REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No**. CV2019-03989**

IN THE MATTER OF AN APPLICATION FOR LEAVE TO MAKE A CLAIM FOR JUDICIAL REVIEW PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDING RULES, 1998 (AS AMENDED) AND PURSUANT TO SECTION 6 OF THE JUDICIAL REVIEW ACT, CHAP 7:08

AND

IN THE MATTER OF THE CONSTITUTION AND THE JUDICIAL REVIEW ACT, CHAP 7:08

AND

IN THE MATTER OF THE DECISION OF THE HONOURABLE PRIME MINISTER OF TRINIDAD AND TOBAGO CONTAINED IN HIS LETTER DATED 22ND JULY 2019 NOT TO REPRESENT TO HER EXCELLENCY THE PRESIDENT THAT THE QUESTION OF REMOVING THE HONOURABLE CHIEF JUSTICE FROM OFFICE OUGHT TO BE INVESTIGATED

BETWEEN

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO

Applicant/ Intended Claimant

AND

DR. KEITH ROWLEY
THE PRIME MINISTER OF THE REPUBLIC OF TRINIDAD AND TOBAGO

Intended Defendant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Interested Party

THE HONOURABLE THE CHIEF JUSTICE OF TRINIDAD AND TOBAGO

Second Interested Party

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Wednesday 30 October, 2019

Appearances:

Dr. Lloyd Barnett leads Ms. Elaine Green, Mr. Rishi Dass, Mr. Kiel Taklalsingh, Mr. Kirk Bengochea instructed by Mr. Imran Ali, Attorneys at Law for the Claimant.
Mr. Reginald Armour S.C leads Mr. Justin Phelps and Mr. Raphael Ajodha instructed by Ms. Tenille Ramkissoon and Ms. Kendra Mark-Gordon, Attorneys at Law for the Defendant.
Mr. Fyard Hosein S.C leads Ms. Sasha Bridgemohansingh instructed by Ms. Michelle Benjamin and Ms. Kristal Madhosingh, Attorneys at Law for the First Interested Party.
Mr. Ian Benjamin S.C and Mr. John Jeremie S.C. leads Mr. Keith Scotland instructed by Mr. Kerwin Garcia, Attorneys at law for the Second Interested Party.

RULING ON THE EVIDENTIAL OBJECTIONS

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1) In this "rolled up" hearing of judicial review proceedings the Defendant has filed an application making several evidential objections to the evidence adduced by the Claimant.[1] In these proceedings, the Claimant is challenging the decision taken by the Prime Minister of Trinidad and Tobago[2] not to represent to Her Excellency the President that the question of removing the Honourable Chief Justice ought to be investigated under section 137 of the Constitution[3] under the main grounds of irrationality, illegality and procedural impropriety[4].

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[1] Notice of Application to Strike Out Evidence and Affidavit in Support of Tenille Ramkissoon filed 21st October, 2019

[2] Contained in his letter to the Claimant dated 22nd July, 2019

[3] The Constitution of the Republic of Trinidad and Tobago

[4] In those proceedings, the Claimant seeks the following reliefs:

(i) A declaration that the decision of the Honourable Dr. Keith Rowley, the Prime Minister of the Republic of Trinidad and Tobago, contained in his letter to the Law Association of Trinidad and Tobago dated 22nd July, 2019, not to represent to Her Excellency the President that the question of removing the Honourable Chief Justice from office ought to be investigated is illegal and/or unlawful and/or contrary to law and is consequently null void and of no effect;

(ii) A declaration that the decision of the Honourable Dr. Keith Rowley, the Prime Minister of the Republic of Trinidad and Tobago, contained in his letter to the Law Association of Trinidad and Tobago dated 22nd July, 2019, not to represent to Her Excellency the President that the question of removing the Honourable Chief Justice from office ought to be investigated was not made in the performance of his constitutional functions in the public interest and accordingly contravened Section 137 of the Constitution;

(iii) A declaration that the decision of the Honourable Dr. Keith Rowley, the Prime Minister of the Republic of Trinidad and Tobago, contained in his letter to the Law Association of Trinidad and Tobago dated 22nd July, 2019, not to represent to her Excellency the President that the question of removing the Honourable Chief Justice from office ought to be investigated is irrational and/or unjustified and/or unreasonable and/or an improper exercise of discretion;

(iv) A declaration that the decision of the Honourable Dr. Keith Rowley, the Prime Minister of the Republic of Trinidad and Tobago, contained in his letter to the Law Association of Trinidad and

The Defendant's evidential objections challenges approximately 58 of the 74 paragraphs of the main affidavit of Douglas Mendes and 8 out of 12 paragraphs of his supplemental affidavit in support of the application.[5] The Defendant's evidential objections having been filed before the filing of his affidavits in reply and after agreeing to a "rolled up" hearing has, however, caused some concern to the Claimant that the application itself may amount to an abuse of process. That said, the Court commends the parties for engaging in discussions to resolve this procedural dispute and I continue to encourage parties to collaborate on all matters of process in these proceedings consistent with the credo of "procedural consensus".

2) May I first then begin with that aspect of collaboration which gives effect to the overriding objective. In the decision of **Karen Tesheira v Gulf View Medical Centre** CV2009-02051 the Court had commented that it encourages parties in all stages of litigation to arrive at consensus in procedural applications, of course subject to the Court's supervision:

Tobago dated 22nd July, 2019, not to represent to her Excellency the President that the question of removing the Honourable Chief Justice from office ought to be investigated was made in bad faith and/or unfairness;

(v) A declaration that the decision of the Honourable Dr. Keith Rowley, the Prime Minister of the Republic of Trinidad and Tobago, contained in his letter to the Law Association of Trinidad and Tobago dated 22nd July, 2019, not to represent to her Excellency the President that the question of removing the Honourable Chief Justice from office ought to be investigated was made taking into account irrelevant considerations;

(vi) A declaration that the decision of the Honourable Dr. Keith Rowley, the Prime Minister of the Republic of Trinidad and Tobago, contained in his letter to the Law Association of Trinidad and Tobago dated 22nd July, 2019, not to represent to her Excellency the President that the question of removing the Honourable Chief Justice from office ought to be investigated was made without taking into account relevant considerations;

(vii) Consequent upon all/any of the declarations above, an order of certiorari to remove into this Honourable Court and quash the said decision;

(viii) Consequent upon the order of certiorari above, an order of mandamus directing the Honourable Prime Minister to reconsider the said decision subject to any directions and or advice that may be given by this Honourable Court with respect to the exercise of his discretion under section 137 of the Constitution;

(ix) Costs; and

(x) Such other orders directions, declarations and writs as the Court considers just in the circumstances.

[5] Paragraphs 8-34, 35 lines 3-9, 36 lines 3-43, 37-51, 17, 54 lines 7 and 9, 57 lines 1-4, 58-74 of the Affidavit of Douglas Leonard Mendes filed 3rd October, 2019 (The Main Mendes Affidavit) and paragraphs 5 (i), (ii) a – c, (iii), (iv), (ix), (x), (xi), (xii), (xiii), 6, 7 lines 7 and pages 23/25 lines 76 to 77, 8, 9-12 of the Supplemental Affidavit of Douglas Leonard Mendes (the Supplemental Mendes Affidavit)

"13….Protracted procedural applications are a waste of judicial and litigants' resources. Where there can be agreement parties should work towards consensus. This applies to extensions of time, admissibility of documents, disclosure, expert evidence, further information, filing joint statements, the entire list of procedural matters that will involve managing a case towards a trial. Indeed it is the duty of the Court in actively managing cases to encourage the parties to co-operate with each other in the conduct of proceedings. Rule 1.3 CPR also imposes an obligation on the parties themselves to co-operate with one another to further the overriding objective."

3) Reference was made in that case to the reduction in procedural applications by utilizing a philosophy of consensus in working out procedural matters as described by the Honourable Chief Justice W. Martin, Western Australia:

"In Western Australia, we have actively and aggressively discouraged interlocutory disputes. We've made no secret about that. We have embraced the notion of proportionality which was first identified by Lord Woolfe and we apply it forcefully. If someone comes along and says, "We want to have a day's hearing about this particular point on the pleading", we might look at it and say, "No, that day and the time and money spent on that day is not justified by the significance of that issue to the just disposition of the case, so we will hear the application, which is dismissed". That approach is not uncommon. We also have the benefit of a very important rule of court, Order 54 rule 9, which requires the parties to confer before they can initiate any interlocutory dispute. In judicial decisions, we have made it clear what conferral means. Conferral does not mean writing an aggressive and derogatory letter to the other parties' solicitors and sending a copy to the client. Conferral means, ideally, a face-to-face meeting between people with authority to resolve the interlocutory dispute, and at a minimum, it means a telephone conversation between people with that authority. We have found that insistence upon compliance with this rule has been enormously successful in discouraging the volume of interlocutory disputes in the court."[6]

[6] "The Future of Case Management" speech of the Hon Chief Justice W Martin delivered at the Australian Legal Convention, Perth 19th Sept 2009.

4) I say this to underscore the effort of Senior Counsel of the respective parties in collaborating to arrive at the agreement between the Claimant and the Defendant on the majority of the objections. I continue to encourage them to resolve procedural disputes in that way. I also emphasise the point because I understand that young lawyers are following this case and they need to understand how to approach these matters of process to give effect to the overriding objective. Finally, I still hold the hope that the momentum and positive energy that the parties build in collaborating on procedural matters might even transcend into the substantive matter and we can resolve it through a suitable ADR process, but I will leave that for another time because I know that is a very sensitive subject.

5) What then has been left for my determination based on the agreement by the parties are the Defendant's objections to four (4) matters:

   (i) Paragraph 17 of the Main Affidavit of Mr. Mendes.

   (ii) Paragraph 57 - lines 1 to 4 from the words "*On*" to "*day*": "*On 23rd July, 2019…on that day"* of the Main Affidavit of Mr. Mendes.

   (iii) Paragraph 61 of the Main Affidavit of Mr. Mendes- only "DLM38".

   (iv) Paragraph 6 of the Supplemental Affidavit of Mr. Mendes.

6) The grounds of the objections mainly rest on the grounds of hearsay and irrelevance.

7) Before dealing with these objections specifically, I will first make an observation with respect to the Claimant's argument that the evidential objections in this "rolled up" hearing is an abuse of process then explain the general principles which guided my assessment of the evidential objections.

8) In **Joann Bailey-Clarke v The Ombudsman of Trinidad and Tobago and the Public Service Commission** Claim No. CV2016-01809, some comments were made on the nature of judicial review proceedings in a "rolled up" hearing. Mainly, such hearings were seen as a convenient process to deal with the question of leave and substantive relief in one hearing:

   "17. The direction given for the disposal of the leave application in a "rolled up hearing" is a tool of effective case management in the deserving case where both questions can

be determined on one hearing upon considering all of the available evidence as a means to further the overriding objective. The Court must exercise that discretion "with regard to the filtering purpose of the leave application." The "rolled up" hearing is however useful where a serious issue of delay needs to be preserved at the substantive hearing or where expedition is needed and the case needs to be managed to a rapid conclusion."

9) The "rolled up" hearing is essentially a case management device to effectively dispose of the issues raised in the application. As in **Bailey-Clarke**, as a matter of formality, the Court had directed that the Claim Form be filed in this case without prejudice to the Defendant's position on the question of leave. Importantly, in this case, the parties see the merit in proceeding expeditiously with a final determination of this dispute having regard to the two stages involved in the making of a claim for judicial review. In **Bailey-Clarke**, as a matter of process, the Court discussed the applicable test to apply in "rolled up" hearings. In this application another aspect of process is raised with regard to "rolled up" hearings that is: In "rolled up" hearings, is the Defendant to be taken to have abandoned its right to take evidential objections before filing its evidence? The Claimant has submitted that in this "rolled up" hearing the Defendant shall be taken to have waived the right to make such objections and to do so is premature and would amount to an abuse of process. I do not agree. I say so for the following brief reasons.

10) The Claimant's arguments can be summarised as follows: There is a duty of candour on the Defendant in public law proceedings to ensure that the litigation is conducted with "all the cards face upwards on the table" and provide a full and frank response to the substantive claim. See **R v Lancashire County Council ex parte Huddlestone** [1986] 2 All ER 941 (CA). The Defendant must be taken to have consented to file evidence in opposition to the substantive relief and it is premature to strike out evidence at this stage without condescending to the particulars of its defence pursuant to Part 10 of the Civil Proceeding Rules (CPR). In that way, the Claimant's evidence will then be taken in the round considering where there exists admissions or concessions by the Defendant in its evidence. What the Defendant ought not to do is to argue the question of leave before filing evidence in answer

to the substantive claim.

11) These arguments of the Claimant in reality set the context for considering whether the Claimant's evidence is admissible rather than whether the application is an abuse of process. The statements in **Bailey-Clarke** in describing the "rolled up" hearing is not to be construed as a warrant to circumvent the rules of evidence nor to dispense with the procedural requirements in the filing of affidavit evidence whether in support of an application for leave or substantive relief.

12) The rules with respect to the admissibility of evidence are relatively clear. Specifically, these proceedings fall under the discrete Part 56 CPR process. In particular Rule 56.3(4) and Rules 56.7(3) and (4) provide for the filing of an affidavit in support of the application for leave and for the substantive relief. To the extent that Part 56 comprises a distinct rule, it is to be construed with the other relevant parts of the CPR to the extent that they are consistent with it. See **Gladys Gafoor v The Attorney General of Trinidad and Tobago and The Integrity Commission** CV2012-00876.[7]

13) Insofar as affidavits are concerned, references to affidavits in Part 56 are to be construed in particular with reference to the requirements of evidence in Part 30 and affidavits specifically in Part 31 of the CPR. Specifically Rule 31.3 of the CPR provides as follows:

> "**Contents of affidavit**
>
> **31.3** (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his own knowledge.
>
> (2) However, an affidavit may contain statements of information and belief—
>
> *(a)* where any of these Rules so allows; and

[7] **Gladys Gafoor v The Attorney General of Trinidad and Tobago and The Integrity Commission** CV2012-00876 paragraph 25 states:

> "25. The procedures in Part 56 deal specifically with claims in administrative law. The framers of the CPR have carefully carved out the procedures to be adopted in relation to public law matters with careful consideration for the provisions of the Constitution and the Judicial Review Act. It sets out unique modifications to several aspects of general procedure which are provided for elsewhere under the CPR and which are specifically designed for public law matters. Such modifications include aspects of joinder, service, the reception of evidence, the conduct of case management conferences and the making of applications."

(b) where it is for use in any procedural or interlocutory application or in an application for summary judgment, provided that the source of such information and the ground of such belief is stated in the affidavit.

(3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.

(4) No affidavit containing any alteration may be used in evidence unless all such alterations have been initialled by the person before whom the affidavit was sworn."

14) Furthermore, the Court retains its case management powers to govern the admission of evidence in judicial review proceedings under Part 56 of the CPR:

"**Case management conference**

56.12 (1) At the case management conference the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply."

15) It cannot be construed that a "rolled up" hearing dispenses of the Court's powers of case management to sift through the evidence of the Claimant to ensure that it has "checked the boxes" on the rules of admissible evidence. While I accept, as the Claimant has argued, that it may have been desirable for the Defendant to simply file its affidavits in response and to deal with evidential issues by way of submissions at a later stage in the proceedings, there is no fetter nor bar to raise the point at this stage that there is material which the Defendant ought not to respond to as it is irrelevant, hearsay or scandalous. No authority has been cited to suggest that any such impediment exists.

16) In contrast the authorities are clear: While the Court will be slow to strike out evidence, the CPR frowns on the inclusion of scandalous, irrelevant or oppressive matters in affidavits. See Rule 31.3 CPR. In **Judicial Review: Supperstone, Goudie and Walker,** the learned authors observed at paragraphs 20.34 and 20.36:

"20.34 It is wise to pay some careful thought to whether or not evidence and documents are relevant to the matters at stake in the proceedings. Judges are

expressing increasing impatience with the inclusion of large quantities of superfluous material, and are likely to be well disposed towards those who file unnecessary documents.

20.36 The usual rules with regard to the admissibility of evidence apply to judicial review claims as to other types of civil claims. The only general (if a little unhelpful) rules is that all relevant evidence is admissible, except where it is inadmissible."

See also the authorities considered in **JIPFA Investments Limited v Minister of Physical Planning and Ors** BVIHCV2011/0040, **Zaneshir Poliah and anor v Ziyad Amin** CV 2017-01989 and **B v Children's Authority of Trinidad and Tobago** CV2016-04370.

17) While I accept that these authorities do not deal with "rolled up" hearings, the principles are equally apt. I will take as uncontroversial, some salutary principles of evidence from the authorities referred to above as summarised by Mr. Hosein S.C which is that judicial review proceedings encompasses all the rules of evidence. Second, it stands to reason that the rules of hearsay both under the **Evidence Act Chap 7:02** and common law rules will apply. Third, the question of what evidence should remain on the record should be determined at an early stage. Fourth, there may be cases where the Defendant would be called to put its evidence first but there is no objection nor fetter to a Defendant to make its objection in the form that it has. Finally, one of ought to be careful that the admission of inadmissible evidence may be unwittingly or purposefully be used as a device to ferret out and fish out matters from a Defendant which may not be germane or relevant to the controversy.

18) I will also add that essentially the Court is exercising a case management power. Some further assistance in "rolled up" hearings demonstrate that the discipline in following evidential rules remain intact. In **R (on the application of WJ (China)) v Secretary of State for the Home Department** [2010] EWHC 776 (Admin), Beatson J observed:

"**[18]** One reason for some of the difficulties in this case may be that where a rolled-up hearing is ordered the timetable moves faster than some might expect and the rules do not clearly provide for the filing of evidence and skeleton arguments before the hearing. This is not surprising because rolled-up hearings are (at least in their present numbers) a

relatively recent development. They may be justified where there is an issue of delay which, if permission is granted, cannot be raised at the substantive hearing. They may also be justified where there is an issue that has to be determined urgently, its arguability is not clear on the material before the court, but the relevant evidence has either been adduced by the time the papers are considered by the court or it can be adduced within a shortened timescale. But the rules concerning evidence and skeleton arguments for hearings are framed on the basis that permission has been granted. So, the provision in CPR 54.14(1) for evidence provides a timetable of up to 35 days starting from "the service of the order giving permission" and that in the Practice Direction for filing skeleton arguments (54A PD 15.1) requires them to be filed 21 days before "the date of the hearing of the judicial review (or the warned date)". The explicit reference in CPR 54.14(1) to the order giving permission strongly suggests it does not apply to a rolled-up hearing but, if interpreted generously, the provision in the Practice Direction might apply to a rolled-up hearing because it will in substance deal with the judicial review as well as the application for permission. There is, however, no clear basis in the rules for requiring these steps to be taken in such a case. Accordingly, when an order is made for a rolled-up hearing it is desirable that directions be given to ensure there is an appropriate pre-hearing timetable. This should make provision for the service of evidence by the Defendant, additional evidence by the Claimant, a trial bundle, skeleton arguments, and a bundle of authorities."

19) Usefully there exists an Administrative Court Judicial Review Guide 2019 for the Judiciary of England and Wales in which it is noted:

"8.2.9.3. When preparing documentation for a rolled up hearing the parties should apply the same rules as apply when preparing for a substantive hearing (see chapter 9 of this Guide). This is because, despite the fact that permission has not yet been granted or refused, substantive consideration of the application for judicial review will, if appropriate, take place on the same day. Thus, the documentation before the Court should be the same as if the hearing was the substantive hearing."

20) While the UK authorities on "rolled up" hearings are more structured and "rule based" they

do provide a measure of assistance in devising appropriate processes for judicial review in this jurisdiction under general powers of case management. Further, this Court had considered the question of evidential objections and made a specific direction for the filing of an application to strike out before the filing of affidavits in reply. The case management timetable as agreed by the parties contemplated an early filing of evidential objections. If a Court in exercising its case management powers wanted to defer such applications until after all evidence is filed it is open to the Court as a matter of case management to specifically so direct.

21) Turning now to my approach in exercising the discretion in excluding evidence, there is some merit in one of the points the Claimant has made in its submission of adopting a liberal approach to evidential objections in "rolled up" hearings. Paragraph 20.55 of **Judicial Review: Supperstone, Goudie and Walker** states:

> "Once the defendant has filed its evidence, the claimant should have a far better understanding of the way in which the act or decision under challenge was reached. The claimant's advisers now come under a duty to reassess the merits of the review, and reconsider whether or not the matter has sufficient merit to proceed to a hearing. If, on receiving the evidence, it becomes clear that the decision was properly taken, the matter should not be allowed to proceed to trial."

22) At this stage where the Defendant has not yet filed any evidence and having agreed to deal with both the question of leave and the substantive relief, a Court should act cautiously in restricting the presentation of the Claimant's case unduly before having a panoramic picture of the dispute after the filing of the evidence of the Defendant. In my opinion, where there is a flagrant breach of the evidential rules would the sword come down on the Claimant but latitude should be given for the presentation of the Claimant's narrative. To this extent, the approach in **B v Children's Authority** would be the preferred approach in such "rolled up" hearings. See also **Sierra Club of Canada v Canada (Minister of Finance)** 1998 CarswellNat 2273.

23) While I am not minded to have a mini hearing on issues such as bias, irrelevant

considerations and regularity of decision making, suffice it to say, the starting point of the analysis of this Court is the material before the decision maker, his deliberation and his reasons. I would expect a certain degree of evidential discipline so to speak but I would defer to receiving the parties' respective narratives and in particular the Defendant's decision making process before we further analyse and interrogate the claim and the grounds of reliefs. Having said that, there are obvious "outliners" on this generous parameter and some matters of formality in the evidence which are harmless either way.

24) What now falls for consideration in the four paragraphs that are the subject to the dispute is the question of the relevance of the background leading to the submission of the complaint to the Prime Minister and hearsay evidence. Mr. Armour S.C has usefully summarised the main principles which bear repeating:

    a. The admissibility of evidence is generally a matter for the discretion of the Trial Judge, having regard to the common law rules, the overriding objective and the principle of proportionality;

    b. Evidence can only be admitted once the adequate foundation has been adduced;

    c. Evidence may be admitted once it is relevant and does not offend the traditional rules against hearsay and/or opinion evidence; and

    d. The Court retains a residual discretion to admit hearsay and/or opinion evidence depending on the probative value of that evidence balanced against the prejudice of receiving it, however the Court should be slow to adopt this approach.

25) I should also mention the useful case of **Bernard v Canada Revenue Agency, Treasury Board and Professional Institute of the Public Service of Canada** 2015 FCA 263 which usefully sets out the applicable principles for the reception of evidence that sets out the background to a decision.

- The starting point is that the evidentiary record before the Court is restricted to the evidential record that was before the decision maker.

- The background narrative should be by way of summary aimed at assisting the Court

to understand the record before the decision maker, the history and the nature of the case.

- The background should be neutral, non-argumentative
- Care must be exercised not the go further to provide fresh evidence into the merits of the decision.

26) With these general principles in mind, I focused on these four objections and my rulings are as follows.

RULING ON THE EVIDENTIAL OBJECTIONS FILED BY THE DEFENDANT

OBJECTIONS IN RELATION TO THE CLAIMANT'S PRINCIPAL AFFIDAVIT (THE MAIN MENDES AFFIDAVIT)

PARA. REFERENCE	DEFENDANT'S OBJECTION	CLAIMANT'S RESPONSE	COURT'S RULING
17	This paragraph introduces inadmissible hearsay and/or scandalous evidence relating to the purported views of the Rt. Honourable Mr. Justice Michael de la Bastide. The source of the information is not cited or provided to the Court. On neither the Leave Application nor the fixed date claim is this evidence admissible. In any event, the purported views of the Rt. Honourable de la Bastide clearly have no relevance to the exercise of the Defendant's discretion	This is relevant to the reasonableness of the Claimant conduct in investigating the allegations against the Chief Justice and referring a complaint to the Defendant, which the Defendant has categorised as irregular and motivated by improper purposes. In addition, the allegations against the Honourable Chief Justice were well publicised. The publicly reported views of a former Chief Justice and President of the Caribbean Court of Justice could not be an irrelevant consideration to the Defendant's exercise of	This paragraph is struck out on the ground that it introduces inadmissible hearsay and scandalous evidence. See **J.L. Young Manufacturing Company Ltd. v J.L. Young Manufacturing Company Ltd** [1900] 2 Ch 753 and **B v Children's Authority of Trinidad and Tobago** CV2016-04370

	under section 137, and was not before the Defendant as part of the Complaint at the time he made his Decision.	his discretion under section 137 of the Constitution. There is nothing scandalous about the public statement of a former Chief Justice and this assertion is in appropriate. The evidence is in any event not hearsay and directly relevant for the fact that it was made. This is because it goes to the duty of inquiry of the Defendant. The advice of Mr Stevens QC ("DLM32") itself expressed concern at para. 40 over judicial recommendations for public housing but, relying on a letter from Mr Lyons, concluded that in Trinidad and Tobago the HDC policy permitted the Chief Justice and other Judges, which *ex facie* it does not, and legally it cannot, to make recommendations for public housing. This should have raised an inquiry as to whether there was and or the propriety of such a practice that such recommendations were being made. Any such inquiry would have brought to light the fact that a former Chief Justice had	

		publicly spoken on the very issue (and in connection with the matters the subject of the Complaint) denying the propriety of such a practice.	
57 - lines 1 to 4 from the words "*On*" to "*day*": "*On 23rd July, 2019…on that day*"	The lines within this paragraph relate to the internal decision-making process of the Claimant prior to issuing a letter to the Defendant on the 28th July, 2019. The precursor steps to the issuance of a letter to the Defendant concerning the Decision are irrelevant to the review exercise being performed by the Court.	This paragraph is relevant because of the Defendant's treatment of the Claimant as acting irregularly and or for improper motives	The objection is overruled. The evidence contains relevant background narrative of the Claimant. It is relevant to the Claimant's argument that it took the proper steps to make its complaint. See **Bernard v Canada Revenue Agency, Treasury Board and Professional Institute of the Public Service of Canada** 2015 FCA 263.
61 Exhibit "DLM38"	These paragraphs are irrelevant as they relate to matters which took place subsequent to the Defendant having made his decision. Additionally, it is egregiously inadmissible to seek to attach an irrelevant and inadmissible unsigned	The paragraphs and the related exhibits the Defendant are relevant to his state of mind in when he considered the Complaint, and to the issue of bias and or his taking into account irrelevant considerations. Evidence of bias post the Decision is admissible and relevant if it shows the	The last sentence of paragraph 61 "A true copy of the unsigned letter is now produced and shown to me and is hereto annexed and marked "DLM38"" and the first sentence on paragraph 62 "The exhibit "DML38"

	letter such as DLM38. The Defendant provided the Claimant with written reasons for his Decision, as well as legal advice he received from Mr. Howard Stevens QC. This Honourable Court, in performing its supervisory role, is required to review those reasons, with reference to the Complaint and in the context of the legal advice received, to determine whether the Defendant committed any error on the face of the record. Extraneous statements of a political nature, respectfully, cannot form part of that review exercise and are clearly more prejudicial than probative.	Decision was tainted by unlawfulness.[8]	contained references to the Executive Summary of the Committee's Report." are struck out on the grounds of inadmissible hearsay. See **J.L. Young Manufacturing Company Ltd. v J.L. Young Manufacturing Company Ltd** [1900] 2 Ch 753.

OBJECTIONS TO THE CLAIMANT'S SUPPLEMENTAL AFFIDAVIT (THE SUPPLEMENTAL MENDES AFFIDAVIT)

PARA. REFERENCE	DEFENDANT'S OBJECTION	CLAIMANT'S RESPONSE	COURT'S RULING
6	This paragraph is irrelevant as it relates to	The paragraphs and the related exhibits the	This paragraph is struck out following

[8] See **R v. Rand** (1913) 15 DLR 61 where a conviction was overturned owing to a magistrate's bias, evidence of bias post-conviction was admitted.

	matters which took place subsequent to the Defendant having made his decision. Particularly, an inadmissible unsigned DLM38 letter purporting to be penned by Mr. Gerald Ramdeen, Attorney-at-law, to the Honourable Chief Justice has *ipso facto* nothing to do with either the Defendant or the Decision.	Defendant are relevant to his state of mind in when he considered the Complaint, and to the issue of bias and or his taking into account irrelevant considerations.	the striking out of DLM 38.

Costs

27) There shall be no order as to costs.

Vasheist Kokaram

Judge