right to natural justice.

114. The claim is dismissed.

115. Unless this Court receives submissions from the parties on the question of costs within 21 days of this order my order as to costs shall be as follows:

(a) The Claimant do pay to the Defendant half of its costs of the Defendant's procedural application to strike out portions of evidence filed on 18th May 2012 to be assessed by this Court in default of agreement;

(b) The Defendant do pay to the Claimant half of its costs of the Claimant's procedural application to strike out portions of evidence filed on 18th May 2012 to be assessed by this Court in default of agreement;

(c) There be no order as to costs on the Court's discharge of the prohibition of the publicity of these proceedings as this was a matter raised by the Court of its own motion at a pre trial review without any formal application made by either party;

(d) There be no orders as to costs on the application to amend, it being made in response to the late receipt of the letters;

(e) The Claimant do pay to the Defendant the costs of the claim to be assessed by this Court in default of agreement;

(f) There be no order as to costs in relation to the Interested Party on this claim Save as to its entitlement to costs upon the withdrawal of the claim pursuant to the Court's order dated 24th May 2012.

Dated 12th July 2012

Vasheist Kokaram

Judge

APPENDIX A

INQUIRY INTO CONDUCT	ALLEGATION BY CHAIRMAN/ MEMBER	CLAIMANT'S RESPONSE
(a) having participated in the decision making processes of the Commission, thereafter, unreasonably resiling from and/or refusing to abide by the decisions of the Commission;	See letter from Chairman:- • Refusal to abide by decision (para. 3) • Recant on statements to Commission (para. 5)	• Page 4 (b) • Page 4 (b)
(b) retaining confidential documents of the Commission provided to her in the course of the Commission's business and, unreasonably refusing to return same when required to do so;	See letter from Chairman:- Return of documents (para. 4)	Page 4 (a)
(c) conducting herself in her relations with her fellow Members and with staff of the Commission in an intimidatory manner not conducive to accomplishing the work of the Commission;	See letter from Member, Neil Rolingson:- Behaviour (para. 5)	Page 3 (i), (ii), Page 4 (c), (d), (f)
	See letter from Member, Ann Marie Bissessar:- Behaviour (paras. 2, 3 and 4)	Page 3 (i), (ii), Page 4 (c), (d), (f)

INQUIRY INTO CONDUCT	ALLEGATION BY CHAIRMAN/ MEMBER	CLAIMANT'S RESPONSE
(d) in relation to matters coming before the Commission, preferring her personal status and perceived reputation and standing as an Attorney over the work and reputation of the Commission and without any or any sufficient regard for the fact that her appointment as a member and Deputy Chairman is for the benefit of the Commission;	See letter from Chairman:- Standards of behaviour and public confidence (para. 2)	Page 3 (i), Page 4 (c), (d), (f)
(e) in relation to the work of the Commission, preferring her personal status and perceived reputation and standing as an Attorney over the work and reputation of the Commission and without any or any sufficient regard for the fact that her appointment as a member and Deputy Chairman is for the benefit of the Commission;	See letter from Chairman:- Standards of behaviour and public confidence (para. 2)	Page 3 (i), Page 4 (c), (d), (f)
	See letter from Member, Ann Marie Bissessar:- Pre-action protocol letter (para. 1)	Page 2 under the heading pre-action protocol letter
(f) conducting herself in relation to the business of the Commission and in her relations with her fellow Members and staff of the Commission in such a	See letter from Member, Ann Marie Bissessar:- • Work of the Commission	• Page 3

INQUIRY INTO CONDUCT	ALLEGATION BY CHAIRMAN/ MEMBER	CLAIMANT'S RESPONSE
manner as to have brought or contributed significantly to bringing the work of the Commission to a state of impasse and/or such a stage that a majority of her fellow Commissioners are unable to work with her;	cannot proceed (para. 8) • Unable to continue working with Gafoor (para 8)	• Page 5 under the heading "Remedy"
(g) conducting herself in relation to the business of the Commission including its confidential processes and documentation in a manner which is likely to bring the Commission into disrepute;	See letter from Chairman:- Leaks and public odium (paras. 6&7)	Page 2 under the heading "Letters from the Chairman and the other two commissioners", Page 1 under the heading "Public perception"
	See letter from Member, Neil Rolingson:- Leaks (paras. 2, 3 and 4)	Page 2 under the heading "Letters from the Chairman and the other two commissioners"
	See letter from Member, Ann Marie Bissessar:- Public attacks and leaks (paras. 7 & 8)	Page 1, Page 2 under the heading "Letters from the Chairman and the other two commissioners", Page 4 (e)
(h) conducting herself in relation to the business of		

INQUIRY INTO CONDUCT	ALLEGATION BY CHAIRMAN/ MEMBER	CLAIMANT'S RESPONSE
the Commission and in her relations with her fellow Members and staff of the commission in such a manner as to have undermined the authority of the Commission;		
(i) notwithstanding having had the gist of the complaints above drawn to her attention, dismissing the said complaints as being petty allegations which are patently untrue;		

APPENDIX B

Cases Considered

Abuse of process

1. Harrikissoon v Attorney General of Trinidad and Tobago [1980] AC 265
2. Privy Council Appeal No. 83 of 2007 Felix Augustus Durity v The AG of T&T
3. Strachan v The Gleaner Co Ltd [2005] UKPC 33, [2005] 1 WLR 3204
4. Jaroo v Attorney General of Trinidad and Tobago [2002] UKPC 5, [2002] 1 AC 871
5. Attorney General of Trinidad and Tobago v Ramanoop 2005 UKPC 15
6. Civ. App. 30 of 2004 Basdeo Panday v The AG of T&T
7. Chokolingo v Attorney General of Trinidad and Tobago [1981] 1 WLR 106
8. Attorney General of Trinidad and Tobago v McLeod [1984] 1 WLR 522
9. Hinds v The Attorney General [2001] UKPC 56
10. Boodram v Attorney General of Trinidad & Tobago [1996] AC 842
11. George v Attorney General of Trinidad & Tobago (8 April 2003, unreported)
12. Meek v Powel [1952] 1 All ER 347
13. R v Webb [1999] EWCA Civ 1858
14. Newsouthgate Metals Ltd v London Borough of Islington [1996] Crim L.R. 334
15. Claim No. CV 2008-00667 John Henry-Smith & Barbara Gomes v The Attorney General of Trinidad and Tobago and The Director of Public Prosecutions

Fundamental freedoms

1. Panday v Gordon Privy Council Appeal No. 35 of 2004
2. Roodal v The State Privy Council Appeal No. 18 of 2003

Fundamental freedoms Protection of the Law

1. Thomas v Baptiste [1998] 54 WIR 387
2. Attorney General & Ors. V Joseph(Jeffrey) & Boyce (Lennox) [2006] 69 WIR 104

Fair Hearing

1. Re Pergamon Press Ltd. [1971] Ch. 388, [1970] 3 All ER 535
2. Reg. v Gaming Board for Great Britain, Ex parte Benaim and Khaida [1970] 2 All ER 528, [1970] 2 QB 417, [1970] 2 WLR 1009, [1970] EWCA Civ 7
3. Wiseman v Borneman [1971] A.C. 297
4. R v Secretary of State for the Home Department, Ex p Doody [1994] 1 AC 531
5. McInnes v Onslow Fane and another [1978] 3 All ER 211
6. Herring v Templeman and others [1973] 3 All ER 569
7. R v Senate of the University of Aston, ex parte Roffey [1969] 2 All ER 964
8. R v Secretary of State for the Home Department, ex parte Mughal [1974] Q.B. 313
9. Rees v Crane (Privy Council Appeal No. 13 of 1993); 1 All ER 833
10. Huntley v The A.G of Jamaica [1995] 2 W.L.R. 114; [1995] 2 A.C. 1
11. Wade and Forsyth, Administrative Law, 7th ed. (1994), at p. 566
12. PC Appeal No. 0092 of 2009 [2010] UPKC 2, Hearing on the Report of the Tribunal to the Governor of the The Cayman Islands – Madam Justice Levers
13. Lewis v AG of Jamaica [2001] 2AC 50
14. Kanda v Government of Malaya [1962] AC 322
15. R (on the application of Alan Lord) v The Secretary of State of State for the Home Department [2003] EWHC 2073 (Admin)
16. R(on the application of Anthony Benson) v Secretary of State for Justice [2007] EWHC 2055 (Admin)
17. Dr. Prabha Gupta v General Medical Council [2001] EWHC Admin 631
18. Mahon v Air New Zealand [1984] 1 AC 808
19. R v Secretary of State, ex p Fayed [1997] 1 All ER 228
20. Boodram v AG of Trinidad and Tobago [1996] AC 843
21. Sherman McNicholls v Judicial and Legal Services Commission [2010] UKPC 6, Privy Council Appeal 0023 of 2009
22. Carmel Smith v Statutory Authorities Service Commission CA#213 of 2007
23. Evan Rees and Others v Richard Alfred Crane [1994] 2 AC 173

24. Permanent Secretary of Ministry of Foreign Affairs and Patrick Manning v Feroza Ramjohn Civil Appeal No. 71 of 2007
25. Dhanraj Singh v AG [HCA S – 395 of 2001]
26. Lawrence v Attorney General of Grenada [2007] UKPC 18
27. Clark v Vanstone [2004] FCA 1105
28. Lewis v Heffer [1978] 1 WLR 1061
29. John v Rees [1970] Ch. 345
30. Furnell v Whangarei Schools Board [1973] A.C. 660
31. Tehrani v Argyll and Clyde Health Board (No. 1) [1989] S.L.T 851

Presidential powers /ouster

1. A.G. of Trinidad and Tobago v Phillip (P.C.) (1995) 1 AC
2. Andy Thomas & Kirkland Paul v A.G (HCA No 6346 & 6347/85)
3. Lincoln Smith v AG (HCA No. 2475 of 2003)
4. Sharma v Brown – Antoine [2007] 1 WLR 780